

IN THE HIGH COURT OF LESOTHO

In the matter between:

LEHLOHONOLO SEFALI	1 <sup>st</sup> Applicant
RETŠELISITSOE MOHALIKANE	2 <sup>nd</sup> Applicant
V	
THE MAGISTRATE (Thaba-Tseka) Mr Kolisang	1 <sup>st</sup> Respondent
CLERK OF COURT (Thaba-Tseka Magistrate Court)	2 <sup>nd</sup> Respondent
DIRECTOR OF PUBLIC PROSECUTIONS	3 <sup>rd</sup> Respondent

**JUDGEMENT**

Coram	:	Hon. Monapathi J.
Date of hearing	:	20 <sup>th</sup> March 2012
Date of Decision	:	21 <sup>st</sup> march 2012
Judgment Delivered	:	12 <sup>th</sup> April, 2012

**Summary:**

*Where a magistrate imposed a shockingly high option of a fine, did not investigate the ability of an accused person to pay such fine and did not state reasons for his sentence and thus seemingly ignored factors which were mitigating, the sentence ought to be varied.*

## STATUTES

*Criminal Procedure and Evidence Act, 1980*

## CASES CITED:

*S v Immelman 1978 (3) SA 727 (A.D)*

[1] This matter is about reviewing correcting and setting aside a judgment of the magistrate of Thaba-Tseka, in a charge of Assault with Intention to do Grievous Bodily Harm. The two (2) Accused were sentenced to imprisonment for a period of one (1) year and eight (8) months with an option of a fine of M9,000.00 (nine Thousand Maluti) The two (2) Accused were convicted following admission of their own guilt. In addition, as usual, a record of the proceedings was sought (in prayer 2) to be dispatched.

[2] As a matter of law there must be some gross irregularity or illegality that can cause matter to be dealt with as prayed herein. The application ended up not being opposed by Mr. Tšoeunyane for the Crown.

[3] Although in slightly different circumstances of where a globular sentence was questioned, in **S v Immelman 1978 (3) SA 727 (A.D)** (Headnote) the Court of Appeal is reported to have laid down that:

“In regard to the question of sentence, the trial judge enjoys a discretion, a statement of reasons which move him to impose the sentence which he does also serves the interest of justice. The absence of reasons may operates unfairly as against the accused person and the state”. (My emphasis).

[4] Mr. Nthimo for Applicants (Accused) had sought for issue of an interim order pursuant to that prayer 2. I wanted to find out what exactly was the irregularity complained of. As I observed it need not have been difficult or obscure if the impression was given instantly by Applicant's Counsel that the complaint was not about conviction but about "shockingly high" fine imposed.

[5] At the time the matter of conviction was being pursued or intimated by Mr. Nthimo, and improperly so, he spoke about certain evidence not having been tendered, mooted withdrawal of the complaint and such matters which were quite unsupportable. This was more so because the Accused admitted their own guilt and accepted the prosecutors statement or outline in terms of section 240 (1) (b) of the *Criminal Procedures and Evidence Act, 1980*.

[6] But when Counsel spoke about the failure by the learned magistrate to have considered compensation made to the complainant and the harshness of the fine (options) aspect of sentence Mr. Tšoeunyane for Crown was clearly persuaded, that is, that the fine was not commensurate with the ability of the Accused to pay the fine. Neither was Accused's ability to pay the fine investigated and finally that the amount of the fine (an unusual sentence) was such that the Accused would be unable to pay the same. It is plainly that the Court did not state the relevant factors that it took into account while he imposed the fine. See *MOJELA v REX 1977 LLR 321*.

[7] I accordingly agreed that while the sentence to imprisonment of one (1) year and eight (8) months should remain, however the fine ought to be varied. I noted that although it did not appear that the complainant was treated as an in-patient at

Paray Mission Hospital the doctor who examined the complainant has stated that the degree of force used was “severe”.

[8] I therefore varied the option of the fine to M2,000.00 payable by each Accused as an alternative to the sentence to imprisonment of one (1) year and eight (8) months already imposed.

**T. E. MONAPATHI**  
**JUDGE**

For Applicants (Accused) : Adv. Nthimo  
For Defendant : Adv. Tšoeunyane (for DPP)

Judgment noted by Adv. Mahao and Adv. Chobokoane