

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

PITSO MAKHETHA	1st Appellant
MALEFETSANE MABOPE	2nd Appellant
LIRA MARAI	3rd Appellant

v

R E X

REASONS FOR JUDGMENT

Filed by the Hon. Chief Justice Mr. Justice T.S.
Cotran on the 17th day of December 1984

This is an appeal by three accused persons against the refusal of a Resident Magistrate to grant bail pending trial to four out of five accused persons who appeared before him on a charge of robbing the Standard Bank PLC. at Leribe on the 29th day of June 1984.

The appeal was dismissed on the 26th November 1984. I said reasons will be filed at a later date and these now follow:-

In the proceedings before the magistrate the Crown had objected to bail on a number of grounds and called the investigating officer as a witness. He outlined his objections against the grant of bail. The magistrate considered the matter carefully and in exercise of his discretion refused bail.

I am now asked to say that the magistrate acted unreasonably. An array of lawyers appeared before him. They advanced the usual grounds. The magistrate was of opinion that there was no guarantee that the accused, or some of them, will stand their trial. I cannot quarrel with that because our borders are wide open and anyone can cross with ease whether or not the accused's passport had been surrendered and it is quite true, as the magistrate had said, that we have no extradition treaty with the neighbour that surrounds Lesotho borders.

The magistrate had other reasons for refusing bail, including the seriousness of the offence, the relatively large amount involved in the robbery, and that whatever amount of cash bail he fixes (and

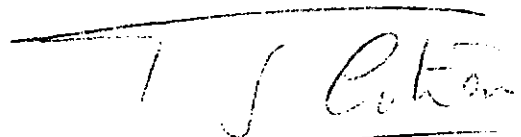
/by law

by law bail should not be excessive) will not ensure compliance because estreating the cash bail would be no sacrifice.

The investigating officer swore that the investigations in the case were not complete, that arms from L.P.F. and Police armories were stolen and that if the accused were at large they may (in his opinion) impede any attempt to recover the arms. The magistrate pointed out that one of the applicants was a member of the Lesotho Paramilitary Force and one other of the Lesotho Mounted Police.

In these circumstances the magistrate thought that the proper administration of justice demand that the accused be in custody i.e. that this factor must prevail over the Court's usual and natural inclination towards liberty until conviction. I see no reason to intervene with this assessment. These accused are supposed to be the guardians of law and order. If at large they have friends in both forces who might give succour.

Mr. Seholoholo informs me that the Director of Public Prosecutions has directed that Preparatory Examination be held and that he intends to bring in an indictment in the High Court. Once the Preparatory Examination is completed and the depositions are available to me I am prepared to entertain a renewed application for bail.



CHIEF JUSTICE

17th December 1984

For Appellants : Mr. Sooknanan)
For Crown : Mr. Seholoholo) with copy of Judgment