

CRI/A/81/79

IN THE HIGH COURT OF LESOTHO

In the Appeal of:

PONTSO MOTAKE

Appellant

v

R E X

Respondent

JUDGMENT

Delivered by the Honourable Mr Justice F.X. ROONEY  
on the 18th day of February, 1980

The appellant was charged with the theft of R329-99 the property of her employer, the Lesotho Government. She pleaded guilty. She was sentenced to nine (9) months imprisonment.

She appealed to this Court against both conviction and sentence. Mr Ramodibedi submitted that the statement of the facts of the case outlined to the court by the prosecutor and accepted by the appellant as correct did not disclose the offence charged.

Undoubtedly, the prosecutor's statement was not as detailed as it ought to have been. For instance, it did not disclose the purpose for which appellant collected monies on behalf of the Government in her capacity as a clerk employed in the Ministry of Agriculture. Nor did it show how the shortage of R329-99 was calculated. However, I cannot regard these defects as fatal to a conviction. The statement clearly alleged that the appellant received monies on behalf of the Government which she was required to deposit in an account at the Standard Bank at Maputsoe. It was said that of the money collected by the appellant between the 5th and 28th February 1979, she used the amount found to be short for her own purposes. I am satisfied that the appellant's agreement with these facts clearly indicated

an intention/....

an intention to make an unequivocal plea of guilty. Before sentence was passed the appellant admitted that she was wrong to have taken the money, but, that she had thought to repay it.

In his reasons for sentence, the learned magistrate referred to the fact that the appellant had misused her position of trust in the public service. He felt that this crime merited a deterrent sentence. He took into account that the appellant would forfeit her employment. He made no mention of the personal circumstances of the appellant as a first offender and the mother of a very young child. He did make reference to Rex v. Lefulesele Molapo and another R/O 25/79 (unreported). I cannot see the relevance of that decision to the present case. The review order dealt with the crime of false pretences involving registered mail. It bears no similarity to the present case.

In the case of Grace Seelso v. Rex CRI/A/2/79 (unreported) this Court was concerned with a lady employed as a clerk in the Ministry of Justice who stole R595 from the Government over a period of 4 months. The monies were received by her in the course of her employment. She was also a first offender and was a widow with six children. In that case this Court reduced a sentence of three (3) years imprisonment (one half of which was conditionally suspended) to one of 18 months imprisonment (one half suspended).

While it can be said that no two cases can be precisely equated for the purpose of sentence, it is proper to take into account sentences passed in similar cases so that a measure of consistency is achieved.

The appellant helped herself to over R300 of Government funds in the space of a fortnight. She was a public servant. She knew or ought to have known that in view of the prevalence of this type of offence committed by public officers' she ran the risk of incurring a serious penalty. She chose to take that risk and ought not now to be heard to complain of the severity of her punishment.

I do not/....

I do not propose to interfere with the sentence imposed in the lower court and this appeal is dismissed.

F.X. Rooney

JUDGE

18th February, 1980

For Appellant: Adv. Ramodibedi

For Respondent: Mr Peete