



IN THE HIGH COURT OF ESWATINI

Held at Mbabane

Case No.: 248/2009

In the matter between

REX

VS

NTOMBI LORRAINE MDLULI

DAVID MPHIKELELI MLANGENI

Neutral Citation: *Rex Vs Ntombi Lorraine Mdluli & another (248/2009)*
[2019] SZHC 40 (13th March 2019)

Coram: Hlophe J.

For the Crown: Mr A. Matsenjwa

For the 1st Respondent: Mr Z.W. Magagula

For the 2nd Respondent: Mr J.M. Mavuso

Dates Heard: 12/09/2018, 28/11/2018,
10/12/2018, 12/02/2019
13/02/2019,

Date Judgement Delivered: 13th March 2019

Summary

Criminal Law – Theft – Boxes of cigarettes allegedly worth millions of Emalangi stolen from the Matsapha State Warehouse where they were kept at the instance of the Customs And Excise Department pending finalization of a criminal matter concerning their alleged smuggle into this country – What constitutes theft in law – Whether the use of the item is material in determining the value of the goods and by extension whether an offence was committed – Accomplice’s evidence – Approach of our courts to the evidence of an accomplice discussed – Although the statute requires no corroboration courts required to approach such evidence with caution – Instances on how caution is applied in law considered.

JUDGMENT

[1] Sometime between October 2008 and April 2009 a total of 367 master cases of Remington Gold Cigarettes allegedly valued at Three Million Six Hundred and Seventy Thousand Emalangi (E3, 670,000.00) were stolen at a State Warehouse in Matsapha where they had been kept pending finalization of the Criminal Case relating to their alleged smuggling into the country tenable at the Siteki Magistrate’s Court together with a determination on what was to become of them.

[2] It is not in dispute that the master cases of the cigarettes concerned were kept there after they had been seized from one of the country's border gates where they were allegedly being smuggled into the country from Mozambique. It is further not in dispute that after their seizure, the driver found in possession of the cigarettes was charged with offences relating to the violation of the Customs and Excise Act while the cigarettes were themselves seized in terms of either the Customs or Excise Act or in terms of the Criminal Procedure and Evidence Act of 1938. The cigarettes, which were termed as goods according to the applicable laws, were transferred for apparent safe keeping at the State Warehouse in Matsapha. The warehouse in question was operated under the auspices of the then department of Customs and Excise.

[3] It transpired that the said warehouse had a staff complement of its own which looked after it. This staff was made of the person in charge namely Mr John Mathendele Mamba and the three others. Mr Mamba died before the trial could commence. The other member of staff was Ntombi Mdluli, who was employed as a day time security officer. She later became accused 1 during trial. The third member of staff was Zodwa Patricia Sibandze. She was employed as a cleaner, a job she testified was carried out during day

time. She later became an accomplice witness. There were also two further staff members, in David Mphikeleli Mlangeni and John Khova Gama. These two, alternated as night watchmen. Each worked for a week at a time. Mr Mlangeni started off as the fourth accused but later became the second accused after the other two accused persons ceased to be referred to as such. Zodwa Patricia Sibandze had become an accomplice witness whilst the court was informed that Patrick Adams had disappeared. Otherwise Joseph Khova Gama was never charged but became a state witness, PW2.

[4] The evidence revealed that after the master cases of the cigarettes were delivered at the state warehouse for safe keeping they were stolen. In view of the fact that the boxes carrying them were kept in a secured area, the theft did not entail a removal of the boxes in which they were kept. Instead the master cases were removed from inside the boxes carrying them and replaced with pieces of clothes, fabrics or rags said by PW1 to have been obtained from some clothing factories in Matsapha. The investigations that followed the theft of the master cases hitherto contained in the boxes led to the arrest of the four people mentioned above. They were charged with theft of the 367 master cases stolen from the boxes kept inside the secured area of the warehouse.

[5] At the commencement of trial the crown withdrew charges against Zodwa Patricia Sibandze who was later introduced as an accomplice witness. Patrick Adams hitherto identified as the second accused did not attend trial because he had allegedly disappeared and his whereabouts could not be ascertained. I note that he had not attended the matter in court on several occasions earlier when it had to be mentioned before trial commencement. The crown was forced to apply for a separation of trials as the court indicated it was no longer prepared to postpone the matter given that it had done so on several occasions earlier. The matter proceeded on trial with Ntombi Mdluli and David Mphikeleli Mlangeni featuring as the only accused persons who were hence forth to be known as Accused 1 and 2 (or the 1st and 2nd Accuse) respectively.

[6] The charge sheet alleged that the accused persons were charged with theft in that during the period between October 2008 and April 2009, the said accused persons had, whilst acting in furtherance of a common purpose, unlawfully stolen the 367 master cases of the Remington Gold Cigarettes referred to above. These were valued at E3, 670,000.00, and were also said to have been in the possession of John Mathendele Mamba which was obviously because he was the person in charge of the state warehouse where

the cigarettes were kept. It is important to mention that the aspect of the charge describing the person in whose possession the cigarettes were, later changed to Sibongile Hlatshwayo, the Officer employed by the Customs and Exercise as the Legal Advisor who had delivered the boxes of the cigarettes in question at the State Warehouse and had issued the detention notices. It must be disclosed, this followed the death of Mr John Mathendele Mamba which according to the evidence happened prior to the commencement of trial in the matter.

[7] When trial commenced, the first and second accused persons pleaded not guilty to the charge. They were respectively represented by Mr Justice Mavuso and Mr Zonke Magagula. The crown was represented by Mr Ayanda Matsenjwa.

[8] In an endeavor to prove its case the crown, which admittedly had the duty in law to do so, led the evidence of five witnesses. These were the accomplice witness Zodwa Patricia Sibandze who testified as PW1; PW2 Joseph Khova Gama; PW3 Sibongile Hlatshwayo; PW4 Louis Kevin Marx and PW5 Gugu Mahlindza. In general, the evidence by the crown witnesses testified to the

effect referred to above. The brief details which I feel I must give from each witness, are as set out herein below.

[9] PW 1 Zodwa Patricia Sibandze told the court that she was, on a certain day, approached by the First Accused who told her that she had met one Zega, an alleged Mozambican businessman, known to the employees at the state warehouse as such, who asked that they release the cigarettes contained in the boxes stashed inside their warehouse to him for a fee. They were allegedly promised good payment in return. They were also told that the said cigarettes were of no use to the government because they were going to be destroyed. It was decided that the cigarettes contained in the boxes be removed and replaced with some pieces of clothes or fabrics obtained from the Matsapha clothing factories.

[10] The said Zega would come at night and load the cigarettes onto his truck after having done the swap and replacement of same with pieces of clothes or rags. As this was done Zega would come with a young man eventually identified as one Patrick Adams. The removal of the cigarettes was done on several occasions by the said Zega and his companion Adams. Of note is

that the money they received to share declined each time a consignment was taken. It was always collected by Mr David Mlangeni, the current 2nd accused. Otherwise all the warehouse staff except for Joseph Khova Gama is said to have taken part in the removal of the cigarettes from the warehouse including the replacement of the cigarettes with the clothes or rags. Where the concerned employees did not directly take place, they were alleged to have acted by means of common purpose with the others. The removal and replacement of the cigarettes happened at night. The keys for the warehouse at night were allegedly kept by Ntombi Mdluli, accused1, who would avail them for the commission of the crime later. The warehouse employees were later arrested by the police. This was after the person in charge of the warehouse, one John Mathendele Mamba, had allegedly called PW1 and informed her that he had been called by the head office and told that the cigarettes had been stolen from the warehouse and that the master cases of cigarettes had been replaced with some fabrics or rags in the boxes that initially contained them.

[11] Although this witness (PW1) was cross examined at length, she remained unshaken in her testimony. It was however put to her that the other accused

persons had not taken part in the commission of the offence in question including sharing in the proceeds of the crime, which she denied.

[12] Joseph Khova Gama, PW2, told the court that he was one of the four employees placed at the state warehouse in Matsapha. He emphasized that he alternated with David Mphikeleli Mlangeni as night watchmen, providing security to the warehouse where items confiscated from the country's borders were kept. The keys for the warehouse would at night be kept by the first accused after he would be given same by Mr John Mamba the person in charge. He had seen the cigarettes being delivered at the warehouse hence he could confirm that what had been delivered there were cigarettes. He had seen that after some of the boxes had fallen open revealing what they were containing as they were being off loaded. He had not seen anyone removing cigarettes from the warehouse and had not taken part in any such exercise. He had also not shared money with anyone. Although cross examined at length, he remained unshaken in my view.

[13] According to PW 3 Sibongile Hlatshwayo, she was a legal advisor at the Department of Customs and Excise. She recalled a day in August 2008,

when she attended to the seizure of 368 master cases of Remington Gold Cigarettes. These cases were seized at Mhlumeni Border Gate, on board a certain truck that was entering this country from Mozambique. These cases of cigarettes had not been declared as they should have been. Upon realizing the cigarettes in question, she and the investigating officer 4093 Detective Sergeant Louis Marx had to open all the boxes and confirm that what was contained therein were Remington Gold the cigarettes contained in master cases, which was a case that consisted of 60 packets of 10 x 20 cigarettes packets. After that exercise the truck was driven to the Siteki Police Station. It was later decided that the consignment be driven to the State Warehouse in Matsapha for safe keep. This was once again after the contents of the boxes had been verified and confirmed to be containing the same master cases as before. At the warehouse the consignment was stored after she had prepared and signed a detention notice. Otherwise the driver of the truck had been charged and made to appear before the Siteki Magistrates court where he awaited trial.

[14] Sometime around April 2009, the criminal matter against the driver of the truck that had brought into the country the undeclared cigarettes consignment was meant to proceed at the Siteki Magistrates' Court. She

was, together with the Investigating Officer, called to attend the trial as witnesses. As they had been asked to bring with them samples of the boxes of cigarettes, they decided to take two such boxes from the state warehouse.

[15] It was only after the matter had commenced and they were required to demonstrate to the court what the cigarettes contained in the boxes seized from Mhlumeni Border Gate looked like, that they noted that whereas one of the boxes contained the master cases of cigarettes as expected, the other one only contained pieces of rags or fabric. This necessitated that thorough verification on all the boxes be carried out to ascertain the extent of the obvious rot. To their surprise all the 367 of the 368 boxes seized from Mhlumeni contained the pieces of rags or clothes and not the cigarettes as expected. The investigations that ensued resulted in the arrest of the accused persons together with PW 1.

[16] PW4, 4093 Detective Louis Marx testified and corroborated at great length the evidence of PW3 particularly on how the cigarettes forming the subject matter had been seized and how there was a discovery that the cigarettes contained in most of the boxes had been stolen and replaced with rags or

pieces of cloth. He clarified how after the accused persons had been cautioned in terms of the Judge's Rules, they eventually led the police to one Patrick Adams at Fairview in Manzini and later to the warehouse where they showed the Police how the master cases of cigarettes were removed and replaced with the pieces of cloth or rags or fabrics.

[17] PW 5 Gugu Mahlindza was an employee of the then Customs and Excise Department. She was tasked with ascertaining the value of the stolen master cases of cigarettes. She had come to the conclusion that the cigarettes stolen were valued at E3 760 000. She indicated how she had come up with the sum of E3 760 000. She denied that the cigarettes confiscated by the Police had no value. She corroborated Sibongile Hlatshwayo that the said cigarettes could either be destroyed or auctioned, which decision had not yet been taken. There were however payable taxes attaching to the cigarettes, which was the main reason for the department's having seized the boxes of the cigarettes concerned.

[18] In an apparent admission that a prima facie case had been made against the accused persons, the defence opened its case by calling its witnesses to the

stand. In her testimony, the first accused, Ntombi Mdluli, denied knowledge of a person by the name of Zega. She also denied knowledge of Patrick Adams. She denied having taken part in any deal at the instance of the said Zega. She also denied having played a part in the substitution of the rags or pieces of cloth for the cigarettes. She denied as well having kept the keys to the secured area where the cigarette boxes were kept inside the warehouse. She denied having led the police to the homestead of Patrick Adams and of having led them to the shed to indicate how the cigarettes were removed and replaced with rags. She claimed that the police were the ones who took them to those places.

[19] Under cross examination she confirmed that Mr Mamba used to leave the keys to the warehouse with her although she tried to say those keys were given to her so that she could give them to PW1, Patricia Zodwa Sibandze to enable her gain entry in the morning for purposes of cleaning. She said that Mr Mamba only gave her two sets of keys and not the third one meant for the secured area of the warehouse where the cigarettes were kept. I note however that all this had not been put to the crown witnesses, particularly PW 1, to enable them to react thereto as at the time they were giving their testimony. Her attempt to do so at that stage of the proceedings amounts to

an afterthought which is no evidence and can only mean that such evidence has to be construed against the witness who failed to put that version to the witnesses in question for them to react thereto.

[20] She also had not put to PW1 that she would always hand over to her the keys to the warehouse, which she would be given by Mr Mamba. Other than that this was an afterthought, there is no sound explanation why that is the case particularly considering that the keys were central to the theft of the cigarettes which were contained in the secured area of the warehouse. She herself maintained that there was never a break-in. This is further crucial because she was also adamant in her answers under cross-examination that the theft could not have occurred during the day because they would all be at work then and would have seen it occurring.

[21] Whereas she tried to say, assuming there was any reason to believe her story, that Zodwa Sibandze had the time to steal the cigarettes in the two hours she would spend at work before all of them could start work, it cannot be difficult to conclude that there is no way 367 master cases of cigarettes made of boxes could have been stolen or taken away by one person just

before they all assumed work in the morning particularly considering there was a watchman outside. Such a version would be too fanciful to accept and flies in the face of reality. In any event this contention was never put to the said Zodwa in her testimony so that she could react thereto. Furthermore the story by Zodwa Sibandze in this regard was confirmed by Joseph Khova Gama that the First Accused was the one who kept the keys to the warehouse to the extent she would open up for Zodwa Sibandze to commence her work. Her contention was therefore an afterthought and should be rejected. See **Dominic Mngomezulu and Others V Rex Criminal Appeal Case No.94/92.**

[22] She also had a difficulty clarifying why Zodwa Sibandze would fabricate a case against her because in her own words they had a good relationship. To that extent, it is clear she had no reason or none has been established on why she had to fabricate a case against her.

[23] The second accused, (at times referred to as the fourth accused), David Mphikeleli Mlangeni testified in his defence and denied taking part in the commission of the offence. He denied having acted in common purpose

with, Ntombi Mdluli, Zodwa Sibandze and Patrick Adams to commit the offence in question.

[24] He confirmed though there having been no break in at the warehouse which ruled out the possibility of there having been any other means used in the theft of the cigarettes than through the use of the keys which would mean it was consented to by all the roll players at the time. That is those who worked in the warehouse together with at least one of the security guards.

[25] Coming to the evaluation of PW1's testimony (that is the accomplice witness), I am convinced that her evidence is without blemish which means that I find it to be credible. She could not be shaken in cross examination and her evidence did not sound fanciful. It was indirectly confirmed by Accused 1 and 2 when they failed to challenge material aspects of it only opting to challenge such for the first time at the time they were giving their versions or at the time they were under cross examination. That as pointed above is in law consistent with an afterthought. I am therefore satisfied that PW1, Zodwa Patricia Sibandze was a credible witness, who testified honestly including exhibiting a comfortable demeanor.

[26] It is clear that the strength of the crown's case is founded in the inherent doubtful nature of an accomplice witness's testimony. The position of our law on the status of such evidence has been a subject of numerous decisions of this Court and the Supreme Court. See in this regard **Pikinini Motsa V Rex Appeal Court Case No.36/2000; Linda Kibho Magongo v The King Supreme Court Case No.35/2010** and **R V Geji Gama 1987 – 1995(3) SLR 330**. See also the South African Case of **Rex V Ncanana (1) 1948 (4) SA 399 (AD)**.

[27] Stating a position supported by a long line of cases, the Supreme Court had the following to say in **Linda Kibho Magongo V The King Supreme Court of Appeal Case No.35/2010 [2010] SZSC 13** at paragraph 6 which clearly captures the practice of our courts and their approach to the evidence of an accomplice witness:-

“It is also important to remember that before looking for corroboration of an accomplice's evidence, the court must first decide whether the witness is credible. If not the matter is at an end since the need for corroboration does not arise. See

Hannah CJ in R V Mandla Homeboy Dlamini 1982 – 86 SLR 384 at 387 D-F quoting S V Mupfudza 1982 (1) ZLR271 which was cited with approval in Botswana in Monageng V The State, CA 37 of 1983.”

[28] I have already covered this aspect of the accomplice’s testimony as I have found that she was credible which means that I now have to consider the second issue, the cautionary approach to the testimony of an accomplice’s evidence. Loosely it is that stage which can be taken to require corroboration yet in reality it is no more than a requirement that caution be applied so as to ensure that the danger of convicting a wrong party is eliminated. Dunn J in *Rex Vs Geji Gama 1987-1995 (3) SLR 330 at 332* put the position as follows:-

“The requirements of this section [237 of the CP & E of 1938] are, by and large easily satisfied. A well-known and established rule of practice, however, requires that even where the requirements of the section have been satisfied, caution be exercised in dealing with the evidence of an accomplice and

that the trier of fact should warn himself of the special danger of convicting on the evidence of an accomplice.”

[29] Section 237 of the Criminal Procedure and Evidence Act of 1938 provides as follows:-

“Any court which is trying any person on a charge of any offence may convict him of any offence alleged against him in the indictment or summons on the single evidence of any accomplice:

Provided that such offence has, by competent evidence, other than the single and unconfirmed evidence of such accomplice, been proved to the satisfaction of such court to have been actually committed.”

[30] The position of our law is that although a court is entitled to convict an accused person on the basis of an uncorroborated evidence of an accomplice witness it must warn itself of the dangers entailed in such evidence. In other words the court is called upon to observe the cautionary rule. Describing

this rule in ***Pikinini Simon Motsa V Rex Appeal Court Case No.36/2000 (unreported)*** the cautionary rule was defined as follows:-

“The rule is no more than a reminder to the court that a facile acceptance of the credibility of certain witnesses may lead to false conclusions. At the same time it has often been stressed by the court that the exercise of caution must not be allowed to replace the exercise of common sense. S V Snyman 1968 (2) SA 582 (A) at 585.

[31] The caution required of a court to exercise, it has to be remembered, does not have to be satisfied only through corroboration. It can instead be satisfied through various other considerations such as those facts which in the ordinary and usual conduct of cases would have the effect of reducing the likelihood of convicting a wrong person. Browde JA stated the position as follows on this issue in ***Pikinini Motsa V Rex Criminal Appeal Case No.36/2000***:-

“Any factor which can, in the ordinary course of human experience reduce the risk of a wrong finding will suffice e.g. the failure by an accused to cross examine crown

witnesses on material aspects of the case or where the accused himself attempts to mislead the court by palpably false evidence.” (Underlining has been added)

[32] This cautionary rule would also be satisfied in those situations where even though the foregoing considerations may be absent, the court understands and is alive to the obvious dangers entailed or inherent in an accomplice’s evidence. This was put as follows by Browde JA in the same **Pikinini Motsa V Rex** (*Supra*) Judgement:-

“Finally I should add that even if the above facts are absent, it is competent for a court to convict on the evidence of an accomplice provided the court understands the peculiar and oft – stated dangers inherent in an accomplice’s evidence and appreciates that rejection of the evidence of the accused and the acceptance of that of the accomplice are only permissible where the merits of the accomplice as a witness and the demerits of the accused are beyond question.”

[33] The accused persons did not only fail to put their case to the crown witnesses particularly the accomplice witness but they tried to mislead the court by putting a palpably false case. This becomes apparent where upon realizing the significance of access or no access to the keys to the warehouse and in particular the controlled area where the cigarettes were kept, the first accused contends for the first time in her evidence in chief that she would give the keys to Zodwa Patience Sibandze, PW1 to keep at night and also that those of the controlled area were kept by Mr Mamba in person. These versions had not been put to the accomplice witness and also to Joseph Khova Gama, so that they could react to them. It was only raised in her defence which is consistent with an afterthought.

[34] Referring to the need for a court to warn itself of the special danger of convicting on the evidence of an accomplice, Schriener J put the position as follows in ***R V Ncanana 1948 (4) SA 399***:-

“The special danger is not met by corroboration of the accomplice in material respects not implicating the accused, or by proof allunde that the offence with which the accused is charged was committed by someone; so that satisfaction of the

requirements of Section 285 does not sufficiently protect the accused against the risk of false incrimination by an accomplice. The risk that he may be convicted wrongly, although section 285 has been satisfied will be reduced, and in the most satisfactory way if there is corroboration implicating the accused. But it will not be reduced if the accused shows himself to be a lying witness or if he does not give evidence to contradict or explain that of the accomplice. And it will also be reduced, even in the absence of these features, if the trier of fact understands the peculiar danger inherent in accomplice evidence and appreciates that acceptance of the accomplice and rejection of the accused is, in such circumstances, only permissible where the merits of the former as a witness and the demerits of the latter are beyond question.”

[35] Upon a closer analysis of the matter I have tried the best I can to warn myself of the dangers inherent in the evidence of an accomplice and I am convinced that taking into account all the circumstances, of the matter, I have to prefer the evidence of the accomplice witness over that of the accused persons. As I said the accomplice witness gave her evidence

honestly and without difficulties unlike the accused persons who were not flowing in their testimony over and above the fact that they failed to put some crucial aspects of their case to the crown witness only for them to confront the crown with such aspects of their case in their defence which is an indicator of an afterthought.

[36] According to PW1, before the offence could be committed, there was an agreement between the First Accused, the current second accused and herself that they enter into a deal with Zega who was going to be allowed to take the cigarettes after substituting them in the boxes with pieces of rags or fabrics or cloths. This was to be done for a fee. I have already accepted the evidence of PW1 over that of the accused persons, who I am aware were only required to give only an explanation. I have accepted that all the role players in the theft of the master cases of the Remington Gold Cigarettes acted in furtherance of a common purpose.

[37] Common purpose is established in our law where two or more people agree to engage or associate in a joint unlawful enterprise. In such a case each one of the said people is responsible for the acts or actions of the other which fall

within their common design. See in this regard ***Philip Wagawaga Ngcamphalala and 7 Others V Rex, Criminal Appeal Case No.17/2002.***

[38] This position was expressed in the following words in ***Rex v Mfanukhona Dlamini and Another Criminal Case No. 28/2013*** at Paragraph 365:-

“Common purpose entails in two or more people agreeing to commit a particular crime or to actively associate in a joint unlawful enterprise. Where the agreement or association is proved, each such accused will be responsible for the specific criminal conduct committed by one of their number, which falls within their common design. See in this regard Jonathan Burchell’s Principles of Criminal Law, Revised 3rd Edition at Page 574, See also S V Therbus 2003 (6) SA 505 (c) as well as Rex V Musa Fakudze and 11 Others High Court Criminal Case No.42/2007.”

[39] If the evidence of PW1 is accepted in this matter, it follows that common purpose has been proved, when considering the agreement shown to have been reached by the three namely PW1, the First Accused and the Second

Accused, to conclude a deal with one Zega whose terms was about the latter being allowed to remove the cigarettes kept at the state warehouse for a fee.

[40] It was argued by the accused's attorney that the cigarettes shown to have been removed by Zega with the full cooperation of the accused persons and PW1, from the state warehouse were valueless and in that sense could not be stolen or put differently they were not items capable of being stolen. I must say that I cannot agree with such reasoning. Firstly the crown led the evidence of Gugu Mahlinza who told this court what the value of the cigarettes shown to have been stolen by the accused persons was. It was shown to have run into millions of Emalangeni. In any event, the accused persons are shown not to have released the said items to Zega for nothing but to have been paid agreed amounts after the removal of each consignment which was not consistent with the disposal of valueless items. I therefore find that the cigarettes were items or goods capable of being stolen.

[41] Given the nature of the evidence, including the testimony of the accomplice witness which I have accepted, I do not find it necessary to determine in the circumstances of the matter whether there is any circumstantial evidence

available to connect the accused with the offence as suggested by counsel for the second accused. The evidence does indicate that cigarettes contained in the boxes (which were by common cause kept at the warehouse, particularly the controlled section) were stolen and substituted in their stead with pieces of clothes or fabrics. These cigarettes are shown to have been removed utilizing the keys as no break-in is shown to have taken place. The keys were kept by the First Accused during the night. The theft itself could not have occurred during the day because Mr Mamba would be there at the warehouse but could only occur at night in line with the accomplice's testimony. The accomplice witness who did not keep the keys acknowledges the crime was committed by her together with both David Mlangeni and the First Accused. The other security guard at night, Joseph Gama is excluded by the accomplice witness and is left unscathed by cross-examination leaving out the two accused persons together with the accomplice witness as the only people against whom an adverse inference could be drawn. Like I said I do not need to be conclusive on this point save to indicate why the thought of circumstantial testimony is even contemplated.

[42] Taking into account all the circumstances of the matter set out above, I have come to the conclusion that the accused persons cannot in law escape responsibility for the master cases of cigarettes stolen at the state warehouse situate in Matsapha and I accordingly find them guilty of the theft of the said cigarettes and I convict them of the offence with which they are charged.



N. J. HLOPHE
JUDGE – HIGH COURT