

IN THE HIGH COURT OF LESOTHO

In the matter of:

R E X

v

KELEBONE LETHEPA  
MOSUOE LETHEPA

Review Case No. 72/01  
Review Order No.4/01

C.R. No. 250/01  
In Thaba Tseka District

ORDER ON REVIEW

This matter has come up for automatic review.

Accused have been convicted of the two counts and sentenced to two (2) years and six (6) years respectively.

Despite that the Accused had committed serious offences and there was a need for rehabilitation and deterrence of potential offenders, (as the learned magistrate correctly opined) there was no compelling reason why the sentences had had to run consecutively.

The factor of prevalent offences (assault GBH and kidnapping) is vague or at least not demonstrated for the Accused to deny or admit (See **S v H** 1977(2) 954 (AD)). To that extent it could be said the Court was using its personal knowledge. But this I could only say with regard to the offence of kidnapping. I found it

difficult to agree that this was proved. I did not however find this my disagreement as a basis for disturbing the sentence. I found a different reason for doing so.

On page 20 of the record the learned magistrate has listed six (6) grounds for the Court sentences, I suppose for the reason why the sentences shall run consecutively. I thought that the grounds which included that the accused are first offenders and that they needed to be deterred or rehabilitated still required a justification as to why (if so) the sentences should run consecutively not concurrently. This the learned magistrate did not do as interests of justice would require.

The latter (interest of justice) is a requirement like the requirement for proper exercise of judicial discretion as a requirement in review of proceedings. See also **S v Anderson** 1964(3) SA 494(A) at 495 which speaks about guidelines in appeal matters.

The desire to have convicted accused rehabilitated should find expression in the sentences that allow offenders back into society. This should be demonstrated. See **S v R** 1993(1) SA 476 (AD) at 479-482. Much as the learned magistrate expressed a desire to have the Accused rehabilitated he should not have ordered that the sentences run consecutively.

I would correct the sentence only to the extent of ordering that the sentences must run concurrently.



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T. Monapathi  
Judge

25<sup>th</sup> October 2001

cc. : Magistrate - Thaba Tseka  
O/C Police - Thaba Tseka  
O/C Prison - Thaba Tseka  
C/C Central Prison  
C.I.D. Police Headquarters  
Director of Prisons  
Director of Public Prosecutions  
All Magistrates  
All Public Prosecutors