

IN THE COURT OF APPEAL
FOR THE REPUBLIC OF BOTSWANA

Francistown Case No. 618 of 1980

Criminal Appeal No. 138 of 1981

In the matter between:

MORGAN CASMON

Applicant

and

THE STATE

Respondent

RULING ON APPLICATION
FOR LEAVE TO APPEAL

O'BRIEN QUINN, CJ

This application comes before me as a Single Judge of the Court of Appeal under the provisions of Rule 36 as read with Rule 49 of the Court of Appeal Rules 1975.

The applicant was convicted by the Senior Magistrate at Francistown on 10th August, 1981, on a charge of being in unlawful possession of precious stones and sentenced to 3 years' imprisonment, and a suspended sentence of 20 months' imprisonment for a similar offence committed in 1979 was activated and ordered to run consecutively.

The defence of the applicant, his ground of appeal in the High Court and basis of his application are that the Police "planted" the diamonds on him and that he knew nothing about them. In this application he also applied for leave to appeal against sentence on compassionate grounds.

Having perused the papers and correspondence, I do not consider that any purpose would be served by having this matter heard in Court. The whole question turns on credibility. The Senior Magistrate had to decide whether he believed the three Police Officers or the applicant, and after carefully considering the question and stating that he realized that there were minor discrepancies in the Police evidence, nevertheless held that he believed them and not the applicant.

The applicant has not, either in the High Court or in his written application to this Court, raised any point or argument which has shown or indicated in any way why the learned Senior Magistrate should have believed otherwise.

Likewise, I do not consider that he would be able to show or indicate to a full bench of this Court any reason why this Court should find that the Senior Magistrate was wrong in his finding.

In my opinion the applicant was rightly convicted and I refuse him leave to appeal to the Court of Appeal.

With regard to sentence, the Courts in Botswana look very severely on offences of unlawfully possessing uncut diamonds and particularly on second offenders. In the circumstances of this case I can only say that the learned Senior Magistrate was right to have so sentenced the applicant and to have activated the suspended sentence and ordered it to run consecutively to the main sentence.

I, therefore, refuse leave to appeal against sentence also.

RULING made at the High Court, Lobatse, this 4th day of December, 1981.



J. A. O'BRIEN QUINN
CHIEF JUSTICE