

IN THE HIGH COURT OF LESOTHO

CRI/APN/312/06

In the matter between:

RELEBOHILE QHOSHELA

APPLICANT

AND

THE LEARNED MAGISTRATE NTHABI

1ST RESPONDENT

DIRECTOR OF PUBLIC PROSECUTIONS

2ND RESPONDENT

CLERK OF COURT BERE A

3RD RESPONDENT

JUDGMENT

Delivered by the Honourable Mr Justice T. Nomngcongo

On the 14th September 2010

This is an application for review of the proceedings in the magistrate court for the district of Berea where the accused was convicted under the Sexual Offence Act and sentence to fifteen years imprisonment on the 18th November 2003. The review proceedings were only launched nearly three years later. Argument was heard on the 27th September 2006. After that the file was missing and it only surfaced in August 2010.

This delay is obviously inordinate and I have no doubt, it has seriously prejudiced the accused.

Of the point raised on review it was alleged that the presiding officer had acted as both presiding officer and interpreter. The presiding officer swore an affidavit in answer to this allegation. I must say at once that it is improper for a judicial officer to enter the fray of litigation. He stands or falls by the record of proceedings and his judgment which in this case was just not there. All the presiding officer did after the close of defence case was to record that there were no address and after to record that the accused was guilty as charged. The risks of descending into the arena as His worship did are obvious he will be seen as giving evidence on behalf of one of the litigants instead of being an impartial adjudicator. In casu the learned magistrate has exposed himself to an embarrassing altercation with the accused. The accused says there were no interpreter and when his worship says there was, he simply say he is not telling the truth otherwise he would have put that on record or name the interpreter , which he did not. I would add that the interpreter himself should have filed an

affidavit, such affidavit was not forthcoming. The result is that the accused emerges the victor in the altercation as I cannot but conclude that his version is better than that of His worship, that there was no interpreter.

For that reason alone these proceedings have to be set aside as I hereby do.

The problems now remain to be what to do with accused. As I have indicated he has served his sentence from 2003. Now that is enough of the 15 years sentence to have accused earned remission. It would be unfair and highly prejudicial to the accused to order a trial *de novo*. I order therefore that he be immediately set free.

T. Nomngcongo
Judge

For applicant : Mr Joala

For respondents : Mr Molapo