

IN THE HIGH COURT OF LESOTHO

In the matter between:

LIPHOLO PITSO

Applicant

and

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

For Applicant (Accused) : Mr Putsoane

For Respondent : 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 convicted and sentenced to a term of imprisonment of 1 year.

This Court noted that the learned magistrate and the Attorney-General had not been cited. In the future this procedure 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 where there is a need for an explanation or clarification. (See **Phakama Ratalane v DPP CRI/APN/901/2001**, 6th February 2002.

The Applicant's complaint is a simple one as can be gathered from the third reason in the statement of sentence (on page 3 of proceedings). This reason reads as follows:

“Even though Accused asks for forgiveness and even though a plea of guilty is a *prima facie* case of remorse the Accused's demeanor before Court is not of a person who feels remorse. The Court noted that the Accused was even smiling when the charge was being read to him. Accused gives this Court the impression Accused does not fully appreciate the gravity of his actions.”

Applicant's Counsel submitted that the learned magistrate must have considered this attitude of the Accused to have been aggravating. Alternatively he considered it when he should not have done so. Meaning that when the Court considered this attitude of the Accused must have influenced the Court's action when that should not have been the case.

This attitude of the Accused did not appear in the record hence the

Accused's Counsel submitted that :

“It was wrong in fact law and principle for the magistrate to have taken into account factors which do not appear on the record in passing sentence upon the Applicant.”

That accordingly having taken into account an irrelevant consideration in the sentencing process it was a procedural irregularity rendering the sentence reviewable. The Crown conceded. Counsel contended that in the circumstances the least that the Court should have done was to impose an option of a fine. I agreed.

The conviction stood and the sentence ought to be reviewed and varied. I corrected the sentence as follows: “1 year imprisonment or M1,000.00”.



T. Monapathi
Judge