

CRI/A/3/2011

CR 815/07

IN THE HIGH COURT OF LESOTHO

In the Matter Between:-

LETSIKA CHEFA

APPELLANT

AND

REX

RESPONDENT

JUDGMENT

Coram : **Hon. Molete AJ.**
Date of Hearing : **2nd December 2011**
Date of judgment : **22nd May 2012**

Summary

Criminal appeal – Common purpose – what constitutes – Appellant not providing explanation of his conduct – Effect thereof – necessary elements for common purpose proved – Appeal dismissed.

ANNOTATIONS

CITED CASES

S v Brown 1996 SALR 49 61

S v Boesak 2001 SALB 20

Rex vs Thaba Leche CRI/T/181/05 23

Kubutu Mokenya and Others vs Rex LAC 2007-2008 237

S v Mgeoezi and Another 1989(1) SA 687

Mabaka and Another vs Rex 2001 – 2004 LAC 1 18

STATUTES

Road Traffic Act No.8 of 1981

BOOKS

[1] The appellant appeals against the judgment of the magistrate where he was charged together with one Teboho Sephekola with the crime of bribery.

[2] The charge sheet against the accused persons alleged that;

“upon or about the 8th June 2007, and at or near gateway filling station in the district of Maseru, the said accused acting in concert, one the other or both of them, whom are at all material times police officers attached to the traffic division in the Lesotho Mounted Police Service and as such state officials, did unlawfully and intentionally and corruptly solicit and/or accept from one Mateboho Motjolopane the sum of One Hundred and Eighty Maloti (M180-00) as a consideration for declining to arrest and detain the said Mateboho Motjolopane on an

allegation of contravention of the **Road Traffic Act**¹ committed by the said Mateboho Motlolopane at or near Lerotholi Poly-Technique and/or Teba in the Maseru Urban Area in the presence of the said accused.”

[3] Both accused pleaded not guilty to the charges and the crown led the oral evidence of five witnesses to prove the guilt of the accused. The written statement of 'Matšepo Tšita was admitted and read into the record with the consent of the parties.

[4] The Magistrate found both the accused guilty as charged and he sentenced them on the 27th May 2008 to a period two years in prison or to pay a fine of M5000-00. Half of the sentence was suspended for 18 months.

[5] It is only the second accused (now appellant) who lodged the present appeal to the High Court. The appeal is against conviction only and the grounds are set out as follows;

“the learned Magistrate erred in law in convicting the accused as he did in as much as the weight of evidence did not justify such conviction.”

[6] The evidence led at the trial and which was common cause is that

No 8 of 1981¹

- (a) On 8th June, 2007, 'Mateboho Motjoloane (PW1) was driving her isuzu van with registration number C1500 from industrial area having loaded chicken feed on the bakkie.
- (b) At or near water affairs she came upon a Police check-point manned by Appellant and one Teboho Sephokola (A1).
- (c) PW1 was stopped by A1 and informed that her carriage of the goods was in violation of the Road Traffic Regulations and she would have to pay a fine of M500-00 in Court.
- (d) A1 ordered PW1 to go and talk to appellant who was at the time seated beside the road next to a tree. She explained to appellant what she had done as alleged and Appellant referred her back to A1 to conclude the matter with him.

[7] PW1 then goes on to say she was threatened with arrest by A1 since she had failed to agree with appellant. PW1 pleaded with A1 but no agreement was reached, until A1 asked for M180-00 as a compromise. PW1 did not have it. She asked to be allowed to go and fetch the amount but A1 demanded her licence as security for her return.

[8] A1 wrote her cell-phone on a piece of paper and gave it to her to be able to call her and arrange a meeting once she had the money. The piece of paper which was given to PW1 with cellphone numbers was handed in by consent.

- [9] PW1 then called Matsepo Tsita for assistance with the money required. She (Matšepo) advised her to report the matter to the police. She did so and a police trap was arranged with some marked notes which were given to PW1. The notes were handed in evidence and also marked as exhibits.
- [10] At the Police Station PW1 then phoned A1 and a meeting was arranged near gateway restaurant in vicinity of the Maseru Boarder Post. At the appointed time PW1 went; and there she met both police officers in a vehicle driven by Appellant with Registration AE 311.
- [11] The issue of the payment was discussed with both officers and the appellant eventually handed over to PW1 her licence upon the assurance that the money was available. PW1 then went to her own vehicle followed by A1 and she handed the trap money to him. The police officers who had laid the trap then made the arrest and found the trap money on A1. In the confusion, Appellant is said to have left the scene hastily to escape arrest at it became to clear what was taking place.
- [12] At the end of the crown case, the Appellant chose not to testify. This he did even after the court *a quo* had refused his application for discharge at the close of the crown case. The court held that a *prima facie* had been made against him but he refused to answer and chose to remain silent.

[13] The choice of the defendant not to give evidence may lead the court to conclude that the case against him has been proven beyond reasonable doubt, especially where his application for discharge was refused.

See **S v Brown 1996**²

S v Boesak 2001³

Rex vs Thaba Leche⁴

[14] In this case, it was necessary to explain to the court and silence meant that the court was denied any explanation regarding three important aspects of the offence charged.

- (a) Why no action was taken against PW1 after it was established in his presence that she had violated the traffic regulations.
- (b) His presence at the appointed time and place for delivery of the bribe.
- (c) His active participation in the car when he demanded money from PW1, and personally releasing her licence upon the promise that the money was available.

² SALR 49 page 61

³ SALR 20

⁴ CRI/T/181/05 page 23

[15] Mr Molati for the Appellant submitted that his client's appeal ought to succeed because it was not established in evidence that he demanded money from A1, nor that he had made arrangements to meet her at gateway. He said his client never reconciled himself with the act of soliciting a bribe.

[16] Mr Nathane on the other hand said that the actions of the Appellant, coupled with his failure to testify were enough to establish common purpose. He relied on the authority of **Kubutu Mokenya and Others vs Rex**⁵ where Grosskopf JA laid down the pre-requisites following the case of **S v Mgeoezi and another 1989(1) SA 687**. He said;

“In the first place, he must have been present at the scene..... Secondly, he must have been aware of the assault..... Thirdly he must have intended to make common purpose (with the perpetrators).... Fourthly, he must have manifested his sharing of a common purpose by himself performing some act of association with the conduct of the others. Fifthly, he must have had the requisite mens rea.”

[17] I agree with that as the correct statement of the law. I also agree that even considering the test laid down by Ramodibedi, JA (as he then was) in the case of **Mabaka and another vs Rex 2001 –**

⁵ LAC 2007 – 2008 page 23

2004⁶; regarding the explanation of the accused. This is a proper case to conclude that an adverse inference against the appellant ought to be drawn because he failed to testify where *a prima facie* case was made that called for rebuttal.

[18] In the circumstances the court in this case finds that the appeal has no merit and ought to be dismissed.

[19] The court observed that an unacceptably long time lapsed between the lodging of the Appeal and the hearing. It is not clear why the magistrate delayed to give his reasons, but for an appeal that was lodged in 2008 to only come to this Court for hearing in 2011 apparently due to the Magistrate's delay to supply reasons for judgment as the appellant contends is a matter of grave concern to this Court. It surely must bring the whole administration of justice into disrepute.

[20] This appeal in this matter is dismissed.

L.A. MOLETE
ACTING JUDGE

For Appellant : Mr Molati

For Respondent : Mr Nathane

⁶ LAC 1 page 18