

IN THE HIGH COURT OF LESOTHO

CRI/T/52/93

In the matter between:

R E X

v

TSEBO RAMMONENG
MABOLOKA MABOLOKA

FIRST ACCUSED (A1)
SECOND ACCUSED (A2)

JUDGMENT

Delivered by the Honourable Mr. Justice T. Monapathi
on the 9th day of September 2002

For Crown : Mr. M. Lenono

For Accused : Mr. T. Mahlakeng

Gentleman Assessor : Mr. G M Motsamai

This trial commenced on the 16th October 1995 until the 30th May 2002. In

between the two dates Mr. L. Pheko the original defence Counsel died “may his soul rest in peace” and Gentleman Assessor Mr. S. T. Sekhesa fell off due to illness. On the 5th January 1993 the matter had started as a summary trial. During the testimony of PW 1 therein the proceedings were stopped and then turned into a Preparatory Examination (PE) that ended on the 19th March 1993.

The two Accused are charged with three counts of the crime of Fraud and were also charged in the alternative with three counts of the crime of Theft By False Pretences. Both Accused pleaded not guilty to the charges.

These charges involved three (3) amounts of money from hand written (as against typed in) cheques allegedly drawn by officers of Lesotho Government in the Treasury Department on three occasions that is: on or about the 14th June 1991, in M14,363.30, upon or about the 16th day of July 1991, in M14,688.96 and upon or about 15th August 1991 in M18,646.63. The total amount of money drawn as alleged was therefore a sum of M47,678.86.

Accused No.1 **Tsebo Andreas Rammoneng (A1)** was at all material times a civil servant in the Ministry of Finance, in the Department of Treasury at Maseru. He was a desk officer responsible for the Ministry of Water, Mining and

Energy also referred to as WEMIN in short. It also included the Ministry of Agriculture as one of the source ministries.

A1's duties as such involved receiving documents from and as prepared by relevant ministries for payment to persons or bodies mentioned in those documents for services rendered to those ministries and/or monies or funds for which certain persons were entitled as shown in the respective vouchers.

A1 would check that the documents so surrendered were proper in all necessary respects. That they were passed or forwarded in accordance with the right procedures. Then he would cause them to be passed to the relevant authorities or fellow officers for further processing and for payment. He would then collect and register the respective payment cheques when ready. And then ensure that those cheques are subsequently dispatched to their respective ministries where they would be finally collected by their payees as entitlement for reasons stated.

At times cheques would be paid into banks such as the Standard Bank. Those payees would invariably sign in a register of the Treasury department a ledger called Exhibit "F" before this Court for receipt of the cheques. Evidence

before this Court was that for receipt of the questionable cheques A1 was the one who signed for and registered them even if it was after the dates when they were executed. This late registration was not the norm. It was due to the circumstance that will unravel in the cause of the evidence as stated by Crown witnesses.

Accused No.2 **Maboloka Maboloka (A2)** was formerly a Civil Servant in the Ministry of Agriculture, having joined the service in 1975. He later resigned in August 1989. He never rejoined the Civil Service thereafter.

At the time of the alleged offence A2 was in the employ of the Lesotho National Insurance Group

The Second Accused was alleged to have received and deposited into his Current Account with Lesotho Bank Number 0360003802 the said sums of money.

It was alleged that the three cheques were fraudulently issued out on the basis of equally invalid and dishonest payment vouchers on each of the three occasions. The three payment vouchers were signed out as number 70/102688, 70/102914 and 70/101190 respectively.

copied at the office of the DPP by Crown Attorney (Mr. Lenono). And subsequently the record and exhibits were referred to the office of the Chief Magistrate. This is to the extent in which the matter put simply because there was a dispute about the movement of the exhibits.

Later on the Chief Magistrate reported to the Crown Attorney Mr. Lenono, who was the Acting Director of Public Prosecutions the disappearance from the custody of the Court Officers exhibits B C D from the collection of exhibits from the PE record. Crown Attorney supplied the Clerk of Court with copies of the missing exhibits. Mr. Lenono became PW 13 in these proceedings and testified to support the last mentioned state of the facts. This was naturally not without dispute.

It would be subject of a debate whether the exhibits supplied by Mr. Lenono were those from the exhibits filed and marked by the Chief Magistrate or they could be copies of the same documents copied after they were unmarked and filed before the holding of the PE. A number of objections and the rulings indicate that disputes about those exhibits in this proceedings occupied a great deal of the Court's time.

What is important, at this stage, to make reference to, is that it was not denied that at the beginning of this proceedings of the loss (after the close of the PE) of the three relevant payment vouchers and three relevant cheques which in possession of the office of Senior Clerk of Court at the Magistrates' Court Maseru. Consequently an application was made by the crown for admission of the three (3) cheques and the three payment vouchers as secondary evidence after a "diligent search". See Appendix 1 (Ruling of the 12th December 1995)

In pursuit of the above application three witnesses were put in by the Crown namely : the late Mr. L Mapetla - Chief Magistrate (PW 1), Miss N. Makhele (PW 2) and Miss M Ntoi (PW 3) both of the staff of the Clerk of Court, Magistrates' Court, Maseru. On the 12th day of December 1993 - I made a ruling that I would allow the three (3) photostat copies of payment vouchers and the three photostat copies of the cheques as secondary evidence to be allowed and tested in the ordinary way. See "Appendix I".

The evidence of the following witnesses at the PE was allowed, and the depositions read into the recording machine, as evidence. This was done by consent with the late Attorney Mr. Pheko in terms of Section 273(1) of the CP&E.. That is the evidence of : PW 3, PW4, PW5, PW6, PW7, PW14 and PW16. At the

time of trial PW 13 had since passed away.

The following witnesses gave oral evidence including the Crown Counsel Mr. Lenono (as PW 13). After that was close of the Crown case. Accused thereafter testified on their own behalf as DW 1 (A1) and DW 2 (A2) respectively.

PW3 was a lady who worked as a teller at the Lesotho Bank branch at Industrial Area. She also dealt with advances at the material time. She knew A1 by sight and knew A2 very well. A2 was the bank's customer and went to the bank regularly and had a current account number 0360003802. Refreshing her memory from exhibits "I" and "J" she said on the 17th August 1991 a Lesotho Government cheque was deposited in the current account of A2 in the amount of M18,646.63, A2 having presented a deposit slip and the cheque for checking by the witness. The accountant had been one Mr. Lekhooa Pitso (PW5 at PE). The cheque was presented by A2 in person.

The said cheque number was 101190 and the payee was A2 himself. The witness became suspicious about the cheque because on the previous month A2 had presented a similar cheque which also stated that it was a salary cheque. The cheque had been marked "Imprest Account". The witness stamped the cheque

accordingly as "Teller 1", 17/08/91 Lesotho Bank Industrial. She had been teller "1" at that time. She testified that the cheque No. 102914 for M14,668.96 was also previously presented for depositing by A2 on 18/07/91 to her. She recognized the cheque as exhibit "C". The cheque was handled by Mr. Pitso from that time. The witness made a statement to the police about the cheque.

PW4 worked as an Accountant with PW3 who was a teller at Lesotho Bank Industrial Area Branch at the material time. He knew A2 but not A1. A2 was a customer at the witness' said branch of the bank. On or about the 17th August 1991 PW3 brought for the witness attention a cheque drawn in favour of A2. It was a government cheque in the amount of M18,646.63. A2 had deposited the cheque into his current account. PW3's suspicion was brought to attention of the witness. The cheque was also too large. He shared the same suspicion with PW 3. He decided that the cheque be deposited in the account but no withdrawals should be made before it was cleared. The witness made a photostat copy of the cheque deposited by A2 before it could be referred to Standard Bank for clearance. One copy of the cheque was the one which he made and presented in Court at the PE as exhibit "A". Exhibit "A" is obviously a copy of exhibit "B". As said before this witness' deposition was admitted.

On or about the 19th August 1991 A2 came back to PW 4's bank and presented his personal cheque with which he wanted to withdraw M6,645.00. The cheque was referred to the witness by another teller. The witness told the teller to inform A2 that he should come later as the cheque was to be cleared first. The witness could not remember the number of the cheque presented by A2. At the PE he recognized the cheque Exhibit "E" as the one which was drawn by A2 having been presented and referred to the witness. The number of the cheque had been 209622 of the account number 036000 3802 which is A2's account. The cheque had been presented to teller Number 5.

As a result of the events in the last paragraph the witness (PW4) phoned the Treasury department of Lesotho Government and there contacted Mr. Zwane (PW6 at the PE) who was the Accountant General of Lesotho Government. Having asked Mr. Zwane about the cheque payment (presumably the cheque deposited) to A2 Mr. Zwane gave the witness a report. The witness and Mr. Zwane agreed that the police should be brought into the picture immediately.

Mr. Zwane's officers brought three copies of payment vouchers including Exhibit "D". All the vouchers were in the name of A2 as the payee. One was issued in June and the other in July 1991. A reference to the bank statement of the

month of June 1991 could not be found in the original document therefor. But a photostat copy (certified by the Bank Manager) was found. It showed that a cheque in the amount of M14,363.30 was deposited into the A2's account on the 19th July 1991.

The witness had the original document of the second statement. This one showed that a cheque of M14,668.96 was deposited into the current account of A2 on the 18th July 1991. It also showed that A2 had withdrawn all the money deposited in June and July 1991. Only the money deposited with Exhibit "D" had not been spent. The witness handed the personal cheque of A2 to the police. He also handed over the photocopy of exhibit "D" to the police. He also recognized Exhibit "A". At the PE he handed in the bank statements relating to the account of A2 in evidence. The certified photocopy of 29th June 1991 relating to Exhibit "B" was marked Exhibit "I" and the statement of the 30th September 1991 relating to Exhibit "D" was marked exhibit "H" at the PE

PW5 was a lady who worked at Standard Bank as a cash custodian at the material time. In 1991 she was in charge of current accounts. She testified that cheques which are issued by their banks are fetched by them (bank officers) from the Central Bank. They also handle cheques issued by other banks for reference.

The cheques referred to the witness's employer bank are checked against the list from the bank from which they come.

The witness testified further to say that when satisfied that all cheques have been accounted for they are impressed with the Standard Bank date stamp at the back of each cheque. Thereafter the cheque is passed to the department which verifies that the cheque has been paid from the correct account and thereafter the cheque is stamped "paid" on the face of it. If it has in fact been paid the stamp "paid" signified that the bank which submitted the cheque has been paid and the transaction is over. Thereafter the cheque will be returned to the drawer with his statement. A cheque issued by Lesotho Government will be returned to the Treasury Department. Clearance mean that the cheque has been sent to the bank where the customer has an account to ascertain if the customer is still in funds.

The witness (PW5) was handed cheque number 102688 (Exh "B") which came from Lesotho Government Imprest Account which is no. 027022/70261. This cheque was deposited at Lesotho Bank on the 19th June 1991 and was cleared at Standard Bank on 20th June 1991. It was initialled to indicate that the signatures were correct and the cheque is cancelled by drawing a line across it. The cheque no 102688 was dated the 18th June 1991 and was to be paid from the said Imprest

Account. It was a salary payable to M J Maboloka in the sum of M 14,363.30 and it was signed. The cheque had been considered complete and regular.

The next cheque which was handed to the witness (PW5) was Exhibit "C" at the PE being cheque no. 102914. It was from the office of the Financial Controller of the Treasury Department and was destined for the Maseru Branch of the Standard Bank. It bore the same account as the previous one. The payee was M Maboloka in the sum of M14,668.96. It was signed by two people. The cheque was received by the witness' bank on the 19th July 1991 having left the Lesotho Bank on the previous day as the date stamp showed. The relative signatures had been verified and the cheque cancelled. The cheque had been passed as complete and regular and funds therefor had been paid.

The third cheque was Exhibit "D" over which the witness (PW5) testified similarly as with the two previous ones. It bore the same account number as the other two it being a Standard Bank Chartered Bank cheque of Lesotho Government like the others. It paid J M Maboloka as the others of which the payees were M J Maboloka and M Maboloka respectively. It was not suggested that the payee shown on the three cheques was none other than A2. The cheque left Lesotho Bank on the 17th August 1991 and arrived at the witness bank on 20th

August 1991. It was in the amount of M18,646.63. The signatures had been verified and the cheque had been collected. It bore the witness's bank's date stamp. This proved that it had been accepted as complete and regular. This cheque like the other two others proved that they had all been paid from the Lesotho Government account.

P.W.6 had been James Lehlohonolo Zwane the then Accountant-General of Lesotho Government. As such there was a good reason why his admitted evidence turned out to be more elaborate. He knew both accused. He knew A1 as a worker in the Salaries Section of the Treasury Department. He knew A2 by sight. Officers such as A1 were allotted different ministries (desks) which they served.

The witness had testified that the document which entitled a retired or re-instated officer to payment is the casualty return and a letter from the Public Service Commission authorizing employment. If the officer concerned had been interdicted the Public Service Commission issues out a letter of re-instatement which should be supported by a casualty return from the ministry. I noted that none of the witnesses including the Accused spoke of the existence of such a casualty return. Not that it caused the questionable transactions.

The witness went on to testify that the payment voucher is prepared after the casualty return and the letter of employment has been received and are attached to the payment voucher. The payment voucher is the document authorizing payment. The payment voucher has to show the name of the payee, the description of service and has to be authorized by the person who has the authority in the ministry. The voucher has to show from which vote it has to be paid. The person who prepares the voucher has to sign his name and the authorizing officer signs and puts the date stamp of his ministry.

Furthermore as PW 6 testified when the prepared voucher arrives at the Salaries Section the person handling it has to check whether all the supporting documents are present and whether the voucher has been properly signed. If the documents that should accompany the voucher are lacking one has to check the file of the person to be paid to see if they are not there. If the documents are in the file but do not appear on the voucher, the person handling the voucher has to call the person who prepared it to come and quote them on the voucher. If the documents are not seen the voucher is queried and is thereupon returned to the ministry from which it emanate with a request for furnishing of proper particulars.

If the payment voucher is not in order the person checking it has to verify

the fact and sign it. Thereafter the voucher may be passed to the head of the Salaries Section. The head of the Salaries Section has to cross-check the voucher and only if it is properly done that he may sign it and pass it for payment. He will then put the line stamp marked "passed for payment." In the absence of the head of the section one senior officer to the checker can also cross-check the voucher and pass it for payment.

The witness had further testified that after the above process a voucher is passed to another section where cheques are prepared. If the cheque is needed urgently a hand written cheque is made out. If it is not urgent it will go through a computer. There is a distinction therefore between handwritten and typed in cheques. The hand written cheque is written by one person and then taken to two people who are authorized to sign Government cheques. The two people, who are authorized to sign cheques, will check the cheque against payment voucher and sign it. The signatories will sign separately in their offices. The voucher records the number of the cheque and will bear the number. The officer who prepares the cheque notes the number of the cheque on the voucher. The number of the voucher is preceded by the account number. The Lesotho Government cheque requires no stamp because is written Lesotho Government cheque. The Imprest Account is Account No.7.

The procedure was further outlined as follows: After the cheque has been signed for the officer from the Salaries Section enters the cheque into a register which shows the date, the payee, the amount. A space is left for a person who receives the cheque to write his name and sign the section from which it comes.

In the Salaries Section there is yet another register in which the cheque is entered and the officer of the ministry has to sign for it before he receives the cheque. No officers or payees are allowed to fetch their own cheques from the Treasury Department except through their ministries. But in exceptional circumstances the head of a department may deviate from this procedure. The practice of making hand written cheques was no longer allowed under any circumstances because it had become prone to abuse.

The witness confirmed that in 1991 he received a telephone message from PW4 about a certain cheque. Whereupon he called for the cheque's counterfoil and the voucher which supported the cheque. The counterfoil and the voucher tallied. The file of the payee was called for. When the file and the voucher was checked it was found that the voucher stated that the payee was being re-instated but there was no letter authorizing it from the Public Service. There was not even a letter from the ministry i.e. a casualty return. The witness concluded that the voucher was irregular by reason of lack of these necessary documents.

The witness, on the basis of his strong suspicion of irregularities, phoned back PW 4 and informed him to hold the cheque. He also wrote to the police to inform of this development. Before then he had checked if there were other cheques which were irregular in the manner described. Two cheques of that kind were discovered. All of them including the one that was originally being investigated were payable to Mr. Maboloka. The payment voucher with respect to the other two cheques were found not to be supported by casualty returns nor letters of authority from the Public Service Department. The vouchers and the cheques were handed over to PW1. As the witness further stated even the third cheque had been charged on Lesotho Government account at Standard Bank and had been deposited it into A2's account. A2's account had been credited with the amount of Exhibit "D".

The witness went on further and stated as follows: Exhibit "B" was the cheque no. 102688 of the 18th June 1991 which he found to be irregular together with its voucher. It showed the payee as M.J. Maboloka. It was in the amount of M14,636.30. It was received by T A Rammoneng (A1) from the Salaries Section. He had signed with his signature which the witness is familiar with. A1 had also checked the voucher. Exhibit "D" which is cheque no 1011190 of 16th August 1991 and its voucher was irregular in the manner previously described. The payee

of the cheque was J Maboloka. It was in the sum of M18,646.68. It was uplifted by A1 from the Salaries Section on the 16th August 1991.

The brief summary of PW 6 testimony was therefore as follows. It first went about the relevant procedure at the Treasury. He was alerted by PW 4 from Lesotho Bank about cheque in exhibit "D". He launched an investigation as a result.

Firstly he looked into the file of the person who was allegedly being paid (A2). There was no letter authorizing his re-instatement by the Public Service Ministry nor was there a casualty return.

Secondly there were no other cheques that had previously been paid in similar circumstances to A2.

Thirdly all the cheques namely nos. 102688 for M14,363.30, 102914 for M14,668.96 and 101190 for M18,646.68 had been charged on Lesotho Government account and the Lesotho Government had been debited with A2's account had been credited.

Fourthly the above cheques with the corresponding payment vouchers were irregular and lastly the Treasury Official who received the cheque was A1 from the Salaries Section whose signature the witness identified as the checker of all those documents by reason of his familiarity with it.

The attitude of the Accused to the testimony of witnesses who later testified orally indicated to me that the weight of this evidence of Mr. Zwane which was admitted as said before was seriously underestimated by the Defence. The impact and the weight of this evidence can only be shown by its summary as recorded above.

PW7 was a gentleman who worked at the Ministry of Public Service and previously worked as a Chief Personnel Officer where he dealt mostly with the employment of government employees. It was from 1989 to April 1992. He knew that every civil servant had a file. He still had access to those files even at the time he testified before the Court even though he had been transferred to another government post.

This witness testified that he knew both accused. He used to play draft with A1 whom he knew to be working at the Treasury Department. He knew A2 in his

private life. A2 resigned from the civil service in 1989 but his personal file was still there. He asked leave of Court to peruse from A2's file which he had in his possession and he read from it.

The file revealed that A2 had been employed by Lesotho Government on the 1st November 1975 as a Livestock Assistant in the Ministry of Agriculture. He was later seconded to the defunct Thaba Bosiu Project. In July 1977 he returned to the Ministry of Agriculture as a mechanical supervisor. On the 26th June 1988 A2 wrote a letter to the Public Service Ministry in which he tendered his resignation due to ill-health. His letter was replied to on the 19th October 1989. His resignation was accepted. He was thanked for his loyal service.

Two casualty returns were issued in respect of A2's resignation. The first one, No.18710 of the 6th November 1989 showed that A2 resigned as from the 1st August 1989. This meant that A2 had resigned as from the date shown in the casualty return. According to the witness' testimony A2 was never reinstated in any capacity in the Lesotho Government. Otherwise this would be shown in the file. The second casualty return, namely No. 24919 which was dated the 2nd August 1989 had the effect of stopping his salary from that date.

The last but one witness whose evidence was admitted was PW14 a lady who worked at the Treasury Department where A1 and PW6 worked. Of the two Accused she knew A1 only. She assumed duty in 1979. At the time of testifying before the Court she had been an accountant.

In 1991 she was accountant in the Salaries Section where A1 also worked. She was authorized to pass vouchers for payment. In June 1991 A1 had brought a payment voucher and asked the witness to pass for payment. It was in the witness's office. The witness thought the voucher was from the Ministry of Agriculture. She passed the voucher for payment because A1 had checked the voucher. The witness thought the payee was J M Maboloka.

The witness was shown Exhibit "B" which she recognized as the voucher she passed for payment because it bore her signature. The witness did not remember A1's signature. Neither did she know the signature of the person who compiled the cheque. She had passed the voucher for payment because it was checked, compiled and had the folio number and the date stamp of the ministry of Lesotho Government.

I noted that the value of PW 14's evidence was to connect A1 with Exhibit

“B”.

The last witness whose evidence was admitted by consent was that of PW 16 at the PE. This gentleman worked at the Treasury Department as Financial Controller. In 1991 he was acting Chief Accountant. He had the authority to counter-sign cheques. The others with whom he had such authority were Mrs Motsamai, Mrs Motsoasele, Mr. Kolobe, Mr Zwane and Mr. Mothibeli.

Of the accused before Court he only knew A1. The witness knew that A1 used to work in the Salaries Section of the Treasury. He had had infrequent contacts with A1. Even then it was only on personal basis.

When shown Exhibit “C” which is a cheque no. 102914 the witness was able to recognize his own signature on the cheque. It was dated the 16th July 1991 and belonged to the No. 7 account of Lesotho Government. The cheque was counter-signed by Mr. Mothibeli. The voucher accompanying the cheque had been brought to the witness by Mr. Peko. The witness neither co-signed exhibit “B” nor Exhibit “D” The witness’s duty was to check that the names and the amounts of the vouchers corresponded with those on the cheques. After signing the cheque he gave it to Mrs Peko to distribute.

I agreed with Crown Counsel that the above deposition constituted not only uncontroverted pieces of evidence against the Accused but admitted facts in the evidence of this trial. The issues of fact found to have been proved consequently, before the Court, I could not ignore. That is why I alluded to the weight brought about by the fact that those facts were not challenged.

The peripheral dispute surrounding the disappearance of the three (3) original cheques and their respective vouchers became a recurrent theme as evidenced by Appendix I (the ruling of the 12th December 1995) and other three rulings which followed. The purpose of the investigations as aforesaid was primarily to find out whether it would be proper and permissible to put in photostat copies of the cheques and vouchers as secondary evidence of the lost originals. To that extent it requires a fuller summary of the evidence of PW 1, PW 2 and PW 3 even though the rulings would be more enlightening when they are visited. An apposite remark would be that the objections about admission of the documents became so long drawn and tiring that one was constantly reminded of the American legislative stratagem called filibustering that is "obstruction of progress" albeit for a purpose. The following summary of the three witnesses is therefore useful.

PW 1 was the late Chief Magistrate LS Mapetla. He presided over the PE. He testified that the cheques and payment vouchers handed in and marked as exhibits were all original except one photostat copy of a cheque no. 101190 for M18,646.63 which was handed in in its photostat copy form and marked "A" and in its original form attached to its accompanying payment vouchers, jointly marked exhibit "D".

There was also the original cheque no. 102688 which tallied with payment voucher No. 70/102688 for M14,363.30. There was also Original Cheque No.102911 which tallied with Voucher No. 70/102194 for M14,668.96 for M J Maboloka. And lastly Cheque No 101190 which tallied with Voucher No 70/102914 for M18,646.13 for J Maboloka.

The personal cheque (of Mr. Maboloka) exhibit "E" and the Cheques register exhibit "F" were also handed in.

After close of the PE, PW 1 said the exhibits were all put in a brown envelope and together with the record of proceedings sent to the office of the Director of Public Prosecutions. The record and annexures were brought back but Mr. Mapetla was later informed of the disappearance of the cheques and the

vouchers from the lot. He ordered for a diligent search of the missing things from all relevant and possible places to no avail. He informed forthwith Crown Attorney (Mr. Lenono). Office of the Crown Attorney provided the office of the Clerk of Court with photostat copies of the missing documents. Copies of the documents were shown to the witness. He was able to identify them.

PW 2 Ntlhoboi Makhele was a Senior Copy Typist in the Chief Magistrate's office. She remembered giving the original cheques and their accompanying original payment vouchers to the office of her assistant to go and cause photostat copying of the said documents either at the Justice Ministry Headquarters or at the High Court offices. This had been done in the past. The witness then went on leave. On her return she found that the exhibits in question were missing. She informed PW 1 who ordered for a search.

PW 3 was 'Makatileho Ntoi. She was Office Assistant in the Chief Magistrate's office. She admitted being given an envelope by PW 2 containing certain exhibits which were to be photostat copied. She put the envelope on a desk in the Senior Clerk of Court's office and went on an errand to one lawyer's office. On her return she had forgotten about the envelope until she was asked about it by PW 2 a week later. The original cheques and their respective payment vouchers

were never recovered. The other exhibits remained available.

After the evidence of these three witnesses the Crown asked to hand in and refer to the copies of the missing cheques and payment vouchers. This was objected by defence on the ground that the cheques and vouchers had to be properly handed in.

This Court made a ruling on the 12th December 1995 that the photocopies of cheques and payment vouchers “may be put in as secondary evidence and will be tested as to their testimonial value in the ordinary way”.

From this stage (after the ruling) and onwards the photostat copies of cheques and payment vouchers were used. They were marked as follows:

Firstly “ID 1” were cheque and payment voucher 70/102688 for M14,363.30. Secondly “ID 2” were cheque and payment voucher 70/102914 for M14,688.96. And thirdly “ID 3” were cheque and payment voucher 70/101190 for M18,646.63.

A result of the myriad of objections was that Mr. Lenono ended up testifying

to correct as to the role he played in making copies of the cheques and vouchers and “the circumstances and originals of the documents”. See Appendix II (Ruling of the 19th April 2001). He ended up putting in exhibits “B” “C” and “D” respectively which corresponded with “ID 1”, “ID 2” and “ID 3” above.

The Fourth witness to give oral evidence was **Mr. Samuel Mokitimi** who stayed at Ha Mabote. He knew both Accused. They were his friends with whom he engaged in the social activity of card playing at a place called “Metro Cash and Carry” where they often met. He testified that he knew where the Accused worked and where they stayed. He had visited them at their places of residence on many occasions .

On one occasion followed by two others he visited A2 at his home at Lower Seoli on the outskirts of Maseru. He was with A1 and A2 when the three of them took off from the place where they played cards. A2 was in possession of his briefcase from which he took out certain documents.

A2 brought out pinkish forms from other documents. These were accompanied by white papers. One pink document was attached to a white one underneath in order to make a carbon copy and these were placed on a table.

There were rubber date stamp impressions on the pink papers which he noticed. The impression was already made although the documents were otherwise printed forms that were blank. The witness then said A2 took out a white paper which had information in it.

A2 asked the witness to transcribe the information from the white paper on to the pinkish form in a manner that resulted in a filled out form as shown and identified as "ID1". "ID1" is a photostat copy of a payment voucher dated 14th June 1991. On two other occasions on the following months the procedure was repeated at the home of A2 in the presence of A1 and here the production of "ID2" and "ID3" resulting in vouchers dated 16th July 1991 and 16th August 1991.

The witness said he did not ask nor was there an explanation given to him about the purpose of these transactions. This, as I found, was difficult to believe as being inherently improbable. It is reasonable to suspect that the witness stood to benefit from this transaction. At the least he should have suspected that something was wrong and yet he was prepared to go on with the process. To the extent that A1 and A2 were the witness's friends that is more of a reason why the Accused could only be less than candid about the nature of the transactions.

From this white paper produced by A2 the witness then proceeded to fill out on different occasions on each form the information falling under Ministry, Department, pay to: address, description of service and R.C. Except that the vouchers are for payment of MJ, M,J Maboloka, payment of salary, w.e.f. the officer is re-instated, the information and the money figures and the dates differ in the different forms.

The witness stated that the writings on the paper were “not his own writing” but “was similar to his own writing.” “This was not the original document” on which he wrote. That the production of the original would have made the witness “more positive”. However the witness said the writing looked like his own writing. This is one of the aspects over which the witness was not being truthful.

It is correct that at the PE the witness testified that “accused 2 produced a white paper and wrote on it and “asked me to transcribe what he had written on it.” He was taxed by the Defence Counsel about the absence of similarity of the statement to what he deposed to before the Court. He stuck to the latter version. I did not think he was convincing in his explanation as to why there was a difference. But he was clear that the information he transcribed on to the pink document was the one given to him by A2. Except that the witness may have not

understood the words “w.e.f.” which is a shortened form for “with effect from it was clear to me that he understood all the remarks in the payment voucher.

I did not believe this witness that he did not see the words “Lesotho Government” on top of payment voucher on the form. Even if he did not he must have understood that that the documents were payment vouchers of Lesotho Government even judging from all other information contained in the form or forms themselves. Indeed he may have forgotten the contents of the vouchers including the figures but certainly not because it was in English. He must have known the purpose of the transaction and most probably was given the report as may have been necessary or was to be expected. On each occasion when the forms were presented for filling by A2 there was already date stamp impressions on the forms. On each occasion the three friends would go back to their meeting place at “Metro Cash and Carry” wholesale.

From the evidence of this witness I believed that sure foundation of a scheme was hatched and fortified. What remained was its execution in the offices of the Treasury Department.

The second witness whose evidence was not admitted by consent was PW5

Meshack Petlane who had retired in June 1991 from the Ministry of Agriculture which A2 vacated by way of resignation due to ill-health in 1989. To his knowledge A2 was never re-instated into his Ministry after that retirement. He worked under the Crops Department where the witness was director. During the month of June he was on leave pending retirement. In no material way was his evidence challenged. It established that A2 retired and left the said ministry for good.

PW 6 was Richard Thabang Letsoela. In 1991 the witness was in the Ministry of Agriculture - Crops Division and a department called TOU. He worked with A2 who left his job permanently in July 1989 on his own volition. It was by way of resignation on the ground of ill-health. A2 never rejoined the Ministry thereafter. PW 5's evidence is corroborated by this witness's testimony that A2 was no longer employee of the Ministry of Agriculture in 1991 and could never have been re-instated into the Ministry of Agriculture. The witness' evidence was not disputed.

PW 6 became Masephemo Monnapula. In 1991 the witness worked in the Water Affairs Department in the Accounts section. With reference to exhibit "C" payment voucher she noted the following: The Department voucher number was

not unstated. This was irregular. Furthermore the stamp used by her office on vouchers was the "Accounts" stamp not the stamp appearing on exhibit "C". The latter was for use by the "Administration" section for their purposes only. The use of the stamp intended for use on Accounts documents was unusual and could only have been irregular unless it was authorized which it was not.

The witness did not know of any Mr. Maboloka who was to be re-instated in their Ministry. There had never (to her knowledge) been a Mr. Maboloka who previously worked in their department.

The witness was shown the original of cheque no. 102914 in the Crown Attorney's office when she was interviewed as a witness. She denied knowledge of the cheque. This was the same as she testified with respect to the cheque in exhibit "D".

I concluded that the Crown established proof that A2 could not have been employee of the Department and furthermore there could not have been any justification for payment of government funds in favour of a Mr. Maboloka. There was absolutely no credible challenge to this evidence. Naturally A2 would seek to (as he did) distance himself from any association to the witness' department by

way of a defence.

PW 8 was Mr Bruno Tšeliso Sekoli. He was the Principal Meteorologist in the Ministry of Natural Resources in the Water Affairs Department. The witness said he had never worked with either of the Accused though he knew them in their private lives. He had been a fellow student in the High School with A2.

The witness was shown the signatures of authorising officers on payment vouchers in exhibits "C" and "D". He said they were forgeries of his own signature because he had not signed on the documents. He knew of no legitimate transaction in relation to payment of Mr Maboloka. The latter had never been an employee in the witness' Department. He was shown the original vouchers some time in 1991 or 1992. He still denied knowledge of those signatures.

PW 9 was Mrs Matšeliso Francina Ntereke. She testified that in 1991 she was Accountant in the Treasury Department. She assisted Mrs Mqedlana. The witness was referred to exhibit "C" which was a voucher dated 16th July 1991. She recalled that A1 brought it to her to pass for payment. She had to process the papers because Mrs Mqedlana was absent. The voucher had no accompanying documents. She however signed it believing they were on A1's desk and he had

already checked them. She signed the voucher and gave it back to A1.

In relation to exhibit "D" again the voucher had been brought to the witness to sign as her superior Mrs Mqedlana was once more absent. She accordingly signed and thereafter handed back the documents to A1 who then left. No reason was suggested why the witness would falsely implicate A1.

The witness recognized her own signature on both documents. She did not know the signature of A1. This witness was a truthful witness whose testimony was unshaken.

PW 10 was Mrs Malehlohonolo Peko. The witness testified that in 1991 she worked at the Treasury Department where she was Acting Senior Accountant.

The witness said she was familiar with A1's handwriting and signature. She used to see A1 entering cheques in the cheques register in the examination section. This he did in cheque register which was exhibited as "F".

The witness was made to read from page 233, 249, 250, and 270 of exhibit "F". These were pages in which A1 (as the witness testified) made entries in

respect of payment vouchers and cheques in exhibit "B" "C" and "D".

I noted from page 233-34 of exhibit that not only did the signature following Rammoneng TA appear in relation to voucher 70/102688 MJ Maboloka. This appeared on five other occasions (to payees) to wit LADB, Lesotho Bank, LBFC, Standard Bank and Barclays Bank. In all these the writings are similar and the signature is the same. Why would the entry where MJ Maboloka was concerned attract a denial and why not in others? Even if all the entries or signatures were denied, as A1 ultimately did, what would a credible explanation be for the alleged scheming, contriving or trickery against A1? What would be the motive for such?

The above question go to entry voucher 70/102914, amount M14,668.96, on 16/07/91 where the writing "Rammoneng" is similar although the signature is admittedly not quite similar to those on page 234 but exactly like "TAR".

On page 251 (16/07/91) of the register the following scenario is found. Five cheques to five different payee banks appear to have been signed for by "Rammoneng" and the signature is something like "TAR". The payee and signature are similar to what one finds on page 249-50. Furthermore one has to look at page 173-74 (16/08/91) in relation to payee J Maboloka, voucher

70/1011/90, M18, 646.63. The name is “Rammoneng” and the signature is “TAR” as on page 252. On this page 273-74 there are other payee besides MJ Maboloka. The same name appears and the same signature appears. Why is this coincidence other than indication of one person at work. The entries are similar in name and signature except only with regard to what is found (signature) on page 250.

I thought it was without doubt that it was the same person who made the entries on the mentioned pages in the register. Other credible pieces of evidence went on to point out that it was A1 who uplifted the cheques shown in the register and which are being questioned in this proceedings. As I said in the beginning of the judgment where certain inferences have to be drawn as a matter of common sense some conclusions may appear to be inherently probable. It is the testimony of these witnesses which must be believed in the face of a denial which is inherently improbable and palpably false such as that of A1.

The issues of uplifted cheques as a matter of serious probability, cannot be separated from that of admitted evidence of prepared vouchers presented by A1 for issue of cheques by Rathaba (PW 16) having been passed on to her by Mrs Peko (PW 10). Again see the evidence of Mrs Lemeke (PW 14) about exhibit “B” voucher.

The evidence which was admitted about receipt of prepared voucher emanating from A1 has become overwhelming. These were the vouchers which brought about the cheques. Why would A1 suddenly lose contact with the cheques. I had to conclude as irresistible inference that it is true that A1 was seen entering cheques in the register. I did not find any reason why the witness ought to be disbelieved. Nor was anything suggested.

PW 11 was Mrs 'Mateboho Motsamai. She testified that in 1991 she was Financial Controller at the Treasury Department. She knew A1 very well. Her duties included counter-signing handwritten cheques. She stated that she countersigned the cheque in exhibit "B" of the amount of M14,363.30. She did not deal with the cheque in exhibit "C". She countersigned the cheque in exhibit "D". She recalled specifically that A1 came into her office and asked her to sign the voucher as the cheque in relation thereto had to be treated as urgent as the owner had been on interdiction and was pestering A1. She complied because she became convinced that the matter deserved urgent attention. Moreover she had at that time felt satisfied that the supporting vouchers were good.

PW 12 was a member of Lesotho Mounted Police Service No. 5954 Sgt Nkune. He was the investigating officer in this case. On the 20th September 1991

Nkune went, following a report, to the Industrial branch of Lesotho Bank. He was accompanied by other officers and staff from the office of the Accountant General. Nkune was shown the original cheque payable to A2 for the amount of M18,646.63. He was also given a copy of a cheque at Lesotho Bank which he handed in in Court at the PE and it was marked exhibit "A". As it later was explained exhibit "A" was copy of the original cheque exhibited as "D".

Later on during the course of his investigations Nkune received from the Treasury Department the following: three (3) original cheques, three (3) vouchers supporting the cheques, a cheques register and a personal cheque belonging to A2. Mr. Nkune testified that the personal cheque was about M6,000.00 and was about to withdraw funds when this was stalled. These were marked as exhibits at the PE. In this Court Mr. Nkune made reference to his knowledge of the documents and that he himself had kept copied in the police docket at one time and had even made copies of the cheques and vouchers as a precaution against loss of originals.

Although the docket once disappeared when Mr. Nkune was on leave, at one time, he was ordered to rebuild it. He was able to do so successfully because the exhibits were stored separately and safely. His testimony about the knowledge and possession of the documents was or would be confirmed by Treasury

Department and a bank official Mr. Pitso (PW 13). But he said he later took possession of the original documents from Mr. Zwane when he was proceeding with investigations. It was three original payment vouchers and three cheques.

Nkune was able to identify copies of the cheques and vouchers. While he had been able to put in those as exhibits at the PE he was not able to do that in this Court because of the objection made by Defence Counsel. This is shown more fully in the Appendix II (Ruling of the 28th June 2000). The ruling included a declaration that Mr. Lenono, Crown Counsel, was the person best positioned to hand in the photostat copy exhibits because “..... it is not unheard of for a public prosecutor to act as a witness on some occasions.”

Mr. Nkune was able then to hand in all other exhibits except “B”, “C” and “D”. These were exhibits “A” “E” (A2's bank deposit slips), “F” (cheques register). “G” (A2's Bank statement) “H” (A2's Bank statement). Exhibits “B”, “C” and “D” were to be handed in by Mr. Lenono, Crown Counsel in accordance with my ruling in Appendix III (4th September 2000).

The two bank deposit slips are instructive in what they show which is as follows. The one dated the 18th July 1991 is of A2's bank account no. 0360003802

in the amount of M14,668.96 which cheque amount was from Lesotho Government. This deposit is undoubtedly in the same amount as in cheque and voucher exhibit "C".

The second bank deposit slip is of the 17th August 1991 of the said bank account of A2 in the amount of M18,646.63 which was of a cheque amount from Lesotho Government. This deposit is undoubtedly in the same amount as in cheque and voucher exhibit "D".

I have already commented about the cheques register elsewhere in this judgment as implicating A1 who had on more than three occasions uplifted cheques which he signed for including, as I concluded, the cheques subject of the charges before this Court.

The bank statement of A2's said account of the 29th June 1991 (exhibit "G") shows a cheque deposit of M14,363.30 made on the 19th June 1991. This deposit is undoubtedly in the same amount as in cheque and voucher exhibit "B".

The bank statement of A2's said account of the 30th September 1991 (exhibit "H") showed a cheque deposit of M14,668.96 of the 18th July 1991 and a cheque

deposit of M18,464.63 of the 17th August 1991. Refer to vouchers and cheques exhibits "C" and "D" respectively.

It is useful to digress for a moment. As said earlier in the judgment it was the attitude of defence Counsel to stretch the proceedings by way of repeated objections. This was once more demonstrated in the midst of the evidence of Mr. Nkune. The exchange between the Court and Counsel in this instance took about a tapeful of recording. This once more did not augur well for early completion of the proceedings.

I would conclude that these bank documents which pertain to A2's bank account show a clear connection between the three vouchers and cheques subject of the charge in this proceedings and A2 through his bank account and a transaction involving those cheques whose origins was unquestionably either fraudulent or a result of theft by false pretences.

This Court would further conclude that a relationship is established through these transactions between the author or authors of vouchers and cheques who had intention to defraud or steal. It is A1 who could have had that intention to the extent that he is said by clear and credible evidence to have dealt with the

questionable documents while in the Treasury Department.

A clear nefarious relationship can now best seen between A1 and A2 if the cheques referred to above are the cheques which came from the Treasury Department. A2 has to tell a convincing story as to how he came by those three (3) cheques which went into his account.

Exhibit "E" was A2's cheque of the 19th August 1991 which sought to draw funds and benefit from the rich deposits of funds in A2's account. The Crown contended that A2 sought to benefit by way of theft. Unquestionably A2 had become greatly enriched.

I concluded that Nkune had had possession of the documents exhibited in the course of his investigations. Most importantly he received those from the officials of the Treasury Department and others from the bank officials of the Industrial branch of Lesotho Bank. He confirmed that following reports from the said officials he attended at the Treasury Department and at the Lesotho Bank where the subject of criminal investigations concerning A1 and A2's conduct were reported more fully to him including handing over to him of documents and exhibits shown in the above paragraphs. To reiterate Mr Nkune knew the

documents and he had even handed them in as exhibits at the PE. In addition he had a reasonable suspicion that the accused were liable as charged having also confronted them.

Mr. Lekhooa Pitso who was PW 4 at the PE whose evidence had been admitted in the proceedings was "recalled". It will be remembered that Mr Pitso was Accountant at Industrial branch of Lesotho Bank where A2 kept his account. Mr. Pitso's evidence can only be read in conjunction with PW 3 who was bank teller who alerted Mr. Pitso to some suspicious circumstances about withdrawal of a cheque and then to the state of A2's account.

As a result of PW 3's report the witness said he mounted an investigation into A2's account including on the day of A2's depositing of August 1991 cheque because it was a second cheque of a large amount before that teller. That cheque was also too large for a salary cheque. His further investigation revealed a third similar cheques before a different teller.

One of the cheques the witness had photostat copied when the original cheque was referred to the Standard Bank (drawer bank). Accountant General (PW 6 at PE) was also contacted about the suspicious cheque deposits. A copy

of the cheque was given to Mr. Nkune (PW 12) the policeman. Mr Pitso recalled it was exhibit "A". He had instructed the teller to make photostat copy of the cheque.

The witness said withdrawals had not been made because they were questioned. There had not been any regular withdrawals by A2. The size of the deposits had aroused suspicion on the part of the bank. Even if such were arrear salary cheque deposits they were still too large.

The witness would not be particular of the date of the cheques or deposits. He recalls it was on more than one occasion when he had to scrutinize the transaction. One of the deposits could have been that of the 18 July 1991 if he was not mistaken as it may have been what he said at the PE.

I could not see how the evidence of this witness could be doubted as being truthful and without any motive to deceive. It went as much as to confirm the transactions in A2's account of large amounts of money in three cheque deposits which have become questionable in these charges before this Court. Incidentally A2 admitted that he received the cheques through the post much against evidence suggesting that those kind of payments could never be delivered through the post.

As said before one has to inquire about the connection between the deposits in A2's said bank account and the questionable transactions in the Treasury Department, if not before, about which the witnesses testified against A1 who admitted to have been an Accounts Assistant at the Treasury and accordingly member of staff. Not forgetting of course the proved coincidences and the undesirability of admitting from them of "fanciful possibilities". See **Miller v The Minister of Pensions** (supra).

I have already spoken extensively about the problem of the disappearance of exhibits as after the completion of the PE. And the various objections from defence Counsel which resulted in my various rulings more particularly the one that lead to my declaring that Mr. Lenono would be a competent witness. He ended up being a witness.

Mr. Lenono ended up being called as PW 14 by this Court. So he testified about the fact that he himself had presented copies of cheques and vouchers which had been exhibited at the PE which was presided by the late Chief Magistrate: When the PE was completed he was then Acting Director of Public Prosecutions as already recorded elsewhere in this judgment.

Counsel testified that he received proceedings and exhibits of the PE record in his capacity as aforesaid. He then himself unassisted made photostat copies of the exhibits which included a copy of a cheque, original cheques and vouchers which had been called ID 1, ID 2, ID 3 and ID 4.

Mr. Lenono alluded to the PE having been completed on the 19th April 1994 when then all the exhibits except one were in their original forms. That was a cheque which was marked "A" which was copy of exhibit "B" together with its payment voucher. Another cheque and accompanying voucher was put in marked "C". The last lot was a cheque and accompanying voucher marked "D".

At the end of the PE all the proceedings and exhibits were sent to the office of the Director of Public Prosecutions who was in the person of the witness himself who was then acting in that position. This was the normal procedure in order to enable the Director of Public Prosecutions to decide the charged to prepare or other necessary steps. The witness then decided to indict on the 11th May 1995.

While the PE record was put in his possession Mr. Lenono as he testified he made photostat copies of ID 1, ID 2, ID 3 and ID 4. It was after taking the steps

aforesaid he sent back the record of proceedings to the Chief Magistrate where the record would be typed until same would be sent over to the Registrar of the High Court.

As Mr. Lenono continued to testify it was after some time when he himself made inquiries about the state of the record. It was after about three months when he was informed that the original payment vouchers and cheques had gone missing. Mr. Lenono said he consequently made copies of payment vouchers and cheques. It was after an unsuccessful search for the missing documents by the Chief Magistrate and his staff.

Having made those copies the record was typed out. The made out copies including the exhibit "A" were sent to the High Court.

Mr. Lenono added that it had not been his first time to photostat copies the said missing documents. He had done that even after the police had sent over the docket after investigations. This he himself did as a security measure. He kept those copies which he also used in interviewing witnesses.

What appeared to have introduced a measure of confusion was an

impression created by Mr. Lenono. It was that he could not have been too certain whether what he copied back to the magistrate were those copies which he made before the PE proceedings were refused as against those which were marked by the Chief Magistrate having dealt with them at the PE. But what was redeeming was that Mr. Lenono consistently referred to that: "The photocopies I used were those used after completion of the PE". That is why the cheques (including exhibit "A" in the magistrate's own pen) were demonstrably marked by the magistrate : Mr. Lenono conceded that the documents were not certified nor authenticated in no other way except that he would (as other witnesses previously did) vouch for their source as copies of their original documents which were not traced even after a diligent search, as reported to him.

Those copies shown to the Court were those "already marked by the magistrate" which were handed in by Mr. Lenono as exhibits as follows: ID 1 became exhibit "B". ID 2 became exhibit "C". ID 3 became exhibit "D". ID 4 became exhibit "A".

Even after the well tuned cross examination by Mr. Mahlakeng Mr. Lenono proved straightforward honest and without any motive to deceive on any aspect. Significantly the evidence of PW 1, PW 2 and PW 3 were corroborated in its

totality. That the exhibits emanated from the lost original PE documents became true and proved without a shadow of doubt. To reiterate the photostat copies of the cheques did even show the marking by the late Chief Magistrate. These exhibits were accordingly correctly put into the proceedings as good exhibits and evidence in these proceedings.

The Crown closed its case. The two accused each testified on his own behalf.

A1 admitted that he was Assistant Accountant at the Treasury Department at the material time. His responsibility was to ensure that salaries of staff from those ministries of his "desk" had been paid correctly to keep their records. He also had to ensure that the cheques have been released from the computers so that he may forward them to respective ministries.

A1 denied as he testified that cheques were ever delivered but were collected from the Treasury Department. Furthermore the ledger book would not show that he himself uplifted any cheques in the process of delivering any cheques as this was not the practice by members of staff such as himself.

Again the coincidence is inexplicable that PW 10 would testify that she was able to specifically recall that A1 collected the August 1991 cheque exhibit "D". Furthermore PW 10 said under cross examination that when the cheque was queried at the Bank the Accountant General was phoned and consequently he and Mrs Lerotholi attended on A1. They found that the cheques were not signed for in the register. That despite cheque had been collected and deposited by A1 on the 16th August 1991. A1 was called to sign on the 19th August 1991 or 20th August 1991.

It did not matter which of the two last mentioned dates was correct. All it underlined was that not only was it expected that A1 would sign in the register upon or after uplifting the cheque. It indicates that all knew that it was A1 who uplifted the cheque. That is why he was called to belatedly sign in the register. It was thought he had neglected to sign. A1 may have been unhappy or feeling under a lot of pressure to sign. What was important was that he was indicated as the person who uplifted the cheque including exhibit "D" PW 10 was unshaken in his testimony throughout. I concluded so.

PW 10 knew A1's signature. A1's signature was identified in the cheques register. I was satisfied that his signature, taking into account that it was known,

was truly identified. There was therefore no need to have sought to lead further evidence purportedly in conformity with section 232 of the CP&E 1981.

All that A1 testified besides the denial of preparing for vouchers and uplifting the cheques were that at the PE exhibit "B" was never shown to him. He made issue about carbon copies supporting the original payment vouchers including the absence of carbon copies and the order of such copies by the colour scheme.

A1 further denied that he was shown exhibit "C" at the PE. Neither had he been shown exhibit "D" at the PE. That the signature in exhibit "F" (cheque register) were not his. When he was shown the register on the 20th August 1991 as he testified he had already had wind of or received a report from one Litšabako Tšepe about the register or suspicious cheque. This led him to initially resist signing for receipt or uplifting of the cheques in the register. A1 was not able to show the reason for alleged bias, prejudice or ulterior motive for having fingered him for the alleged wrong doing. Why would so much effort be expended to bringing about such an array of solid facts against A1? He caused fraud, which he perpetrated, of government cheques and theft by false pretences of government funds. He should not have done that or allowed others to do. See **Nthati v Rex**

1981(1) LLR 35 at page 40.

Not only have I pointed at factors that made the Crown's evidence against this witness to be overwhelmingly proved, this accused's story or explanation may never possibly reasonably be true. The Accused neither had a defence. His case was demonstrably false and inherently improbable as to be rejected as false beyond a reasonable doubt. See remarks of Ramodibedi JA in **Rex v Lepoqo Seoehla Molapo** 1997-98 LLR 208 at 287. As shown throughout in this case A1 defence was all denials of every aspect of the Crown's evidence. He did not succeed.

A2's testimony was dismally lacklustre. He said that he resigned from the Government in 1989 and on resignation he was entitled to some terminal benefits. His benefits were not paid immediately. He received the first cheque in respect of leave pay. In 1991-1992 he received cheques in respect of his gratuity. He had no idea of the exact amount he was supposed to receive. Indeed this ought not to be believed as being most improbable.

The last statement has or is supposed to have the following significant meaning. That although he (A2) personally received cheques for leave pay and gratuity since he did not know the total which was supposed to be paid out to him

he was not surprised if he continued to be paid further and further by cheques through the post. He thought he was entitled to receive the three cheques.

A2 also admitted that he was holder of the account no. 36000802 which was credited on the occasions as shown by the bank statements which were exhibited including deposit slips. He had attempted to withdraw from his bank deposit but was arrested. I would resist any conclusion or suggestion that A2 took no care to investigate nor that he was reckless to have received further cheques. He was obviously lying. The more probable scenario is that he was part of an agreement to receive unlawful cheques in the name of retirement benefits or gratuity. He said he received the cheques by post. Even if one chose to believe that such cheques were sent out through the post (which I did not) still the story is unbelievable even as a mistake except that the situation was contrived and had become an unlawful scheme.

A2 also harked back usual note that at the PE all the exhibits "B", "C" and "D" were not shown to him. Even if they were not (about which no inference or conclusion was suggested to me by Counsel) what has one to say about overwhelming evidence that cheques were put into his bank account whose entitlement to the cheque was not beyond reproach but that it was proved to be

downright illicit and intentional. A2 participated in the wrongdoing with A1 or has benefited as per payments made into his account assisted by his partner in crime.

I would safely, as I hereby do, conclude in the same way to A2's explanation as have done with regard to A1, by rejecting the same as false beyond a reasonable doubt.

This Court observed with curiosity the alacrity and extent to which the defence would deal with peripheral issues. The Crown correctly submitted that it had proved it beyond a reasonable doubt that the two Accused persons had defrauded the Lesotho Government in the total sum of M47,678.89 which money they did steal.

Counsel also spoke about the extraordinary length of time it took the Court to complete the proceedings, he stated that the Crown was not accountable for this delay as it submitted. I agreed that a scrutiny of the record would show that over ninety per-cent of the postponements were attributed to the defence. Counsel cited the case of **Sekonyela and Others v Rex** 1981(1) LLR 41 in particular the Courts' remark page 45 which was that:

“When a trial drags on for an inordinate length of time that is bound to affect the sentence finally to be imposed on the accused person.”

Quoting from **Sankatana Masupha v Regina** 1963-66 HCTLR 102 at 104. As Counsel submitted finally in that connection the Court was being urged not to be too eager to take the lengthy trial period in favour of the accused person in this particular case, when the Accused persons themselves were the cause of the delay. I may come back to this later.

In considering that the funds which were illicitly interfered with Mr. Lenono quoted **Delvis Faro and Another** 1980(1) LLR 147 at where Court said:

“ It is the primary duty of every Court in this land to make this land to make their determination to discourage any idea that the Government property can be stolen with impunity.

The Courts in this country are determined to punish severely anyone who steal Government property. Lesotho is a poor country and has of necessity to borrow money from donors. If the little help will receive is not used for the purpose for which it was meant but finds its way into the pockets of individual officers, then very soon this country will find it increasingly difficult to raise any loans.”

Having considered the totality of the Crown evidence and that the two Accused’s stories could only be false beyond a reasonable doubt I could only conclude that the Crown did prove its case beyond a reasonable doubt. In

summary the Crown evidence being:

- “
1. That payment voucher No. 70/102688 was received and presented by A1 at the Treasury, resulting in the drawing of cheque No. 102688 for M14,363.30 payable to A2.
 2. That this cheque No. 102688 was paid into A2's account at Lesotho Bank Industrial Branch on 19/06/91.
 3. That from that deposit, A2 made several cash withdrawals per his personal cheques numbers 209606/7/8 and 9.
 4. That A1 received and presented payment voucher No. 70/102914 to the payment authorising officials at Treasury, resulting in he making of cheque No. 102914 in the amount of R14,668.96 in favour of A2.
 5. That this cheque No. 102914 was paid into A2's account by A2 himself on 18/02/91.
 6. That from that deposit A2 made several withdrawals per his personal cheque numbers 209613/-21.
 7. That A1 received and presented payment vouchers No. 70/101190 to the payment authorising officials at the Treasury, resulting in the making of cheque No. 101190 in the amount of M18,646.63 in favour of A2.
 8. That this cheque No. 102914 was deposited into A2's account by A2 himself on 17/08/91.
 9. That from that deposit A2 attempted to draw an amount of M6,645.00 per his personal cheque number 209622 but was arrested before he could do so.

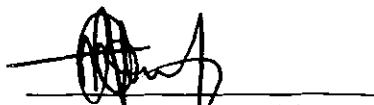
I agree that the Crown bears the onus of proof beyond a reasonable doubt of all the elements of the crime. This Crown has successfully discharged.

Fraud is defined as the unlawful and intentional making of a misrepresentation which caused actual prejudice or which is potentially prejudicial to another. See **The Law of South Africa, Vol.6** page 288 Joubert et al. See also **South African Criminal Law and Procedure Vol.3 4th edition** JRL Milton, at page 702. The essential elements of fraud which must in each case be proved are unlawfulness, making of a misrepresentation, intention to defraud and causing of prejudice.

On the other hand Theft By False Pretence is committed when a person unlawfully and intentionally abtain a corporal thing or property *in commercio* from another, without the latter's consent, by means of a false representation. Mr. Mahlakeng referred me to **The Law of South Africa Vol.6** page 302, Joubert et al.

I was respectfully in agreement that beginning from the first meeting of the two Accused and Mokitimi (PW 4) until when encashment of the personal cheques of A2 or presentation thereof the crime of **fraud** which is the main offence in the first three counts had been committed by the Accused for which I find them guilty as charged.

My assessor agreed.

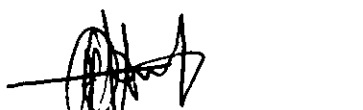


T. Monapathi
Judge

ORDER ON EXHIBITS

I ordered as follows:

1. (a) Exhibits "A", "B", "C", "D", "E", "G", "H", "I", "J" to be destroyed by police.
 - (b) Exhibit "F" to be sent back to the Treasury Department.
 - (c) "Unmarked" Cheque Register, specimen signature form (16th April 1991) Salary Adjustment Voucher (07/05/91) - to be sent to the Treasury Department.
2. Lesotho Bank would be advised to close Account No. 360003802 M J Maboloka in accordance with its regulations.



T Monapathi
Judge

26th September 2002

SENTENCE

**Delivered by the Honourable Mr. Justice T. Monapathi
on the 26th day of September 2002**

I have already found the two Accused guilty of Fraud, as charged, on the 9th September 2002.

The two Accused have testified in mitigation of their sentences on the 16th September and on the 18th September 2002. They have most wisely also testified under oath as to their personal circumstances. These were quite revealing and weighty as the record will bear out.

I have also been told by Mr. Lenono that the two accused have no previous convictions despite that the present convictions involve quite a serious offence. I agreed with respect. Indeed Cullinan AJ said in **Rex v Masupha Ephaim Sole** 4th June 2002 (unreported) at page 5:

“To apply those dicta to the present case I take into account the fact that the Accused is a first offender but as Baker J observed in **S v Van Der Westhuizen** 1974(4) SA 61 (C) at 64 referring to **S v Victor** 1970(1) SA 427 (A). There is no rule that a first offender should not be sent to gaol and is entitled to a suspended sentence.” Clearly there cannot be such a rule, much depends on the circumstances of the case, and in particular the gravity of the offence.” (My emphasis)

In that regard I refer to my biting comments in my main judgment about theft of government funds. In this case it was M28,000.00 that had been actually siphoned from the Treasury Department of Lesotho Government when the fraud itself involved M47,678.86.

In the case of **Nthati v Rex** 1981(1) LLR 35 at 40 a reference to sentence suggests an attitude of the Court in proper cases. That is to say that:

“We in the courts have often said that thefts by public servants should be severely dealt with. I normally impose a custodial sentence unless there are very cogent reasons to do otherwise.”
(My emphasis)

I bore this in my mind when I sentenced the two Accused persons.

Mr. Lenono has rightly observed that this case has taken a long time to resolve finally and that it could not be laid at the door of Crown most of the time but on the attitude of defence Counsel in raising a myriad objections most of the time. Much as I found fault with the substance of the objections which resulted in four written rulings that I made, I would nevertheless commend both Counsel namely the late Mr. Pheko and Mr. Mahlakeng for the aggression with which they defended their clients. One misses moments like that in Court nowadays. With these remarks and others which I have already noted in my

judgment I am merely remarking and I note that the spectre of conviction or otherwise has been hanging over the heads of the Accused since they first knew that they stood charged with these offences about ten years ago.

Added to the aspect of delay could be the issue of disappearance of the exhibits after the completion of the PE which was regrettable and not good for the reputation of our Courts. All in all the trial took a long time to complete and this would certainly redound to Accused under normal circumstances.

I now come to the task at hand which was not an easy one. It is to start by saying that sentencing an accused person has to serve a purpose. There must be:

“aims for punishment in the sense that the following headings describe the result that will hopefully be achieved by means of the punishment imposed. In this context one should also try to ascertain, in advance, exactly which aims may realistically be achieved by means of punishment.”

See **Sentencing DP Van der Merve** at 310-311. The learned author endorses the “popular view that the ultimate aim of punishment is probably to protect the community against crime”. He cites “Direct prevention the example of which is imprisonment amongst others”. He outlines the indirect prevention which consists of persuading the offender to cease his criminal activities ultimately by means of the different methods. See also **Rex v Masupha Ephraim Sole** (supra)

at page 8, citing **S v Rabbie** 1975(4) SA 855(A) and **S v Banda and Others** 1991(2) SACL 352(B)

The three well known methods which the learned author speaks about are retribution, deterrence and rehabilitation. The two last methods find favour in modern penology and the latter being more popular and emphasized. This theory virtually saying that direct prevention by imprisonment is only effective if it conduces to rehabilitation of the offender. At the end of the scale being that an offender would be imprisoned for a long period or given a death penalty where the likelihood of rehabilitation does not suggest itself because the offender is incorrigible or a serious crime has been committed and the society deserved a certain kind of protection by "dispatching" the prisoner.

In punishing convicted offenders the Court considers the following interests: The nature of the crime, the kind or person of the offender and the interests of the community on a kind of a balancing scale. As Mr. Lenono correctly submitted the punishment of the offender while taking proper heed of the seriousness of the offence should not miss the greater interest of the community in seeing to it that the offenders are punished deservedly and demonstrably in relation to the seriousness of the offence. It is because such criminality and conduct is an affront to the society itself. I agreed.

If too low sentences or too harsh sentences are imposed for a misconduct that affects the perception of the community as being nonsensical and that itself affects the reputation of the Courts in the eyes of the public. This was noted.

I was attracted by learned Acting Justice Mr. B.P. Cullinan in **Rex v Ephraim Masupha Sole** (supra) where he warns against anger on the part of the Court or the Court exaggerating the seriousness (of a gargantuan proportions) of a crime above all else and the learned Judge said at page 5:

“However the denunciatively motive description of the crime although accurate, should not be allowed to transgress all other considerations in arriving at a just and balanced sentence. As was said by this Court in **S v Kumalo** 1973(3) SA 697 (A) at p. 698-AB “punishment should fit the criminal as well as the crime, be fair to society and be balanced with a measure of mercy according to circumstances The last of these elements is sometimes overlooked.”

The learned Judge then dealt with what properly should be the view of and the exercise of mercy. This I have taken into account. This I agree with and I accept it as a pertinent warning in most circumstances where a serious crime has been committed.

As I have said each Accused adduced evidence in mitigation of sentence starting with A1 Mr. Rammoneng who is 46 years of age. Mr. Rammoneng is married with three (3) children. It is a total of five dependents he fends for. One

While he was released from hospital he still was unable to move and walk about without use of calipers and leather and steel contraption that support the upper body and align with the lower limbs so that he can walk about or become upright. He even would always need a stick for some necessary support. The long and short of it is without the shoes calipers and leather straps the Accused is completely immobile.

The crucial factor which Accused pointed out would be the difficulty of putting on the contraptions. The Accused has to be assisted. He has to be seated on a bed not on the ground or flat surface. He needs someone to assist him most suitably a family member.

Mr. Rammoneng accepted that he was aware that he had committed a serious offence. He ended up admitting that he was the cause of government's loss of funds although he may have denied it at the pre-conviction stage of the trial. He showed remorse and contrition.

It was the personal circumstances of this Accused which have influenced me to impose the kind of sentence that I imposed. I however took heed of the warning by Cullinañ AJ in **R v Masupha Ephraim Sole** (supra) at page 8 where he approached the question of mercy and that "... it is an element of justice

properly and generated pus. The pus and other fetid substances had to be drained for the whole year.

In 1987 a second operation was effected to clear up the pus and accumulated liquids in the lung cavity. The liquids stopped for only six months but recommenced necessitating use of a drainage pipe.

In 1990 another operation was effected at the back to seek to treat the problem. The pus problem stopped.

Accused however had to attend on medical check-ups every three months to date. His condition is seriously affected by cold weathers and he has to be putting on heavy clothing all the time. If he comes across cold bout of the weather the liquids accumulate again in the lung cavity. He has then to be accommodated in hospital to treat the problem. The two major operations have rendered the Accused fragile and weak. Doctors advised that he must always put on warm clothing even on hot weather conditions.

In 1999 his doctor advised that he has pneumonia. He has to attend on those checkups. He contributes to a medial scheme through his employer. The medical attention is seriously necessary to maintain or else his health will

handling. Because its delay was being scandalous I had to exercise great patience than I ever did before. It should be the last. During the trial one assessor (Mr. Sekhesa) fell off.

I took the opportunity to thank Mr. Lenono for his patience. Not that I exclude the other Counsel. If there was no exercise of patience and tenacity such as Mr. Lenono exhibited despite a lot of problems and pressures (on Mr. Lenono) the case might well have collapsed in the end. Some practitioners are quietly gifted in things that are rarely loudly applauded.

This Court was touched because of the people who are involved in this case. That unwittingly brings the pleasure in the end why the case was worth pursuing. At the end the Accused accepted that they had done the crime and admitted that they were sorry for their act. Indeed both did not similarly open up for confession but I was settled in my mind that Mr. Maboloka was more ready of the two to have shown remorse. He even offered to attempt to pay off the money stolen from government. In any event he will be bound to do something about the funds.

Sending people to prison is not an easy task when one looks at the conditions of overcrowding unsanitary conditions and alleged conditions of

sodomy and sometimes rape of new inmates. It is the extent to which mankind has degraded. This must be well documented somewhere else.

Criminologists claim that prison does not work as it does not reform criminals. But it does protect the public at least while offenders are behind bars. As said before prisons are intended to punish, rehabilitate and deter. Perhaps it is time to reflect on where the emphasis should come. What is certain as they profess is that as a deterrent prisons are not working. The account however misses the point that the modern orientation of prison is to put in place structures and broad policies for rehabilitation. It would be unfair therefore to condemn the institution wholesale.

The personal circumstances of the Accused have dictated or rather influenced the sentences I ended up imposing. They are as follows:

The two Accused are each sentenced to :

Count I 7 years imprisonment

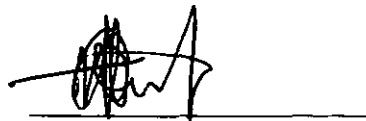
Count II 7 years imprisonment

Count III 7 years imprisonment.

All sentences are to run concurrently but they are however suspended for 3 years on the following conditions:

- (a) The Accused shall not be convicted, during the period of suspension, for any offence involving dishonesty.
- (b) The Accused shall, during the period of suspension, pay back to Government the sum of M28,000.00 by which Government was defrauded.

This shall not be without prejudice to the Government electing to execute for payment of the M28,000.00 on the strength of the judgment in terms of the Criminal Procedure and Evidence Act 1981 for the balance of the funds which may not have been paid during the 3 years period. I am fully aware of the effect of government electing to execute earlier. I have taken note of it in its effect on the sentences.



T. Monapathi
Judge

26th September, 2002