IN THE HIGH COURT OF LESOTHO

In the Appeal of:

LEBOHANG SEROBANYANE Appellant

v

R E X Respondent

REASONS FOR SUMMARY DISMISSAL OF AN APPEAL pursuant to sec. 320 A of the Criminal Procedure and Evidence Proclamation 59 of 1938

Filed by the Hon. Mr. Justice M. P. Mofokeng on the 31st day of December, 1980

The appellant was convicted in the Subordinate Court of Maseru with the crime of theft it being alleged that he stole three doors (and frames) and a heater at the National Teachers Training College, the property of the Governemnt in the immediate care of the Director of the said college. When the charge was read to him he pleaded guilty The prosecutor accepted that plea and the matter proceeded in accordance with the provisions of Section 235(1) of the Criminal Procedure and Evidence Proclamation 59 of 1938 as amended. The appellant appeals only against the sentence imposed on him.

The facts as outlined by the prosecutor are briefly as follows:

On the 7th day of June, 1980, the appellant arrived at the place of his employment. He took three doors and frames and a heater and loaded them into his vehicle (a van). There were people who saw this operation. These items, incidentally, were taken from a site next to the one where

the appellant ordinarily worked. On the 10th day of June, 1980, Mr. Leloko noticed that the articles already mentioned were missing. He asked the appellant about them but the latter denied knowledge of them. However, Mr. Leloko had received information. He took appellant to the police.

On the 14th day of June, 1980, the appellant took the police to a certain house at Ha Abia (about three miles from Maseru and where appellant lives) and produced the articles mentioned in the charge sheet. The value of the articles is R275. The accused had not been permitted to take these articles. The appellant admitted the evidence as disclosed by the prosecutor. He was duly found guilty and in mitigation of sentence he pleaded for leniency. He was sentenced to serve a period of three months in prison.

His appeal is based on the following grounds

"(a) That the sentence is severe and it induce(s) a sense of shock and does not take into consideration the following factors:-

(i) The appellant pleaded guilty to the charge and this in fact shows remorse on the part of the appellant.

(ii) The appellant was a first offender.

(b) That it is submitted that a sentence of imprisonment with an option of a fine was appropriate in the circumstances."

The learned magistrate in his judgment clearly states that he did not gain the impression that the appellant was remorseful. He says if he had indeed been remorseful at all, he should have shown that to Mr. Leloko. I do not think I can seriously quarrel with him. However, what particularly perturbed the learned magistrate was "the practice of stealing from employers" which was "getting out of control". He is entitled to take into consideration the frequent occurance of a particular crime in his area. The learned magistrate also viewed with seriousness the fact that the

appellant had come to his place of employment deliberately to come and steal because he does not work on Saturdays. He did not even steal the articles for his own use but to sell them as evidenced by the fact that they were recovered three miles from his house. The theft was, in his view, for the purpose of enriching the appellant at the expense of the Government. In these circumstances the learned magistrate did not consider the option of a fine to be appropriate. I cannot, with respect, fault him on that. In that respect I need only refer to the case of Delvis Fano and Another, CRI/A/13/80 (unreported) dated 30th May, 1980, where this Court stated

> "The theft of Government property is rampant. This Court has had an occassion to warn people who steal Government's property about the serious view in which this Court regards such conduct....... It is the primary duty of every Court in this land to mark their determination to discourage any idea that Government property can be stolen with impunity. The Courts in this country are determined to punish severely any one who steals Government's property."

That is what the learned magistrate was endeavouring to do and I cannot, with respect, fault him.

It is trite law that the passing of sentence is pre-eminently in the discretion of the trial Court. That discretion will not be interfered with as long as it is exercised judicially and not arbitrarily. (Nthongoa and Another v Rex, CRI/A/78-79 (unreported) dated 6th February, 1980). Where the Court aquo has not misdirected itself or imposed an unreasonable sentence in the circumstances, the appellate tribunal will not usually interfere. (Moroke Lebitsa and Another, CRI/A/29/80 (unreported) dated 17th October, 1980). The position has been neatly summed up by my brother Cotran, C.J. in the case of Makhetha Mphutlane v Rex, CRI/A/39/80)

> " .... I think Crown Counsel, citing a number of authorities both in our Lesotho Courts and in South Africa put the law on sentencing in the correct perspective viz:-
>
> (1) That sentence is pre-eminently a matter for the trial Court.
>
> (2) That an appellate tribunal should not lightly interfere with the discretion of the trial Court if judicially exercised.
>
> (3) ....
>
> (4) That a first offender should not expect a guarantee that a custodial sentence will not be imposed."

This approach, with which I entirely agree, sums up the position in the present appeal.

This appeal has been dealt with pursuant to the provisions of Section 320 A of the Proclamation (supra) in that after perusing the record of the case I came to the conclusion that there was no sufficient ground for this Court to interfere with the judgment of the trial Court and the appeal is summarily dismissed.

The registrar of this Court is hereby ordered to inform the appellant and his representatives accordingly. If the appellant is not already in custody, the proper authority must be informed and the necessary documentation prepared for his immediate apprehension and delivery to the proper authority to start serving his sentence.

J U D G E

31st December, 1980