

IN THE HIGH COURT OF LESOTHO

In the appeal of:

1. MOKOTO TSEPA }
2. SEPHOLLA TSEPA } Appellants

V

REX

REASONS FOR JUDGMENT

Filed by the Hon. Mr. Justice M. P. Mofokeng
on the 14th day of May, 1980

In this matter I gave judgment and indicated that I would hand down my reasons later. These now follow:

The appellants were charged, in the subordinate Court, with the crime of assault with intent to do grievous bodily harm in that upon or about the 10th day of November, 1979 they each or one or both of them intentionally assaulted Manase Tsepa and Mapeshoane Lercha by hitting them with sticks on the clavicle and on the head. The both pleaded not guilty but were found guilty and each sentenced to undergo 6(six) months imprisonment half of which was suspended for a period of three years on certain conditions. They appealed to this Court against both such conviction and sentence.

On the 26th day of February, 1980 the matter was placed before me, in Chambers, pursuant to Section 320A of the Criminal Procedure and Evidence Proclamation 58 of 1938. After perusing the record I ordered the Registrar to set the matter down on roll for hearing (in terms of Section 320B of the said Proclamation) and also inform the appellants in event of their appeals being dismissed they should be prepared to address the Court as to the reason(s) why their respective sentences should not be increased. I have satisfied myself (and the first appellant who proceeded with his appeal confirmed) that they were so informed.

The facts are briefly as follows:

There was a pitso at Ha Ntsupo. Both complainants were present. Manase Tsepa being a headman of the village acted as the Chairman at the said pitso. The purpose of the pitso was two-fold.

- (a) To select reserved pastures and
- (b) to appoint as bugle Kaizen Seliane

2/Apparently

Apparently the appellants did not like the idea of Kaiser Seliane being appointed a bugle as they wanted the then bugle, one Mohau Tlokotsi to remain as such. Suddenly during the deliberations the two appellants levelled accusations against the complainants. The appellants were armed with sticks. They rushed at Mapeshoane Leroba and began to belabour him with their sticks. Even when he had fallen they continued their assault. Then Manase intervened and he was thoroughly beaten up. Some of the people at the pitso ran away while others came to the rescue of the two men who were being beaten up.

The accused deny that they ever touched any of the complainants but there is overwhelming evidence that they severely assaulted the complainants. The learned magistrate who saw and heard the witnesses give evidence before him believed them and I cannot disagree with him. The evidence of the witnesses read very well indeed. I had no hesitation therefore in dismissing the first appellants's appeal against conviction.

After hearing the first appellant's address on sentence, which was not very much, I dismissed his appeal as well against sentence. This was a savage beating against respectable men, one of whom was a headman, while performing one of their most important civic duties. The assaults were particularly bad as these two respectable men were unjustifiably humiliated in the presence of their subjects. This type of behaviour cannot be tolerated and must be visited with a heavy sentence to demonstrate clearly that the courts do not countenance this kind of lawlessness. If a person is dissatisfied with the actions of another, the doors of the Courts of Law are ever wide-opened. Nobody is allowed to take the law into his own hands.

Section 8(1) (d) of the High Court Act No. 5 of 1978 reads:-

"Section 8(1) The High Court shall be a Court of appeal from all subordinate courts in Lesotho with full power -

(a)

(b)

(c)

(d) To impose punishment (whether more or less severe than, or of a different nature from the punishment imposed by the subordinate Court) as in the opinion of the High Court ought to have been imposed at the trial."

Ordinarily an appellate Court is not entitled to substitute its own opinion for that of the Trial Court yet Section 8(d) quoted above gives this court precisely that power. However, to follow it literally can result in sentences by the subordinate Courts being frequently altered to the detriment of their image. But, in this matter before me, the sentence imposed by the learned magistrate is so lenient as to be a travesty of justice itself. These type of sentences are an encouragement to people taking the law into their hands -

- precisely what this court is out to discourage. As indicated earlier the assault in this particular case was vicious and humiliating. It was a defiance of legally established authority. The learned magistrate erred as to the sufficiency of the punishment. I accordingly set aside the sentence imposed by the learned magistrate and substitute therefor the following:

"M60 or 6 months imprisonment."

Since the second appellant was absent, his appeal was struck of the roll. I took this course because it was intimated to me that he had served his prison sentence, otherwise his fate would have been the same as that of his co-appellant i.e. his appeal would have been disposed of in the same manner as that of the first appellant whether he was present or not.



JUDGE.

14th day of May, 1980

For 1st Appellant	In person
For the crown.	Mr. Mdluli