

IN THE HIGH COURT OF LESOTHO

In the Application of :

'MASHASHA SHASHA

Applicant

v

COMMISSIONER OF POLICE

1st Respondent

MINISTER IN CHARGE OF POLICE

2nd Respondent

SOLICITOR GENERAL

3rd Respondent

JUDGMENT ON COSTS

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

This application was argued together with CIV/APN/106/84. There are similarities. The applicant 'Mashasha Shasha was granted a rule nisi on the 10th May 1984 directing the Commissioner of Police and the Minister in charge of the Police as respondents, "to produce the body" of her husband Tseliso Shasha and to show cause why she, her children, and her relatives should not "see him in detention every day allow her to send him food" and release him for non compliance by the respondents of the provisions of the Internal Security (General) Act 1982.

The papers reveal, and it is common cause, that the detainee was apprehended on the 23rd April 1984. His wife went to see him at Mohale's Hoek Police Station on the 24th April 1984; she was told to return on the 26th April, and was then allowed to see him. She noticed that he seemed "in good health".

That detainee has been charged with an offence before the

/Subordinate

Subordinate Court on the 21st May 1984 and was remanded in custody by the magistrate. The Commissioner had signed the order of detention on 7th May for a period of 14 days which expired on the 21st May and from that date the detainee is in custody as per a judicial remand.

The rule was discharged by consent because there was clear compliance with s.32 and s.33 of the Act, viz, 14 days on the first period and 14 days on the Commissioner's interim custody order, but Mr. Maqutu asks for costs on the grounds that the application was necessary because the applicant had averred:-

- (a) that a certain detainee had died whilst in police custody and she was apprehensive, and
- (b) that the detainee in these proceedings had not been treated as required by s.40(4) of the Act which provides that he is subject to the Prison Rules 1957 relating to untried prisoners (s.94 et seq. of the Rules Vol.II Laws of Lesotho p.1320) in that the applicant was not allowed access to him and was not allowed to provide him with food.

In his opposing affidavit Major Neko Molapo of the National Security Service avers that the prisoner referred to by the applicant in fact committed suicide. He confirms he allowed the detainee's wife to visit her husband but admits that no special food was allowed to the detainee because "he could be poisoned and the police blamed for administering poison to him simply because he would have died in police custody". The Prison Rules spell out the privileges available to an untried prisoner but these do not seem to apply to the first 14 days of the arrest in terms of s.32 because s.40(4) speaks of an "interim detention order"

/that

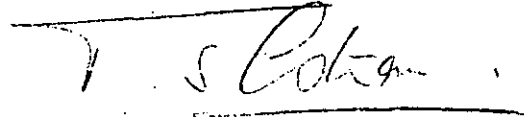
that operates when the Commissioner of Police signs the same, and a "detention order" when the Minister signs another order after the interim order. That being the case the privileges granted by the Prison Rules come into operation after the first 14 days. The Rules give a very wide discretion to the Director of Prisons. In most of the provisions the word used is "may", or "as far as possible" or "subject to such conditions". Sometimes the word "shall" is used, as for example in Rule 99 relating to shaving of hair, beard and moustaches, but in the next paragraph the medical officer may disregard the rule for health reasons.

With regard to private medical practitioners (Rules 100 and 106) the Director "may" allow it "if he is satisfied that there is "reasonable ground for the application". With regard to the provision of food the facility can be refused or subjected to "conditions" that the Director himself might determine . With regard to visits that Director "may" allow the facility but may not, or he can specify the hours and impose restrictions. On the question of finding bail the prisoner "shall" be given the facilities but "at a reasonable hour". Communication with a legal adviser and providing facilities for the prisoners' defence are enshrined but actual access of the legal adviser and friends and relatives are allowed "at a reasonable hour".

What I am attempting to say is that these Rules seem to me to be administrative not judicial or quasi judicial. The Director is the person in charge of a prison not the High Court, which should intervene only in exceptional cases.

/The applicant

The applicant must pay the respondents costs.



CHIEF JUSTICE

31st July 1984

For Applicant : Mr. Maqutu

For Respondents : Ms Tsiu