

IN THE HIGH COURT OF LESOTHO

In the matter between:-

R E X

VS

SIBUSIZO NAIMA

Review Case No. 50/2000
Review Order No. 3/2000

CRI 771/2000
Quthing District

REVIEW ORDER

This is the matter which came before me on an automatic review from the resident magistrate Quthing. The accused was charged with three counts. The first count was the charge of the crime of House Breaking with Intent to Steal and Theft. The second count, was the charge of Theft Common. The third count was the charge of contravention of section 14 of NATIONAL IDENTITY AND PASSPORT SERVICES ACT NO. 9 of 1984.

The accused pleaded guilty and was convicted on all counts. In respect of counts II and III the statement of agreed facts contains all the essential elements which must be established in order to sustain the conviction of the charges in counts two

and three. The conviction and sentences in respect of these two last counts, are found to be in order. I accordingly confirm both conviction and sentence in respect of counts II and III.

As far as count I is concerned, there are problems of insufficiency of evidence that supports the conviction. I proceed to deal with the question of evidence as disclosed in the statement of agreed facts. That statements of agreed facts is as follows:-

“ the crown will show that the accused was previously employed by the parent of the child whose items of clothing, were found missing from the caravan which the father used as a living room. Evidence will show that the caravan was noticed to have been broken into sometime in February 2000. That caravan had been previously closed and locked by this child who was away at the time. This child examined her property and found the items listed in the charge, missing. The father and the child had not given their permission to anyone to take away that property.”

The statement of agreed facts is very brief and vague. It does not show precisely, how and when the breaking in was done and the property removed in relation to

that breaking in. The statement does not show how the breaking in was done. There is also an omission of the facts as to how entry was effected if at all entry was made into that caravan.

It has come to my notice that once an accused tenders a plea of guilty, the public prosecutor, does not bother to make sure that all the facts which establish the commission of the offence charged are put before the court. The plea of guilty by the accused, by itself, is not sufficient to sustain conviction. There must be facts which show the court that the offence charged was in fact committed. In our present case, the accused is charged with the crime of House Breaking with intent to Steal and Theft. There are essential elements of this crime, which must be established by the facts of the case. These essential elements are five in all. They are (a) Unlawfully; (b) breaking; (c) entering; (d) premises; (e) Intent. ***SOUTH AFRICAN CRIMINAL LAW AND PROCEDURE. Volume II Common Law Crimes Third Edition by JRL Milton at page 796.*** The entry into the premises must be unlawful.. ***R v FAISON 1952 (2) SA 671.*** It must be shown in the facts that the accused had no right to enter the premises. This accused, is said to have been employed by the parent of the child whose items of clothing were allegedly taken by the accused. The statement does not disclose in what capacity was the accused employed.. The statement of facts does not disclose whether or not the

accused had any right to enter the premises of the employer. It must be specifically alleged in the facts that at the time the entry was made by the accused into the caravan, he was not at all entitled to enter those premises. **R v WILLY OVAMBOLAND 1931 SWA 11**

(b) Breaking

To 'break' premises means to create a way into those premises by displacing some obstruction which forms part of those premises. **R v FOURIE; R v LOUW 1907 ORC 58**. The removal, [for example of a lock] or displacement of any obstacle which bars entry into that caravan, should have been alleged in the facts. **R v NGOBEZA 1992 1 SA CR 610 (T) 614**. The facts do not show how the conclusion that the caravan was broken into, was arrived at. Was the door or window broken? There need not be actual damage to anything obstructing the way into the caravan. Mere opening of the closed door without the authority or permission of the owner to open it, is breaking in. The facts must specifically address how the conclusion that the caravan was broken into, was arrived at. What exactly led them to conclude that the caravan was broken into? What obstruction was removed if any obstruction was at all removed in order to gain unauthorised access into the caravan?

(c) Entering

There is no allegation that the accused entered the caravan. The complainant must have made some observations that entry into the caravan was effected. The statement of facts should show how the crown was going to prove that the accused entered the caravan. Those facts which gave the complaint an impression that someone has been in the caravan should be specifically stated. There is no mention that entry into the caravan, was effected and how it appears to have been made.

(d) Premises

It is mentioned in the statement of agreed facts that the complainant used that caravan as the living room. Certain assumptions may be made from this statement. Firstly, that it must have been permanently parked there for that purpose. Secondly, that it was being used, primarily for human habitation. That being so, it deserved the protection of the sanctity of a home. On this aspect, the facts though not detailed they some how provide a basis from which assumptions can safely be made to fill in the gaps in that statement of agreed facts.

(e) Intent

The intention to steal may be inferred from the fact that certain items which were

in the caravan were found to be missing immediately after the caravan was broken into. On this aspect, the facts alleged show this court that there are items of clothing which went missing. The statement fails to show precisely at what stage in relation to the breaking in were the items found missing. The material facts which would support the conviction on the charge of House Breaking with intent to steal and Theft have been omitted. The statement of facts does not show if those items were found and where they were found. The facts as stated by the public prosecutor and accepted by the accused, do not disclose the commission of an offence of House Breaking with intent to steal and theft. There is no link between the alleged crime and the accused.

The conviction on this count is quashed and the sentence set aside. The accused was properly convicted and sentenced in respect of counts 2 and 3. The conviction and sentence in respect of those two last counts are confirmed.



**K. J. GUNI
JUDGE**

18th May 2000

cc: The Resident Magistrate - Quthing

O/C Police - Quthing
O/C Prison - Quthing
O/C Central Prison - Maseru