IN THE HIGH COURT OF LESOTHO

In the matter of :

R E X

v

LIKOPO LETSIE

Review Order No. 18/80   C.R. No. 109/80
Review Case No. 258/80   In Mohale's Hoek District

ORDER ON REVIEW

The record of this case has been submitted to the High Court by Mr. Ntsoele the magistrate at Mohale's Hoek. No sentence has been passed and the case cannot therefore be reviewable as of course under sections 66 - 69 of the Subordinate Courts Proclamation. I am, however, prepared to exercise powers to review the proceeding, or rather the proceedings so far, under s.7(1) of the High Court Act 1978.

The magistrate has described the case as "unique" and requested the public prosecutor to consult with the Director of Public Prosecutions who was unable to help. The Director of Public Prosecutions suggested that the file be sent to the High Court.
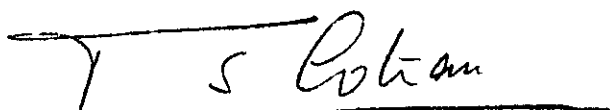
The accused, who was charged with arson, pleaded not guilty to the charge, and the trial commenced. After the evidence of one Crown witness was heard it was realised by everyone concerned that Mr. Ntsoele himself had in fact recorded a "confession" from the same accused, sometime previously, on the same charge. This is not a rare or unique occurrence. A magistrate is not expected to recognise the face of every person that appears before him.

The accused had pleaded not guilty and thus the Crown would have had to prove their case against her beyond reasonable doubt. Since the admissibility or otherwise of the confession may have become an issue, Mr. Ntsoele's position as a magistrate could not be reconciled with his position as a potential witness for the Crown.

There is really no way out in these circumstances except for Mr. Ntsoele to recuse himself from trying the case. I

/set the

set the proceedings aside and order that the accused be now tried _de novo_ before another magistrate.

T S Cotran

CHIEF JUSTICE
2nd October, 1980

cc: The Magistrate, Mohele's Hoek
       O/C Police,   "
       O/C Prison,   "
       O/C Central Prison, Maseru
       C.I.D. Police Headquarters
       D.P.P.
       Director of Prisons
       All Magistrates & PPs