

IN THE COURT OF APPEAL OF BOTSWANA

Criminal Appeal No. 6 of 1988  
High Court Crim. App No. 196 of 1987

In the matter of:

MOTIKINA KABANNA Appellant

vs

THE STATE Respondent

Appellant in person  
Mr. O.G.B. Marata for the State

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J U D G M E N T

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Coram: T. A. Aguda, JA.  
L de Van Winsen, JA.  
G. Bizos, JA

AGUDA, JA.

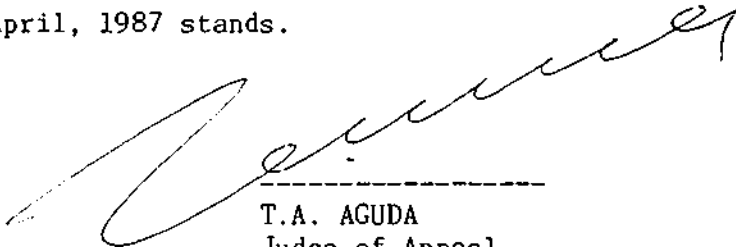
This is an appeal by the Appellant against the sentence passed on him on April 28th, 1987 by the Molepolole Magistrate's Court. He was on that day convicted of house breaking and theft and the sentencing went as follows:

"You are sentenced to 2 years' imprisonment plus 3 strokes of the cane on the first count. On the second count you are sentenced to 2 years' imprisonment again. In addition the one year imprisonment term suspended on the 14th January, 1987 is activated. These terms are to run concurrently but consecutively with whatever term you are currently serving."

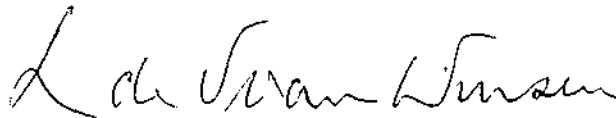
His appeal to the High Court was dismissed. However, subsequently it was discovered that the suspended sentence imposed on 14th January, 1987 which was activated on 28th April, 1987 was in connection with an offence which he had committed in November, 1986.

In this case it was improper to have activated the sentence hence leave to appeal to this Court was granted. I am of the view that had the true facts been brought before the trial Magistrate he would not have activated the suspended sentence of one year.

Therefore the appeal succeeds to the extent that the one year suspended sentence which was activated is set aside. The sentence of 2 years' imprisonment on each count plus 3 strokes of the cane, to run concurrently imposed on the appellant from 28th April, 1987 stands.



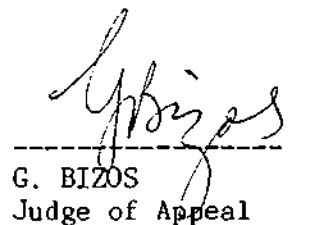
T.A. AGUDA  
Judge of Appeal



I agree

L. de VAN WINSEN  
Judge of Appeal

I agree



G. BIZOS  
Judge of Appeal

GIVEN at Lobatse this 30th day of June, 1988.