

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

TEBELE PHAFA

Appellant

v

HLOPHEHO MACHINE

Respondent

REASONS FOR JUDGMENT

Filed by the Hon. Chief Justice, Mr. Justice  
T.S. Cotran on the 15th April, 1980

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I have dismissed this appeal on the 28th March 1980 and said reasons will be given at a later date. These now follow:-

This is an appeal from the Judgment of the Judicial Commissioner who had dismissed the appeal from the Judgment of the Tsifalimali Central Court that in turn dismissed the appeal from the Judgment of the Pitseng Local Court that awarded the respondent (and original plaintiff) six heads of cattle as damages for impregnation of his daughter Lefulesele by the appellant's (and original defendant's) son Busa.

There are two grounds of appeal :-

1. That there was inordinate delay since the girl Lefulesele had not informed her own parents of the pregnancy until a day or two before she gave birth,
2. That there was some conflict of evidence on the period of gestation which rendered it doubtful if Busa could have been responsible for the pregnancy.

The pregnancy was discovered by the girl's father when he took her to a doctor. She had apparently been assaulted but we do not know by whom for certain. She gave birth to a child the following day the 18th August 1973.

The evidence for the appellant (and defendant below) was that his son had been undergoing initiation rites from about November 1972 to around 20th January 1973 and could not have been the father of the child. Busa's mother had a look at the child

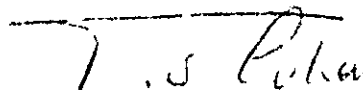
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born to Lefulesele but could see no resemblance to her son. The girl maintained, and she was supported by several witnesses, not eye-witnesses to the actual intercourse to be sure, but of access and opportunity, that she had been meeting with the boy. She says they had intercourse on four occasions after he came down from the mountains the first around 23rd January 1973. There is evidence that on one occasion when the boy and the girl were confronted, that he admitted "being in love" with the girl at one time but he added that she had transferred her attentions from him to another boy called Tsuo.

The trial Court found that the girl's withholding of information of her pregnancy from her parents was understandable and not fatal in the circumstances and that the period of gestation of about 7 months was not too short a term to displace the balance of probabilities in the respondent's (and his daughter's) favour.

All appellate tribunals agreed with the President of the trial Court. I am not prepared to disturb the findings of fact (which can be justified on the evidence) and the Judgments of two appellate courts that confirmed it.

The appeal was dismissed with costs as I indicated earlier.

  
CHIEF JUSTICE  
15th April, 1980

For Appellant : Mr. Keeton  
For Respondent: Mr. Ramodibedi