

IN THE HIGH COURT OF LESOTHO

In the appeal of:

THOMAS MOKHECHE

Appellant

v

REX

Respondent

REASONS FOR JUDGMENT

Filed by the Hon. Mr. Justice M. P. Mofokeng
on the 19th day of May, 1980

The appeal is dismissed and what follow are the reasons thereof.

The appellant was convicted of the theft of M150.00 received from the sale of certain cement blocks being the property of the Government of Lesotho. It was alleged that the appellant had a duty to deposit the said money with the Sub-Accountancy but contrary to his duty he converted the money to his own use and thus stole it. He was sentenced to undergo imprisonment for a period of nine (9) months.

The appellant's grounds of appeal are as follows.-

- (1) The conviction is against the evidence and weight of the evidence.
- (11) The sentence is excessive and harsh.

The matter made its appearance before me, in chambers, on the 29th January, 1980, in terms of Section 320A of the Criminal Procedure and Evidence Proclamation 59 Of 1938. An order was then made on the same day that it be placed on the roll of cases for hearing, by the Registrar, in terms of Section 320B of the said Proclamation. On the 16th day of April, 1980 the matter appeared on the roll of cases to be heard but was postponed to the 21st April, 1980. On the latter date it was further postponed to the 19th May, 1980 at the request of the appellant's counsel, and on that date the matter was finally disposed of.

At the trial, in the Court quo, appellant was represented by counsel and so was he before this court. The appellant had all the opportunity to elucidate his grounds of appeal but chose not to do so. The first ground of appeal is not valid because it does not sufficiently specify the issues of fact or law or of both which are being challenged on appeal. It does not comply with Rule 1 (1) of the Subordinate Court Rules, Order No. XXXV which provides that a written statement setting out clearly and specifically the grounds on which the appeal is based shall be lodged with the clerk of Subordinate Court, I made the position quite clear in my judgment in the case of JOSEPH LETS'ABA RAKOTI v. REX, CRI/A/19/79 (unreported) dated 30th August, 1979 and shall not repeat it.

It is common cause that

1. appellant received the sum of M150.00 from the sale of certain cement blocks to Margaret Bassie,
2. appellant issued temporary receipts to the said Margaret Bassie,
3. appellant did not deposit the said money with the Sub-Accountancy.

There is overwhelming evidence that cement blocks were the property of the Lesotho Government, despite the appellant's denial

- (c) The evidence of Margaret Bassie shows that the appellant sold the blocks to her and issued her with a temporary receipt bearing a Prisons Department date stamp. On the occasions when he issued the temporary receipts, he promised to issue a proper receipt later. The appellant did not mention to her that the cement blocks in issue belonged to Ts'ilo. Margaret Bassie did not see Mr. Makana at the prison on each occasion when she purchased cement blocks.
- (b) 'Mathabiso Ts'ilo (P.W.3) testified that she never received the sum of M150.00 from anyone in respect of the sale of cement blocks at the Buthe-Buthe Prison.
- (c) Elliot Ts'ilo (P.W.4) testified that he did not receive the sum of M150.00 from Mr. Makana or the appellant. He had his own bricks at the prison but he did not sell any.
- (d) W/O Koza (P.W.1) stated that the appellant explained to him that the cement blocks did not belong to the Lesotho Government.

The learned magistrate was quite correct, in my view, to have rejected the explanation of the accused. It was, beyond reasonable doubt, palpably false.

Although there is no rule that a first offender should not be sent to prison if circumstances warrant it, in this particular case this Court is of the opinion that an option of a fine would meet the situation. It would be quite an intolerable situation for the appellant and the administration that the former should find himself in prison among the very people he looked after, some of whom might, rightly or wrongly, have regarded him as their tormentor. Beside, the appellant is still relatively young. He was also a first offender. The learned magistrate did not specifically deal with these matters at the time he imposed the sentence that he did. The learned magistrate's sentence was therefore set aside and was, instead, substituted by the following .

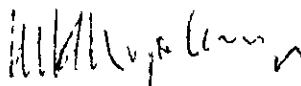
"R90.00, or 9 months imprisonment "

The fine is to be paid as follows

- (1) R20.00 at the end of May 1980;
- (2) R20.00 at the end of June 1980;
- (3) Appellant (he agreed) surrenders his cash bail bond (R50.00) to the Registrar of this Court to whom all payments have to be made.

For Appellant. Mr. Makhene

For Respondent Mr. Mdluli



J U D G E