

IN THE COURT OF APPEAL OF LESOTHO

In the matter between :

LAHMEYER INTERNATIONAL GmbH

APPELLANT

and

THE CROWN

RESPONDENT

Held at Maseru on 22-26 March 2004

CORAM:

Steyn, P.

Grosskopf, J.A.

Smalberger, J.A.

Judgment

Summary

*Appeal - Common Law Bribery - Circumstantial Evidence - What inference justified -
Cross-Appeal by Crown - Whether Crown has a right of appeal against sentence -
Sentence - Considerations governing.*

THE FULL COURT

[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] Before proceeding further it is necessary to say something about the judgment of

the court *a quo*. It is not a model of lucidity and, as pointed out in argument, it contains a number of material misdirections. We have no doubt, however, that it represents an honest and concerted attempt by the learned trial judge and his assessors to grapple with the evidence and the issues in what is a difficult matter. The court made adverse credibility findings against the defence witnesses which were not always backed by cogent reasoning. The flaws in the judgment are such that we are at large to consider the matter afresh. In doing so we will have proper regard to those findings of the court that were justified.

[4] The events leading to the charges against Lahmeyer arose out of the Lesotho Highlands Water Project (“the LHWP” or “the project”, as the context dictates). The governments of Lesotho and the Republic of South Africa concluded a Treaty to govern all the activities associated with it. The project was described by this Court in its judgment in the matter of *Sole vs The Crown* (C of A (CRI) 5/2002) delivered on 14 April 2003, (in a passage subsequently quoted in *Acres International Limited vs The Crown* (C of A (CRI) 8/2002) (“the *Acres* judgment”) as :

“[O]ne of the biggest and most ambitious dam projects in the world, which entailed *inter alia* the construction of the Katse Dam in a remote and inaccessible part of the highlands of Lesotho. Initially the project involved the