

IN THE HIGH COURT OF LESOTHO

In the matter between:

PHAKAMA RATALANE

and

DIRECTOR OF PUBLIC PROSECUTIONS

For the Applicant (Accused) : Mr Putsoane

For the Crown: : Mr Moqhali

RULING ON REVIEW APPLICATION

Delivered by the Honourable Mr. Justice T. Monapathi
on the 6th day of February 2002

There had been no objection to the matter of sentence being reviewed and corrected. The Accused had been sentenced to M7,000.00 or two years imprisonment having been found guilty of possession of 5 bags of dagga.

I noted that the learned magistrate and the Attorney-General had not been cited. In the future this has to be complied with. It cannot be expected that as is the practice (unacceptable as it is) learned magistrates will not see it fit to comment on application for review. More often than not, it appears that a word or two would clarify certain situations, by way of gratuitous explanations, to say the least.

The Court agreed in the circumstances that the sentence had to be reviewed and corrected. Firstly, there were no reasons given by the learned magistrate for his sentence. This was important where a maximum sentence was imposed. Judgments of this Court are legion as to pointing out that this is unacceptable and that the reviewing Court would be at large to impose its own sentence. I have remarked once that the Court cannot use its personal knowledge about certain factors even if the offences are said to be prevalent. See **Rex v Kelebone Lethepa & Ano**. R/O No.4/01. If that was the presiding officer's thinking (that a crime was prevalent for example) he should inform about that.

Mr. Putsoane said that in the circumstances there was no indication that the learned magistrate had taken into account relevant factors in order to consider the proper sentence to impose. Counsel said that his client was a man of 52 years of

age. In addition Accused was a first offender. Furthermore he had pleaded guilty thereby showing remorse and saving the Court's time. And he had a family and dependants.

That in the circumstances the Court was entitled to substitute its own sentence. I agreed.

The sentence was accordingly varied to read M1,000.00 or 6 months imprisonment.



T. Monapathi
Judge