

IN THE HIGH COURT OF LESOTHO

In the matter between:

TEBOHO LESESA

APPELLANT

and

REX

RESPONDENT

JUDGMENT

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

The matter came before me on Appeal from a decision of the Magistrate's Court Mokhotlong. The appeal is on sentence only. The Appellant was charged with the offence of contravening Section 3(3) read with Subsection 4(a) of Act 4 of 1999. It being alleged that he was found in possession of a firearm without holding a firearm certificate in force at the time.

After the charge was put to the Accused, he pleaded guilty to the charge and

the Public Prosecutor outlined the facts which did disclose the offence under which the Accused was charged.

The section has prescribed the penalty to be imposed for first offender and also for subsequent offences. The Appellant being a first offender was sentenced in terms of Subsection (4)(a);

Subsection (4)(a)

“Any person who contravenes subsection (3) commits an offence and is liable on conviction -

- (a) in the case of a first offence to a fine of not less than M5,000.00 or to imprisonment for not less than 2 years.”

The Appellant was accordingly sentenced to five thousand maloti (M5000.00) or two years imprisonment, and it is against this judgment that the appeal was noted claiming that sentence was too harsh.

During argument both counsel were agreed that, though the sentence imposed is prescribed by law, that still hasn't taken away the discretion by the Court, Section 302 of **Criminal Procedure and Evidence Act 7 of 1981**, which shows that the amount and nature of punishment is at Court's discretion.

Considering the facts of the case, if the penalty prescribed is followed to the letter and without considering the personal circumstances of the Accused some grave injustice might result. In this case personal circumstances of the Appellant have not been considered because the penalty has been prescribed by statute.

The Appellant had pleaded guilty to the charge and is also a first offender. In **Motenatena vs Rex 1995-96 LLR &LB 267**, the Court of Appeal held that the Appellant's age and the fact that he was a first offender were material and relevant factors that the trial Court should have considered in passing sentence.

The appeal is therefore upheld and the sentence is altered to read, one thousand maloti (M1000.00) or one (1) year imprisonment.


A. M. HLAJOANE
ACTING JUDGE

For Appellant: Mr Makotoko

For Respondent: Ms Mofilikoane