CIV/APN/282/82

IN THE HIGH COURT OF LESOTHO

In the Application of :

MOTLATSI MAHASE Applicant

v

1. THE COMMISSIONER OF POLICE)
2. THE SOLICITOR GENERAL) Respondents

J U D G M E N T

Delivered by the Hon. Chief Justice, Mr. Justice T.S. Cotran on the 22nd day of February, 1983

It is common cause that the applicant Motlatsi Mahase, who owns a dry cleaning business, was arrested by a Lt. Mabathoana on the 2nd March 1982 and detained presumably under s.31(3) of the Internal Security (General) Act 1967 as amended (principally by Act 1 of 1974) until the 6th April 1982 when he was released by order of the High Court.

His house and his person had been searched concurrently with his arrest. Nothing was found on his person or in the house by way of literature or pamphlets or weapons etc. to indicate that he was engaged or was about to be engaged in subversive terrorist or other nefarious activities against the State. During the search however the sum of M2000 was found in a cupboard and these were seized. The 1967 Act (since repealed except for s. 32A and replaced by the Internal Security(General) Act No.6 of 1982) permitted security officers to arrest and detain a suspect, to search without a warrant, and to seize any article, including money, the latter if there is reason to believe that it was to be used to finance the activities previously referred to (s.23A). The only limit to these drastic powers is that in invoking the Act (apart from basic human rights which must be observed) its provisions must be strictly complied with and if not the detention is invalid.

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It was conceded by Crown Counsel during argument

(a) that the applicant had not been charged with any offence either under the security laws or under any other law subsequently to his arrest, detention, and eventual release,

(b) that several demands for the return of the M2000 had not been met with success.

This application was launched to order the Commissioner of Police to return the money. The applicant also seeks alternative relieve.

The application was resisted in toto.

Lt. Mabathoana had averred (in November 1982) that he did not seize the M2000 because he suspected that the applicant intended to use the money to finance subversive terrorist or other nefarious campaign against the State but because he had reason to believe that the M2000 had something to do with another offence. I will assume that the police are entitled to seize in the course of a search on reasonable suspicion that the person may have committed a certain offence other property that may become subject to a charge under a different offence. The only suspicious circumstances mentioned by the Lt. relating to the M2000 was that the notes were "brittle" and "tore into small pieces upon mere touch" and that he has evidence "of a woman with whom a truck full of notes were kept after they had been stolen".

The applicant had averred that the only law upon which the police could seize his money was under s.47(1) of the Criminal Procedure and Evidence Act 1981 and in terms of that section it was encumbent upon the officer to surrender it to a magistrate which he did not do. The officer avers that he was acting, not in terms of s. 47(1), but in terms of s. 52(c) of the Act.

Section 52 provides :

"A policeman who seizes any article which is concerned in or on reasonable grounds believed to be concerned in the commission or suspected commission of an offence, whether within Lesotho or elsewhere, or which may afford evidence of the commission or suspected commission of an offence whether within Lesotho or elsewhere or which is intended to be used or is on reasonable grounds believed to be intended to be used in the commission of an offence:-

(a) may, if the article is perishable with due

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regard to the interests of the persons concerned, dispose of the article in such manner as the circumstances may require or

(b) may, if the article is stolen property or property suspected to be stolen, with the consent of the person from whom it was seized, deliver the article to the person from whom, in the opinion of such policeman, such article was stolen, and shall warn such person to hold such article available for production at any resultant criminal proceedings, if required to do so; or

(c) shall, if the article is not disposed of or delivered under paragraph (a) or (b), give it a distinctive identification mark and retain it in police custody or make such other arrangements with regard to the custody thereof as the circumstances may require."

The Lt. (and Crown counsel if I may add) seem to think that under this subsection the police have the power to seize a person's property and keep it indefinitely. This is not so. If they are labouring under a myth that such a power exists it should be exploded forthwith.

The Common Law of the land (barring a state of emergency and legislation thereunder) consists of checks and balances. The police have the right and duty to investigate crime, apprehend offenders, seize property suspected of being used for or in the commission of offences, and are allowed reasonable time to bring the suspected person to justice. The citizen has a duty to facilitate and assist the police in their task, but if himself or his property is under suspicion he has a right to demand to know on what charge or charges he is being held and the grounds upon which his property has been seized and as a corollary a reasonable time must be allowed by the citizen to enable the police to gather whatever evidence they can to put him on trial.

What is a reasonable time depends on the circumstances of each particular case and cannot be circumscribed with precision.

The sum total of the evidence on the papers before me is that after almost a year the police have not been able to institute proceedings civil or criminal that would prima facie justify the continued seizure of the applicant's money. It is as obvious as anything can be therefore that so far (three

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months after November 1982) the police have no evidence except the palpably flimsy items that appear in Lt Mabathoana's affidavit and these, are insufficient to prosecute.

The first item is the condition of the notes. If the notes, of whatever denomination, "tore into small pieces upon mere touch" the officer did not tell me how he was able to count them and reassemble them with their serial numbers. Crown counsel was unable to produce a specimen for me to see but said something about the notes being sent to an "expert" for analysis but surely by this time the report must be at hand. The irresistible inference is that the opinion of the "expert" could not have materially advanced the case against the applicant.

The second item is about the woman who was "found with a truck full of notes" but the officer says nothing to connect those notes with the notes seized from the applicant.

In short I find the evidence in the officer's possession of dubious quality and his affidavit vague rather devious. He may be encountering difficulties in the investigations but he had not taken the Court into his confidence. However I am prepared to grant more time for the conclusion of the investigations. I make the following orders:

1. The 1st respondent is given two months from today to complete police investigations.
2. The 1st respondent will then submit the police docket to the Director of Public Prosecutions who would decide whether the evidence available justifies the institution of proceedings against the applicant.
3. If criminal proceedings are instituted the money exhibit should be surrendered to the clerk of Court in terms of s. 55 of the Criminal Procedure and Evidence Act 1981 and the trial proceed expeditiously.
4. If no criminal proceedings are instituted within 10 days of receipt of the docket by the Director of Public Prosecutions the money (M2000) should be returned by the police to the applicant in terms of s. 53 of the Act.

The respondents will pay the costs of the application.

CHIEF JUSTICE
22nd February, 1983

For Applicant: Mr. Matsau
For Respondents: Mr. Mochochoko