

IN THE HIGH COURT OF LESOTHO

In the matter between:-

MAKHOLU NTHAFA  
MAMOTSENG MONNANYANE

APPLICANT  
APPLICANT

and

REX

RESPONDENT

J U D G M E N T

Delivered by the Honourable Mr. Justice J.L. Kheola  
on the 29th day of July, 1988

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This is an application for bail made on behalf of the two applicants who were arrested on the 14th June, 1988 on a charge of murder allegedly committed on the 23rd April, 1988.

The applicants have filed affidavits in which they undertake to stand trial, not to interfere with Crown witnesses nor to hamper police investigations in any way.

The Crown is opposing the application and a certain Trooper Mosoeu and an accomplice Chaka Mateka have filed opposing affidavits. Trooper Mosoeu is the investigating officer of the case and avers that during his investigations he found out that the second applicant has a love affair with one of the accomplice witnesses namely, Phate Kopano. He avers that if released on bail it is likely that the second applicant will influence him (Phate) inasmuch as they come from the same village.

/The second....

The second ground is that because of the seriousness of the offence with which the applicants are charged, it is unlikely that they will stand trial.

It is further alleged that because of the volatile situation in the village following the death of the deceased it is in applicants' best interests that they remain in custody.

Trooper Mosoeu further avers that during his investigations he, on several occasions, looked for the first applicant at her place of abode but could not find her because it was reported that she had gone to Mapoteng to see a doctor. He therefore feels that she was evading arrest.

Chaka Mateka avers that he is an accomplice in the murder case in which the applicants are the accused. On the 23rd January, 1988 (the day on which the deceased was killed) he was threatened by the applicants that should he reveal what happened on the material day, they would plot to kill him in the same way as they did with the deceased. Despite these threats he voluntarily made a confession to the police. He avers that wherever he goes he must be escorted at all times because he is afraid that the applicants and others involved in the murder will kill him.

The applicants have denied any involvement in the murder of the deceased. The second applicant admits that at the time Trooper Mosoeu was looking for her she was in hospital and was not trying to evade the arrest. Her husband had to plead with the doctors to release her from the hospital because police were looking for her. She was released and her husband took her to the charge office.

/I find.....

I find Trooper Mosoeu's allegation that the second applicant was trying to evade arrest to be unreasonable and without any basis at all. He never went to the hospital to find out if the second applicant had in fact been admitted as an in-patient of that hospital. His assumption that she was evading arrest is wrong and must be rejected.

The allegation that the situation in the village is volatile is denied by the applicants. Mr. Phoofolo, applicants' counsel, submitted that the respondent ought to have obtained an affidavit from the chief of the village and not to rely on an allegation by Trooper Mosoeu who does not live in the village. I think there is some substance in this submission though as an investigating officer, Trooper Mosoeu may have personal knowledge of the situation in the village.

Chaka Mateka's averment that the applicants threatened to kill him if he revealed that they killed the deceased, cannot be taken seriously. He avers that he is now escorted by some person wherever he goes so that there is no how the applicants can have a chance to carry out their threat. If the applicants were granted bail one of the conditions would be that they shall not tamper with Crown witnesses. It seems to me that it is unlikely that they would be in a position to contact the accomplice because he is virtually guarded all the time.

The bare allegation by Trooper Mosoeu that the first applicant is in love with one of the accomplices had to be substantiated by an affidavit from the accomplice himself inasmuch as the first applicant denies the allegation.

/I agree.....

I agree that murder is a serious offence but the Courts usually lean towards the liberty of the subject in bail applications pending trial, but it is necessary to strike a balance, as far as that can be done, between on the one hand the liberty of the individual, and safeguarding and ensuring the proper administration of justice on the other (Meyer v. D.P.P. 1977 L.L.R. 161 at p. 163).

In all murder cases in which bail is granted the Courts usually take a risk unless the Crown has, in addition to the seriousness of the crime, shown the possibility of a conviction. In the present case the Crown has not shown that they have a strong case. They seem to rely on the evidence of accomplice witnesses and no other evidence.

The applicants are married women and both have minor children. The likelihood of them not standing trial is very remote indeed. In any case the Crown's opposition seems to be based mainly on the apprehension that the applicants are likely to interfere with Crown witnesses. It seems to me that that can be taken care of by imposing stringent conditions.

The application is granted on the following conditions:-

1. Each applicant shall pay a bail deposit of M200-00
2. Each applicant shall provide a surety in the sum of M200-00;
3. They shall surrender their passports (if they have any) to the police at Teyateyaneng police station;
4. They shall not interfere with Crown witnesses including Chaka Mateka and Kopano Phate;

/5. They shall.....

5. They shall attend remands;
6. They shall attend the trial of the case;
7. They shall report at Sefikeng police station on every Monday between the hours of 8 a.m and 12 noon.

J.L. KHEOLA  
JUDGE

29th July, 1988.

For the Applicants - Mr. Phoofolo  
For the Respondent - Mr. Thetsane.