

**IN THE HIGH COURT OF THE REPUBLIC  
OF BOTSWANA HELD AT LOBATSE**

**CRIMINAL APPEAL NO. 75 OF 2000**

In the matter between:

**ABRAM MODISE**

**APPELLANT**

vs

**THE STATE**

**RESPONDENT**

Appellant in person  
Mr Attorney Rammekwa with

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**J U D G M E N T**

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**LESETEDI J.**

The appellant in this matter was convicted on a single count of stealing by person employed in the Public Service contrary to Section 271 as read with Section 276 of the Penal Code. He was fined P1000 or 12 months imprisonment in default of payment. The particulars of the offence are that the appellant between the 30<sup>th</sup> March 1998 and 1<sup>st</sup> April 1998 at the mental hospital, Lobatse in the Southern Administrative District of the Republic of Botswana, being a person employed in the Public Service, stole fencing material valued

P800 being property of the Lobatse Mental Hospital which the said property came into his possession by virtue of his employment.

In brief, the evidence led by the prosecution is as follows. On the 1<sup>st</sup> day of April 1998, the appellant was found by the hospital security guard loading two rolls of fencing wire and used fencing poles into his vehicle. Appellant loaded the materials within the premises of the hospital. When asked as to where he was taking the materials, appellant said he had been given the said items by his senior officer. Dissatisfied with the explanation, the security guard asked the appellant to unload those materials pending the confirmation with the appellant's senior officer. The appellant unloaded the materials as directed. The appellant's senior officer denied having granted the appellant permission to take the said materials, and when confronted the appellant denied ever having said he was authorised by his senior officer to take the materials. The police were informed and after having attended at the hospital premises, the investigating officer informed the appellant that he would search at the appellant's home the following morning to find out whether there were no other materials which could have been stolen by him as other materials

were reported to be missing. Instead of reporting for work the following morning to meet the police, the appellant left for his home village where at he obtained the assistance of PW3 to remove some fencing materials from the appellant's home and hid them in the bush. This was done with the aid of a wheel barrow and immediately the deed was done, appellant rushed to the bus stop for travelling back to Lobatse, leaving PW3 to wheel the barrow back from the bush. While wheeling the barrow back to the appellant's home, PW3 met the police who had come to search appellant's home. Upon being confronted by the police about where he was coming from with a wheel barrow, the witness gave a clean breast. He led the police to the fencing materials dumped into the bush, and those materials formed part of the charge sheet.

The Learned Magistrate analysed the evidence before the court and rejected the appellant's explanation that he had been transporting the fencing materials to the storeroom of the hospital when he was seen by PW1. This explanation is different to the one he gave PW1 and the police officers. With regard to the fencing material found in the bush near his home, Learned Magistrate rejected appellant's

that the fencing material was not being hidden but that it was taken to the bush so that PW3 could erect a kraal for the appellant. The learned magistrate was correct in doing so, for there was completely no reason why PW3 would have told such a lie even to the extent of implicating himself if there was an innocent explanation for taking the fencing to the bush.

The appellant has not shown any valid grounds for his appeal to be upheld, neither has he pointed out any error which the learned magistrate may have committed in analysing evidence of the case. He firstly argued that with regard to the items he had loaded into his vehicle he had been sent by his supervisor to deliver them to the hospital and could therefore not be found guilty of following the instructions of his supervisor. He argued that in fact he was apprehended by the security guard when he was bringing the items into the yard from outside. This submission is simply unsupported by evidence in the record. Appellant secondly argued that nothing was found in his possession nor retrieved from him. This also flies in the evidence led at the court aquo by PW1 who reported finding him loading fencing material into his vehicle and ordering him to unload it.

There was also evidence by PW2 and PW4 showing that PW1 had immediately reported the incident to them. As for the material found in the bush near his home is concerned, the evidence of PW3 was properly accepted by the learned magistrate. As I said there was no reason for him to falsely implicate the appellant. I therefore find that the appellant has not shown any good grounds upon which the appeal can be upheld and his appeal against conviction is dismissed.

With regard to the sentence there is completely no merit whatsoever in the appeal, the magistrate leaned backwards to impose the sentence which is extremely lenient. The sentence may well have been so lenient as to fail to reflect the gravity of the offence. Although I was minded to ask the appellant to show cause as to why the sentence should not be enhanced I have upon reflection decided not to do so. The appeal against sentence is also dismissed. Conviction and sentence are confirmed.

DELIVERED IN OPEN COURT AT LOBATSE ON THE 21<sup>st</sup> DAY OF NOVEMBER 2001.

  
I B K LESETEDI  
JUDGE