

REVIEW 11/2002

**IN THE HIGH COURT OF LESOTHO**

In the matter between:

REX

vs

SEKHOBE KHALANE

Review Case No.11/2002

Cri.1202/2001

Review Order No.3/2002

In Qacha's Nek District

**JUDGMENT**

**Before the Honourable Mrs Acting Justice A.M. Hlajoane**  
**On the 26<sup>th</sup> Day of February, 2002.**

The matter came before me on automatic review.

The Accused was charged before the Magistrate Court Qacha's nek with the crime of housebreaking with intent to steal and theft. The charge having been read and explained to the Accused and the Accused pleaded not guilty.

The witnesses were called by the Crown. The first witness being the

complainant and the other witness a police officer. The evidence of the complainant was to the effect that, she had left her house closed and locked on the 22<sup>nd</sup> December, 1995 to attend a funeral and when she came back on the 25<sup>th</sup> December, she found the window broken. That she did not notice anything missing then, but only came to realize that one Nthabiseng's album was missing and two blankets, a skirt and a pantie.

Her evidence went on to show that she was one day called from work to Whitehill Shop where she was asked whether she knew one man who was there and she happened not to know him. She was asked about the album which was there and on opening it she identified it as that of Nthabiseng and the photos in there were those of her (complainant's) family. Complainant then asked if the man was the one who broke into her house, but the man replied that they could go into the shop and buy her property. It was then that the police arrived from Qacha. The other property was never recovered.

Under cross examination the Accused showed he had been arrested for a different offence and did not know anything about the album. Besides, under cross examination the accused had shown that in 1995 he was not in Lesotho. The album did not even have the accused's photos.

The second Crown witness that was called was a police officer, whose evidence was very brief but as will be seen could not be considered to have advanced the prosecution's case anywhere.

The witness only showed that he went to P. W. 1's home on the 1<sup>st</sup> March 1996 and found the window opened and a person went in through that window by opening the nail which had been used to close the window. He showed he did not know the accused before Court. The record only went further to show that the investigating officer for the case was reported dead. The crown then closed its case.

In giving his evidence the Accused showed that he was not in Lesotho in 1995 but was in Umtata. That he only came back home in January 1996. He showed he was arrested for taking some money belonging to one Lethena Rasekoele at Whitehill and was asked whilst there by people who arrested him if he knew about the album and he denied knowledge of that album. Accused under cross examination showed that his passport could show that he was not in Lesotho in 1995 but that it got lost. But the amazing thing is that he reported the loss of the passport to the Chief in 1992, funny! Be that as it may, the accused raised a defence of *alibi*, thus shifting the burden of proof. But could it be said that when

Accused said complainant could go into the shop with him to buy her property was admitting his guilt.

The other important aspect of this case is that it has not been shown on the record that the album was found in Accused's possession he was only asked about it at the shop. In addressing Court the Accused said he could be very stupid to have taken the album to a place where he has stolen it and that he could have put his photos in it.

The evidence of the complainant did not at all connect the Accused with the offence charged. The Magistrate in his judgment conceded that it had not specifically been said that the album was linked with the Accused. The Magistrate said "probably the Accused said they could go in the shop and buy her property because he stole the property", Mark the word "probably". It was never said in evidence that the album was found in Accused's possession, it is the Magistrate who said that in his judgment.

On this evidence the Court has found the Accused guilty as charged, yet the evidence did not connect him with the offence. In **Rex vs Ramosamo Makhetha and Another 1985-1990 LLR 49**, the Accused was charged of murder and at the

end of prosecution case, the accused did not give evidence at all, and the Court found out that the evidence as a whole was not sufficient to link the Accused with the crimes and was discharged.

In this appeal as in Ramosamo's case above, there is nothing connecting the Appellant to the commission of the crime, it has not been stated that the album was found in his possession, he was only asked about it at the shop.

It is therefore unsafe to let this conviction stand. The Accused is given the benefit of doubt. He is found not guilty and discharged.



**A.M. HLAJOANE**  
**ACTING JUDGE**

CC: The Magistrate Qacha's Nek  
Director of Public Prosecutions  
O/C Police - Qacha's Nek  
O/C Prisons - Qacha's Nek  
Director of Prisons