CRI/A/5/2001

IN THE HIGH COURT OF LESOTHO

In the matter between:

THUSO MATLOTLO APPELLANT

and

REX

JUDGMENT

Delivered by the Honourable Mrs Acting Justice A. M. Hlajoane
on 25th Day of March, 2002

This matter came before me on appeal against conviction only. The Appellant had been charged of abduction of a minor girl aged but only 14 years in 1999. He was convicted and sentenced to six years imprisonment. The three grounds of appeal being that;

(i) The magistrate erred in not properly reading the accused his fundamental rights to legal representation.

(ii) That the plea of guilty was not voluntarily tendered as prior to his appearance in Court the appellant was tortured and subjected to third

degree methods by the police who ordered him to plead guilty, resulting in a failure of justice.

(iii) That magistrate erred in not terminating the proceedings there and then and transferring the record for review to the High Court when the accused in his address in mitigation indicated that he did not have intention to commit the offence he was charged with.

The appeal ought to have proceeded on the 28th February, 2002 but Counsel showed he had not been properly instructed. It was postponed to the 25th March, 2002 and the Registrar instructed to issue yet another fresh notice of trial. On the 25th March there was no appearance for the appellant neither the appellant himself. The notice had been duly made and sent to the address given. Respondent was represented. I have dismissed the appeal and these are my reasons.

On the first ground of appeal, the magistrate not informing the appellant of his right to legal representation this Court in the case of **Rex v Joe Seipati 1985-90 LLR 235,** held that "where the accused does not himself seek legal representation and where no irregularity occurs there is no principle or rule of practice which vitiates the proceedings". The appellant admitted the outline of facts as true. According to **Hoffman - The South African Law of Evidence 4th Edition at 431**, a plea of guilty is in effect a formal admission of the essential

elements of the charge.

S v Mashinyana 1989 (1) S.A. 592, it was held that, "A Court is not obliged to enquire from an accused whether he wishes to have legal representation. The unexpressed desire of an accused to engage a legal representative cannot afford him a cause for complaint after his conviction and sentence." '*Ignorantia iuris non excusat.*'

The second ground of appeal is still related to the first one. He was tortured by police who forced or ordered him to plead guilty. He mentions this for the first time on appeal. He never told the Magistrate that he had been tortured yet he was no longer in the hands of the police.

The facts of this appeal can be distinguished from the case of **R. v Faku and Others (1)1979 (1) LLR 199** where the confession of the fourth accused was excluded by reasons of the fact that it was not freely and voluntarily made. Accused had been arrested on the 8th February, 1978 and only taken for confession on the 21st of that month. At the trial he claimed that he had been beaten by police on several occasions during his interrogation and that words were put into his mouth by the said police officers who threatened to torture him more should he

dare tell the magistrate anything different.

The appellant as already stated in this case never uttered a word to the magistrate at the trial stage about the torture by the police. Besides he had only spent a day in police custody before he was taken to Court, unlike in the above case where the magistrate even remarked as to why the accused who originally denied any involvement in the act should after 13 days detention suddenly change his mind. The appellant in our case had only spent one day in custody presumably because there is no Magistrate's Court at Mount Moorosi but in Quthing.

On the last point of the magistrate having failed to terminate the proceedings and submitting record for review as the accused in mitigation told the Court that he had had no intention to commit the offence, this is not borne out by the record. According to the record, in mitigation of sentence the accused showed that he did not know that what he did could be that bad. Appellant was a man aged 52 years in 1999 and took away a girl aged only 14 years for marriage. The intention to marry the girl was there and could clearly see that the girl was still of tender age fit to be her grand-daughter.

Accused may have not known that in law it is a criminal offence to abduct

a girl of that age, but ignorance of law is no excuse.

For the reasons given above I dismissed the appeal.

A.M. HLAJOANE
ACTING JUDGE

For Appellant: Mr Mda

For Respondent: Mr Seitlheko