IN THE HIGH COURT OF LESOTHO

In the Matter between

SHADRACK NDUMO Applicant

v

THE CROWN Respondent

J U D G M E N T

Delivered by the Hon. Mr. Justice B.K. Molai
on the 24th day of January, 1983.

The applicant and two others are allegedly detained in gaol on charges involving High Treason, alternatively sedition or contravening the Internal Security (General) Act 1967. The applicant makes this application for an order of the court releasing him on bail pending trial before the High Court. The application is opposed by the Director of Public Prosecutions on behalf of the Crown.

In his founding affidavit, the applicant depones, inter alia, that he has no intention to evade his trial if released on bail. After all, during the period between 16th September, 1982 and 24th October, 1982 while under police detention for interrogation, he was not in the police cell and was allowed to stay outside the charge office during day time. He did not then run away. He is a priest in the Anglican Church. He has a wife who has been in hospital since October, 1982. He has three minor children who are presently in the care of relatives. He wishes to be released on bail so that he can be able to attend to his ill wife and minor children.

In his opposing affidavit, the Director of Public Prosecutions also depones, inter alia, that the applicant

2/ together with .....

together with two others are now indicted before the High Court for trial on serious charges of High Treason, sedition and contravention of the Internal Security (General) Act 1967. The charges against the applicant and others (many of whom are still at large) are as a result of their treasonable and seditious activities against the State and Government of Lesotho committed at the National University campus, Teyateyaneng, Maseru in Lesotho and also at Fcksburg and Senekal in the Republic of South Africa. If released on bail the applicant is therefore likely to run away and not stand his trial thus prejudicing the ends of justice. The Director of Public Prosecutions further depones in his founding affidavit that most of the witnesses who will testify in the pending trial against the applicant and his co-accused are accomplices who participated in the crimes of which the applicant is allged to have been the prime mover and ring-leader. The applicant as their leader and church leader has considerable influence over the witnesses and will, if released on bail interfer with the witnesses to the detriment of proper administration of justice.

Major Ramakhula Ramakhula of the Lesotho Mounted Police who is the investigating officer in the case against the applicant and his co-accused has also filed a similar opposing affidavit in which he avers that his investigations have revealed, among others that the applicant is the Chief Architect of the so-called L.L.A activities in the northern districts of Lesotho. His investigations to try and apprehend numerous of applicant's collaborators - still at large - are continuing. If released on bail the applicant is likely to flee the country and join his collaborators some of whom are operating outside Lesotho. Major Ramakhula further depones that if admitted to bail

3/ the possibilities ....

the possibilities, that in his position, the applicant will be able to interfer with Crown witnesses thus jeopardizing the Crown case, are high.

The applicant has filed a replying affidavit in which he strongly denies that he intends evading his trial or in any way interfer with crown witnesses.

Section 109 of the Criminal Procedure and Evidence Act 1981 empowers the High Court to admit an accused person to bail even where he is charged with murder, High Treason or sedition which are normally not bailable offences in the subordinate courts - see Sec. 99 of the Criminal Procedure and Evidence Act, supra. However in Moletsane v. Rex 1974 - 5 LLR 272 at p. 273 Cotran J. (as he then was) is recorded as having said that the release on bail on such offences is the exception rather than the rule and there must be good reasons shown for departing from the rule. I respectfully agree.

It has been argued before me that while under police detention for interrogations, the applicant was not strongly guarded and could have absconded if he had the intention to do so. This was vehemently denied by the crown counsel who contended that according to the affidavit of Major Ramakhula, the applicant was at all material times under the police guard and could not have escaped even if he wished to . There is clearly a dispute of facts on this issue and it cannot therefore be satisfactorily resolved on affidavits. The important thing however, is that the application is opposed by the Director of Public Prosecutions. I have been urged during arguments to give due weight to what the applicant has said under oath in his

affidavit. This the Court has certainly done. However, the court must likewise give serious consideration to what the Director of Public Prosecutions and the senior police officers say on oath in application of this nature. They are responsible Government officers who play a very important role in the proper administration of justice. What they say on oath in affidavits must never be slightly discarded as if it were a big joke. In the words of Ramsbottom, J. in Lobel and Another v. Classen 1956 (1) S.A. 531 quoted with approval in Moletsane v. Rex, supra

> "The court must rely upon what it is told by representatives of the Crown in applications of this kind ....., the court relies upon the police and counsel for the Crown not to make statements without a full sense of responsibility."

In his work, the Outlines of South African Criminal Law and Procedure by A.V. Lansdown at page 215, the learned Author has this to say on the subject of bail application :

> "The main consideration in the decision of an application for bail when it cannot be claimed as of right (as in the present case), is whether the granting of the application is likely to prejudice the ends of justice and in particular whether, having regard to the circumstances of the case, for instance, the nature of the charge and the severity of the possible sentence, the accused is released would be likely to stand his trial or to endeavour to evade trial by sacrificing his bail".

It cannot be seriously disputed that charges of High Treason, Sedition and contravention of the Internal Security (General) Act 1967 are serious charges. I shall not go as

5/ far as saying .....

far as saying that the applicant is guilty of these serious offences for this is a matter still to be tested in due course at the trial of the applicant and his co-accused. We must, however, have a starting point some where. For this reason, it can be accepted as a starting point that it is possible that at the close of his trial, the applicant may be convicted on the serious charges he and his co-accused are now facing. In that eventuality, the sence is likely to be a commensurately serious one. That being so, the existence of the incentive to abscond must obviously be greater now than it was at the time when the applicant had not been served with any charge.

Moreover, the offences against which the applicant and his co-accused are allegedly charged are political ones. It must be borne in mind that people who commit these political offences are more often than not people of high political morals and ideals who commit them not for personal gains but because of their strong political view points or beliefs. Offences of this nature may carry for a certain section of the community very little or no social disgrace at all. They may even carry approval. There is therefore great incentive for political offenders to jump bail and avoid standing trials in order to gain freedom to disseminate their view points more effectively. A serious averment has been made in the affidavits to the effect that some of the alleged seditious activities of the applicant and his co-accused were carried out in the Republic of South Africa, a country with which Lesotho has no extradition agreement. If on being admitted to bail the applicant

6/ were to cross .....

were to cross to the Republic of South Africa, the ends of justice would no doubt be seriously jeopardized.

Mindful therefore that it is not the policy of our law that accused person should be detained in gaol where it is reasonably clear that he will appear to stand his trial in due course, I have nonetheless come to the conclusion that in the circumstances of the present application, it would be unwarranted risk to release the applicant on the bail.

I have no alternative therefore but to refuse this application.

B.K. MOLAI
JUDGE

24th January, 1983.

Mr. Maqutu for the Applicant,
Mr. Kabatsi for the Crown.