

IN THE HIGH COURT OF LESOTHO

In the matter of:

✓ R E X

v

MOTLALEPULA LETSAPO

REASONS FOR JUDGMENT

Filed by the Hon. Mr. Justice M. P. Mofokeng  
on the 10th day of November, 1980

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The accused and another were charged before a magistrate of third class with the crime of Housebreaking with intent to steal and theft. When the charge was put to them, they both pleaded guilty and the prosecutor accepted their plea. In terms of section 235(1)<sup>(b)</sup> of Proclamation 59 of 1938 as amended the prosecutor outlined the facts and both accused admitted such facts. Thereafter the prosecutor tendered the list of previous convictions in respect of the accused now before me. The first such conviction was committed about four years ago. The crime so committed was one of "Theft Common" and the second conviction was committed about three years ago. The crime committed was "Housebreaking with intent to steal and theft." For the former crime he was sentenced to receive four cuts with a light cane and for the latter he was to be detained "at a Juvenile training centre in terms of section 9(6) of Proclamation 30/1957."

It is quite clear from the record of this case that the learned magistrate did not concern himself at all  
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with the age of the accused. No evidence of any kind, whatsoever, was placed before the learned magistrate concerning the age of the accused nor did he invoke the provisions of section 334 of Proclamation 59 of 1938. The question of the age of an accused to be dealt with in terms of section 288 is very important as only a person who is "not less than the apparent age of seventeen years" is permitted. In this case there is no such proof whatsoever. (See Rex v 'Mabeha Mokhechane, CRI/S/3/76; S. v Sibisi, 1976(2) S.A. 162(N)).

The learned magistrate gives as a reason for committing the accused to this Court in terms of section 288 that because the accused has been to a juvenile training centre he "deserves to receive a heavier punishment which may not be imprisonment because of his youth." Well, what heavier punishment is contemplated? However the real reason for this committal is immediately supplied by the learned magistrate thus:

"Further, corporal punishment would seem to be more appropriate, but cuts this time be increased; for the Court of third class jurisdiction I am holding is not permitted to administer any corporal punishment."

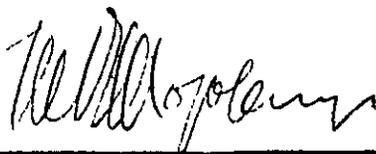
(My underlining).

As I suspected all along this is the sole reason why this matter is before me. This Court has made quite clear, its views concerning corporal punishment. (See Rex v Mohlouoa Tsehlana, Review Order 10/77 and Rex v Palama Lemaoana, Review Order 28/79). The application of a corporal punishment could hardly be a reason for which an accused could be committed to the High Court for sentence in terms of section 288. The section, in my view, is to be invoked for more weighty reasons than the lack of jurisdiction by holder of a third class magistracy who should not have been allowed to try such serious cases as the present

one in the first place. On convicting accused persons in such cases, the learned magistrates find the sentences they wish to impose hopelessly inadequate. At this rate the High Court is turned into a sentencing machine. A magistrate who is a holder of First class jurisdiction, is empowered to review the proceedings of a magistrate who holds third class jurisdiction. If then the provisions of section 288 of Proclamation 59 of 1938 are invoked at the slightest pretext, is the jurisdiction of the holder of the First class Court not usurped? The authorities concerned with the activities of the magistrates who hold third class jurisdiction must think seriously about the problems raised in this judgment. This process of passing the buck shall not be allowed.

However, in this instant case, there have been no real reasons why this matter was sent to this Court. Not only has the age of the accused not been determined at all but the reasons for invoking section 288 are not weighty at all. I therefore decline to deal with this matter.

It is ordered that the matter be referred back to the trial learned magistrate who will proceed to pass sentence as he should have in first place



J U D G E

10th November, 1980

For Accused: In person

For the Crown. Mr. Khaue