

CRI/T/23/85

IN THE HIGH COURT OF LESOTHO

I

In the Matter of

R E X

v

1. HLOMELANG NKOJA
2. KOPANE NTISANE

R U L I N G

Delivered by the Hon. Mr. Justice B K Molai
on the 7th day of May, 1986

This is a ruling on the admissibility of confession. At the commencement of this trial the crown counsel sought to admit in evidence two statements allegedly made by the accused persons to a magistrate in Leribe which statements are in the nature of a confession. It is the question of whether or not the statements of the accused persons have been made freely and voluntarily and without undue influence. This depends on the surrounding circumstances from before the time that the accused persons first express the desire to make the statement until they finally put their signatures or mark on the written statements - R v Ndoiyane and Another 1958(2) S.A 562 p.563D. The testimonial value of statements is irrelevant at this point in time.

In this regard two witnesses were called to testify in support of the case for the crown. Although I was informed that the admissibility of the statements was disputed the accused persons, who are represented by Legal Counsel in this matter, elected to remain silent and called

no witnesses to testify in their behalf I have, therefore, only the evidence adduced by the crown witnesses to rely upon for the determination of this issue.

Briefly D/Sgt Mokheleli testified to the effect that he was involved in the investigations of this case. On 26th November, 1984 the two accused were already under the police custody They came to him to say they had done a wrong thing by going to the house of a white person and taking away property thereof They would therefore like to tell the magistrate about it This was said by accused 1 in the presence of accused 2 who also confirmed. The witness then made arrangements for the two accused to see the magistrate on 27th November, 1984. He denied the suggestion made under cross-examination that the accused went to see the magistrate not on their own volition but as a result of the assault he had been perpetrating on them

In his evidence, T Nomcgongo, the magistrate, confirmed that on 27th November, 1984 each of the two accused did approach him with a desire to make statements To his observation the accused had no external injuries and were in their sound and sober senses. He accordingly administered the usual warning, asked the preliminary questions and recorded the answers thereto as per the renewed forms which he handed in, together with the statements, as Exh A. From the answers that they gave to the preliminary questions the magistrate was satisfied that the statements would be freely and voluntarily made by the accused He accordingly allowed the accused to make the statements which he reduced to writing in the language used by the accused themselves.

As has been pointed out earlier, the accused elected not to give

evidence in this matter I am unable therefore to find any justification why the evidence of D/Sgt Mokheleli that the accused freely and voluntarily choose to approach the magistrate about the statements they wished to make should not be accepted as the truth. Likewise I have looked at the questions and the answers that appear on the renewed forms (Exh A) I find nothing on which the magistrate's impression that accused 2 freely and voluntarily desired to make a statement can be faulted. As regards accused 1 his answer to the question ' "have you made a previous statement of a similar nature if so, when and to whom?"' was "I made a statement to the police but I was being assaulted" He was then asked "why do you then desire to repeat the statement?" and the reply was "so that I should talk freely and not under threats as I was threatened by the police" This coupled with the fact that accused 1's reply to an earlier question "Have you been assaulted, threatened or influenced by any person with a view to making this statement" was in the negative, leaves no doubt in my mind that even if it were true that he had been assaulted by the police at the time he made the previous statement accused 1 did not consider the statement he was about to make before the magistrate to be in consequence of the police assault on him. What he was in fact saying was that he appreciated that he was before a magistrate and wished to make a clean breast. In his words he wanted to speak "freely and not under threats" as he was before the police. At any rate, if by his reply to the question ' "Have you made a previous statement of a similar nature?"' accused 1 meant that he had been assaulted with a view to making a false statement to the magistrate then he had lied in his negative reply to an earlier question "Have you been assaulted, threatened or influenced by any person with a view to making this statement?" He was therefore a self-confessed liar in whose evidence no credibility could be placed.

In the circumstances of this case I have no alternative but to accept the only available evidence that the accused willingly went to the magistrate

before whom they freely made the statements. That being so, the "confessions" ought to be admitted in evidence and I hold accordingly.

B K MOLAI-
JUDGE

7th May, 1986

For Crown Mr Seholoholo

For Defence Mr. Mohau