CRI/APN/242/86

IN THE HIGH COURT OF LESOTHO

In the Application of :-

PHATELA MOSOTHOANE — 1st Applicant
LEKENA MATHIBELA — 2nd Applicant

vs.

R E X — Respondent

JUDGMENT

Delivered by the Honourable Acting Chief Justice Mr. Justice J.L. Kheola on the 27th day of October, 1986.

This is an application for the discharge of the applicants from their imprisonment in terms of section 141 read with section 279 of the Criminal Procedure and Evidence Act 1981. On the 25th September, 1986 I dismissed a similar application on the ground that it was made prematurely because section 141 (2) provides that if the person committed for trial before the High Court is not brought to trial at the first session of that court held after the expiry of 6 months from the date of his commitment, and has not been previously removed for trial elsewhere, he shall be discharged from his imprisonment for the offence in respect of which he has been committed. I then erroneously held that the first session of the

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High Court held six months after the applicants had been "committed" for trial was due to come to an end on the 30th September, 1986. The correct position is that it was the third term and not the second session that was due to expire on the 30th September, 1986; the second session will expire on the 15th December, 1986.

Even if the applicants were properly committed for trial in the normal way this application would still fail on the ground that it was prematurely brought before this Court. They would be entitled to bring this application only after the 15th day of December, 1986.

In CRI/APN/206/86 I worked on the assumption that the applicants had been committed for trial and declined to make a specific finding whether a summary trial before this Court in terms of Section 144 of the Criminal Procedure and Evidence Act 1981 may be regarded as committal for trial. I now have to make a specific finding on the subject so as to stop any further speculation on the subject.

The first point that has to be properly determined is what is "committal for trial". The answer is to be found in section 78 of the Criminal Procedure and Evidence Act 1981 (C.P.E.) reads as follows:

> "(1) Whenever there appears to a magistrate sufficient reason for putting on trial for any offence any accused person brought before him, the magistrate shall grant a warrant to commit the accused to gaol, to be detained there until he is brought to trial for the offence or until he is admitted to bail or liberated in due course of law, and the warrant shall express clearly the offence with which the accused is charged". (My underlining).

The words I have underlined clearly show that when a magistrate commits an accused person for trial, he must sign a warrant committing the accused to prison. The provisions of this section are peremptory

and leave no discretion to a magistrate. Because the procedure for committal for trial requires that the accused person be committed to prison, the law also protects the liberty of the individual by providing that he must be brought to trial as soon as possible. This is where section 141 of the C.P.& E. comes into the picture and makes sure that an accused person who is committed for trial must be brought before the High Court for trial within a year after committal for trial.

Let us now look at the procedure under section 144 of the C.P. & E. It provides as follows:

> "Whenever -
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> (a) in the opinion of the Director of Public Prosectuions any danger of interference with or intimidation of witnesses exists;
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> OR
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> (b) the Director of Public Prosecutions considers it to be in the interest of the safety of the State or in the public interest,
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> he may direct that any person accused of having committed any offence be tried summarily in the High Court without a preparatory examination having been instituted against him."

It seems to me that under section 144 the law does not automatically commit to prison the person who has to be summarily tried. All what the Director of Public Prosecutions does is to service him with a notice that he is to be summarily tried before the High Court and also give him a charge sheet showing the offences with which he is charged. If the accused person is already in gaol when the Director of Public Prosecutions decides to have him tried

summarily before the High Court, he cannot be heard to say that he was committed to gaol to await his trial like a person who was committed for trial by a magistrate after the completion of a preparatory examination.

The applicants in the present case are in the same position as many other accused persons who are awaiting trial and are in gaol because their applications for bail were refused by the courts of law. The procedure under section 144 is different from the procedure under section 141. The procedure under the latter deprives the accused person of the benefits flowing from the preparatory examination. See Swift's Law of Criminal Procedure, Second Edition, p. 237.

Mr. Ramodibedi, for the applicants submitted that the Legislature would not have intended that people brought to the High Court for summary trial and the people committed for trial by a magistrate should be treated differently. I take the view that as the intention of the Legislature is expressed in clear and certain terms the procedure under the two sections were intended to be different.

I come to the conclusion that the procedure under section 144 of the C.P.& E. is not the same thing as committal for trial under section 78. The applicants are not entitled to the benefits flowing section 141.

The application is dismissed.

J.L. KHEOLA
ACTING CHEIF JUSTICE.

27th October, 1986.

For Applicants - Mr. Ramodibedi
For Crown - Mrs. Bosiu.