IN THE COURT OF APPEAL OF LESOTHO

C OF A (CRI) 12/2011

In the matter between:

TŚELISO STEPHEN DLAMINI **APPELLANT**

and

THE CROWN **RESPONDENT**

CORAM: MELUNSKY, JA
HURT, JA
MOSITO, AJA

Heard : 2 October 2012
Delivered: 19 October 2012

SUMMARY

Criminal Law – Fraud – Attempted fraud – defeating or obstructing course of justice or attempting to do so – appellant's participation in aforesaid offenses proved beyond reasonable doubt.

Notice of appeal – essential for notice to set out grounds on which it is alleged that the conviction is against the weight of evidence – insufficient to state that the weight of evidence did not justify conviction.

Sentence – excessively harsh sentence on attempt to obstruct course of justice – overall effect of series of criminal conduct – extent to which time spent in detention prior to trial should be taken into account.

JUDGMENT

MELUNSKY, JA

[1] This appeal concerns, in the main, a series of frauds perpetrated on the Lesotho Highlands Development Authority ("the LHDA") during the two month period December 2004 to February 2005. These formed the subject of counts 2 to 6 in the High Court. Count 1, a charge of defeating or obstructing the course of justice (or attempting to do so), allegedly occurred some six months later, on 25 August 2005.

[2] Arising out of the aforegoing the appellant was indicted in the High Court on all six counts before Mahase J and two assessors, one of whom was released shortly after the commencement of the evidence. The appellant pleaded not guilty to all charges but was convicted as charged and sentenced to an effective term of fifteen years

imprisonment. He appeals to this Court against the convictions and sentences. The notice of appeal is hardly a model of both clarity and detail. It merely provides that the learned judge erred "in law" in convicting the appellant on all counts as "the weight of evidence did not justify such conviction."

[3] Notwithstanding the shortcomings of the notice, a matter that will again be referred to later, I will proceed to deal with the counts in their chronological order. I therefore commence with count 2 and thereafter will deal with counts 3 to 6 before finally considering count 1. It is important to note, in respect of all the fraud charges, that the Crown alleges the appellant acted in concert with others (on count 2) and in concert with "another or others" (on counts 3 – 6). One of the persons who allegedly conspired with the appellant on all of the fraud charges

was Peggy Thakeli, an employee of the LHDA and the appellant's lover at the material times. The relationship between the appellant and Ms Thakeli commenced in or about 2004 and continued during the period covered by the fraud charges. It is necessary to note that in a separate indictment Ms Thakeli was convicted of her complicity in all of the fraud charges and that the conviction was upheld on appeal. Moreover the appellant concedes that she did indeed participate in the commission of the said offences. It only needs to be said that she is currently serving a sentence of eight years imprisonment for her role in the said offences.

[4] It is also important to note that the appellant, consistent with what appears above, does not dispute that the said frauds were perpetrated on the LHDA. His defence is a denial that he committed or assisted in their

commission. The effect of the appellant's admissions enables me to deal with the nature of the offences far more economically than otherwise might have been the case.

COUNT 2

[5] The LHDA, while carrying on business in Maseru, was a customer of ABSA Bank, Johannesburg. From time to time, the LHDA required ABSA to pay its contractors or suppliers by debiting the LHDA account. In terms of an arrangement between the two institutions a payment instruction, signed by two duly authorized officials, would be given to the Bank by means of a fax. On receipt of this ABSA was to obtain telephonic confirmation of the instruction and thereafter to implement it. According to the indictment on count 2 it was the appellant, purportedly acting on behalf of the LHDA, who instructed ABSA to pay R2.4 million out of LHDA's account into an account in the

name of Soleman-Sameer in the First National Bank; that this was a fraudulent misrepresentation; that ABSA was deceived into paying the said sum into the said account; and that the appellant knew that the instruction to ABSA was not lawful or genuine.

[6] Three other matters need to be mentioned. First, that every transaction between the LHDA and a supplier is entered into a computer at the LHDA's accounting department. A unique number (referred to as "deal" number) is furnished by the computer in respect of each particular transaction. Second, ABSA Bank provides the LHDA with frequent and regular statements, reflecting all banking transactions during the period under review. Included in the statements is the deal number of each payment made by the bank on LHDA's behalf. Deal numbers are, as a matter of course, captured by the Bank

from the LHDA's faxed instruction. Third, the signatures on the request for R2.4 million to be paid to Soleman-Sameer were forged. All of the aforegoing facts were not disputed by the appellant.

[7] Ms Thakeli had been employed in the LHDA's accounts department for a number of years before December 2004. She was a qualified accountant and was well acquainted with her employer's procedures relating to the payment of money out of the LHDA's bank accounts. That she was involved in the R2.4 million transaction is beyond question but that is not to say that she was the only participant in the illegality as I shall presently indicate. The fax sent to ABSA with the instruction to pay Soleman-Sameer, dated 16 December 2004, was on the LHDA letter-head. It contained a deal number, full details of the payment requirements and concluded with the request for the Bank

to confirm the transaction “immediately” to the LHDA’s senior accountant, financial support on certain fax numbers. I add that the usual procedure adopted by a supplier who required payment is for him to submit an invoice to the LHDA. It is only after verification of the invoice by appropriate employees of the LHDA that the request for payment is issued by the Development Authority’s computer and faxed to the relevant bank for payment. With regard to the facts on count 2, however, although the instruction for payment was in the LHDA’s usual form, no invoice was submitted to the LHDA by a supplier and, indeed, it is clear that an individual with the name of Soleman-Sameer did not supply goods or carry out work for the LHDA. Nor was he entitled to the payment of R2.4 million or any other amount.

[8] The fraud on count 2 came to light when Mr. Thabo Tikoe, an accountant employed by the LHDA received an ABSA Bank statement on 17 December 2004 that reflected a debit of R2.4 million against the LHDA account. The deal number furnished by ABSA had nothing to do with a legitimate LHDA transaction: in fact the number corresponded to a lawful contract entered into between the LHDA and a Mr. Khohlooa for the modest amount of M8,760.50. That the LHDA was therefore a victim of a well-planned fraud was subsequently confirmed by more senior officials in that body.

[9] What of the appellant's involvement in the planning and/or execution of this fraud, if any? Clearly the offence could not have been committed without the involvement of Ms. Thakeli and two other accomplices, both of whom testified before the court a quo. Mr. Seqhau Phenya was

employed by Lesotho Telecom as a senior technician from 1988 to 2009. His expertise consisted in the installation of telephones, i.e. the connection and disconnection of telephone lines to the Telecom main system. His evidence was to the effect that he knew the appellant; that they lived near to each other; and that he had previously assisted the appellant with a telephone service. Mr. Phenya explained that the appellant requested him to install a telephone and fax in his, the appellant's, house; that the services should operate in such a way that a telephone call to the LHDA would also ring at his house and that a fax sent from his house would appear to have come from the LHDA. The witness's response was that he was able only to do the installation of the lines but not the diversions required by the appellant. After some initial reluctance, Mr. Phenya agreed to assist the appellant in the installation of the lines. His original unwillingness was overcome after the

appellant had offered him an amount of M40 000 for his help and it was explained to him that the money would come from the LHDA and that a person working in that organization was also involved in the scheme. Mr. Phenya told the appellant that a Mrs. Mampho Mohapi, who was employed in Telecom's exchange section, could carry out the diversions he required. In due course he introduced the appellant to Mrs. Mohapi who, apart from being a telephone technician, also sold a product called Herbalife, presumably as a side-line. During a discussion between Phenya, the appellant and Mrs. Mohapi, the latter, despite an initial refusal, subsequently agreed to assist the appellant by temporarily disconnecting one of the LHDA telephone lines and diverting that number to the telephone line to be installed in the appellant's house by Mr. Phenya.

[10] The scheme was then implemented. Mr. Phenya connected the telephone and fax lines to the appellant's house in the presence of Ms Thakeli and the appellant. Also present was another man who has not been identified. A fax machine was borrowed and this was programmed and successfully tested. Mrs. Mohapi then carried out her side of the undertaking. Pursuant to the scheme, a fax was sent from the appellant's house to the appropriate branch of ABSA Bank in Johannesburg and a telephone call from the Bank was received and answered by Ms. Thakeli. She confirmed the contents of the fax, after which the appellant said that everything had been completed. The telephone and fax lines were disconnected and the LHDA's line was restored. All of this Mr. Phenya told to the trial court. He added that a few days after the operation the appellant gave him M20 000 in cash and that the same amount was paid to Mrs. Mohapi.

[11] Mrs. Mohapi substantially confirmed the account of events given by Mr. Phenya and there is no need to repeat her evidence, apart from mentioning that she confirmed receipt of the test fax. She explained that it was sent from an LHDA number, was signed by “Thabo” and contained a reference to the Herbalife product.

[12] The appellant’s response to this telling evidence was a complete denial of his involvement. He was unable to explain why the Crown witnesses would have wanted to implicate him and his evidence could be acceptable only if we find that he was the victim of a perfectly orchestrated conspiracy. But it is inconceivable that this could have been the case. Of course the evidence of the two Telecom accomplices must be treated with caution but the danger that they might have falsely implicated the appellant is substantially reduced by the fact that they corroborated

each other in all material respects. Furthermore cross-examination of the witnesses failed to elicit any contradictions or inconsistencies. It is also clear that the test fax was sent to Mrs. Mohapi. This document, which was handed in at the trial, is further corroboration of the accomplices' evidence, if such be needed.

[13] Counsel for the appellant was unable to point to any material misdirection by the trial court in arriving at its decision to convict the appellant on this count. His argument before us seems to have been directed largely at the presence of an unidentified person in the appellant's house while the telephone and fax lines were being set up. The presence of this individual and even his possible participation in the commission of the offence has no bearing on the appellant's guilt. The fact remains that due to the appellant's direct and significant importuning of the

Telecom officers, the LHDA was induced to pay out a considerable sum of money to persons who were not entitled to it.

[14] From the aforegoing it follows that the appellant's appeal against his conviction on count 1 must fail.

COUNTS 3, 4, 5 AND 6

[15] It is convenient to commence a consideration of the above counts by referring to the opening of a bank account at Boliba Savings and Credit (referred to in the proceedings in the court a quo as Boliba Bank). The account that has relevance here is one that was opened by a man who gave his name as Eseel Mpatluoa Tlebele and who claimed to be trading as Iketsetseng Hardware Centre. In order to open an account a prospective customer has to produce a passport and a trading licence authorizing him to carry on

business. In the case now under consideration a passport in the name of Eseel Mpatluoa Tlebele and a document purporting to be a valid trading licence in the name of Iketsetseng Hardware Centre were shown to the Bank. The account was accordingly opened with an initial deposit of M200.

[16] A witness in the court a quo, whose name was given as Mpatluoa Tlebele, told the court that he had lost his passport (in which his name appeared as Eseel Mpatluoa Tlebele) “a long time ago”. His denial that he had ever opened an account at Boliba Bank was not challenged by the defence. Mr. Mokhochane from the so-called Anti-Corruption Unit testified that he found copies of the true Tlebele passport in the appellant’s bedroom cupboard and a Mr. Thetsa gave evidence to the effect that the appellant had requested a blank business licence form from him and

that he gave the appellant such a form for which the appellant paid him M200. The appellant denied the truth of the evidence of Messrs. Mokhochane and Thetsa. This is an aspect that will be dealt with at a later stage. What the appellant did not deny was that the Tlebele passport (with a different photograph) was used to open the Boliba Bank account and that Iketsetseng was a fictitious and non-existent business entity.

[17] Apart from the initial deposit of M200, two further deposits were made into the Iketsetseng account, namely cheque deposit of M46 780 and M146 105,50 paid in on 22 December 2004 and 2 February 2005 respectively. These deposits form the subject matter of counts 3 and 4. Both cheques were drawn by the LHDA in favour of Iketsetseng Hardware Centre. By 15 February 2005, however, almost all of the money in the said account had been withdrawn.

There were five substantial withdrawals in all, including M80 000 on 5 February and M60 000 on 15 February.

[18] However many other people might possibly have been involved in counts 3 to 6, it is obvious that the scheme to divert the LHDA money into the Boliba Bank account of Iketsetseng could not have got off the ground without the active participation of Peggy Thakeli. By reason of her position in the LHDA she was, as counsel for the Crown put it in his able heads of argument, "at the entrance to the procurement process". Not only did she know how procurement within the LHDA worked, she also knew the LHDA codes to commit these frauds. Moreover Ms. Thakeli worked in the budget section of the finance department. One of her functions, on receipt of a requisition made by a department within the LHDA, was to satisfy the procurement section that sufficient funds were available to

enable the purchase to take place. She also knew who had authority to sign the manual requisition in question.

[19] The evidence disclosed that the purported manual requisitions in respect of counts 3 and 4 were not signed by the authorized signatories but the signatures of those authorized to sign were forged by or with the concurrence of Ms. Thakeli. These documents purported to authorize Iketsetseng to purchase materials from the LHDA and in due course resulted in the cheques of M46,789 and M146,105,50 being paid by the LHDA and deposited into the Iketsetseng account at Boliba Bank. In respect of the earlier transaction two other quotations (apart from the fraudulent one of Iketsetseng) were included in the LHDA records, in accordance with LHDA's requirement that all requisitions over M5,000 required three quotations. No

other quotations and no purchase requisitions were found in respect of the second transaction.

[20] In respect of the third and fourth transactions, (counts 5 and 6 respectively) many original documents were missing. Thus all that was available in the LHDA files concerning count 5 was the data captured on the computer which reflected requisitions totaling M211,031,75 in value for materials allegedly required by a department of the LHDA. Missing were the manual requisition, any quotation and an invoice from the purported supplier. Of course there was no cheque either as no payment was made. In respect of count 6 the LHDA file contained only two pages – a manual purchase requisition for materials having a value of M74,058,75 and a quotation from Iketsetseng for the same amount. It is common cause that the documents were never processed in the procurement unit. To sum up

in respect of counts 5 and 6: in the former count, the manual requisition had been data captured before the transaction was abandoned but in respect of count 6, the process had not even proceeded that far.

[21] I now revert to consider the only quotations that were available to the court a quo. These relate to count 3. At the material time Laluma Building Materials, situated in Teyateyaneng, was managed by a Mr. Binu Abraham. He prepared a quotation on 2 December 2004 at the request of one of his staff members, Tsotang Qathatsi, who had difficulty in doing it herself. Abraham gave the quotation to the two men who had asked for it, one of whom gave his name as Thabo and his mobile telephone number as 589052004. Ms Qathatsi confirmed that two men requested a quotation at the Laluma Hardware store where she was employed. The men told her that they were from

the LHDA. While preparing the quotation she made a mistake and she asked Mr. Abraham to assist her because one of the men was very rude to her which caused her a certain amount of distress. Some months later she attended an identification parade in Maseru where she identified the appellant as the person who had been rude to her at the shop.

[22] Angelina Ntsane was employed by Lioli Hardware in Teyateyaneng in 1 December 2004 when a man, claiming to be from the LHDA, arrived at the shop. He requested a quotation for certain materials which she duly gave. He wrote his mobile telephone number – 58905244 – and his name – Tseliso – on the quotation. Subsequently, she attended an identification parade at the Central Prison, Maseru where she identified the appellant as the person who had requested the quotation.

[23] The appellant's answer in evidence to the Crown case amounted to this: an admission of almost all of the evidence that did not implicate him and a denial of everything that did. Commencing with Mr. Michael Thetsa, it is clear from his evidence that the appellant did indeed approach him with the request to produce a document that appeared to be a valid business trading licence and that he eventually complied with the request after he had obtained assistance from a person with the name of Leboela. The appellant's denial that this occurred is without substance. Thetsa was a friend of the appellant and his wife, he had no reasons to falsely implicate the appellant and no explanation was given as to why he would want to do so.

[24] The fictitious trading licence was used to open the Boliba Bank account and a passport used for the same purpose was a true photocopy of the Tlebele passport with

the photograph changed. It is certain that the person who used the forged trading licence also used the Tlebele passport to open the account. That the appellant was that person is obvious from the evidence of Thetsa. Mokhochane's evidence that he found copies of the Tlebele's passport in the appellant's house is also consistent with the rest of the evidence on this point. It is true, as the appellant's counsel submitted, that no inventory of the items found in the appellant's house was produced but this is not to say that Mokhochane's evidence was deliberately false. The appellant also admitted that the signature which appeared on the Boliba Bank deposit slip for the deposit of the M146,105,50 seemed to be his and his denial that it was not his signature was hardly convincing.

[25] What is perhaps more compelling was the evidence of Mr. Abraham, Ms. Qathatsi and Ms. Ntsane. That the appellant gave his mobile telephone number to employees of both hardware stores in Teyateyaneng is beyond question. That he even wrote his name and number on the Lioli quotation cannot be false. Moreover both Qathatsi and Ntsane had no difficulty in identifying the appellant at the identification parades. The appellant's counsel contended that the identification parades were not fair, particularly because there was no police evidence as to how they were conducted. It was put to the Crown witnesses by his counsel that he was of a much more mature age than any other people on the parade. This was denied by Qathatsi and not admitted by Ntsane. There was also some suggestion that he was the only person on the parade who was wearing spectacles. Even if this were so, it is quite apparent from the evidence that both Crown witnesses had

had ample opportunities to observe the appellant in their respective shops, that they pointed him out without hesitation and that they were absolutely confident that he was the person concerned. In my view it is perfectly safe to accept their evidence on the question of identification, despite the absence of police testimony on the parades.

[26] As I have pointed out the Iketsetseng frauds on counts 5 and 6 were aborted at earlier stages and before actual prejudice to the LHDA had occurred. The preparatory work to carry out these frauds was carried out in the offices of the LHDA by Peggy Thakeli. But the process to obtain money unlawfully from the LHDA had commenced much earlier when the Boliba Bank account was opened on 6 December 2004. The bank was merely the vehicle through which the money was to pass before being withdrawn and the patterns of conduct carried out on counts 3 and 4 were

obviously going to be repeated on counts 5 and 6. In all cases the fictitious and forged documents were to be used by Ms. Thakeli, acting in concert and with the full approval of the appellant. It is not known why the attempts to obtain the additional amounts of M211,031,75 and M74,058 were not carried to fruition but it has not been suggested by the appellant that this was due to a breach in his relationship with Ms. Thakeli or for some similar reason. Consequently it would follow that the scheme that commenced in December 2004 remained in existence during February 2005 when the attempted frauds were committed and that the appellant's participation in these frauds has also been established beyond reasonable doubt.

[27] It follows that the appeals against the convictions on counts 3, 4, 5 and 6 fall to be dismissed.

COUNT 1

[28] I turn now to the first count. On 25 August 2005 a number of persons, including the appellant as A3, appeared before Magistrate Ralebese who remanded the accused to 27 September, pending investigations. A notation to that effect was signed by the Magistrate but squeezed in before her signature were the words:

"But charges withdrawn vs A3 only".

It is common cause that the "squeezed in words", as they are called, were written in by Magistrate Lesupi. What is also clear is that the appellant was charged together with Peggy Thakeli in case No. 764/05, which was a charge in an Anti-Corruption Unit case. Those charge sheets were not kept together with others. They were kept under lock and key in the office of Magistrate Motjotji. On a certain occasion Magistrate Motjotji received the appellant who came looking for his bail money on the grounds that the

charge against him in 764/05 had been withdrawn. Her evidence was that she took out the charge sheet, studied it with the appellant and could find nothing on record to the effect that the charge in the case had been withdrawn. She accordingly did not process the request for the bail refund and the appellant left. Then sometime thereafter she found the same charge sheet on her desk, she looked at it again and observed for the first time that the Lesupi "squeezed entry" had been inserted.

[29] The appellant later approached Ms Abia, a clerk in the Magistrate's court, Maseru to request the return of his bail money as the charges against him had been withdrawn. Ms Abia asked Mrs. Motjotji for the charge sheets – there were two, 764/05 and 765/05 – and after observing Magistrate Lesupi's entry above the signature of Mrs. Ralebese, was satisfied that the charges against the

appellant had indeed been withdrawn. She suggested to the appellant that he should write a letter "showing that the case had been withdrawn against him". The appellant subsequently produced two letters, one for each case number, and Ms Abia took them to the accounts section for the purpose of obtaining payment of the bail money. The clerks in that section were not satisfied with Magistrate Lesupi's "squeezed in" notation and asked Ms Abia to request the Magistrate to re-write the entry with clarity. This Ms Abia did. She found Magistrate Letsika in an office that she shared with Ms Lesupi and the former entered the words "charges withdrawn against A3". The entry was made under the record of a hearing that took place before Magistrate Letsika in Chambers on 27 September 2005. But the words entered at Ms Abia's request were not written on 27 September. They were put into the

Magistrate's book as late as January 2006. The appellant's letters requesting a refund are both dated 10 January.

[30] Now what the appellant has been charged with on count 1 is unlawfully causing Magistrate Lesupi to write on a charge sheet that the charge against him had been withdrawn when, to the knowledge of the appellant and the Magistrate this was not so. It is further alleged that the unlawful entry was made with a view to securing his unlawful release from the charge or to secure the unlawful release of his bail money. Somehow or other Magistrate Lesupi got hold of the charge sheet and squeezed in the entry that the charges against the appellant had been withdrawn. There is no reason to doubt Mrs. Motjotji's evidence that when the appellant came to look for a bail refund on the grounds that the charges against him had been withdrawn, no such entry was in the record. The

charges had not been withdrawn at any stage but when he went to Mrs. Motjotji he must have expected that the withdrawal entry was present. The appellant was the only beneficiary of the unlawful entry. Obviously he, or someone on his behalf, must have attempted to induce Magistrate Lesupi to make the said entry. The only inference is that after it was ascertained that no such entry had been made he must have done something to persuade her to make the entry. This was done with the unlawful object of defeating the ends of justice.

[31] What is more the appellant proved himself to be an opportunist who used whatever false evidence he could to achieve his purpose. In the court a quo he relied on the Letsika withdrawal entry to claim that he had appeared in court on 27 September when the charges against him were withdrawn. It is clear from the record of 27 September that

only one person, a woman, appeared before the Magistrate on that day and that the application on her behalf was made in chambers and not in open court. There is nothing on the record to indicate the he appeared before Magistrate Letsika (or anyone else) on 27 September. The Magistrate's entry was made to facilitate the bail refund, as the evidence of Ms Abia clearly established. Furthermore it was made in January 2006 and not on September 2005. The appellant, while admitting that he wrote the letters requesting a bail refund, denied that they were written on 10 January 2006. His explanation that someone else must have inserted the date is patently false.

[32] The facts on count 1 show conclusively that the "squeezed" entry dated 25 August 2005 was made by Magistrate Lesupi after inducement by the appellant for her to do so; that the entry was not made on 25 August but

sometime thereafter; and that to the knowledge of the appellant and the Magistrate the entry was false. The appellant was therefore correctly convicted on count 1.

THE NOTICE OF APPEAL

[33] I earlier drew attention to the notice of appeal filed on behalf of the appellant. The notice, in its entirety, failed to comply with the provisions of Rules (3) and (4) of the Court of Appeal Rules which were applicable to this appeal. These provided inter alia that the grounds of objection to the judgment should set out the findings of fact and the conclusions of law to which the appellant objects. And Rule 3 (5) precluded the appellant from arguing or relying upon any grounds not contained in the notice without the leave of the Court. Rules 4 (4) (5) and (6) of the current (2006) Court of Appeal Rules are to the same effect.

[34] The aforesaid provisions are intended to enable the respondent on the appeal to know, at the earliest opportunity, what the real issues on the appeal will be. Properly applied the notice will also permit the parties to reach agreement on which portions of the record may be omitted. The notice of appeal in this matter was in vague and general terms and gave no assistance to the Crown or, for that matter, to the Court, in appreciating what facts would be in issue at the appeal. While condonation was granted to the appellant in this matter, legal practitioners should be alive to the fact that the Rules should be strictly complied with and that the Court in future may not readily permit argument on any grounds not contained in the notice.

SENTENCE

[35] The trial court imposed the following sentences of imprisonment on the appellant:

Count 1: 15 years

Count 2: 14 years

Count 3: 13 years

Count 4: 10 years

Count 5: 5 years on each count.

The sentences were to run concurrently with the result that the appellant was ordered to serve a term of 15 years imprisonment.

[36] The only ground advanced against the alleged severity of the sentences was that the cumulative effect produced a sense of shock and in this Court counsel argued that the court a quo should have given more consideration to the fact that the appellant spent three years in detention before the convictions. In my view the court properly took into account all factors, including the time spent by the appellant in detention. Where the court erred, in my view,

was in the imposition of a sentence of 15 years imprisonment on count 1. The offence was undoubtedly a serious one but the severity of the sentence on this count was not in proportion to the gravity of the offence. Magistrate Lesupi was convicted for her part in altering the court record and, on appeal, was sentenced to six years imprisonment, half of which was suspended (see Lesupi & Ano. v Rex C of A (CRI) 10 of 2011, 27 April 2012). The appellant must have persuaded the magistrate to alter the record – it also appears from count 2 that he was a very persuasive person – and in my view an appropriate sentence in his case on count 1 would be six years imprisonment. I add that five years of this sentence should run concurrently with the sentences on counts 2 to 6, so that the appellant will still serve 15 years imprisonment. An effective 15 years does not leave one with a sense of shock if regard is had to the following: the frauds were not

committed as a result of a spontaneous urge by the appellant to enrich himself. They were very carefully planned crimes, committed or attempted over a period of months. Nor did the appellant show any remorse. Even after his arrest and court appearances, he persevered in his criminal conduct by persuading a magistrate to falsify a court record. It follows, in my opinion, that the effective term of imprisonment is completely justified.

[37] There is one further matter that should be mentioned: this is the inexplicable decision by the court a quo to impose a sentence of 13 years imprisonment on count 3 (the Iketsetseng count involving M46 723.08) and only 10 years on count 4 (the Iketsetseng count involving M146 105.48). In the result, however, nothing turns on this discrepancy.

ORDER

It is ordered as follows:

1. **The appeal against the convictions is dismissed;**

2. **The appeal against the sentence on count 1 only is allowed to the extent that the sentence on this count is reduced to six years imprisonment, five years of which shall run concurrently with the sentences on counts 2, 3, 4 5 and 6;**

3. **For the rest appeals against the sentences on counts 2, 3, 4, 5 and 6 are dismissed and the sentences imposed on these counts are confirmed and are to run concurrently with five years of the sentence on count 1.**

4. **The result is that the effective period of imprisonment imposed by the High Court will remain of force and effect.**

L S MELUNSKY
JUSTICE OF APPEAL

I agree:

N V HURT
JUSTICE OF APPEAL

I agree:

K E MOSITO
ACTING JUSTICE OF APPEAL

For the Appellant : Adv L.A. Molati

For the Respondents : Adv H.H.T. Woker