

IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

CR/1052/13

CRI/A/0008/17

In the matter between;

THABANG MASILO

And

REX

APPELLANT

RESPONDENT

JUDGMENT

CORUM:

HON. MAKARA J.

DATE OF HEARING:

30TH AUGUST 2018

DATE OF JUDGMENT:

30TH AUGUST 2018

MAKARA J.

1. This is an appeal against a criminal conviction and sentence imposed upon the **Appellant** by a Magistrate of a Senior Magistrate Jurisdiction in the district of Maseru. the trial proceedings were in consequence of the criminal charge which the Crown had preferred against him in that he had contravened **Section 83 (1)(a)** and **(b) No. 8 of 2010**.
2. Its supportive contents was that he had on the **17th May 2013** made a false statement in writing in respect of a certain church site at **Ha Mabote**.

3. It is of significance in that case in *Court aquo* that the **Appellant** has pleaded guilty to the charge and that the Crown accepted the Plea. This triggered the operation of **Section 240 (1) (b)** of the **Criminal Procedure and Evidence Act of 1981**. The **Section** provides that;

“...if it is a Subordinate Court, and the prosecutor states the facts disclosed by the evidence in his possession, the Court shall, after recording such facts, ask the person whether he admits them and if he does, bring in a verdict without hearing any evidence”

4. The interpretation of which this Court assigns to this **Section** is that it dispenses with a need to call witnesses to support a charge and that the same applies to the normally imperativeness of the Crown to advance any class of evidence in support of same. This is premised on the understanding that it would suffice for the Crown to summarize what would be its evidence had the **Accused** person pleaded otherwise.
5. There has to be a clear distinction drawn between a presentation of witnesses and their respective evidence in support of any essential evidential element for the sustenance of the charge. This is indicative that where a procedure under the Section is followed the Crown would pass the test if its Summary embraces all the essential elements of the charge. The approach should be comprehended against the background that **Section 240(1)(b)** procedure is followed after the **Accused** shall have pleaded guilty . It is for this reason that

at the end of the outline, a Magistrate should call upon the Accused to confirm the outline or do otherwise. The Court is correspondingly enjoined to scrutinize the record so as to ascertain the existence of all elements therein. In the understanding of this Court, the existence of all the requisite elements will be indicative the Crown shall have proven its case beyond any reasonable doubt.

6. In the instant case, it transpires from the record in the *court aquo* that the Appellant had at a material time acted as an agent of the church to buy a site for it and that, this notwithstanding, he subsequently made a misrepresentation to the agents of the Land Administration Authority that the site belonged to him, and as such registrable under his names. Secondly, when that misrepresentation came to the attention of the priest in charge of the church, he objected to the claim and reported the case before the Police – hence the criminal charge under consideration.
7. The Court having read the summarized evidence, is persuaded that the outline embraced all the essential elements for the sustenance of charge.
8. In the premises the appeal fails.

E.F.M. Makara
JUDGE

FOR APPELLANT:
FOR CROWN:

MR. K. NDEBELE OF K. NDEBELE ATTORNEYS
ADV. MATHE FROM THE DPP'S CHAMBERS