

IN THE COURT OF APPEAL OF LESOTHO

In the matter between :

**LAHMEYER INTERNATIONAL GmbH**

**APPELLANT**

and

**THE CROWN**

**RESPONDENT**

**Executive Summary**

**The Full Court - being :**

J.H. Steyn, President  
F.H. Grosskopf, Judge of Appeal  
J.W. Smalberger, Judge of Appeal

[1] The appellant, Lahmeyer International GmbH (“Lahmeyer”), appeared in summary proceedings in the High Court before Mofolo J and two assessors on twelve counts of bribery allegedly committed over the period 21 December 1989 to 10 April 1997. At the conclusion of a protracted trial Lahmeyer was convicted on seven counts (being counts 2, 6, 7 and 9 to 12) and acquitted on the remaining five counts. It was sentenced to fines on each of the seven counts amounting to M10 650 000 in all. The present appeal is directed against Lahmeyer’s convictions on all seven counts. There is no appeal by Lahmeyer against sentence. The Crown has noted a cross-appeal in respect of four of the counts on which Lahmeyer was acquitted. It also seeks to appeal against what it claims to be the leniency of the sentences imposed.

[2] The essence of the charges against Lahmeyer was that it, with intent to bribe, had from time to time paid varying sums of money into Swiss bank accounts held by one Z.M. Bam (“Bam”) and his wife (“Mrs. Bam”) who thereafter, acting as intermediaries, had transferred the amounts in question, or part thereof, to Mr. Sole (“Sole”), who at all material times was the Chief Executive Officer of the Lesotho Highlands Development Authority (“the LHDA”) and a civil servant in the employ of the Lesotho Government (and as such a public official). The Crown alleged that the payments in question were made in respect of action or inaction by Sole in his aforesaid capacity and were intended to influence him in such capacity. That Sole was a public official is not in issue in the appeal.

[3] The L.H.W.P. is one of the biggest and most ambitious projects in the world and entailed *inter alia* the construction of the Katse Dam in a remote and inaccessible part of the Highlands of Lesotho. The ambit and objects of the project are set out in the judgment. One of its principal purposes was the delivery of water to South Africa.

[4] It is not necessary to set out the details as to how Lahmeyer came to be involved in the project and how they developed a relationship with Bam referred to above. However, it is common cause that Lahmeyer paid Bam vast sums of money, some of which was on-paid to Sole. The amounts paid to Bam were substantial amounts in cash i.e. M1,495,590 and by way of bank transfers into Bam’s Swiss Bank accounts some M804,213. In all rounded off the sum of M2,3000,000. In terms of the charges before us payments from Bam to Sole were made from the bank transfers into Swiss bank accounts held by Sole.

[5] The crux of the present appeal is whether the payments to Bam, particularly those on paid to Sole, were bribes or were legitimate remuneration for agency work done by Bam under valid representative agreements. It was common cause that the question to be answered was: were these agreements genuine or were they shams, calculated to disguise the true nature of the relationship - i.e. bribery?

[6] We have analysed the evidence extensively in the judgment (see par 15 at p.15 to par 44 at p.39). We proceed to pose the ultimate question at par 45 - p.39 of the judgment, where we say :

“..... in the light of all the evidence adduced at the trial, was Lahmeyer’s guilt established beyond reasonable doubt?”

We go on to say that : “This translates into whether the only reasonable inference to be drawn consistent with all the facts, is that Lahmeyer bribed Sole.”

[7] We then conclude as follows :

“[46] It is common cause that the evidence with regard to counts 6, 7 and 9 to 12 establishes a flow of money from Lahmeyer to Bam and in turn from Bam to Sole. It was conceded on behalf of Lahmeyer that bribery could have been the cause of the payments to Sole, but it was contended that this had not been proved beyond all reasonable doubt. We are satisfied on a conspectus of all the evidence, and having duly stepped back a pace to “consider the mosaic as a whole” that, applying accepted principles of inferential reasoning, the only reasonable inference to be drawn in the present matter is that Lahmeyer paid Bam money for the purpose of bribing Sole, that the money that was passed on to Sole by Bam in respect

of the counts in question was in furtherance of that purpose and that the RAs were not genuine in that they were primarily entered into as devices to disguise the true relationship between Lahmeyer and Bam and to facilitate unlawful payments to Sole. In the result Lahmeyer's appeal against its conviction on counts 6, 7 and 9 to 12 falls to be dismissed."

[8] We then deal with count 2 and conclude as follows at par 57 p.44 :

"[51] In our view the Crown has failed to prove any link between Lahmeyer's payment of FF135 760 to Bam and Bam's payment of FRF 458 600 to Sole. The probabilities in fact show that the payment to Sole derived from Acres and not from Lahmeyer. In the circumstances the Crown has failed to prove its case on count 2 and Lahmeyer's appeal against its conviction on count 2 accordingly succeeds."

[8] The Cross Appeal by the Crown

Counsel for Lahmeyer contended that the Crown did not have a right to appeal in accordance with the provisions of sec. 7(2) of the Court of Appeal Act (Act 10 of 1978) which limits the right of the Crown to appeal only "upon a point of law." This provision was however amended by Act 8 of 1985. As a consequence the Crown now has the same rights of appeal as an accused, i.e. it can appeal on any matter "of fact or law".

[9] The Crown cross-appealed on counts 3, 4, 5, and 8 on which the High Court acquitted Lahmeyer. We hold that the Crown's appeal succeeds on counts 3 and 5 and is dismissed in respect of counts 4 and 8.

[10] Sentence

We deal with the various considerations that should be borne in mind by a Court of Appeal in general, and by this Court on the facts of this case in particular.