

**CRI/T/0006/2020**

**IN THE HIGH COURT OF LESOTHO**

**HELD AT MASERU**

**In the matter between:-**

**REX**

**vs**

**BORENAHABOKHETHOE SEKONYELA**

**CORAM : HON. T. MATOOANE ACTING JUDGE**

**DATE OF JUDGMENT: 27<sup>th</sup> APRIL, 2022.**

**JUDGMENT**

**Neutral Citation: Rex vs Borenahabokhethoe Sekonyela [2022] LSHC 86 Crim.  
(27th April, 2022)**

The accused is charged for **contravention of Section 21 (3) (a) and (b) of the Presentation of Corruption and Economic Offences Act No.8 of 2006.** Alternatively, with **Contravention of Section 59 (1) (c) of the Financial Management Act of 2010** read together with **Regulation 24 (5 (a) of the Treasury Regulations of 2014.**

The evidence led by the Crown in common cause. The tender was issued by the Ministry of Home Affairs around December 2016 or January 2017. An evaluation team was duly appointed.

There were two bidders and the eventual winner was Kananelo Enterprises. The evaluation team made a recommendation to the Procurement department. A contract was drawn between the parties which provided that delivery should be effected within a fortnight of the signature thereof. However, delivery was not effected as agreed.

Two months later Kananelo Enterprise wrote a letter of the accused in his capacity as the Principal Secretary and Chief Accounting Officer of the Ministry. In the letter, the service provider undertook to effect delivery within 10 days and requested that they be paid before the delivery to avoid the end of the financial year which would end at the of the March 2017.

On the basis of the undertaking, the accused issued a memo to the accounts department instructing them to effect payment despite the absence of a delivery note. The accused relied solely on the undertaking made by the supplier.

Subsequently, the Financial Controller and her subordinates processed payment on the basis of instructions from the accused.

The accused applied for the discharge at the close of the Crown's case in terms of *Section 175 (3)* of the **Criminal Procedure and Evidence Act of 1981**. The basis of the application was that the Crown had failed to make a *prima facie* case against him as they have failed to prove *mens rea* or intent in the form of *dolus*.

The accused contention was that the pieces of legislation which he was charged under, did not exclude *mens rea*.

It is trite principle of the interpretation of Statute that there is a presumption of *mens rea* as a requirement for criminal liability see **Interpretation of Statutes** by **G.E. Devenish 1<sup>st</sup> edition at p184 – 186**.

On the alternative charge, the accused contention was that **Regulation 24 (5) (a)** dealt specifically with the examination officers in the financial department and does not make reference to any other officer of the Ministry. The Regulation

specifically forbids the examining officers to authorize payment in the absence of a delivery note.

Thus this Regulation cannot be used against the accused who was not an examining officer.

### **The main charge**

The main charge is based on **Section 21 (3) (a) (b)** as stipulated earlier in this judgment.

The appeal court dealt with this Section in **Lebotsa vs Crown (2009 – 2010) LAC p127 at page 131** and I quote page 131 “*what the section requires is that the actions be for a specific purpose, a matter of objective characterization on all the available facts. This is an additional requirement to that of mens rea in the form of intent dolus.*” Per **Gaunttell, JA.**

The accused was intent on beating the financial year deadline on behalf of the service provider. Although it can be argued that by authorizing payment to the service provider before delivery, can be interpreted as granting undue benefit to the service provider. The basis being that he or she would be using the funds emanating from the Government to purchase the required goods or services, while other bidders could not.

Secondly, it can be interpreted as assisting the supplier to avoid the requirements of the contract which stipulate that delivery should be effected within 14 days.

However, that notwithstanding, one element is still missing from the jigsaw puzzle which is *mens rea* in the form of intent (*dolus*).

The evidence of the Crown fell short of proving the intent of corruption in any form. It is true that the accused rode roughshod over the official of the Ministry including the Financial Controller and the Examiners. He ordered them to process payment on the basis of an empty promise from the service giver. The requisite intent of gaining from the corruption was not proved. The fact that the tender processes were followed to the letter without the accused influence works to his credit.

The accused was clearly negligent in the conduct of his office as the Government lost a hefty sum of money through his actions. He has tried to make amends by issuing a civil case against the culprit. The Ministry can still recover the money from the accused himself on the basis of culpa but that is a matter for another day.

The application for discharge is granted and the accused is acquitted.

**T. MATOOANE**

**ACTING JUDGE**

**For Crown : Adv. Bassie**

**For Defence : Mr Letsika**