

IN THE HIGH COURT OF LESOTHO**In the matter between****R E X**

v

PULANE CAROLINE MOKONE**For the Crown : Mr. H. Louw - instructed by the
Director of Public Prosecutions****For the Accused : Mr. B. Sooknanan****JUDGMENT****Delivered by the Honourable Mr. Justice T. Monapathi
on the 9th day of May 2000**

This was a summary trial. The Accused who was an adult female and Senior Data Controller at the Compulsory Savings Section of the Treasury Department of Lesotho was charged with fourteen (14) counts of the theft alternatively, of fraud of monies which added to the total sum of One Hundred and Four Thousand, One

Hundred and Six Maloti and Sixty One Lisente (M104,106.61).

The charge was explained to her and her Counsel confirmed that she understood the charge of Eleven Counts the three of which (2,8 and 10) had been withdrawn. She pleaded guilty to the theft, as charged. Mr. Louw outlined the evidence that would have been tendered. This outline the Accused and her Counsel confirmed as correct. The Court then entered a plea of guilty to the eleven (11) counts.

The Compulsory Savings Act 26 of 1974 (the Act) provided for monthly deduction of an amount equal to 5% from the salary of civil servants in the employ of Lesotho Government (the Government). Such funds were to be paid into a special savings account in the name of each individual Civil Servant by the ~~Accountant-General of this country.~~ Such amounts could only be withdrawn after five (5) years had elapsed from the date of the first deduction.

Compulsory Savings Order 18 of 1992 (the Order) amended the Act No.26/74 to provide that all deductions and interest would be repayable to each Civil Servant after three (3) years had elapsed from the date of the first deduction. Early withdrawals were allowed where the participant to the Compulsory Savings Scheme (the scheme) passed away, was female and married, became ill or infirm, retired or resigned from the Civil Service. The scheme was compulsory for all civil servants and voluntary for employees of parastatal organizations as sampled on page 45 of compiled bundle of exhibits collectively called Exhibit "A".

No separate bank accounts were opened for each individual participant and all contributions were paid into a single bank account whilst the Treasury Department maintained a separate ledger, recording amounts due to participants.

Contributions by civil servants automatically deducted from their salaries and updated in the records of the Compulsory Savings Department contributions from employees of parastatal organization were paid over to the scheme by cheque drawn on the bank account of the relevant parastatal and accompanied by a contributors' list. The scheme's records were then manually updated in the Computer Department and which updated information was verified by the department.

All claims, whether arriving automatically after three (3) years or entered manually were verified by the Department. The department then compiled a list of all claims which then inputted by personnel of the Computer Department. A transaction list was then printed and reviewed by the Department. Subsequent to such review, the relevant cheques were printed out in the Computer Department. ~~The printed cheques were then returned to the Department for review and~~ despatched to the Government departments and parastatals/organizations where claimants were employed.

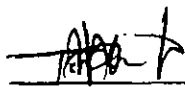
The Accused was a Senior Data Controller in the Computer department her responsibility being, inter alia, the verification of all data inputs entered by data captive operations. Her duties included the following: The supervision of data controllers and data captive operations. Secondly, the development and maintenance of data control capturing and operating procedures. Thirdly the furnishing of technical guidance to data controllers. Fourthly, the development and maintenance of a security system for specialized stationary and lastly the performance of other duties as required by the Operations Supervisor.

Within the scope of her said responsibilities the Accused committed the offences charged. She procured cheques form the scheme payable to the names of

persons not entitled to received payment from the scheme. The list of such names, cheque numbers and amounts in all the eleven (11) counts was contained in Annexure "A" to the indictment. Having handed the said cheques to such persons, who, after having deposited the said cheques into the bank account where they met with payment by the Government, then returned funds to the Accused. The numbers and the amounts of those cheques were as aforesaid and as stated in Annexure "A". And or alternatively Accused deposited the said cheques into her own bank account where they were met with payment formidably by the Government. The cheques, deposit slips, copies of bank ledger entries, and entries in pass books were formidably documented in Exhibit "A".

The Accused therefore unlawfully and intentionally stole the said amounts of money, the property of, or in possession of the Government of Lesotho and/or the Central Bank of Lesotho:

Counsel needed to prepare for the addresses on sentence and the matter was therefore postponed to the 12th May 2000.



T. MONAPATHI
JUDGE
9th May, 2000

SENTENCE

This is about the sentence of the Accused who has already been found guilty on the 9th May 2000.

First of all I must comment about the degree of efficiency exhibited and the

manifestly good preparation made by the two Counsel. It is after a long time that we have had such preparation in this Court more especially in criminal proceedings which would such as this one involving a lot of documentation. This bring in a lot of fresh air which reminds of the days gone past when things used to be done in this fashion. I wish to commend Counsel and they can rest assured that the Accused will benefit through this task of her sentence, having been made easier.

Sentencing is a very difficult exercise because one will not be assisted by any guidelines or grid with which one would want to conform. That is why it is always a matter of judge's discretion. These guidelines where they have been developed, are formulated in order to promote a set of prescribed principles, the most important of which is that a sentence must be proportionate to the offence committed. In determining or arriving at this proportionality regard must be had to the seriousness of the offence, the social harm caused depending on the different offences. The sentence would have to strive towards optimum combination of restoring rights to victims, protecting society and rehabilitating the offender.

It is granted that in the use of the judge's discretion there is and there can be considerable inconsistency in sentencing decisions. This is caused by the absence of the guidelines and the fact that each individual judge's acquires the practice as he goes along on the job and will invariably follow certain personal inclinations including prejudices. Hence mistakes made before are perpetrated as judges normally follow some informal precedents developed by their predecessors.

I must say that I have been quite impressed about the personal circumstances of the Accused person. I am satisfied that despite the poverty in her upbringing she comes from strong roots and a upbringing that was intended to bring about an upright citizen of this country. She also has a school going child and her sister and

the sister's child thus perpetuating Accused's "remorseless struggle" since her childhood. And I felt she may have deviated late in life when she should not have done so. Her deviation was for a period of about twenty (20) months up to when her criminal activity was unearthed.

The situation, at present, is that the Accused has committed a serious crime. It is a crime which can fairly be called a crime of sophistication and organization. Of course she was well placed, as the judgment recorded, to have been able to marshal what resulted in no mean loss to Lesotho Government. She had such duties as have been described in the judgment and she was positioned to organize that scheme where she dealt with lists of beneficiaries, computer records, cheques and dispatch of cheques. When she deposited those cheques and disbursed funds to herself and to undeserving others who were part of the scheme and who benefited from the proceeds, it was a well-thought out campaign. I was satisfied that the Accused benefited more than others. This was natural in the circumstances. The particulars of those eleven (11) counts with which the Accused was convicted have been outlined in the charge sheet and in the Crown Counsel's outline. The total sum stolen has amounted to M104,000.00. The money was stolen over a period of twenty (20) months or so. Indeed the other moneys were disbursed to the Accused's other friends in the scheme.

I remain satisfied however that the Accused was the principal thief or one of the principal thieves. This theft has resulted in a loss to Lesotho Government which is an actual and direct prejudice suffered by the Government in a trend of thievery which were rampant and involved as it was suggested other big thieves who have been convicted already and who were this Accused's superiors. Those could rightly be taken to have been bad and wrong examples to their subordinates. And that exposed the soft underbelly of the Treasury's vulnerability which showed that a lot

of planning can make money easy to steal from Government. This Accused was part of the organization whereby theft has been and it is still a problem, in which people in whom trust was put have breached such trust. This Accused was one of them. In which theft people were mostly motivated by greed. This Accused was one of them.

Indeed the Accused has no formal (previous) convictions. I am satisfied that she must have been tempted along the way, to have desired these contributions to the Compulsory Savings Scheme in which people contributed. And indeed she admitted guilt. The fact that she did not have any previous convictions and this fact of her having admitted guilt I have noted. She must have been aware however that her conduct would occasion loss to government, the state and the people of this country.

I noted that there were mitigating factors. The first one was the one that she has admitted guilt. It is difficult to speculate as to why she did so except that it is safe to infer that she did so as a result of contrition and remorse, these which must have motivated her. The other aspect is that there have been this long period of time over which the threat of conviction or of this proceedings having hung over her. That she had to withstand that kind of anxiety. That at that time or most of that time she was out of work, most of the time on half pay salary, pending the finalization of these proceedings.

I have spoken about various factors I would say are aggravating, those that demand that this accused person must be punished in a demonstrable way. Because the Courts in punishing people who have been convicted are performing a social function. It is also a social duty in that the community would like to see that people are punished in the right way, that sentences are not nonsensical. As it is said

sentences should not be disturbingly inappropriate, unduly lenient or unduly harsh and merciless, thus risking the bringing of the administration of justice into disrepute and would incur the indignation of the society. They must be realistic. That is what the society demands. But in doing so we must pay attention to the nature of the crime, the interests of the offender and such circumstances has pointed out the beginning of his address which I cannot ignore.

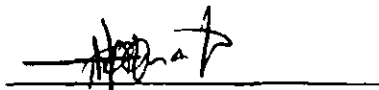
There are certain requirements about punishment or sentencing that is the intended effect of punishment as I have indicated earlier on. That there must be deterrence, a certain amount of retribution and then that an accused person must be seen to be rehabilitated in the end. A combination or a balance of all those attributes is a useful combination, but very much difficult to achieve. But any Court would ideally want to achieve all those things.

It has been said that according to modern sentencing principles sending people to prison is to be seriously discouraged. It is suggested that convicted people who are sent to prison will be contaminated. In that he or she will meet unsavoury characters in prison, people who are hardened and who will wrongly influence the convicted person from good ways. It is contended that this risk can be avoided by imposing other sentences than imprisonment. These include suspensions, postponements, reprimands and warnings. These further include Community Service Sentence in petty offences. These all make sense. But they have to acknowledge that the sentence of imprisonment, its policy and its motivation are still to be found in the statute book. It is a sign by which the Courts demonstrate the seriousness with which they take the crime committed (which are often serious) and how heavy punishment should be in appropriate cases. So that demonstrably realistic punishments will be seen to have been imposed or given.

Coming back to this Accused. She was at the nerve centre where a severe damage was done to the property of government. To say that she was one of the main schemers is appropriate in a rampant kind of crime which is fashionable in this country. That is why I commented that it seemed to be easy to steal from government. That the Courts will punish people who do these things must be demonstrated in the sentences given to offenders who ought to be sentenced. I repeat that there are a few things that stand in the stand of this Accused which I have spoken about earlier and which I need not repeat them. One of them was about the strong roots of the Accused. If she had made a sworn statement in mitigation she may have been able to impress me even further or she may have not able to do so. I have in the result considered the submissions made by both Counsel both who have impressed me.

Coming back to where I begun the neatness with which these proceedings were conducted continues to impress me. And I have said it will benefit this Accused. It is some kind of encouragement which I want to convey to the Director of Public Prosecutions who I commend. In a similar way I feel encouraged that this kind of work will be with us all the time in the future as it is a desirable thing.

I sentenced the Accused to imprisonment for a period of Eight years without option of a fine on each count. Three (3) of those years I suspended for five (5) years on condition that the Accused would not be found guilty of crime involving dishonesty. The sentences are to run concurrently.



T. MONAPATHI

JUDGE

12th May 2000