

IN THE HIGH COURT OF LESOTHO

In the Application of :

MATSOLO MOHOANYANE

Applicant

v

COMMISSIONER OF POLICE
MINISTER IN CHARGE OF POLICE
SOLICITOR GENERAL

1st Respondent
2nd Respondent
3rd Respondent

J U D G M E N T

ON COSTS

Delivered by the Hon. Chief Justice Mr. Justice
T.S. Cotran on the 31st day of July 1984

On the 10th May 1984 a rule nisi was issued at the instance of the applicant Matsolo Mohoanyane, calling upon the Commissioner of Police and the Minister in charge of the Police, as respondents, to "produce the body" of her husband Motebang Mohoanyane and to show cause why the applicant and the children and relatives of Motebang should not see him "in detention every day and send him food" and to release him for non compliance by the respondents with the provisions of the Internal Security (General) Act 1982.

The papers were served upon the Commissioner and the Minister on the 23rd May 1984. The extended return date was the 4th June 1984. By that time the detainee had been released and the rule had, per force, to be discharged.

Costs usually follow the event but in this case Mr. Maqutu asked that the applicant be awarded costs on the grounds that there was infringement or possible infringement of the provisions of the

/internal

Internal Security (General) Act 1982. The Crown resists this award on the ground that the detention was lawful.

It was common cause that the said Motebang was arrested on 23rd April 1984 and that on the 26th April the applicant went to Mohale's Hoek Police Station to inquire about her husband. She was not allowed to see him but she was told that he was detained under the Internal Security (General) Act 1982. It was also common cause that on the 7th May 1984 the Commissioner of Police signed a detention order for 14 days. It would have expired on the 21st May but the detainee had been released before this date. S.32 and s.33 of the Act have clearly been complied with.

Mr. Maqutu claims however that the detainee was released after the rule nisi was granted by the High Court on the 10th May implying that but for the rule the police would not have released the man. This is not in fact supported by the date stamps which show that the rule was not served upon the Commissioner until the 23rd May 1984. This Court cannot "speculate", in favour of the applicant, that the Commissioner "got wind" of the granting of the rule before he was served with its terms.

Mr. Maqutu claims that the manner of notification of arrest, viz, to the detainee's wife did not comply with s.48. S.48, however, does not specify the manner of publication and leaves it to the "authority" to do so "in the most efficacious" way. Notifying the detainee and his wife orally seems to me to be compliance.

Mr. Maqutu also claims that when the police released the detainee a condition was imposed upon him that he does not leave his cafe premises at Tsoloane which was an illegal condition justifying

/an award

an award of costs against the police. The detainee's wife filed an affidavit that "this was interference with my marital rights" because she and her husband have their marital home at Mafeteng camp. If this forms a cause of action she is at liberty to sue but there is no affidavit from the detainee himself, who was free to make it, between the date of his release and extended return date, that such a condition was in fact imposed upon him.

Finally Mr. Maqutu raised the question of the treatment of detainees in terms of s.40(4) of the Act. This is dealt with in CIV/APN/107/84 and my comments therein should be read as if they are part of this judgment.

This is not a case justifying the award of costs against the police and I decline to make such an order.



CHIEF JUSTICE
31st July 1984

For Applicant : Mr. Maqutu

For Respondents : Ms Tsiu