

IN THE HIGH COURT OF LESOTHO.

In the Application of :

'MASEFATSANA MOLOI

Applicant

v

COMMISSIONER OF POLICE
&
SOLICITOR GENERAL

Respondents

REASONS FOR JUDGMENT

Filed by the Hon. Mr. Justice F.X. Rooney
on the 22nd day of January, 1982.

Mr. Maqutu for the Applicant,
Mr. Tampi for the Crown.

On the 15th January, 1982 I made a final order in this case in the following terms :

1. That the rule nisi be discharged except to the extent that it had already been confirmed by my order of the 11th January, 1982.
2. The respondents are ordered to ensure that the proviso to section 31(3)(b) of the Internal Security (General) Act 1967 (as amended) is complied with in respect of the Detainee.

I reserved the question of costs for further consideration and, indicated that I would give my reasons for my decision at a later date.

Persuant to the order of the 11th January, arrangements were made to enable this Court to receive the evidence of the Detainee. This was done on the 13th January when the Court sat, in camera, at the Central Police Station, Maseru. Those present at the hearing were:

Mr. Maqutu	- attorney for the applicant
Mr. Tampi	- counsel for the respondents
Colonel Mabote	- representing the Commissioner of Police
Mr. Lehohla	- Registrar of the High Court
Mr. Sesioana	- Interpreter (whose services were not required)

The purpose of this special session of the Court was explained to the Detainee, who stated that he had no

objection to

objection to his giving evidence under oath. He was then examined by the legal representatives of both parties. The questions put to the witness were confined to the issues before the Court, which have already been set out in my written order of the 11th January.

The Detainee told the Court that when he was arrested he had in his possession two pairs of trousers, three shirts and two pairs of pyjamas. When he sends out his clothing for washing, it takes about two weeks before they are returned to him. He denied that he ever said that clothing from outside should not be brought in for his use, but he agreed that on one occasion he sent back certain items of clothing which he did not require. The Detainee had no complaint to make to the Court about his treatment in regard to clothing.

This evidence disposes of the applicant's complaint that the police are withholding the Detainee's clothes for some sinister reason.

The Detainee told the Court that he was interrogated by police officers on two days during the first week in December. He said that he answered all the questions which were put to him. However, the police expressed dissatisfaction with his answers and accused him of withholding information. He denied this. He was again questioned during the week before Christmas. The subject matter of the second interrogation was not the same as that on the first occasion. His interrogators made no comment on his answers. Nothing was said to him concerning the Commissioner's opinion, if any, on any occasion.

After taking the evidence of the Detainee, the proceedings at the Central Prison, Maseru were concluded. The Court listened to argument in the High Court and reserved its ruling as already indicated.

Mr. Maqutu submitted that the application in regard to the Detainee's clothing was justified in view of the delay which the Detainee experienced in obtaining a return of his clothes after they had been washed.

On the main issue Mr. Maqutu argued that in the absence

of an affidavit from the Commissioner of Police there was no evidence that he had not formed the opinion that the Detainee had answered all questions put to him to the Commissioner's satisfaction. He submitted that the Commissioner was obliged to keep the case of the Detainee under constant review and could not forget about him and thus allow him remain in custody until such time as the 60 days provided for in the statute elapsed. Mr. Magutu criticised the failure of the police to commence the interrogation of the Detainee during the month of November or to arrange for a resumption after the interrogation held before Christmas. He submitted that this Court is entitled to take the view that in the circumstances disclosed, the Commissioner was by his inactivity defeating the object of the statute.

In reply Mr. Tampi argued that Section (3) (a) should not be subjected to a strained interpretation which would have the effect of defeating its purpose. He submitted that the evidence showed that the Detainee had been interrogated and that his detention was lawful until such time as the Commissioner formed the opinion that he had replied satisfactorily to all questions at the said interrogation.

I have no knowledge of the matters upon which the Detainee is required for interrogation. Whatever the nature of the investigations which the Commissioner is conducting through his subordinates, it is not to be supposed that these are capable of immediate resolution. The Act has limited the total period during which a person may be held under the section to 60 days. The evidence is to the effect that the Detainee has been required to answer questions. It cannot be said that he was detained in the first instance for any other reason than is provided for under the Act.

The detention of a person arrested under the Act, if lawful in the first instance, remains lawful until such time as the Commissioner has formed his opinion, or until 60 days have elapsed, whichever is the lesser period. While it would have been helpful to this Court to have had placed before it some indication of the state of the Commissioner's mind on the matter, there is nothing to suggest that the Commissioner has forgotten about the Detainee or that he

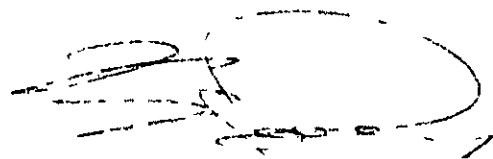
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has formed an opinion that he has replied satisfactorily to all questions. In the circumstances it cannot be said that the initial detention was unlawful or that the continued detention has become unlawful. For these reasons the applicant did not succeed except to a limited extent.

Mr. Tampi has not sought an order for costs against the applicant. Mr. Maqutu submits that the proceedings were justified and that the applicant's costs should be paid by the respondents.

As I mentioned in my ruling of the 11th January, 1982, the Detainee was not visited by a magistrate, once a week or at all between his arrest on the 20th November and the visit of Mr. Pali to his place of detention on the 10th December. Mr. Tampi on behalf of the respondents gave the assurance that attention is being given to ensure that the mandatory provisions of the Act in regard to detainees being visited by magistrates of the first class at regular and proper intervals will be enforced in future. I am happy to receive that assurance.

I take the view that this applicant, although only partly successful, was justified on the sole grounds that the Detainee was not dealt with in accordance with law in so far as magistrates' visits are concerned. No explanation has been given to this Court to account for the failure of the authorities to make the required arrangements. In these circumstances I am of the opinion that the respondents should bear the consequences of their failure to respect the statutory rights of the Detainee and the costs of this applicant are awarded against them.



F.X. Rooney
JUDGE

22nd January, 1982.

Attorney for the Applicant : Mr. Maqutu,
Attorney for the Respondents: Law Office.