

IN THE COURT OF APPEAL OF BOTSWANA

Criminal Appeal NO. 8 of 1988

In the matter between:

GAKEEDIWE MATLOLELA	Appellant
versus	
THE STATE	Respondent

Appellant in person
Miss P. Solomon for the Respondent

J U D G M E N T

Coram: A. N. E. Amisshah, J. P.
L. De Van Winsen, J. A.
B. A. Doyle, J.A.

AMISSAH, J. P.:

The appellant was tried, I believe, by several magistrates for a number of burglaries and thefts committed within a short space of time in 1983. Sentences were imposed upon him by the various courts some to run consecutively and some to run concurrently.

One of his convictions came before Hannah, J. on review. Hannah J. found no merit in the conviction and sentence in that case. But in the course of his judgment Hannah J set out the other convictions and considered them. He posed the question whether considering the appellant's age, which was twenty-six, he should be given sentences which in effect amounted to seventeen-and-a-half years imprisonment. In the end Hannah J. confirmed the conviction and sentence in the case on review before him.

The next thing was that the accused went before Corduff, J. on appeal in respect of his convictions and sentences. Corduff, J undertook a meticulous exercise setting out the offences committed

by the appellant and the sentences imposed for them. The learned judge found that there were eleven convictions altogether. After analysing the convictions and sentences, he came to the conclusion that what he had to do in the case was a form of rough justice, and he so ordered the sentences for the various offences for which the appellant had been convicted that the effective sentence that the appellant had to serve was twelve years. The order of Corduff J. was made as far back as 1st November, 1984.

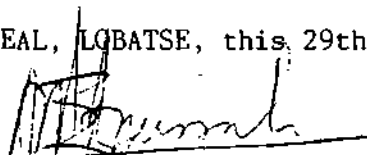
Now the case has come before us on appeal with leave granted out of time by Murray J. The learned judge in his ruling granting leave had stated that he had not been given any satisfactory explanation by the appellant for the delay in making the application. If so, he ought to have refused leave. Having granted leave to appeal, the learned judge then asked this Court to endorse previous judicial comments on the undesirability of cases being brought piece-meal before subordinate courts. If that is intended as a reference to us by Murray J., under section 15 of the Constitution which empowers a judge of the High Court to refer a question of law to the Court of Appeal for consideration and determination, then we have to say that there is no point of law involved. Nevertheless we have looked at the matter.

There is a case to be made for the view expressed by Murray, J. that where several offences are committed, and they can be tried together, they should, as far as possible, be so tried. We have no doubt that that should be the course to take. The question is whether this can be done in all situations. There may be practical problems, some of which have been highlighted in the affidavit put before us by the Commissioner of Police. No doubt, every effort ought


to be made to try together charges against the same accused for offences committed over a period of time which makes it possible for them to be tried together. But beyond saying that we see very little that we can do. We do not see it as an appropriate use of section 15 of the Constitution for invitations to issue to us merely to endorse statements made by other courts.

We have looked at the sentences. Appellant's record is very bad. There is nothing which we can base ourselves on to say that the exercise which Mr. Justice Corduff meticulously undertook was not properly discharged. In the circumstances we dismiss this appeal.

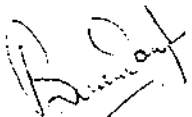
GIVEN AT THE COURT OF APPEAL, LQBATSE, this 29th day of June, 1988.


A. N. E. AMISSAH,
JUDGE PRESIDENT

I agree,


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L. De VAN WINSEN
JUDGE OF APPEAL

I agree,


.....
B. A. DOYLE
JUDGE OF APPEAL.