

IN THE HIGH COURT OF LESOTHO

In the Application of :

TIEHO KHOPELI

v

R E X

REASONS FOR JUDGMENT

Filed by the Hon. Chief Justice Mr. Justice
T.S. Cotran on the 27th day of July 1984

This is an application for bail pending trial.

On the 16th July 1984 I dismissed the application and said reasons will be filed later. These now follow:-

It is common cause that the applicant was arrested on or about the 3rd April 1984 on a charge of murder (of an escort police officer) in the course of robbery involving a large amount of money and has been in custody ever since i.e. some 3 1/2 months.

Only the High Court can grant bail on charges of murder. Bail is not automatic either in the High Court or (in bailable offences) in the Subordinate Courts. Some magistrates unfortunately interpret "discretion" as a personal whim or fancy. The considerations which influence the Court in granting or refusing bail pending trial have arisen in our Courts on many occasions. Some cases are reported, e.g. Moletsane v Rex LLR 1974-1975 272 and R. v Petje 1980 (I) LLR 199 but some are not.

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These considerations have been summarised in Ntoi v R.

CRI/APN/20/77 dated 21st November 1977 - and in Sekhalo v R.

CRI/APN/15/77 dated 25th November 1977 - unreported - as follows:-

"In applications for bail pending trial it has often been said that the Courts must start with the premise that every accused is presumed to be innocent until the contrary is proved and should lean towards the granting of bail rather than refusing it. This rule is of course subject to certain qualifications based on the principle that it will not be granted if the interests of justice will be prejudiced.

Bail may be refused:

- (a) on serious charges (though the seriousness of the charge is not per se an impediment); - Leibman v A.G. 1950 (I) S.A. 607 -
- (b) if there is fear that accused will interfere with the investigations or intimidate witnesses, (Heller & An. v A.G. 1932 CPD 102)
- (c) if the accused is likely to abscond (Omar 1930 CPD 79)
- (d) there is a probability of convicting Kok 1927 NPD 267 at 270, though the Court must be careful not to encroach upon the functions of the Judge and assessors when the trial eventually takes place - Neil 1911 NPD 210 at 213."

The accused right to seek bail pending trial is absolute but the granting thereof is discretionary. A balance must be struck between the subject and the proper administration of justice. In capital and other serious charges if there is objection to bail the High Court ought not lightly to exercise its discretion to grant it until after the accused commitment to see from the record of the proceedings at the Preparatory Examination what the case is all about. In Lesotho we are surrounded by hundred of miles of borders, easily crossed, with
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a neighbour with whom there exists no extradition treaty. To pretend that absconding will be a rare occurrence is totally unrealistic.

Now here the accused is on a charge of murder and it has been said that a man is likely to abscond rather than be hanged or the temptation to do so considerable (see Perumal 1967 (3) S.A. 725 at p.727 C). When murder is committed in the course of robbery, and when a large amount of money has been allegedly stolen, there is indeed more incentive to flee.

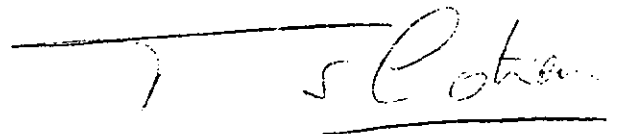
The investigating officer has sworn an affidavit that after the commission of the offence the accused fled to Bloemfontein and he had to go to that city to make an arrest by courtesy of the South African Police.

The Director of Public Prosecutions has sworn that in his opinion the accused was likely to abscond and not stand trial. I am not persuaded that the Director's averments are sham. He is a person with grave responsibilities in possession of evidence not yet available to the Court and the assumption is that, as a lawyer, he will not lightly embark on opposition just for the sake of opposition. The Court is bound to place great reliance and trust in what he says, and an accused should produce very cogent reasons before he can convince the Court to disregard it. The Court of course can, and has, both in Lesotho and in the Republic, on one or two occasions declared the Director's (or the Attorney-General's) opposition unfounded (e.g. Essack 1965 (2) S.A. 161 and R. v Petje supra) but these occasions are rare. The application before me is similar to R. v Kopo CRI/APN/1/74 - unreported - dated 3rd May 1974 where bail was
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refused.

Every application must depend on its own merits but in the case of serious crime proper administration of justice entails that after the arrest of a person on reasonable suspicion the police authorities be given time to go on with their investigations unimpeded. If this requirement is lost sight of in the name of liberty justice may well be defeated.

The application was accordingly refused.

A handwritten signature in cursive script, appearing to read 'S. C. Cotton', is written over a horizontal line. The signature is positioned to the right of the center of the page.

CHIEF JUSTICE
27th July 1984

For Applicant : Mr. Khaue
For Respondent : Mr. Seholoholo