

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

SOPHONEA LECHE Appellant

v

ZINZISWA 'MOLAOA

Respondent

J U D G M E N T

Delivered by the Hon. Chief Justice, Mr. Justice
T.S. Cotran on the 18th day of December
1980

This is an appeal from the Judgment of a magistrate at Qacha's Nek in which he awarded the respondent, a school mistress at a primary school, R10 per month towards the maintenance of a child allegedly fathered by the appellant, a warder in the prisons service, in 1975. He had employed her to work temporarily as a domestic servant in his home. The appellant himself is married with four children but his wife was away at the time. The respondent too is married with four children but was living apart from her husband.

The appellant had denied paternity.

The appeal has been pending since May 1977.

Perusal of the case record shows that the plaintiff/respondent gave evidence and then the defendant/appellant gave evidence. There was thus, to begin with, only the oath of one against the oath of the other. After the defendant/appellant gave evidence another witness emerged in the shape of a Mrs. Mathabang Nkhau - who testified that she "learnt" the appellant and respondent were lovers. She added that the appellant used to visit respondent, and one day the respondent sent her to tell the appellant that the child was sick. The latter promised to send some money with a policeman. The appellant says that it was the magistrate who ordered that witness to be brought and he complains that this witness who lived 30 miles away was not telling the truth. The respondent could have produced some of her
/colleagues

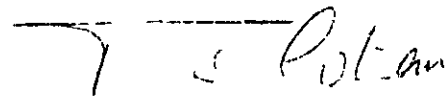
colleagues that worked with her as teachers at the school.

The magistrate does not explain how this witness managed to come and why she was called after the parties closed their cases. The magistrate relied on her for "corroboration".

The Court is loathe to interfere with the magistrate's findings of fact but paternity cases do merit a careful weighing of the probabilities. I am not satisfied that the magistrate did that.

The appeal is allowed to the extent that the magistrate should have granted the appellant/defendant absolution from the instance.

No order as to costs.



CHIEF JUSTICE
18th December, 1980

For Appellant : In Person
For Respondent: No Appearance