

**IN THE HIGH COURT OF LESOTHO**

In the matter of:

R E X

v

NTETE MABALEA

Review Case No. 1/02  
Review Order No.1/02

C.R. No. 783/01  
In Maseru District

**ORDER ON REVIEW**

This matter has been brought to me on automatic review from the Magistrate of Maseru. It follows the conviction of an 18 years old Ntete Mabaleha (Ntete) of Ha Palama under Headman Nkuebe Moshoeshoe. The young man having admitted that he had done the wrongful act with which he was charged. It was recorded on the charge sheet that he said:

“I have done it”

Furthermore it was recorded:

“Proven to have done it and committed to the JTC.”

The charge was that of indecent assault, it being alleged that:

“Upon or about the 31/10/01 and at or near Ha Palama in the district of Maseru the said Ntete did unlawfully and intentionally commit the assault of an indecent character upon one Kefuoe Makhotla by touching the private parts of the said Kefuoe Makhotla thus

committed the offence as aforesaid.”

The learned magistrate has recorded all necessary things about the charge including the facts proved, Accused’s statement in mitigation and at the end made her findings as recorded on the 3<sup>rd</sup> January 2002.

Annexed to the proceedings was a medical report which I need not comment about for the purpose of these proceedings. What was most important was the pre-sentence report by Senior Probation Officer (Miss Moliehi Tšehlo) of the Probation Unit of the Ministry of Justice, Human Rights and Rehabilitation, of the 28<sup>th</sup> September 2001.

In the report the probation officer has commented in relation to Ntete, about the following factors: source of information, family background, educational background, personality, statement about the offence, attitude towards the offence, general problem analysis and recommendations. It is useful therefore to quote the statement about the last three factors:

### **ATTITUDE TOWARDS THE OFFENCE**

“Even though Ntete claiming that he slept with the victim’s consent he states that he is sorry for what he did. He did not realize the seriousness of his actions.”

### **GENERAL PROBLEM ANALYSIS**

“According to the interviewer, this is Ntete’s first offence in criminal justice system. Even the headman indicated that Ntete has never been brought before him for any misdeeds. Members of the community were shocked that Ntete has committed this offence.

Some of the neighbours feel that Ntete seem to be lacking proper parental are.

From the observations made, Ntete's behaviour is mainly due to ignorance. He was not aware of the consequences of his actions."

### **RECOMMENDATIONS**

"his is Ntete's first offence in criminal justice system.

It is the duty and responsibility of the Probation Officer to liaise with the families and communities in their endeavour to correct anti-social behaviour of children and youth. African character on the rights and welfare of The Child Article 4(1) states that all the actions concerning the child undertaken by any authority the best interest of the child shall be of the primary considerations. Ntete is a student. Thus, it is recommended that offender be given probation order with supervision as well as community service.

It is also recommended that the Court orders a family group conference for both families, as the Probation Officer foresees the possibility that member of either families offending against each other. This will be done under the supervision of Probation Officer."

This was a report which encouraged a sentence which would eminently conduce to and provide an opportunity for rehabilitation of the offender without much effort as opposed to imprisonment with all its detrimental results.

The following interim order was made on the 15<sup>th</sup> February 2002 after the interview by probation officer in the presence of Prison Officer Matime and the Assistant Registrar:

Ntete is to be released from the J.T.C. forthwith pending a final review order. In the meantime the Probation Officer will ascertain whether he has secured school at Abia High School in Maseru and conditions such as whether he is boarding at school or will reside with parents or his uncle as a day scholar.

The Probation Officer will report on the 1<sup>st</sup> March 2002 on these aspects. In the meantime the Probation Officer will make arrangements to contact respective families with the view to settling the question of family group conference. Progress thereof will be reported to the Registrar and the Review Judge.

Once the aspect of school has been established the Court will be able to make an order with respect to supervision and things connected with whether the Community Service Order will be feasible in the circumstances.

On the 22<sup>nd</sup> March 2002 the Probation Officer will report on every aspect and enable making of final order.

In paying requisite attention to the Senior Probation Officer's report one had to be reminded and to focus on the prescription of the Lesotho Prison Service's informative. **Strategic Framework towards Improve Corrections in Lesotho** (7<sup>th</sup> January 2002). This document provides as follows at relevant portions:

E. **VALUES AND PRINCIPLES**

1. ....

2. ....

3. **Value**

The majority of offenders can be dealt with effectively in the community by means of non-custodial correction programmes. Imprisonment should be used with restraint and as a measure of last resort.

“F. **GOALS**

1. ....

2. **Respect for human worth**

All correctional work shall respect the individual person and accepted human rights standards and norms.

3. ....

4. ....

5. **Sense of Justice**

Correctional work shall take account of the general sense of justice in society and among the victims on crime.

6. ....

7. ....

8. **Exercise of responsibility**

Correctional work shall be so organized that the offender has opportunity to develop a sense of personal responsibility, self respect and self confidence and become motivated to actively strive for a crime free life by assisting personal, social vocational and educational development.

9. ....

10. Rehabilitation

Correctional work shall support and motivate prisoners rehabilitation, reformation and reintegration into community taking into consideration the rehabilitative needs of the offender, the protection of the society and the interests of the victim.

G. **OBJECTIVES**

H. **HUMAN RIGHTS OF PRISONERS**

1. The right to life and integrity of the person.
2. Etc
10. The right to self-development

I. **CATEGORY OF VULNERABLE PERSONS**

1. ....
2. ....
3. Juveniles
4. Etc.

J. **JUVENILE JUSTICE BASIC GUIDING PRINCIPLES**

1. Environment of the well being of the child.
2. ....
3. Treatment in a manner consistent with the promotion of the child's sense of dignity and worth.
4. Treatment in a manner which reinforces the child's respect for human rights.
5. ....
6. Use of diversion and non-institutional treatment.
7. Deprivation of liberty used as a measure of last resort and for the shortest appropriate period of time.

8. ....
9. ....
10. ....

K. **CORRECTIONAL ACTIVITIES**

1. Vocational Training etc.
2. Education etc.
3. Sports and recreation etc.
4. Treatment Methods
  - (a) Interviews
  - (b) Guidance and counselling.
  - (c) etc.

(My emphasis)

It became clear that the Senior Probation Officer's report was a good guide as to how the problem of **Ntete** was to be approached. For this I was fortified having looked at the **Strategic Framework** document (supra)

Following the interim order of the 15<sup>th</sup> February 2002 the Senior Probation Officer attended in my chamber on the 1<sup>st</sup> March 2003 and reported on the aspects of the Family Group Conference (FGC) (victim treatment) and school progress as follows:

The probation officer would (as she proposed) make a request that the report on the progress of the FCG be made on the 22<sup>nd</sup> March 2002 before the Registrar and the Review Judge. I thought the proposal would have to be modified on the ground that the urgency of the review should not be diluted by reason of undue delay or effluxion of time.

The Probation Officer reported that Ntete had been admitted for COSC study programme for the year 2002 at Abia High School in Maseru. However he failed to report on the 6<sup>th</sup> February 2002 as he was still in detention at JTC. The Principal explained that his place was consequently filled as it was not known whether he was coming to attend.

As Ntete had attended school at Moshoeshoe II up to Form C class Ntete's family (supported by the Probation Officer) applied to be admitted and was fortunately granted a place at Moshoeshoe II High School. This was even more fortunate because Ntete resided with both his parents at Ha Palama under Chief Nkuebe Palama Moshoeshoe, in the same area.

The Form D class has not yet been allocated a class teacher, therefore the Probation Officer only met the school principal and is yet to meet the class teacher. The Form D class "re-opened" on the 11<sup>th</sup> February 2002 Ntete is now doing Form D.

The Probation Officer further reported that she was to make arrangements



for FGC and report on its progress on the 22<sup>nd</sup> March 2002. She felt however that the FGC progress report will not be complete on the expected date. This was due to the fact that the victim's mother works in the Republic of South Africa and comes home only during public holidays. She was expected during the forthcoming Easter holidays.

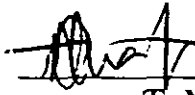
The Probation Officer further humbly requested this Court to re-schedule the submission of the report to the 20<sup>th</sup> April this year. While I partly agreed I did not think, with my final order which was overdue, the attention of this Court would be necessary any longer. Whatever the Court did by way of receiving necessary reports was done with a view to facilitating a comprehensive final order and not because it is the role of this Court to monitor progress of any directives connected with punishment of offenders however anxious the Court would be to bring about a reasonable review order.

This Court finally made the following review order:

- (a) That Ntete is to be released from the JTC with immediate effect as ordered on the 15<sup>th</sup> February 2002 to stay with his parents. This was done with a view that his schooling ought not to be interfered with.
- (b) The Probation Officer and the Magistrate of Maseru shall arrange

Ntete's participation in a Community Service placing that will be suited to his position and dignity. It will have to be a school or such like institution. It should not interfere with his day to day schooling (classes).

- (c) The Probation Officer will proceed with Family Group Conference as best as she is capable of within proper ethics and procedure of her profession.
- (d) That Ntete be granted a probation order with supervision.
- (e) All matters to do with taking into effect or failure to do so will be reported to the Magistrate of Maseru and the Director of the JTC.
- (f) Should Ntete cause failure or default on any of these conditions within a year he shall be taken back to the JTC. The magistrate of Maseru will be seized with determining whether it is proper in the ruling circumstances to take this step.

  
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T. Monapathi  
Judge

8<sup>th</sup> March, 2002

Copy: The Magistrate Maseru  
O/C Police Maseru  
O/C Prisons Maseru  
O/C Central Prison  
Director of Prisons  
Director of Public Prosecutions

C.I.D. Police Headquarters  
All Magistrates  
All Public Prosecutors