CRI/T/32/82

IN THE HIGH COURT OF LESOTHO

In the matter of :

R E X

V

SETENANE MABASO
THABISO MOHLOUOA

RULING - MISJOINDER - REASONS THEREOF.

Delivered by the Hon. Mr. Justice M.P. Mofokeng
on the 14th day of April, 1983.

To appreciate the significance of this ruling it is best that events are narrated, albeit briefly, in their proper sequence.

The accused, Setenane Mabaso, was indicted on a charge of murder. The details thereof do not concern us at the moment. However, when he appeared before me, Crown Counsel stood up and read to the Court a notice in writing, couched in terms of section 5(c) of the Criminal Procedure and Evidence Act 10 of 1981 which gives the Director of Public Prosecutions power to "discontinue in writing at any stage before judgment is delivered any criminal proceedings instituted or undertaken by himself ...." There was nothing the Court could do but let the accused go. He was not entitled to a verdict at that stage because he had not yet pleaded to the charge.

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In the afternoon of the same day, two accused persons appeared before me on a charge of murder. The provisions of section 144 of the Criminal Procedure and Evidence Act (supra) were purportedly invoked. One such an accused was the person who had appeared before me in the morning and against whom the Director of Public Prosecutions had decided, for reasons best known to himself, to invoke the provisions of section 5(c) as already explained.

The general rule is that "no person shall be tried in the High Court for any offence unless he has been previously so committed for trial by a magistrate ...." (Sec. 92(1).

One such committal is effected after a preparatory examination has been duly held and concluded in a subordinate Court. The latter procedure was followed in the case of Setenane Mabaso. The exception to invoking the general rule, in terms of section 92, is that provided for by section 144. All that the latter section does is to disperse with the holding of the preparatory examination. It follows, therefore, that where the provisions of section 92 have been <u>duly</u> satisfied there is no room for the subsequent application of section 144. It would be an absurdity.

In the case of <u>Rex v Rampine & Another</u>, 1979(1) LLR. 377 at 381 it was held that an act similar to what the Director of the Public Prosecutions has done in the present case i.e. had liberated an accused person and now wished to re-indict him again, he could not do so because as a consequence of his act the committal had fallen away. The preparatory examination has to be re-opened and accused re-committed. That has not been

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