

IN THE HIGH COURT OF LESOTHO

In the matter between:

REX

v

**1. JULIA MAPHAMOTSE LEBINA
2. MAJAKATHATA LEBINA**

JUDGMENT

**Delivered by the Honourable Mr Justice WCM Maqutu
on the 23rd day of August, 2001**

The two accused Charge sheet was as follows:

The accused

**ARE GUILTY OF 24 COUNTS OF THE CRIME OF
THEFT, ALTERNATIVELY, FRAUD**

GENERAL PREAMBLE

WHEREAS, at all times relevant to this indictment:

1. The Compulsory Savings Act 26 of 1974 ("the Act")

provided for the following:

- 1.1 The deduction of an amount equal to 5% from the salary of a civil servant in the employ of the Government of Lesotho ("the Government");
 - 1.2 such funds deducted were to be paid into a special savings account in the name of each individual civil servant by the Accountant-General of the Government; and
 - 1.3 Such amounts could only be withdrawn after five years had elapsed from the date of the first deduction;
2. Compulsory Savings Order 18 of 1992 ("the Order") amended the Act to provide that all deductions and interest would be repayable to each civil servant after three years had elapsed from the date of the first deduction;
 3. 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;

4. The Scheme was compulsory for civil servants and voluntary for employees of parastatals;

AND WHEREAS:

5. No separate bank accounts were opened for each individual participant and all contributions were paid into a single bank account while The Treasury Department of the Government ("the Treasury") maintained a separate ledger, recording the amounts due to participants;
- 6.. Contributions by civil servants were automatically deducted from their salaries and updated in the records of the Compulsory Savings Department ("the Department");
7. Contributions from employees of parastatals 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 are then manually updated in the Computer Department, and which updated information is verified by the Department;

8. The following procedure was performed in the payment of claims:
 - 8.1 All claims, whether arising automatically after three years or entered manually, are verified by the Department;
 - 8.2 The Department then compiles a list of claims which is then inputted in the Department's records by personnel of the Computer Department;
 - 8.3 A transaction listing is printed and reviewed by the Department.
 - 8.4 Subsequent to such review, the relevant cheques are printed in the Computer Department; and
 - 8.5 The printed cheques are then returned to the Department for review and despatch to the Government Departments and parastatals where the claimants are employed.

AND WHEREAS

9. Accused 1 was an accountant in the Department where she acted as senior accountant from September 1992 to August 1993. She had the responsibilities of a supervisor in the Department which included the following duties:
 - 9.1 The training of junior officers;
 - 9.2 The verification of the correctness of information relating to transactions of the Scheme;
 - 9.3 The authorisation for production of Scheme cheques; and
 - 9.4 The maintenance of the Scheme's cheque register.
10. Accused 2 was related in marriage to Accused 1 and conducted a business styled "Downtown Café".

AND WHEREAS

11. The Accused, where Accused 1 directly and accused 2 through the medium of Accused 1, procured cheques from the Scheme payable to the names of persons not

entitled to receive payment from the Scheme; and

12. Having:

12.1 Handed the said cheques to such persons, or persons other than the payees, who, after having deposited the said cheques into their bank accounts where they were met with payment by the Government, returned funds to Accused 1; and/or

12.2 Deposited the said cheques into her own bank account where they were met with payment by the Government; and/or

12.3 handed the said cheques to Accused 2 who deposited the said cheques into the business account of the entity styled "Downtown Café" where they were met with payment by the Government; and/or

12.4 Were party to a scheme to obtain cheques from the Scheme, deposit such cheques into their own banking accounts, or the banking accounts of others and obtaining the monies and/or proceeds

therefrom

THE ACCUSED ARE THEREFORE GUILTY OF TWENTY FOUR COUNTS OF THE CRIME OF THEFT

IN THAT upon or about the dates mentioned in column 3 of Annexure "A" hereto, and at or near Maseru in the district of Maseru, the said accused did unlawfully and intentionally steal the amounts of money mentioned in column 4 of Annexure "A" hereto by means of cheques with details mentioned in columns 2 to 5 of Annexure "A" hereto, the property of, or in the possession of the Government of Lesotho and/or the Central Bank of Lesotho.

ALTERNATIVELY, THE ACCUSED ARE GUILTY OF TWENTY FOUR COUNTS OF FRAUD.

IN THAT upon or about the dates asset out in column 3 of Annexure A the accused, in a joint scheme as alleged herein-before, did unlawfully, falsely and with the intent to defraud, t the actual or potential prejudice of the Government of Lesotho and/or the Central Bank and/or the employees of the Government of Lesotho and/or the contributors to the Compulsory Savings Scheme ("the said prejudiced parties") with the prejudice as referred to in column 4 of Annexure A represent to the said prejudiced parties that:

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1. The individuals are referred to in column 5 of Annexure A were members of the Compulsory Savings Scheme; and/or
2. Such individuals had contributed to the Compulsory Savings Scheme; and/or
3. Such individual's names appeared on the contributors list; and/or
4. Such individuals were entitled to payments from the Scheme in terms of the provisions of the Scheme as set out herein before; and/or
5. Such individuals were entitled to receive the monies and cheques as referred to in columns 2 and 4 of Annexure A and/or
6. Such individuals did receive the full amount and the cheques as referred to in columns 2 and 4 of Annexure A

Count no.	Chq no.	Chq date	Amount	Payee
1	60931	15-Feb-91	5,945.42	TJ Masebekoa
2	63767	31-Jul-91	7,372.10	M Shale
3	66486	19-Feb-92	7,404.32	N Moleko
4	66485	19-Feb-92	7,285.17	N Masilo
5	67351	4-May-92	6,635.68	M Sofeng
6	67409	19-May-92	6,154.15	M Marabe
7	68054	16-Jun-92	7,662.68	F Manong
8	68144	25-Jun-92	6,596.32	M Khaile
9	68343	7-Jul-92	11,365.74	T Mota
10	68668	24-Jul-92	8,807.67	A Ramotsei
11	69174	14-Aug-92	9,546.28	M Maofane
12	69175	14-Aug-92	8,652.75	L Sekope
13	74333	14-Sep-92	8,859.85	E Manong
14	74334	14-Sep-92	10,120.09	M Mohapi
15	76023	21-Dec-92	10,511.75	M Letuka
16	67044	8-Apr-92	8,102.84	L Mofola
17	76023	21-Dec-92	10,254.10	M Malefane
18	59624	10-Oct-91	8,042.70	M Masuku
19	61342	25-Mar-91	7,778.09	C Potsane
20	69177	14-Aug-92	10,327.22	M Masuku
21	60350	28-Dec-90	5,806.51	M Mapetla
22	60836	4-Feb-91	6,604.02	A Khoabane
23	600098	19-Nov-90	7,971.17	R Masepe
14	66719	5-Mar-92	8,541.34	K Ramotsei
			196,347.96	

Both accused pleaded not guilty of all charges.

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Admissions were made in terms of Section 273 of Act 9 of 1981 (i.e. *The Criminal Procedure and Evidence Act of 1981*):

1. "It is admitted that the individuals as referred to in column 2 of Schedule "A" were not in the employ of the entities as referred to in column 3 of Schedule "A".
2. It is further admitted that the individuals as referred to in column 2 of Schedule "A" were not contributors to the compulsory savings scheme and therefore could not benefit from a repayment or claim lodged at the compulsory savings scheme as referred to in column 4 of Schedule "A" ".

PW1 Tseliso Mosebeka, duly sworn, was declared as an accomplice and was warned of his legal position.

Tseliso Mosebeka (PW1), duly sworn, said he did work on Accused 2's butchery and charged M1700.00 for installing electricity in it. Accused 2 sent him to the place of work of Accused 1. Accused 1, the wife of Accused 2, gave him a cheque of M5945.42 drawn in the name of Mosebeka J dated 19/2/1991. PW1 went to deposit it in his savings account at the Lesotho Building Finance Corporation on Accused 1's instructions. In terms of their agreement PW1 withdrew M2155 and gave it to Accused 1 who gave him M1700.00. PW1 was asked to withdraw

another M2000.00 and give it to Accused 1, this PW1 reluctantly did. PW1 was told, by Accused , 1 M1700.00 was an advance payment for work to be done. PW1 fitted a new cistern for the toilet.

PW1 told the court that he was not in the compulsory savings scheme. He had not right to money in the compulsory savings scheme. The compulsory savings cheque was handed in as Exhibit A.

In cross-examination PW1 conceded that he did not tell the police the truth about the amount he got. PW1 did not agree with the accused on the way their house is and on the work done on it. To a suggestion that PW1 did not work for the accused, PW1 insisted that he did. In re-examination PW1 said before Accused 1 advised him to open a bank account. PW1 said he did not have a bank account. Accused 1 had even threatened him if he made a statement to the police. PW1 told the court that he reported this to the police.

PW2 an accomplice was Khomo Ramatsei who gave evidence to the effect that Accused 1 was his maternal aunt. The cheque on page 54 which was later marked Exhibit J was given to him by Accused 1 between 1992 and 1993. They were to share the proceeds. It was for the sum of M8807.67. PW2 needed the money. PW2 signed at the back of the cheque. PW2 put it in his savings account. PW2 said he does not remember exactly how they shared but he did give Accused 1 her share.

PW3 (warned as an accomplice) was N. Masuku. Duly sworn she said during 1990 she had worked at the Ministry of Agriculture. PW3 said she knows Accused 1 and her husband Accused 2. Accused 1 was part of her family. The parents of this witness had brought up Accused 1. Accused 1 had handed her a cheque of M8,042.70 on or about the 10th October 1990 and she had signed at the back of the cheque. PW3 got about half the money and Accused 1 the other half according to their agreement. This cheque was later marked Exhibit R. PW3 also got a cheque of M10,327-72 from Accused 1. She kept half the money and Accused 1 got the other half by agreement. This cheque was later marked Exhibit T. PW3 told the court that she had not earned that money. When this happened she had long got her compulsory savings money to which she was entitled. She did suspect it was wrong for her to have these two cheques.

Cross-examination showed accused would deny giving PW3 those cheques.

PW4 P. Potsane was the next Crown witness to give sworn testimony that she was warned as she is an accomplice. She told the court that Accused 1 was brought up in his family. Accused 1's father had been working in the Masuku family when he died. PW4 gave evidence about a cheque of M5,806.51 which was handed to her by Accused 1. Accused 1 had brought her the cheque. This cheque was later marked Exhibit U. The cheque was deposited in PW4's account. PW4 gave Accused 1 half the amount and kept the other half for herself.

Cross-examination revealed PW4's daughter was also involved in this cheque fraud. PW4 said she did not know. It appeared the late husband of PW4 had also been involved but PW4 did not know this. It was said Accused 1 would deny giving PW4 the cheque, PW4 insisted that Accused 1 had given her the cheque.

The Crown had called Mapeete Setala (also accomplice) as the fifth witness(PW5) and she gave sworn testimony. PW5 told the court that she was a friend of PW.....and had been so since 1980. PW5 said she worked in Government revenue collection. She had handed to Accused 1 a bundle of cheques which included a cheque of M6604.02. At that time she was still using her maiden surname. PW5 had financial problems and asked for help. Accused 1 brought her this cheque. She was to give Accused 1 about M3000-00 or M4000-00 out of the money - she could not remember the exact amount. She kept to their agreement. PW5 knew what she was doing is wrong.

Under cross-examination, it was indicated that Accused 1 would deny giving PW5 the cheque. PW5 said she did.

Duly sworn PW6 Makholulu Anna Pholo said she was a Senior Auditor. In 1994 she had audited the compulsory savings scheme. It was a special assignment from the Auditor General. PW6 was given a few cheques and told to go to the Treasury. She was referred to the Financial Controller of the Treasury by the Accountant General at the Treasury. PW6

was referred to the reconciliation department because she did not have enough information. She ended up in the Compulsory Savings Department where she was referred to Accused 1 and one Mrs Mosetse. PW6 asked for the register of compulsory savings cheques. Both of them said it did not exist. Mr Mokhoabane, who used to work in that department, said the register existed and produced it.

PW6 then asked for a list of contributors from Accused 1 and she gave them to her. PW6 perused everything and wrote a report which appears on page 32 to 42 of the bundle of documents given to the court as a file. A total of M907,455-15 had been irregularly paid out of the compulsory savings fund. Five (5) people were involved in this irregular practice, one of them was Accused 1. The owners of the funds were supposed to have signed the register for their cheques. PW6 studied the procedures of how cheques were written, kept at the Computer Centre and sent to the Compulsory Savings Division of the Treasury. She got possession of the list of cheques from the Computer Centre and different registers that were kept for Government parastatals and Government Departments. In the register for parastatals that PW6 got from Mr Mokhoabane, all people who were issued with cheques were listed. In this list Accused 1 had signed for some cheques. This register got lost during investigation. PW6 identified the following cheques in the file compiled for the court:

Exhibit A on page 45

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Exhibit B	on page 46
Exhibit C	on page 47
Exhibit D	on page 48
Exhibit E	on page 49
Exhibit F	on page 50
Exhibit G	on page 51
Exhibit H	on page 52
Exhibit I	on page 53
Exhibit J	on page 54
Exhibit K	on page 55
Exhibit L	on page 56
Exhibit M	on page 57
Exhibit N	on page 58
Exhibit O	on page 59
Exhibit P	on page 60
Exhibit Q	on page 61
Exhibit R	on page 62
Exhibit S	on page 63
Exhibit T	on page 64
Exhibit U	on page 65
Exhibit V	on page 66
Exhibit W	on page 70
Exhibit X	on page 71

A number of cheques had been deposited in the bank account of

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Down Town Café in the Standard Bank in Account Number 027042260761.

These were:

Exhibit B on page 46

Exhibit C on page 47

Exhibit D on page 48

Exhibit E on page 49

Exhibit F on page 50

Exhibit G on page 51

Exhibit H on page 52

Exhibit I on page 53

Exhibit K on page 55

Exhibit L on page 56

Exhibit M on page 57

Exhibit N on page 58

Exhibit O on page 59

Exhibit P on page 60

This bank account Number 027042260761 belonged to Accused 2, the husband of Accused 1. PW6 reported her findings to the Auditor General.

Under cross-examination PW6 said she was told that the bank account belonged to Accused 1. PW6 noted that Accused 1 would deny. She hid the register for parastatals. What PW6 insisted on was that Accused 1 claimed she did not know what she was talking about.

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The next sworn testimony was that of PW7 Malesiamo Motsoasele. She said she did not work at the Compulsory Savings Scheme, but she was asked to compile information on how it worked. It was Accused 1 who told her how the scheme works. Accused 1 was a Grade 8 supervisor in charge of other officers. PW7 described how claims were made and cheques drawn which were eventually handed to Accused 1 as supervisor in the Compulsory Savings Section. When that happened, the cheques would be registered. The cheques would then be picked up by the payee or by a person authorised by the payee. PW7 said she took Accused 1's word on procedure.

Cross-examined, PW7 said cheques were signed by a machine. When the cheque was ready, the person authorised to sign for the cheques from the compulsory savings Department would collect and sign for the cheques.

PW8 was Rantelali Matsepe (another accomplice who was duly warned). He gave evidence on oath. He told the court that his signature appears on Exhibit W which is a cheque drawn in his favour. He had approached Motšeo Potšane about his financial problem. Motšeo Potšane went to the Treasury and brought a cheque of M7,971.17 Exhibit W, already written R. Matsepe which were his names. PW8 deposited it and withdrew M5000-00 and took it to Motšeo Potšane. There was no lawful reason for receiving that cheque. It was Government money.

(((((PW4)))))) Motšeo Potšane was recalled and gave the following

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sworn testimony. PW9 told the court that she knew Accused 1 wanted people to write cheques in their names and share the proceeds. Accused 1 made the cheque in PW8's name. The agreement PW9 made with PW4 was that PW8 would get the cheque through PW4. PW8 delivered Accused 1's share of the money which PW4 handed to Accused 1.

In cross-examination PW4 said PW8 did not know Accused 1. PW4 says Accused 1 gave her the cheque even if Accused 1 might not have created the cheque. There were difference between PW4's evidence and the statement she made to the police. She said it was because she was frightened. She conceded she lied before the police to avoid going to prison.

The Crown then called Inspector Tšita as the 9th witness PW9. He gave sworn testimony to the effect that in July 1994 the Department of Treasury lodged a complaint to the police. PW9 got files of parastatals and cheques and found they had been deposited in certain banks. Among the bank statements of accounts he got were Exhibit 2 in respect of 027042260741 which appears on page 11 to 21 of the file. The savings banks books involved marked Ex.AA appeared on pages 24 to 31.

PW9 got explanations from Accused 1. Then he went to Accused 2, who was the owner of Down Town bank account. Accused 2 would cash them for friends and co-workers of Accused 1. He reduced the explanation in writing and Accused 2 signed it. This was not introduced in evidence as

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inadmissible as it dealt with Accused 1, the wife of Accused 2.

In cross-examination PW9 denied handling Accused 2 roughly. PW9 claimed to be even a friend of Accused 2. He added that he does not even know how Accused 2 was arrested as he PW9 had been transferred.

The Crown closed its evidence.

The Defence put Accused 2 as its sole witness to give sworn testimony.

Accused 2 duly sworn told the court that Accused 1 had three children. Accused 2 said he went as far as Form 2. The police arrested him in June 1995 alleging he had stolen government money. He described his ordeal at the police station. Accused 2 said the Government cheques that were in his account were from customers. He changed cheques if customers bought for at least M100.00. The police said Accused 2 was lying he had been given these cheques by his wife Accused 1.

Accused 2 said he changed cheques if a customer bought for at least M100.00. If the cheque was for a lot o money say about M8,000-00, he would ask the customer to come the following day. In the meantime he would go to the bank so that he could have the money the following day when the customer came. He would deposit the cheque and withdraw the change. Accused 2 denied PW1 Mosebeka did any work for him.

In cross-examination Accused 2 admitted his business account was Down Town Café. Accused 2 said he makes M5000-00 per month. He did not keep any records. He made M500.00 or more a day. Accused 2 said he is not sure what his profit is per day. He does not make much profit because there are many cafés. He stopped trading because there was too much pilfering.

Accused 2 in answering further questions said he did not know the section of the Treasury where Accused 1 worked.

The M5000-00 that he made per month included his profit. It was possible that strangers would leave cheques with him until he obtained changes. Accused 2 did not know why people preferred to change cheques of up to M10 000-00 at his place. When Accused 2 was asked about specific amounts that were deposited but accompanied by no withdrawals the following day, Accused 2 said he kept a float of up to M8000-00 in the house. It could be risky to keep such an amount in the house but he was not aware of this at the time. It had never happened he gave a person M7000-00 all at once. When he was referred to the 16th March 1992, Accused 2 said, this must have happened.

Accused 2 said he did not know what happened between his wife and the witnesses who claimed they took cheques from her. Accused 2 asked about the payment of taxes, replied that he had never paid tax. There were cheques on which he had not sought the identity document such as a passport from the holder of the cheque. The fact that these people were not

legally entitled to these cheques as PW6 had shown was unknown to him. Accused 2 denied that these cheques that were deposited in his account were from his wife. Accused 2 said these cheques were signed by holders at the back in his presence. In respect of the Cheque Exhibit C, Accused 2 had signed at the bank under the printed name of NTSOAKI MOLEKO, Accused 2 said he did this at the suggestion of the bank.

It is for the police to find these thieves, although it did come to his mind to find them to exonerate himself of these charges. Accused 2 told the court the police took his deposit book and cheque book and left. PW1 might speak about him and Accused 1 to shield the actual perpetrator.

In re-examination, Accused 2 said sources of money for cashing cheques were trading account, savings account and the float in the house. Strangers changed their cheques at supermarkets and other trading concerns.

Evaluation of evidence

It is not disputed that the cheques Exhibits A to X were Government of Lesotho cheques that were paying the people named on them monies from the compulsory savings scheme. It is also not disputed that none of the 24 people (in favour of whom these cheques were drawn) were entitled to funds from the compulsory savings scheme. It is not disputed that these cheques were drawn fraudulently in a scheme to steal money from the compulsory savings fund that Government had set-up for depositors.

The accused are charged because the Crown seeks to prove that they were involved in the fraudulent drawing of these cheques or in the receipt of these monies knowing them to be stolen.

In respect of Accused 1, there is evidence that she was a supervisor in charge of other officers in the Compulsory Savings Department at the Treasury. PW1 Tšeliso Mosebeka told the court Accused 1 gave him a cheque of M5945.42 when he was not a contributor to the Compulsory Savings Scheme on or about 15/02/91. This cheque, which PW1 deposited in his savings account, is Exhibit A. PW1 says he withdrew part of the money and gave it to Accused 1. PW2 Augustinus Ramotsei also says Accused 1 gave him a cheque of M8807.67 Exhibit J which he deposited in his account and another cheque of M8541.34 which he deposited in his account. PW2 further testified that he retained a portion of the money and gave a portion of the money to Accused 1. PW3 Maseboko Masuku also says she was given the cheques Exhibits R and T respectively in the amounts of M8042.70 and M10827.22. PW3 further told the court that she kept for herself about half those amounts and gave the rest to Accused 1.

Accused 1 did not go into the witness box to rebut this evidence. She also did not rebut the evidence of PW4 who told the court that Accused 1 gave her a cheque of M5806.51 Exhibit U. PW4 cashed the cheque and kept half of the money and gave Accused 1 half of the money. PW4 approached Accused 1 to draw a cheque for PW8 for the amount of M7971.17 Exhibit W. PW4 got the cheque Exhibit W and gave it to PW8. PW8 deposited the cheque and withdrew a portion of the money according

to PW4's instructions, which money PW4 gave to Accused 1. Mapeete Setala PW5 similarly was given a cheque Exhibit V by Accused 1 for the sum of M6604.02, this cheque was in her maiden surname. PW5 deposited the cheque and gave Accused 1 about half the money.

Consequently Accused 1 has not gone into the witness box to contest the evidence of PW1, PW2, PW3, PW4, PW5 and PW8 in respect of counts 1, 10, 18, 20, 21, 22,.... It goes without saying that Accused 1 had a *prima facie* case to answer as she was not only one of the people who were Government Officials dealing with Compulsory Savings funds but had definite allegations of criminal conduct levelled against her.

It is beyond question that all the abovementioned witnesses are accomplices. Consequently this court should caution itself against convicting on the evidence of accomplices. See *Rex v Ncanana* 1948(4) SA 399 AD at pages 405 to 406 Schreiner JA said the risk of wrongful conviction is reduced where the accused does not give evidence in rebuttal. Yet the need for corroboration (if it can be found) remains especially where there is only one accomplice giving evidence to each criminal episode. For this reason in *Rex v Viljoen* 1947(2) SA 56 AD at pages 63 to 64 and *S v Gokool* 1965(3) SA 461 at page 479 E to 480 C courts have held that individual counts of the same criminal conduct which have been executed in the same manner within a certain period by the same offender against the same type of victim, have the effect of corroborating each other.

In this case Accused 1 (from the evidence before me) was in the Compulsory Savings Department of the Treasury. Five witnesses say she caused cheques to be drawn in their names fraudulently to steal funds from the Compulsory Savings Fund. In return she got a share of the money they collected. The offence being the same and the *modus operandi* used by Accused 1 also being the same these accomplices of Accused 1 in these offences corroborate each other.

The next portion of the case involves the cheques that were deposited in the bank account of Down Town Café - Account Number 027/04/22607/61. The manager of this Down Town Café was Accused 2, the husband of Accused 1. A statement made before the police by Accused 2, which was deemed to be evidence against his wife Accused 1, was excluded on the grounds that it might amount to the Crown making the husband give evidence against her. In *S v Groesbeak & Ander* 1969(4) SA 683 it was held that in a case where a husband is charged jointly with his wife, the wife's evidence is not admissible against the husband. She may enter into the witness box and give evidence in her own defence, but this cannot affect the protection the law offers her husband and *vice versa*. Further more Accused 2 was claiming it was taken under duress and in dubious circumstances. The court did not have to investigate the merits of Accused 2's allegations. It was conceded by the crown that this statement was inadmissible.

There are the following cheques that were deposited by Accused 2 in

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Down Town Café's bank account from people who cannot be found and by people Accused 2 did not know. Accused 2 says they bought for at least M100.00 and he cashed their cheques and gave them the cash. It is not in dispute that these cheques were fraudulently drawn to steal money from the Compulsory Savings Fund which was operated by Government. Accused 2 claims he is innocent, he did not know these cheques were from a fraudulent source. Exhibit Z leads to the following analytical table compiled by Mr Louw for the Crown:

Count Number	Exhibit Number	Cheque Amount
2	B	M 7372.10
4	D	M 7285.17
5	E	M 6635.68
6	F	M 6154.15
7	G	M 7662.68
8	H	M 6596.32
9	I	M11365.74
11	K	M 9546.28
12	L	M 8652.75
13	M	M 8859.85
14	N	M10120.09
16	P	M 8102.84
Total	12	M98353.65

I noted that there were several cheques in the file or bundle which were not made the subject of these proceedings. But these cheques had been deposited in the bank account of Down Town Café.

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Cross-examination and a scrutiny of the bank statements revealed that these cheques were not deposited and money withdrawn to give the people cash, who bought from the café for at least M100.00, the following day. But Accused 2 had alleged that was what was supposed to happen. The turnover was said to be M5000-00 per month, later this was described as profit. At one stage Accused 2 said he kept a float of M5000.00 in the house. This amount was increased as Accused 2 found it difficult to justify the fact that cheques were deposited but money was not withdrawn the following day to give to the people who brought the cheques.

It became clear that these cheques were brought by someone whenever the bank account of Accused 2 was in need of funds. Whoever brought them is immaterial because Accused 2 was aware that he was not entitled to the money. I therefore reject Accused 2's claim that he changed the cheques for customers. The bank statements contradict this assertion. It was clear to me that Accused 2 was telling lies.

The problem I have is what to convict the accused of.

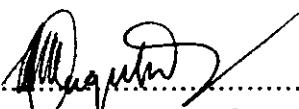
Verdict

There was fraud in the process of furthering a theft. Stand up Accused.

I find Accused 1 guilty of theft in respect of counts 1, 10, 18, 20, 21, 22.

I find Accused 2 guilty of theft in respect of counts 2, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14 and 16.

My two Assessors agree.


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W.C.M. MAQUTU
JUDGE

For the Crown : Miss N Nku
For the accused : Mr B Sooknanan