CRI/APN/101/90

IN THE HIGH COURT OF LESOTHO

In the Application of :

COL. SEKHOBE LETSIE Applicant

and

DIRECTOR OF PUBLIC PROSECUTIONS Respondent

JUDGEMENT

Delivered by the Hon. Mr. Justice B.K. Molai on the 4th day of April, 1990.

This is an application for bail, pending trial. The Respondent opposes the application and the parties have duly filed affidavits.

It is common cause from the affidavits that, at all material times, the applicant was a member of the Royal Lesotho Defence Force and the Ruling Military Council in Lesotho. On 19th February, 1990 he was arrested and/or detained by members of the Royal Lesotho Defence Force. On 7th March, 1990 he appeared before the Subordinate Court of Maseru and was remanded into custody on four (4) counts of murder and two (2) counts of attempted murder alleged to have been committed on 16th November, 1986. He has since been kept at the Maseru Central Prison awaiting his trial which is due to commence between the 4th and the 25th April, 1990.

The gist of the applicant's affidavits is that he has not committed the offences against which he is charged. He intends to

2/ stand trial .....

stand trial so that he can prove his innocence. If released on bail he will not interfere with witnesses or do anything to frustrate proper administration of justice. There is, therefore, no justification for the opposition of his application for bail.

The answering affidavits have been deposed to by the Director of Public Prosecutions who is the Respondent, S/Lt. Sephelane, the investigating officer and Ts'olo Lelala, a victim/complainant in one of the offences against which the applicant stands charged. In a nut-shell, the answering affidavits are to the effect that the investigations which were not easy to conduct whilst the applicant was a member of the Ruling Military Council in Lesotho have, since his arrest and/or detention, started in earnest but not completed. If he were to be set free on bail, the probabilities are high that the applicant will interfere with witnesses some of whom are accomplices. Whilst he was holding his high office in the Government the applicant was able to make friends in many countries to which he can easily abscond. This, coupled with the fact that the offences against which he stands charged call for heavy punishment in the event of conviction, poses great inducement for the applicant to abscond and thus thwart or defeat the course of justice.

I have been referred, inter alia, to the decision in Meyer v. Director of Public Prosecutions 1977 L.L. R. 161 where Cotran, C.J. stated at p. 163 that the courts leaned towards the liberty of the subject in bail applications pending trial but it was necessary to strike a balance, as far as that could be done, between on one hand the liberty of the individual and safeguarding and ensuring the proper administration of justice on the other. To that effect the courts had to take into account whether or not

3/ if he were .....

if he were released on bail the applicant would interfere with witnesses in an effort to thwart or defeat the course of justice, whether or not the nature of the crime and its punishment were serious enough to warrant incarceration before trial and whether the applicant would stand trial or his freedom would give him the incentive to flee.

It is significant to bear in mind that in the present case both the Director of Public Prosecutions and the investigating police officer have, for reasons already explained, objected to the applicant being released on bail, pending his trial. In Soola v. Director of Public Prosecutions 1981 (2) L.L.R. 277 at p. 280 Mofokeng, J. had this to say on the issue:

> "The objection by the Director of Public Prosecutions must be carefully considered by the court and not lightly discarded; after all he is a responsible officer charged with onerous duties."

I entirely agree. Indeed, experience has taught me that of late it is very rare that the office of the Director of Public Prosecutions objects to bail being granted to people charged with as serious offences as murder. It is, therefore, important that when on those rare occasions the Director of Public Prosecutions does object to bail being granted to an applicant the matter should be subjected to serious scrutiny of the court to ensure that considerations for the liberty of the subject will not result in the frustration of proper administration of justice in this country.

As regards the Respondent's apprehension that the probabilities are high that if released on bail the applicant will interfere with witnesses, some of whom are accomplies, it is worth

4/ mentioning .....

mentioning that the alleged accomplice witnesses are said to be members of the Royal Lesotho Defence Force. There is, however, a suggestion that the applicant has, since his arrest and/or detention by members of the Royal Lesotho Defence Force, been removed or dismissed from the Force.

Assuming the correctness of this suggestion it seems to me unlikely that the applicant who is no longer a member of the Force can easily interfere with the accomplice witnesses who are presumably still members of the Royal Lesotho Defence Force. However, in his affidavit Tsolo Lelala who is not a member of the Royal Lesotho Defence Force avers that he has fears that as prospective star witnesses in the pending trial against the applicant, he and his wife will be placed in real danger if he were to be released on bail. The affidavit does not, however, disclose what the applicant has done to the prospective star witnesses to warrant the fears entertained by Tsolo Lelala. Be that as it may, if the applicant dared to interfere with witnesses whilst remaining in the country he will no doubt be committing an offence for which he can, in my view, be re-arrested and/or re-detained. I find it difficulty, therefore, to turn down the application on this ground alone.

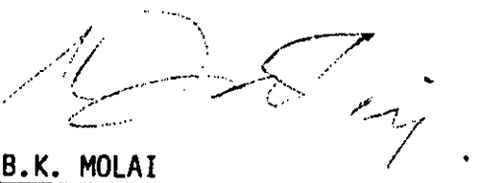
However, in the case of Moletsane v. Rex 1974/5 L.L.R. 272 at p. 275 Cotran, J. (as he then was) quoted with approval the following words by Diemount, J. in S. v. Mhlawli and Others 1963(3) S.A. 795 at 796:

> "It has been said by the courts on several occasions that where the inducement to flee is great - as in this case - and where no extradition from the neighbouring Protectorates would be possible - again as in this case - the court will not readily grant bail if the Attorney-General opposes the application."

5/ In the present .....

In the present case the considerations that have weighed heavily in my mind are that the applicant is charged with not just one but four (4) counts of murder and two (2) counts of attempted murder, all of which are serious offences calling for commensurately serious punishments upon conviction. This will, in my opinion, no doubt pose great inducement for the applicant to jump bail and flee, for example, to the neighbouring Republic of South Africa, a country with which Lesotho has no extradition agreement and thus frustrate proper administration of justice.

In the circumstances, the view that I take is that it would be a totally unwarranted risk for this court to grant the application which is accordingly refused.



B.K. MOLAI
JUDGE.

3rd 4th April, 1990.

For Applicant : Mr. Pheko

For Respondent : Mr. Mdhluli.