CIV/T/435/83

IN THE HIGH COURT OF LESOTHO

In the matter of :

THABO SEKHESA Plaintiff

v

1. SOLICITOR GENERAL
2. MINISTER OF DEFENCE } Defendants
3. DIRECTOR OF NATIONAL SECURITY

R U L I N G

Delivered by the Hon. Chief Justice, Mr. Justice T.S. Cotran on the 21st day of November, 1983

The plaintiff is claiming damages in the sum of M11,000 against the defendants for unlawful arrest and detention from the 3rd of June until the 29th July 1983.

In their plea the defendants say that the plaintiff was arrested lawfully in terms of s.32 and s.33 of the Internal Security (General) Act 1982 and held in custody until 1st July. They admit however that his detention thereafter for a period of 27 days was unlawful and offered to pay damages.

The plaintiff requested defendants to furnish him with further particulars regarding the plaintiff's detention for the period between 3rd June 1983 and 1st July 1983.

Defendants replied that all, save one of the particulars requested, are matters of evidence and detail that would emerge at the trial.

The plaintiff moved the Court under Rule 30(5) to compel the defendants to supply those particulars.

It seems abundantly clear to me that this application

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must be refused. The main issue is clear, viz, whether the arrest and detention for the disputed period was lawful or unlawful, and this cannot be decided unless evidence is heard. What the plaintiff is seeking, under the guise of a request for further particulars, is in reality a judicial interpretation in advance of argument, on the procedural aspect of extremely complex and difficult sections in the Act. Any ruling on particulars may well be a decision on the question of upon whom does the onus of proof lie and which of the contesting parties should begin.

I need point out only some of these difficulties and complexities :

1. Section 32 sanctions arrest and detention for 14 days but does not expressly provide for the arresting officer to give the detainee reasons for his suspicions either orally or in writing and is under no obligation to bring him before any court.

2. Section 33(1) enjoins the Commissioner in certain circumstances to make an interim order of custody for 14 days. This order must be in writing. The purpose is presumably to give authority to the person in charge of a prison or some such place, to hold and keep the detainee, but again there is no express provision that a copy of this order should be served on the detainee or his relatives within a specified time. Nor is there any provision that requires the Commissioner to disclose to the detainee the grounds of his suspicions. The Commissioner is obliged to report the detention to the Minister but there is no provision about the method or timing. Section 48 is imprecise because it speaks of "as soon as may be" and "in such manner as the authority considers most efficacious". How soon and what method must be of necessity vary from case to case.

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3. It is only after the elapse of a period of 28 days that under the express provisions of the law (s.35(2)) that notice is required to be given to a detainee that the matter of his arrest and detention has been referred to an advisor. After this stage the procedure is better spelt out. The defendants as I said admit liability in this respect.

The general maxim is omnia praesumuntur rite et solemniter esse acta, i.e. all things are presumed to be correctly and solemnly done until the contrary is proved. The Act is of course a penal act but it is not possible today to say that the maxim should be jettisoned. The presumption is in any event rebuttable.

If there is anything to be implied into these provisions by way of judicial interpretation is a matter that has to await the trial. The Court is not prepared to say today that it ought to incorporate into the law, by implication, something upon which the law is either silent or imprecise.

Let me add that a detainee (s.40(4) of the Act) has the right to be treated as an unconvicted prisoner in terms of the Prison Rules 1957 (Vol II Laws of Lesotho p. 1300) unless the Minister directs otherwise. We do not know if there was a contrary direction by the Minister. The Prison Rules are not inhumane. The standard of accommodation and other amenities provided must perforce depend upon the financial and manpower resources of the individual country. The rules generally provide for beds and bedding baths etc... but not the exact numbers of blankets or nature and standard of conversational civility that ought to be observed between warder and prisoner. If there has been infringements that entitles the detainee to damages only the trial Court will be able to determine on the evidence adduced.

The application as I had earlier intimated is dismissed with costs.

CHIEF JUSTICE
21st November 1983

For Plaintiff: Mr. PHEKO
For Defendants: Mr. Tampi