

IN THE HIGH COURT OF LESOTHO

In the Matter of :

R E X

Plaintiff

v.

*MABONANG MOAHLOLI

Defendent

J U D G M E N T

Delivered by Hon. Justice F.X. Rooney
on the 20th day of June, 1980.

The accused is charged with theft of R113,542.40 the property of the Government of Lesotho. It is alleged that the money was stolen between the 1st April, 1978 and the 31st August, 1979. There was annexed to the indictment a list of dates, cheques and amounts allegedly stolen. The list comprises 22 separate allegations, and these are covered by 22 separate Government payment vouchers and cheques Exhibits 6 to 8 and 12 to 30.

There is an alternative charge of theft by false pretences which read as follows :

"

*MA-BONANG MOAILOLI

(HEREINAFTER REFERRED TO AS ACCUSED)

IS GUILTY OF THE CRIME OF THEFT BY

FALSE PRETENCES

In that during the period 1st April 1978 and 31st August, 1979 and at or near Maseru in the district of Maseru, the said accused, being in the employ of the Government of Lesotho as an accountant in the Ministry of Interior - Maseru, and as such authorised to draw up payment vouchers for the daily-paid employees in the said Ministry, and to cause salary cheques to be issued in respect of such employees, the said accused did unlawfully and with intent to defraud and to steal misrepresent to the Treasury in the Ministry of Finance that the payment vouchers and pay-sheets, she there and then presented (on the dates shown in the Annexure) for payment were valid and lawfully authorized, whereas in truth and in fact, the accused when she so mis-represented, well knew that the said payment vouchers and

pay-sheets were fraudulently drawn up by herself upon fictitious names of non-existing persons and the accused did by means of the said misrepresentation obtain and receive from the said Treasury, certain cheques (itemized in the Annexure) for the total amount of R113,542.40 the property or in the lawful possession of the Government of Lesotho, and which cheques she, the accused, thereafter cashed at the Standard Bank (Maseru) and converted the money to her own use."

and a further alternative charge of fraud reading :

"

'MA-BONANG MOAHLOLI

(HEREINAFTER REFERRED TO AS ACCUSED)

IS GUILTY OF THE CRIME OF FRAUD

In that during the period 1st April 1978 and 31st August, 1979 and at or near Maseru in the district of Maseru, the said accused, being in the employ of the Government of Lesotho as an accountant in the Ministry of Interior - Maseru, and as such authorized to draw up payment vouchers for the daily-paid employees in the said Ministry and to cause salary cheques to be issued in respect of such employees, the said accused did unlawfully and with intent to defraud misrepresent to the Treasury in the Ministry of Finance that certain pay-sheets and certain corresponding payment vouchers, purporting to have been drawn up for the payment of certain daily-paid employees, were good, valid and lawfully authorized and did by means of the said misrepresentations induce the said Treasury, to the loss and prejudice of the Government of Lesotho, to issue certain cheques (itemized in the Annexure) to herself for the total amount of R113,542.40, whereas the accused at the time she made the aforesaid misrepresentations well knew that the said pay-sheets and payment vouchers were fraudulently drawn up by herself upon fictitious names of non-existing persons and that she was not entitled to the monies in all amounting to R113,542.40 which she thereafter cashed or caused to be cashed at the Standard Bank (Maseru) and converted the said monies to her own use to the loss and prejudice of the Government of Lesotho."

The same annexure to count I was used with reference to the alternative counts.

No exception or objection was taken to the charges as laid. This was not a case in which the indictment could charge a general deficiency as the accused was not a person entrusted with the custody of money. (Sec.128 Criminal Procedure and Evidence Proclamation). It would have been more correct to have charged the accused on twenty-two separate counts of theft, subject to the limitation that indictments should not be oppressive and unnecessary (Rex v. Hudson 26 Cr. App R.94 quoted with approval in this Court by Evans J. in Ntaso & Thekiso V. Rex 1967 L.J.R. Vr. 390 at 397).

3/ Charges should

Charges should be drafted so as to avoid a duplicity embarrassing to an accused person. However, in view of the nature of the defence in this case I am satisfied that the accused was not embarrassed by the manner in which the indictment was framed.

It is not disputed that during the relevant period the accused was an officer in the Department of the Accountant-General. She was assigned to the Town Clerk's Office (also known as the Town Office), Maseru, as an accountant with certain duties which included the preparation of payment vouchers in respect of employees' wages. Some employees were paid at daily rates on or about the 20th of each month while others were paid on the last day of the month. The workers were attached to various sections such as the abattoir, refuse collection, parks and gardens and so on. They numbered in all 244 and their names were recorded at the Town Office. Each section had a supervisor. As the time for the payment of wages approached, wage-sheets were prepared which indicated the daily attendance, overtime etc. and the amount due to each worker.

When the amount of wages required was thus ascertained, it was the duty of the accused to prepare a payment voucher and bring it for signature to an officer, usually the Town Clerk, who was authorised to sign it. By his signature the authorising officer certified that the voucher was passed for payment in accordance with Financial Regulations, that the goods or services have been acquired for public purposes, and that the expenditure is a proper charge on public funds, and has not been previously paid and that funds are available. The Financial Regulations (Exhibit 4) Chapter 6 spell out the liabilities of an officer who signs a payment voucher and these include (602(2)) that in the event of an incorrect payment being made the authorising officer may be held personally responsible and the amount surcharged against him.

Regulation 607(b) requires the authorising officer to ensure that details of the voucher has been entered in the vote book and the vote book folio number is entered in the space provided on the voucher. The entry in the vote book should also be initialed by the authorising officer. In this case the actual responsibility for keeping the vote books and the entries therein is a matter in dispute.

4/ After the voucher

After the voucher had been signed by the authorising officer the accused would take it to the Treasury and apply for a cheque for the amount indicated. Here the voucher would be examined and if in order passed for payment. A computer intervened to further the matter and it is fortunately unnecessary for me to explain or comment upon the mysterious processes by means of which a cheque made payable to the Town Clerk was issued. As all cheques are crossed the crossing has to be cancelled by other Treasury officials. The accused would then obtain cash from the Standard Bank against an endorsement by the person presenting the cheque.

In the case of all the 22 cheques which are the subject of the indictment, it was admitted by the accused that she made out the vouchers, secured the signature of the authorising officer, obtained the uncrossed cheque from the Treasury, either presented the cheque to the bank or sent another officer to collect on her behalf and received all the money. The question at issue here is what she did with that money thereafter. The Crown alleges that she converted it to her own use, except in five cases where it is said that she took only part of the money. The accused claims that she used all the money for the purpose for which it was intended, namely the payment of the wages of the persons employed at the Town Office.

Attached to each payment voucher are two copies of the wage-sheets as supporting documents. These pass to the Treasury and are returned with the cheque. When payments are made to the workers each one is required either to sign or place his thumb-print against his name on one copy as evidence of his receiving the wages. The copy with the acquittances is returned to the Treasury and the other copy is retained at the Town Office. Only a few of the wage-sheets supporting the cheques have been produced at this trial, because it is said that these documents cannot be found either at the Treasury or the Town Office.

Much of the evidence for the prosecution was not challenged. Mr. Nair (FW 1) a Principal Auditor said that in September 1979 he was instructed to investigate an apparent over-expenditure of R190,000 in the Ministry of Interior specifically at the office of the Town Clerk, Maseru. Accompanied by Mr. Desai and Mr. Letsoela of the Audit Department he went to the Town Office where the accused was employed as an accountant. He examined the vote books for the financial years 1978-79 and 1979-80 (Exhibits 5 and 11 respectively).

5/ He found

He found that the records kept were incomplete. He ascertained by means of roll-calls that there were a total of 244 labourers employed by the Town Clerk in the various sections including parks and gardens, public health, refuse collection, the pound and the abattoir. Mr. Nair said that one of the duties of the accused as accountant was to ensure that all expenditure was recorded in the vote books. The vote books were compared with the 22 vouchers prepared by the accused which are the subject of this case. He found that only 3 of these vouchers, (Exhibits 6, 7 and 8) were recorded in the vote book Exhibit 5. He found that the wage-sheets relevant to Exhibit 6 contained the names of labourers he was unable to identify among the 244 names of the known workers. These wage-sheets comprise Exhibit 44. Mr. Nair said that if Exhibit 12 to 24 had been recorded in the vote book (Exhibit 5) these entries, together with other genuine vouchers for wages paid which were properly recorded, would have revealed a massive over-expenditure. Payments entered into the vote books are deducted from the amount allocated by Parliament for expenditure under various heads and items and the balance must be kept within the authorized provision.

The accused was present when the auditors arrived to make their investigation, but, on the third day she left the office and did not return to her duties. She was not, therefore, asked to make any explanation by the auditors and she did not make any.

The auditors prepared two reports as to their findings and these were admitted in evidence without objection as Exhibits 9 and 10. Exhibit 9 dated 20.9.79 was an interim report which recommended a police investigation into possible fraud as revealed by the auditors' findings. The second report dated the 9.10.80 gave further details of the situation revealed by the audit inspection. Neither report makes any direct allegation against the accused, although Exhibit 9 mentions her absence from work. Both reports although signed by the Auditor-General were drafted by Mr. Nair.

Mr. Desai (PW 2) said that the average wage bill for the Town Office was about R13,000 a month. This had been greatly exceeded and Mr. Desai identified the 22 cheques as being the cause of the over-expenditure. Supporting wage-sheets could not be found. Only certain officials were authorised to sign payment vouchers and specimens of the signatures of these officials were kept at the Treasury. Officials were supposed to compare the signatures on vouchers with those on specimens before cheques were issued.

Mr. Desai was recalled at a later stage of the proceedings without objection from the defence. He said that two cheques were prepared each month for the payment of wages at the Town Office. He found that additional

6/ vouchers had

vouchers had been prepared and cheques issued between April 1978 and August 1979. He found in the case of Exhibits 16, 18 and 24 that the wage-sheets did not support the amounts for which the cheques were drawn. In each, of these cases there was an excess of R2,892.00 over the amount paid out for wages. The total wages payable each month varies according to the number of days worked and allowances for overtime. Mr. Desai postulated that a fictitious wage-sheet showing wages due of R2,892.00 could have been added to the wage-sheets used to support the vouchers Exhibits 16, 18 and 24 in order to produce the excess.

Mr. Albert Makoae (PW 3) an official of the Treasury, who passed many of the disputed vouchers as fit for payment agreed that it was his duty to check all vouchers and satisfy himself as to the signature of the authorised officer, that the folio number of the entry in the vote book was recorded on the voucher and that the Financial Regulations were observed. I can only conclude that this officer performs his duties in an automatic fashion. As will afterwards appear eight of the vouchers which Mr. Makoae passed for payment did not have thereon the signature of the authorised officer, but a forged squiggle and most of the vouchers did not give details of the folio number of the vote book in which the expenditure was supposed to have been recorded. He was obliged to admit in cross-examination that in each case when he passed the vouchers for payment he was satisfied that all the Financial Regulations had been complied with. To state otherwise would have been to acknowledge in public that he had failed to perform his duty.

Mr. Phamotse (PW 6) a Deputy Principal Secretary in the Ministry of Interior authorised the payment of the amount reflected in Exhibit 14 on the 10th October, 1978 at the request of the accused. He said that he would have had before him the supporting wage-sheets at the time that he signed the voucher. He did not follow up the matter, and ensure that the workers were paid as it was not part of his duty so to do.

Mr. Ts'ekelo Mopeli (PW 9) was Town Clerk from 1975 until November 1978. He signed vouchers Exhibits 6, 7 and 8. He agreed that Exhibit 44 would have been attached to Exhibit 6 and that he had authorised the payment on the strength of it. In his time as Town Clerk the vote book (Exhibit 5) was kept by Mr. Lerotholi. He knew nothing about any other vote book besides Exhibit 5 which was then in current use.

Mr. Bolokoe Mokhele (PW 7) was Principal Assistant Secretary in the Ministry of the Interior during the period 1978-79. He signed 10 of the disputed vouchers namely Exhibits 12, 13, 15, 16, 17, 18, 19, 20, 22 and 24 as authorising officer. He denied that the signatures on Exhibits 21, 23, 25, 26, 27, 28, 29 and 30 are his. He does not know who forged his signature on these vouchers. He

signed payment

He signed payment vouchers because the Town Clerk of the period was absent. The accused normally came to the Ministry to request his signature.

Mr. Mokhele said that Lerotholi worked on the vote book. He denied the existence of any other vote-book used at the Town Office. He denied that when a Mr. Lelimo was Town Clerk that he "put him aside" and undertook his work. He agreed that the forgeries on the vouchers were poor imitations of his signature. He agreed that before he put his signature on a voucher the accused would have to satisfy him that all was in order and that the attached wage-sheets were correct.

It was specifically put to this witness by Mr. Monaphathi for the accused that she had given him the proceeds of the cheques cashed at the bank. He denied it. He denied any involvement in the matter, and he told defence Counsel that he was not correctly instructed.

The wage-sheets attached to Exhibit 6 which comprise Exhibit 44 bear the signatures and thumb-prints of workers in the form of acquittances for wage paid. The finger-prints on Exhibit 44 were examined by a finger-print expert Mr. James Bradley (PW 11) who is seconded to the Lesotho Mounted Police from the Warwickshire Constabulary. He has 15 years experience in the identification and comparison of finger-prints. He took a set of finger-prints from the accused and compared them with the five finger-prints to be found on Exhibit 44. He was able to identify 4 of these as being the right thumb-print of the accused. His conclusions are illustrated in Exhibit 49 and Exhibit 50. He found in each case 7 points of similarity between the finger-prints on Exhibit 44 and the thumb-prints of the accused. The four employees against whose names the thumb-prints are recorded are Mr. Khoari, M. Posholi, P. Phororo and M. Lefaisa.

Mphoto Posholi (PW 21) an employee in the Ministry who works under the supervision of one Motaung and whose wages were R39 a month in April 1978 said that he signs for his wages. He denies that the thumb-print appearing against the name M. Posholi as (number 14 on Exhibit 44) is his. He further denies that his signature appears against the name "Mile Posholi" at (number 16) on the same page. He denies ever having received a monthly wage of R69 as stated in Exhibit 44. Other evidence tending to show that Exhibit 44 was not a genuine document came from the following workers, Majeremane Khotsi (PW 19), Leboko Sejentsi (PW 20), Linus Moses Putsoa (PW 22) Kamoho Maghamisa (PW 23) and Seciso Lesiamo (PW 24). The evidence relating to Exhibit 44 was virtually unchallenged by defence Counsel.

Leone Scout (PW. 13) is the supervisor of the workers engaged in street cleaning. He was shown Exhibit 44. He said that although his name appeared at the bottom he did not sign the wage sheet which was for another section - public health. Exhibit 44 contained the names of people he did not know.

The procedures which ought to be followed at the Treasury before cheques are issued were explained by Mr. A.N. Nko (PW 4). However, he admitted that these procedures were not in fact always followed. He agreed that there was inefficiency in the system as practised and he hinted that the disappearance of the original wage-sheets against which the payments in this case had been made could have been the result of collusion between the accused and officials working in the Treasury. He said that it would not be easy for the accused to gain admission to the room in which the missing records were supposed to be kept, without the support of the officers working there.

Detective Warrant Officer Makutle (PW 5) investigated the case. It is unnecessary to summarise his evidence in any detail. He searched the house of the accused in October 1979 and he found R300 in R10 notes in a shopping bag which he seized as an Exhibit. The accused was arrested and charged.

Mrs. Thato Ntho (PW 12) worked at the Town Office as an accounts clerk under the directions of the accused. The vote books were kept in the office where she worked. She sometimes endorsed the cheques on behalf of the Town Clerk and on two occasions she collected the cash from the Standard Bank and brought it to the accused. This witness was on friendly terms with the accused. In May 1979 the accused gave her a gift of R200 towards the cost of a house which the witness was building. She also received from the accused articles of clothing. She described the accused as a generous person.

Mrs. Ntho said that sometimes when it was found that the money drawn from the bank was insufficient to meet the wages, the accused would make up the difference by drawing bank notes from the bosom of her dress.

Mrs. Ntho agreed that whenever she collected money from the bank it was used to pay the labourers. Her endorsement appears on the cheques in Exhibits 18, 20, 22 and 24. All these were occasions in which it is alleged that the money drawn from the bank was in excess of that required by the accused to pay the wages due. Mrs. Ntho denied that she endorsed Exhibits 22 and 24. However, I see nothing about the signatures on these two cheques which differs from the admitted endorsements made by this witness.

Mrs. Mosenyc (PW 14) said that in December, 1978 she lost her salary amounting to R60. She was working as a typist in the Ministry of the Interior. She told the accused, who was her friend, and she was given the money by her as a gift. She also received R50 from the accused on the occasion of her confirmation.

Mrs. Litsilo Shosepana (PW 15) was the inseparable companion of the accused. She went everywhere with the accused as if she were the "bodyguard" to a "Minister". Her devotion to her friend was well rewarded. She said the accused purchased a car and both ladies went about in it and attended parties at Leribe and elsewhere. The accused rented a flat at Upper Thamae which Mrs. Shosepana described as a pleasure resort where there was beer, food and music. The accused told her that the money she so freely dispensed came from her father's insurances.

Another recipient of the accused's generosity was Mrs. Moholi (PW 16) a clerk at the Town Office who said that she prepared the wage-sheets Exhibit 44. She was given a list of workers. She did not say from whom she obtained the list, but she gave the completed Exhibit 44 to the accused.

Mr. James Zwane (PW 17) is a Senior Auditor. In March, 1979 certain investigations he was making in regard to the disposal of stock by the Police Stock Theft Unit led him to the Town Office, Maseru. There he met the accused who was at a table, upon which he could see wage-sheets. He decided to check these. He questioned a signature on one of them and sent for Mr. Scout (PW 13). Mr. Scout disputed the signature. Mr. Zwane instructed the accused to destroy the wage-sheet. Apart from sending a note to one of his colleagues in the Audit Department, Mr. Zwane did not pursue his investigations further. I find it extraordinary that a Government Auditor who finds an irregularity in the course of a routine check should decide not only to take no further action but to have an obvious forgery destroyed. If Mr. Zwane's attitude towards his duties was less casual than it is then it is possible that the financial drain on Government funds disclosed at this trial would have been stopped 5 months earlier.

Mr. Zwane denied in cross-examination that he demanded R200 from the accused in return for his ordering the destruction of the false wage-sheet.

Mr. Motaung (PW 18) is the supervisor in charge of parks and gardens at the Town Office. He was shown a wage-sheet Exhibit 55. He denied that the signature O.A. Motaung appearing at the bottom was his. The wage-sheet was headed "Public Health". He does not supervise that section and he could not recognise any of the names appearing on the Exhibit 55, except the names of some people who worked in the parks and gardens section.

Mr. R. Lerotholi (PW 25) was an accountant at the Town Office between September 1977 and the early part of 1979. He was senior to the accused. His duty was to supervise payments, collection and commitment control. He had custody of the vote book (Exhibit 5) until he left. Various people made entries in the vote book. He pointed out that if nothing was recorded in the vote book he would not know if a payment had been made. On the other hand no payment voucher should have been authorised if the officer who signed it did not first satisfy himself that the correct entry had been made in the vote book. The officer in the Treasury who passed a voucher for payment should first see that the voucher contained a reference to the folio number in the vote book. This latter notation was absent from most the vouchers produced in this case.

Cross-examined by Mr. Monaphathi, this witness said that the accused did not work directly under his supervision, but, he had some duty to see what she was doing. He did not perform any of the duties assigned to the accused. He made entries in the vote book Exhibit 5. He agreed that Exhibit 5 could easily be taken apart and the folios removed. He did/^{not} know of the existence of any other vote book. He agreed that although the Financial Regulation required authorising officers to initial the entry in the vote book at the time vouchers were signed, he could not find such initials anywhere in Exhibit 5. I may add to this that the column provided in the vote books for the initials of the C.A.O. is either left blank or used for some other purpose. Financial Regulations has been entirely ignored in this respect.

Mr. Lerotholi showed us where on folio 17 of Exhibit 5 he had checked the entries recorded in the book for the purpose of ensuring that the arithmetic was correct. He did not think that any of the folios in Exhibit 5 were missing, but, he said that this was not easy to determine. He was able to identify folio number. which were in his own handwriting.

Without being specific Mr. Lerotholi said that certain entries in Exhibit 5 were incorrect and that before he left the Town Office he was so informed by the Principal Assistant Secretary at the Ministry of the Interior.

Before I consider the evidence given by the accused I feel obliged to refer to the many deficiencies in the prosecution case which were due either to poor investigation or bad presentation or a combination of both. Exhibits were produced in a casual manner, not necessarily by the officer in whose custody they were at the time of the trial. No evidence was given as to their history or whereabouts of most of exhibits between their

discovery and their production. In the case of some Exhibits this has not been of importance, but, it is material in the case of Exhibits 5 & 11, the contents of which are challenged by the accused. I have commented in the past about the casual way in which exhibits are often presented to and handled by subordinate courts and I do not expect a less rigid standard in this Court.

There was no direct evidence from the proper quarter of the extent of the over-expenditure by the Ministry of the Interior on labourers employed at the Town Clerks Office. No one gave evidence as to the precise duties expected of the accused and to whom she was responsible for her work. More time seems to have been devoted to the production of evidence on matters which proved not to be in issue than on disputed areas. The main issue indeed the only issue, in dispute is what happened to the money when it was received by the accused. On this the evidence was mainly indirect.

The accused gave evidence in her own defence and she did not call any witnesses. She said that wage-sheets were prepared by the accounts office at the Town Clerk's Office from lists presented by the supervisors of the various sections. There would be inserted in the wage-sheets the time worked and the pay due to each worker. When the total was calculated an entry was made in the vote book and the payment voucher prepared. She admitted that she obtained the signature of the authorising officer on all the disputed vouchers. The two types of wage-sheets in use are large and small. (Exhibits 3 and 2). The supervisors sign the large wage-sheets, but, for some reasons the small ones are left unsigned. The distinction appears to be between daily paid workers whose names appear on the large sheet and monthly paid workers whose names are recorded on the short pay sheets.

The accused used to leave the signed voucher at the Treasury and after a few days return to collect the cheque. Attached to the cheque would be the original wage-sheets. She would cash the cheque at the bank and then proceed to put the money in the pay-pockets with the assistance of her staff. Each worker would sign or thumb-print his receipt on the original wage-sheets.

The accused said in evidence about Exhibits 6 to 8 and 12 to 30 that she prepared the vouchers, received the money and paid the workers. She denied that she used any of that money for her own purposes. She showed the entries made in the vote book (Exhibit 5) in relation to Exhibits 6, 7 & 8.

12/ She agreed that

She agreed that all the other payments were not reflected in either Exhibits 5 or 11. She did not keep Exhibit 5, that was the work of Lerotholi (PW 25). She said that Mokhele (PW 7) kept Exhibit 11 and that since the 1st April, 1979 she took the vouchers to him to be entered.

She agreed that she saw Mr. Zwane (PW 17) in March, 1979. He checked the cash in the safe. He also examined the wage-sheets and the vote book. He took all the papers before lunch and said he would return with them. After lunch he told the accused that he was going to the Treasury and that he would see her on the following day. He said that there was no mistake in the accounts and no cash shortage. That is all she knows about Mr. Zwane.

She said that all the missing wage-sheets should be either at the Town Office or the Treasury. She was not responsible for their disappearance.

When Mr. Leotholi left the office, the accused learned that the vote book (Exhibit 5) had not been properly kept. She was called to the office of Mr. Mokhele and Mr. Khonyana the Senior Accountant was there. Mr. Mokhele told her that she must correct the errors in the vote book. Mr. Khonyana suggested that Lerotholi should be recalled from his new posting to sort out the mistakes. Lerotholi, she alleges, refused to come and said that there was a lot of work to be done to put matters right. She was then directed to open a new vote book and Mr. Mokhele ordered her to work at his office so that he could show her what to do. She went to the stores and obtained fresh leaves for the vote book and she completed the new folios at the direction of Mr. Mokhele.

All the folios which had been incorrectly filled up were removed and kept at Mr. Mokhele's office. She detailed some of the changes which were made in the compilation of the correct vote book. She had difficulties with Mr. Mokhele about the way the work was being done. He once insulted her and she complained of his conduct to the Deputy Secretary at the Ministry.

The accused agreed that the payments in Exhibits 25 to 30 were not recorded in the vote book Exhibit 11. She recalled the entries being made and she said they ought to be there as she took them to Mr. Mokhele to be entered.

Cross-examined by Mr. Pectc, the accused said that she was not convinced that the errors in Exhibit 5 had been put right. She maintained that the signatures, purporting to be those of Mr. Mokhele on Exhibits 21, 23, 25, 26, 27, 28, 29 and 30, were in fact those of that officer. She said that

if they were not, the vouchers would not have been passed for payment by the Treasury.

Asked about Exhibit 44, The accused agreed that she prepared the short wage-sheets Exhibit 44(b) to (c), but not the long wage-sheets Exhibit 44(a). She did not agree that Mr. Bradley (PW 11) found her finger-prints on the wage-sheet. She questioned the correctness of his finding. She agreed that her finger prints had been taken after her arrest, but, she says the finger-prints found on the wage-sheet were those of another person. She explained that people like Mr. Posholi (PW 21) often put their thumb-prints instead of their signatures even though they could write their names.

She did not know what happened to the various documents produced in evidence after she had left the office. She denied that she had destroyed whatever documents she had used to get the vouchers signed and the cheques issued in order to cover up her tracks.

The accused denied giving money to Mrs. Ntho or Mrs. Moholi. Sometimes she shared her tea with the latter, that is all.

Asked about Exhibit 16 the accused agreed that the wage-sheets showed in Exhibit 52 do not tally with the amount of the voucher. She suggested that other wage-sheets supported the difference which amounted to R2,892.00.

A file of documents (put in as Exhibit 57 without objection) was produced by Mr. Peete in cross-examination of the accused. These documents should have formed part of the prosecution case and been produced and explained by a witness. These documents, it is alleged by the Crown support the genuine payments made to workers during the same period as the disputed vouchers and cheques were fabricated by the accused.

It is noted that there are two vouchers for the month of April, 1978, August 1978, September 1978, October 1978, June and July 1979 and three vouchers for August 1978. When these are taken together with the disputed vouchers and payments, it indicates that something is wrong. In normal circumstances payment of wages was made only twice each month on the 20th and the last working day. I have abstracted the following from Exhibit 57. All the vouchers save one are in the accused handwriting (which was admitted by her under oath) -

- Item 1. Cheque No. 191 dated 19.4.78 for R8,504-65, Voucher signed by Mr. Mopeli and cheque endorsed by the accused.
- " 2. Cheque No. 1135 dated 28.4.78 for R4,025. Voucher signed by Mr. Mopeli and cheque endorsed by accused.
- " 3. Cheque No. 1418 dated 16.6.78 for R7,206-15, voucher signed by Mr. Mopeli and cheque endorsed by the accused.
- " 4. Payment voucher No. 3200 dated 14.7.78 for R5,012.20, voucher signed by Mr. Mokhele.
- " 5. Cheque No. 6295, dated 19.7.78 for R7,849.05 voucher signed by Mr. Mokhele cheque endorsed by Mr. Mopeli.
- " 6. Cheque No. 2992 dated 15.8.78 for R7639.05 voucher signed by Mr. Mokhele, cheque endorsed by the accused.
- " 7. Cheque No. 184 dated 25.8.78 for R4,724.90 no voucher attached, cheque endorsed by accused.
- " 8. Payment voucher No. 11105 dated 18.9.78 for R4,726.40 signed by Mr. Mokhele.
- " 9. Cheque No. 11114 dated 19.9.78 for R7,672.85 voucher signed by Mr. Mokhele, cheque endorsed by the accused.
- " 10. Cheque No. 17235 dated 18.10.78 for R4,684.50, no voucher attached cheque endorsed by accused.
- " 11. Cheque No. 23439 dated 14.11.78 for R7,660.55, no voucher attached, cheque endorsed by accused.
- " 12. Cheque No. 29363 dated 8.12.78 for R8,015.35, no voucher attached, cheque endorsed by Mrs. Ntho.
- " 13. Cheque No. 44792 dated 14.2.78 for R7,808.60, voucher signed by Mr. Mokhele, cheque endorsed by accused.
- " 14. Payment voucher no. 1854 dated 24.4.79 for R5,022.75, signed by Mr. Mokhele.
- " 15. Cheque No. 9072 dated 25.5.79 for R5,072.55 endorsed by Mrs. Ntho.
- " 16. Cheque No. 17803 dated 27.6.79 for R5,014.60 endorsement not identified.
- " 17. Cheque No. 14550 dated 15.6.79 for R8,361.45, voucher signed by Mr. Phamotse, the endorsement on the cheque looks like N.D.I. Khonvane.

- Item 18.. Cheque No. 23046 dated 19.7.79 for R8,222.10, voucher signed by Mr. Mokhele and cheque endorsed by him.
- " 19. Cheque No. 29929 dated 14.8.79, voucher signed by Mr. Mokhele and cheque endorsed by Khonyana. The writing on this voucher does not resemble that of the accused.
- " 20. Cheque No. 34583 dated 29.8.79 for R4,813.15 endorsed by accused.
- " 21. Cheque No. 24891 dated 24.7.79 for R4,696.25 voucher signed by Mr. Mokhele, cheque endorsed by the accused.

Only items 12,15,16 and 19 are not connected with the accused. Not two of these vouchers or cheques is for the same amount. In the ordinary course of events of considerable variation may be expected in the amount required for wages as this will depend on the attendance record, hours and overtime worked by each of the 244 employees on the staff. I would consider it a remarkable coincidence if the total amounts were the same.

Subject to the exceptions noted above, the accused admitted that workers' wages were paid out in accordance with the cheques and vouchers put to her in cross-examination. This was in addition to the wages paid out against the disputed cheques. When it was put to her that taking both sets of vouchers together the only conclusion that could be reached was that the workers had been paid their wages more than once on several occasions, the accused appeared to adopt the attitude that if that was so it was not her fault.

Defence Counsel submitted later that the Crown ought to have called all 244 workers to prove that they had not received their money. It was no part of the Crown case that the accused had not paid the workers. It was suggested that she had manufactured wage-sheets. The evidence of the 244 workers would not have advanced the inquiry further either way.

The accused said that when the auditors came to her office in September 1979 she fell ill and could not attend to her work. She had a sore throat. She never returned to the office.

Before I comment upon the evidence relating to Exhibits 34, 36, 37, 38 and 46, I should explain that these were documents sent to Detective Inspector Bam of the South African Police who gave evidence as an expert in handwriting. His evidence is not now material in view of the admission by the accused that she prepared all the vouchers in dispute. The only importance of these documents is that they represent additional payments of wages made at the Town Office on vouchers prepared by the accused and

I record them as follows :

Exhibit 34, Voucher No. 23439 dated 10.11.78 for R7,660.55
signed by Mr. Mokhele.

Exhibit 36, Voucher No. 17235 dated 16th October, 1978 for
R4,684.50 signed by Mr. Phamotse.

Exhibit 37, Cheque No. 15935 dated 10.10.78, voucher signed
by Mr. Phamotse, cheque endorsed by accused.

Exhibit 38, cheque No. 37434 dated 15.1.79 for R8,188.20
voucher signed by Mr. Mokhele, cheque endorsed by
accused.

Exhibit 46, voucher No. 25704 dated 20.7.79 for R1,976.50.
The signature on this voucher is doubtful to my mind.

It follows from the above that between April 1978 and August 1979 a period of 17 months, there has been produced to this Court a total of 48 vouchers or cheques without vouchers relating to payments made at the Town Clerk's Office to workers. Of these payments 44 can be directly traced to the accused who either prepared the vouchers or endorsed the cheques. The total number of vouchers required to pay the workers at the Town Office was 34 at the rate of two per month. This was something about which the accused as accountant at the Town Office was fully aware. She prepared the vouchers and she therefore must have known that she was extracting from the Treasury more money than was necessary to pay the workers.

The accused swore that her finger prints did not appear on Exhibit 44. Mr. Bradley's evidence was not challenged in cross-examination. It is not clear how it is suggested that Mr. Bradley could have been mistaken either in his comparison of the prints or in his conclusion that seven points of similarity placed it beyond all doubt that the accused's thumb-print is to be found on Exhibit 44, purporting to be the acquittances of labourers. Faced with the inexplicable, the accused was obliged to deny the obvious and impugn her own veracity in the process. She is in this proved to be a liar.

I have no doubt that the accused fabricated the wage-sheet Exhibit 44 to support the voucher she prepared to procure the issue of the cheque Exhibit 6.

I am also satisfied that Mr. Mokhele did not sign the eight vouchers Exhibits 21, 23, and 25 to 30. One does not need to be an expert of any kind to determine that there is no resemblance between ^{the} signatures on these exhibits and that of Mr. Mokhele. The accused prepared these vouchers

and collected the money. She has not explained, because no explanation consisted with her innocence is possible, how it came about that these vouchers were forged.

It was submitted that there is no evidence to distinguish the real payment vouchers from those alleged to be false. The papers are missing and there is much disorder in the records of the Town Office and the Treasury. It is submitted that there is nothing to show that the vote books Exhibits 5 and 11 were not tampered with since the accused ceased work at the Town Office. I do not place a great deal of reliance upon the vote books. The evidence discloses a deplorable disregard for financial regulations in this particular Ministry by senior and junior staff alike. Responsible officers have authorised payment vouchers which were false, without regard to their duty. But the accused cannot rely upon the lack of discipline among her colleagues as an excuse for criminal conduct.

The evidence that the accused was generous with her money would have had greater force if I had been informed of the salary drawn by the accused during the period under review. Police investigation into this aspect of the matter might have been more extensive. There is certainly no evidence that the accused had established a life style that an unearned and untaxed income of approximately R6,800 a month would support. A more sinister interpretation of the largesse distributed by the accused would be that she had a desire to make it worth while for certain of her colleagues to suppress curiosity about her activities.

The accused through her Counsel suggested that Mr. Mokhele had received money from the proceeds of cheques cashed at the bank. The allegation was denied by the witness. When it came to her turn to give evidence, the accused denied that she had instructed her counsel to put that question to Mr. Mokhele. The allegation that Mr. Zwane had tried to blackmail her was left in the air. I have no reason to believe that Mr. Monaphathi would embark upon such a dangerous line of cross-examination without his client's express instructions.

I am satisfied on the evidence that the accused embarked upon a course of conduct which involved the fabrications of wage-sheets and the preparation of false payment vouchers. She found that her plans were made easy by the prevailing laxity. Officers signed vouchers without closely regarding their contents. Things were no better at the Treasury. At first the accused entered details of the false vouchers in the vote book Exhibit 5. If she had persisted in that practice then it would inevitably have led to a situation where the vote would be shown to be exhausted. In any event the manner in which the vote book was being maintained encouraged her in the belief that it was not being checked.

Towards the end of her days in the Town Office the accused must have discovered that the Treasury were not comparing the signatures of authorised officers. It was less risky to forge Mr. Mokhele's signature than to bother him to sign vouchers for non-existing payments, although Mr. Mokhele was willing enough to sign without question more than the usual two wage-sheets each month.

To establish the extent of the accused's depredations it is necessary to consider each Exhibit in turn.

Exhibit 6. The accused made use of a forged wage-sheet upon which her own thumb-print is to be found to obtain a cheque for R4,368.00. She did not, as she says, pay the workers with the money and I am satisfied that she stole the proceeds.

Exhibit 7. This cheque is made out for the same amount as Exhibit 6. The total amount of the wages in the separate wage-sheets in Exhibit 44 is R4,482.50. Against this there are tax deductions amounting to R114.50. This is equal to R4,368. Exhibit 6 and Exhibit 7 are copies of each other. Somehow the accused devised a method by which the false wage-sheet attached to Exhibit 6 could be used again to produce the same result. The accused is clearly guilty of stealing this money also.

Exhibit 8. The variation in the figure is slight. The tax deduction of R114.50 is the same as on Exhibits 6 and 7. The cheque is dated the 17th July, 1978. I have abstracted from Exhibit 57, items 4 and 5 which show that the accused had already prepared vouchers from that month which amounted to R12,861.25. This was the normal wage bill for the Town Office. I am satisfied that the accused converted the proceeds of this cheque.

Exhibits 12, 13 and 14, the cheques are all made out for the same amount as Exhibit 7 which is indicative in itself that these payments are false. Items 8 and 9 of Exhibit 57 show, a payment of R12,399.25 for September 1978. Exhibit 13 provides for an additional R4,375.70 for that month. I am again satisfied that there are also false vouchers and that the accused received the money and stole it. Exhibit 15. The amount of the cheque is R7,534.50 which figure appears again on Exhibits 17 and 21. The last named is a voucher upon which the signature of the authorising officer is forged. The coincidence is too great to be explained away. The money was stolen by the accused.

Exhibit 16. This is linked to Exhibits 18, 20, 22 and 24 where it is said that part only of the proceeds of the cheques was paid to the workers in each case and R2,892.00 was misappropriated by the accused. Only in the case of Exhibits 18 and 24 have wage-sheets been produced and these do not support the total amount of the cheques. I do not think that in the cases of these vouchers it has been proved beyond all reasonable doubt that the accused stole the money.

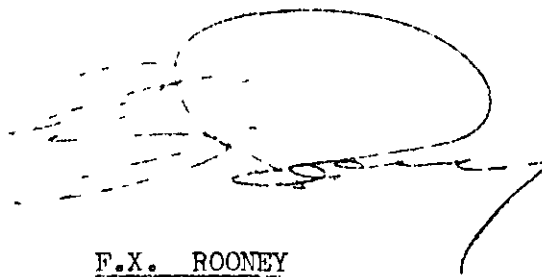
Exhibit 17, already dealt with
Exhibit 18, already dealt with
Exhibit 19 is for the same amount as Exhibit 23, which is forged, namely R7,542.20 taken with the general background of the accused's conduct I am satisfied that in each of these cases the coincidence in these amounts is sufficient to hold that the vouchers were false and the accused took the money.

Exhibit 22, already dealt with
Exhibit 23, already dealt with
Exhibit 24, already dealt with
Exhibit 25 to 30 are all forgeries and I find that the accused received and stole the money.

I find therefore that the proved defalcations of the accused amount to R99,082.40 and not R113,542.40 as charged in the indictment. Before proceeding to a formal verdict I feel obliged to say that the accused could not have succeeded in her criminal conduct over so long a period if she had not been assisted by the opportunities presented to her.

I am unable to find that she had active accomplices, but there remains a suspicion that certain people made it easy for her to extract a large sum of money from Government sources. The complete break down of financial discipline and control disclosed by the evidence heard at this trial is a grave reflection upon those officers charged with responsibility of safeguarding public finances. I hope that those in authority will see to it that the officers who by their negligence or incompetence contributed to the substantial loss sustained by the Government will be dealt with in accordance with Financial Regulations and General Orders. But much more is required if instances of this nature are to be avoided in future. The Accountant-General must put his house in order and ensure that all officers in the Public Service with financial responsibilities discharge their duties in accordance with the regulations laid down. Laxity and indifference erode the discipline essential to a public service which must retain public confidence in its integrity, if it is to function effectively.

The theft in this case was committed by a series of false pretences. The vouchers prepared by the accused were false in that they purported to show that wages were due to workers whereas in fact they were not. By this means, the accused induced authorised officers to sign the vouchers as being a proper charges on Government, or by presenting vouchers to the Treasury which were forged, she obtained the same result. She received the cheques and cashed them and misappropriated the proceeds. Theft by false pretences includes theft simpliciter. (See the Judgment of the Court of Appeal in C. of A.2/1979 Makalo Khiba v. Rex, unreported). The distinction is not of great importance, but, as the accused cannot be convicted of both crimes, I bring in a verdict of theft by false pretences of the sum of R99,082.40 and I find her not guilty of theft and fraud as charged in the main count and on the second alternative charge.



F.X. ROONEY

JUDGE

20th June, 1980.

For Plaintiff

Mr. Peete

For Defendant

Mr. Monaphathi

IN THE HIGH COURT OF LESOTHO

In the Matter of :

REX

v

*MABONANG MOAHLOLI

S E N T E N C E

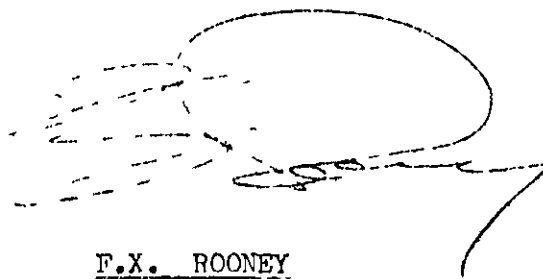
Delivered by Hon. Justice F.X. Rooney
on the 27th day of June, 1980.

The accused has been found guilty of the theft by false pretences of the sum of R99,082.40, the property of her employer the Lesotho Government. The crime was committed over a long period by means of forgery and deception. The crime was planned and deliberate.

The accused since her arrest in October 1979 has given at various times and places different versions of her conduct. These have varied from a complete denial to the allegation that she acted in collusion with one or more of her colleagues in the Public Service who made use of her talents for deception to their own advantage and for which she received only a minor share of the proceeds of her crime. The accused has proved herself to be an unmitigated liar on whose word no reliance can be placed. If she had accomplices it is impossible to say who they are or what they have done with any money they received. I refuse to lose sight of the fact that it was the accused who received the stolen money in the first place. She has failed to give this Court an acceptable account of what she has done with the money and it is reasonable to conclude that she has hidden it away with the intention of enjoying her wealth when she has served her sentence.

The accused must be punished severely for her own sake and as a deterrent to other Public Servant who might be tempted to follow her example.

The theft in this case was committed by a series of false pretences. The vouchers prepared by the accused were false in that they purported to show that wages were due to workers whereas in fact they were not. By this means, the accused induced authorised officers to sign the vouchers as being a proper charges on Government, or by presenting vouchers to the Treasury which were forged, she obtained the same result. She received the cheques and cashed them and misappropriated the proceeds. Theft by false pretences includes theft simpliciter. (See the Judgment of the Court of Appeal in C. of A.2/1979 Makalo Khiba v. Rex, unreported). The distinction is not of great importance, but, as the accused cannot be convicted of both crimes, I bring in a verdict of theft by false pretences of the sum of R99,082.40 and I find her not guilty of theft and fraud as charged in the main count and in the second alternative charge.



F.X. ROONEY

JUDGE

20th June, 1980.

For Plaintiff	Mr. Peete
For Defendant	Mr. Monaphathi