

IN THE HIGH COURT OF LESOTHO

In the matter between:

REX

V

SEKHOBE LETSIE

Before the Honourable Chief Justice Mr. Justice B.P. Cullinan on the 16th day of July, 1990.

For the Crown	:	Mr. G.S. Mdhluli, Director of Public Prosecutions
	:	Mr. N. Qhomane
	:	Mr. S.P. Sakoane
For the First Accused	:	Mr. L. Pheko
For the Second Accused	:	Mr. M.T. Matsau

RULING

Case referred to:

(1) S v Dlamini (1978)4 SA 917 LN.

As I see it, the wording of section 236(1) of the Criminal Procedure & Evidence Act, 1981, as compared with that of section 231(1) of the Criminal Procedure & Evidence Proclamation, 1938, clearly indicates that an accomplice is a compellable witness, and further that he shall be compelled to answer questions tending to incriminate him in respect of the offence charged at a trial, or which is the subject of a preparatory examination. That much is

clear.

I do not see that there is any difficulty with sub-section (2), of section 236, other than the use of the words "subject to sub-section (3)". The same wording was used in the Criminal Procedure Act, 1977 of the Republic of South Africa. In the 1977 Act the same wording is used with reference to a subsequent revocation, in a subsequent proceedings, of a discharge granted in an earlier proceedings. The learned Attorney for the second accused, Mr. Matsau, places some significance on the words, "the offence concerned". As I see it, that is an omnibus phrase to cover the words in sub-section (1), namely, "the offence alleged in the charge (at a trial) or the subject of the preparatory examination".

In sub-section (3) there is specific reference to the deletion from the record of the discharge of an accomplice witness. Such entry can only be made after the witness has finished his evidence: indeed in the case of S v Dlamini (1) it was held at p.920 that it should be made at the end of the trial. Sub-section (3) can therefore only refer to subsequent proceedings. The reference to a "re-opening" of a preparatory examination indicates this. Further, the words, "the trial of any person upon a charge of having committed the offence concerned or an offence disclosed by the preparatory examination", suggest a trial, after a preparatory examination, upon the charge which formed the subject of the

examination, or which was "disclosed" at such examination. There is no doubt however that the former part of that phraseology could refer to a trial, that is following upon an initial trial.

In any event, I am satisfied that an accomplice may be compelled to be sworn and to answer incriminating questions. Further, all that sub-section (3) enacts, is that if the witness fails to be sworn, or to answer such questions, then any previous immunity granted shall be taken away. Even if, as the learned Attorney for the first accused, Mr. Pheko, submits, sub-section (3) may also refer to initial proceedings, and I do not agree that it does, then it means no more than that the witness cannot, in any event, be granted any immunity. In my view, however, the wording of sub-section (1) is quite specific and the present witness is compellable as to being sworn, and as to answering incriminating questions.

Delivered at Maseru this 16th Day of July, 1990.



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B.P. CULLINAN

CHIEF JUSTICE