

IN THE HIGH COURT OF LESOTHO

In the Application of

MALERATO NDABE

Applicant

v

SOLICITOR GENERAL	1st Respondent
COMMISSIONER OF POLICE	2nd Respondent
OFFICER COMMANDING THE N.S.S	3rd Respondent

REASONS FOR JUDGMENT

Filed by the Hon Chief Justice Mr Justice T S  
Cotran on the 4th day of June 1984

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On the 4th May 1984 Mr Mphutlane for the applicant moved the  
Court as a matter of urgency seeking relief as follows -

- "1 That a Rule Nisi do issue calling upon the Respondents to show cause why -
- (a) The 2nd and 3rd Respondents shall not produce the body of THABO NDABE before this Honourable Court,
  - (b) The 2nd and 3rd Respondents shall not be directed to release THABO NDABE from custody,
  - (c) The 2nd and 3rd Respondents shall not be restrained from assaulting, torturing or in any way threatening or using psychological violence on THABO NDABE,
  - (d) The 2nd and 3rd Respondents shall not be directed to allow THABO NDABE access to a Medical Practitioner of his choice,
  - (e) The 2nd and 3rd Respondents shall not be directed to allow the Applicant to give food and refreshments to her husband, THABO NDABE,

/(f) The

- (f) The 2nd and 3rd Respondents shall not be directed to allow the Applicant to give her husband, THABO NDABE, clean clothing in exchange of dirty clothing used by THABO NDABE in custody
- 2 The 2nd and 3rd Respondents shall not be directed to pay the costs of this Application
- 3 The Applicant shall not be granted further and/or alternative relief "

The matter came before Kheola A J in chambers who issued a rule "as prayed" returnable on the 14th May 1984. It will be noticed that no prayers were made for any immediate relief and I have since ascertained from the learned Judge that Mr. Mputlane did not orally seek any alternative or additional relief when he appeared before him in chambers.

Mr. G G Nthethe, an attorney, however had sworn an affidavit in support of the applicant saying that on being briefed on the 26th April 1984, he went to the charge office on the following day and was informed that the detainee was being held under the Internal Security (General) Act 1982, and that he was refused access to see him. For the first 14 days of detention a detainee under this Act does not seem to be entitled to see a legal advisor as of right.

Miss Assistant Registrar Lethunya, however, signed, or was persuaded to sign, an order on the same day as follows:

- "1 That a RULE NISI be issued returnable on the 14th day of May 1984 calling upon the Respondents to show cause (if any) why
  - (a) The 2nd and 3rd Respondents shall not produce the body of THABO NDABE before this Honourable Court,
  - (b) The 2nd and 3rd Respondents shall not be directed to release THABO NDABE from custody,

/(c) the

- (c) The 2nd and 3rd Respondents shall not be restrained from assaulting, torturing or in any way threatening or using psychological violence on THABO NDABE,
  - (d) The 2nd and 3rd Respondents shall not be directed to allow THABO NDABE access to a Medical Practitioner of his choice and his legal representative,
  - (e) The 2nd and 3rd Respondents shall not be directed to allow the Applicant to give food and refreshments to her husband, THABO NDABE,
  - (f) The 2nd and 3rd Respondents shall not be directed to allow the Applicant to give her husband, THABO NDABE, clean clothing in exchange of dirty clothing used by THABO NDABE in custody
- 2 That prayer 1 (c), (d), (e) and (f) should operate as an interim interdict with immediate effect, pending the finalization of this application
  - 3 The 2nd and 3rd Respondents shall not be directed to allow the costs of this application
  - 4 The Applicant shall not be granted further and/or alternative relief "

The Judge did not grant any order, or part of an order, to operate as an interim interdict with immediate effect but this is what the respondents were served with

On the 9th May 1984 Mr Mphutlane moved the Court again, also as a matter of urgency, calling upon two of the respondents in the original application, and the officer commanding the National Security Services, as the third respondent, to show cause why they should not be committed for contempt of Court for refusing to let a legal practitioner (Mr Nthethe) access to the detainee contrary to the order of the Court. The return date was fixed for the 14th May as for the first application and extended to the 21st May 1984.

The short answer to Messrs Nthethe, Khaue and Mphutlane is that  
/the Court

the Court did not give the orders that they claim. What the lawyers succeeded in doing was to get the Assistant Registrar to sign something which the acting Judge did not authorise. What may have happened of course was that they had an order already typed, whether deliberately or negligently it is unnecessary to decide, at variance with the prayers in the notice of motion, which Miss Lethunya readily signed.

For these reasons the rules in both applications must be discharged with costs to the respondents.

Mr. Khauoe assured the Court that his partner who drew the papers did not intend to mislead the Registrar or his assistants nor did Mr. Mphutlane intend to mislead the Judge. It is not only the Assistant Registrar who was misled but quite a number of people were misled as well including, I regret to say, myself when I issued the second rule. I must impress upon attorneys, counsel and Court staff to be careful in drafting and ~~perusing~~ urgent ex-parte applications.

Mr. Khauoe agreed that his firm will pay the costs to respondents in both applications de bonis propriis and it is so ordered in terms of Rule 61 of the High Court Rules as amended by Legal Notice No 32 of 1982.

CHIEF JUSTICE

4th June 1984

For Applicant            Mr. Mphutlane

For Respondents        Mr. Mpopo