

IN THE HIGH COURT OF LESOTHO

In the Application of :

LETSOSA HANYANE

Applicant

v

THE DIRECTOR OF PUBLIC PROSECUTIONS Respondent

REASONS FOR JUDGMENT

Filed by the Hon. Chief Justice, Mr. Justice
T.S. Cotran on the 23rd day of March 1983

This is an application for bail pending appeal to the Court of Appeal.

The applicant was tried in the High Court before Mofokeng J sitting with one assessor on a charge of murder and was found guilty of that crime but with extenuating circumstances. He was sentenced to ten years imprisonment.

On the 8th March 1983 I dismissed the application and my reasons for doing so now follow.

The grounds put forward by Mr. Sello are the usual grounds put forward in applications for bail pending trial. These are important but in my view are not all prevailing and are simply factors to be taken into account. They were buttressed by, in essence, two further grounds.

The first point was one of law, viz, that the Court ought to have given more time to the defence to call what they thought was a vital witness who was expected to testify to a version of the incident favourable to the applicant. The witness was very ill and it would seem she could not be brought to a Maseru hospital or for the Court itself to proceed to Mafeteng to take her evidence there. The Judge did not know what were the prospects of her recovery and most importantly, its timing.

/Nevertheless

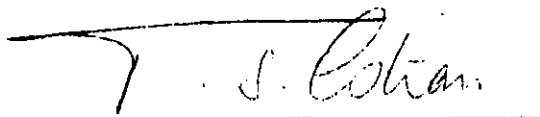
Nevertheless he waited for one week. The Judge dealt in his Judgment fully with this matter and indeed appears to have assumed, in favour of the applicant, that if she had actually given evidence as expected it would not have swayed his findings.

The second point is that the applicant has reasonable prospects of success because an appellate tribunal may well take a different view on the credibility of witnesses and more particularly of the single whose testimony the Judge accepted.

It was common cause at the trial that the applicant had shot and killed the deceased. He pleaded self defence but that plea was rejected. It was a difficult trial but I have not been persuaded that there are reasonable prospects of success either on the law or on the facts.

My attitude towards applications for bail following upon conviction in a superior Court are found in Motloug and others v R. 1974-1975 LLR 370 and need not be repeated. I do not consider "an arguable case" as tantamount to "reasonable prospects" of success. An appeal is a rehearing and an appellate tribunal has on occasions taken a different view of the facts but this is a rare occurrence and is not per se a reason to grant bail.

As I intimated earlier bail pending appeal was refused.



CHIEF JUSTICE
23rd March, 1983

For Applicant : Mr. Sello

For Respondent: Mr. Peete