

IN THE HIGH COURT OF LESOTHO

In the Application of :

MOTHEO MOKOALELI

Applicant

v

COMMISSIONER OF POLICE
SOLICITOR GENERAL

Respondents

REASONS FOR JUDGMENT

Filed by the Hon. Mr. Justice F.X. Rooney
on the 6th day of October, 1982.

Mr. Gwentshe for the Applicant
Mr. Ntlhoki for the Respondents.

On the 10th September, 1982, the applicant herein moved this Court for an order in the nature of habeas corpus in respect of his son Lehlohonolo Mokoaleli who was taken into Police custody on the 7th September. A rule nisi was issued and an affidavit in opposition was filed by the respondents. On the 23rd September, I allowed the application with costs and I now give my reasons for making the order.

In his founding affidavit the applicant stated that his son was born in 1958 and that thereafter he had a dispute with the boy's mother 'Marapelang Mokoaleli. As a result she left with her son to live in Johannesburg where the boy grew up.

Chief Lefa Moremoholo of Bela Bela in the Berea district confirmed the identity of the person detained and that he was born in Lesotho in 1958. The chief said that he had made arrangements for the applicant's son to pay basic tax in Lesotho.

From the manner in which the application was presented, it is obvious that the applicant was under the impression that his son was being detained under the laws relating to the control of aliens entering and

2/ residing in

residing in Lesotho. He sought in the present proceedings to establish inter alia his son's birthright as a citizen of this country.

The answering affidavit was sworn by General Shadrack Matela, the Commissioner of Police.

He said :

"On 7th September, 1982, I received information which roused my suspicion that one Ben Singo, a South African citizen born in Cape Town and who had previously been and was once more in Lesotho under the name of Lehlohonolo Mokoaleli, had committed or was intending to commit certain acts in contravention of section 12 (3) of the Internal Security (General) Amendment) Act No.1 of 1974.

4.

In the evening of the same day, 7th September, 1982 around 7.00 p.m. I sent out some senior members of the Police Force led by Captain Takalimane to mount a search and arrest Ben Singo alias Lehlohonolo Mokoaleli for interrogation into the information I reasonably suspected him to be in possession of.

7.

The said Ben Singo also known as Lehlohonolo Mokoaleli is still in detention to date and has not answered all questions to my satisfaction and I verily believe that his continued detention is justifiable."

In addition General Matela confirmed the arrest of the applicant and the issue of an order of detention in respect of him, a copy of which he annexed to his affidavit. The order names the detainee as Lehlohonolo Mokoaleli.

In a replying affidavit, the applicant denied that his son was born in Cape Town. He admitted that the alias Ben Singo was acquired by his son in Johannesburg as he grew up as a member of the Singo family. The applicant disputes General Matela's assertion that Lehlohonolo was detained for reasons authorised by security legislation and stated his belief that his son was detained for a suspected breach of the immigration laws.

The form of affidavit used by General Matela in this case is similar to that used in 'Manthakoana Mahase v. Commissioner of Police and Another CIV/APN/70/82

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unreported and about which I made the following observations:

"Section 12 of the statute quoted by General Matela amends section 31 of the Internal Security (General) Act 1967 in sections (3) (4). There is no sub-section (3) to section 12 of the 1974 Act. The amended section 31 includes the enabling provisions which authorises in limited circumstances the detention without trial of certain persons. The new sub-section does not create any new offences or impose any obligations and it is therefore difficult to understand how it can be said that a person had committed or was intending to commit offences in contravention of the section.

Be that as it may, General Matela did not allege that he suspected upon reasonable grounds that the Mahase brothers or either of them had committed or intended to commit any offence under the 1967 Act or any offence involving damage to property of the state or of any person. The General did not say that he was of the opinion that the Mahases were in possession of information relating to the commission of an offence or intention to commit an offence. Instead, it is clear from what General Matela has deposed to in the affidavit quoted above that he acted on information which aroused his suspicions. He has given no indication as to the nature or extent of the information upon which he relied.

The point to be emphasized is that the enabling section 31 (3) does not authorise the Commissioner or anyone else to arrest or cause the arrest of any person upon suspicion unless it is based upon reasonable grounds as illustrated in the recent case of Masefatsana Moloi v. Commissioner of Police and Another (CIV/APN/203/87 (unreported)). As the arrest and the detention of the two men was procured because of rumours, the police acted outside the scope of the enabling legislation, these were unlawful actions taken by the police and this Court was obliged to put an end to this state of affairs by ordering the immediate release of the brothers from custody."

I am unable to see any distinction between the two cases and none has been indicated to me. There is, therefore, no reason why a different view should be taken of this application.

Mr. Ntlhoki informed the Court that the exact grounds upon which General Matela acted in this matter could not be disclosed to this Court for reasons of State security.

4/ So be it. In hiding


So be it. In hiding behind the defensive screen of State security, the respondents at the same time effectively disarmed themselves. In the case of 'Masefatsana Moloi v. Commissioner of Police and Another CIV/APN/203/81 (unreported) having referred to the case of Sigabo v. Ministry of Defence and Police and Another 1980(3) S.A.

I concluded

"Where an official in the exercise of his functions denies that he has acted unlawfully or unreasonably and avers that he has acted within the limits of the powers conferred upon him by a statute and that he has reason to believe the existence of the state of affairs which the statute requires must exist before the powers may be exercised, but, declines to state what his reasons are for that belief, or what the circumstances are which rendered his belief reasonable, that may in a proper case give rise to an inference that the powers conferred by the statute were improperly exercised and that the reasonable belief which was a condition for their exercise did not exist. (Sigaba's case Supra). In the result, the exercise of State privilege may have the unforeseen result that the State is thereby unable to establish that its officers acted in accordance with law."

The Court was left in the position that the applicant's allegations were simply denied and ineffectively answered by a bald and unsupported statement that Lehlohonolo was lawfully detained. Where the liberty of an individual is in issue this Court cannot be satisfied by such an answer.

In the result therefore the respondent failed to satisfy me that the arrest and detention of the applicant's son was in accordance with law. It was directed that he be immediately released and that the costs of the proceedings be borne by the respondents.



F.X. ROONEY,

JUDGE

6th October, 1982.

Attorney for the Applicant : Mohaleroe, Sello & Co.
Attorney for the Respondents: Law Office.