

IN THE HIGH COURT OF LESOTHO

In the matter between:-

MATS'ELA MONGALI	1st Applicant
RAKUTU TS'EHLO	2nd Applicant
RANTHOTO NTLOHI	3rd Applicant
PAULUS MAKHANYA	4th Applicant
SEHLOHO MAFISA	5th Applicant
SERFONTEIN MOLUHO	6th Applicant
LEPHESE MACHABE	7th Applicant
PUTLOANE PUTLOANE	8th Applicant
FUSI HLALELE	9th Applicant
MPIKO PULENYANE	10th Applicant
LENGAU STOI	11th Applicant
SEEISO TS'OEHLISI	12th Applicant
MANKO MOKGALELI	13th Applicant
MOKONE KATLA	14th Applicant
MATSIE SEMANO	15th Applicant

and

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

J U D G M E N T

Delivered by the Honourable Mr. Justice J.L. Kheola
on 20th day of February, 1991.

This is an application for bail which is opposed by the
Director of Public Prosecutions. The applicants have filed

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affidavits in ^{which} they allege that they work in the Republic of South Africa. If their application for bail is refused they will lose their employment and it will not be easy for them to get any other employment because of the high level of unemployment in the Republic of South Africa as well as in this country. The applicants are citizens of Lesotho by birth and have permanent homes in their village where they own livestock and some of them run some sort of businesses. They have their wives and children in this country. They allege that they have no incentive whatsoever to estreat the bail.

The applicants swear that they will stand their trial and that they will not interfere with Crown witnesses or hamper investigations in any way.

In the past I used to grant bail to the citizens of Lesotho who worked in the Republic of South Africa under the migratory labour system and most, if not all of them, used to comply with all the stringest conditions imposed - including having to appear before courts for remands from time to time. In those days trials used to run very smoothly without any accused persons failing to attend. In recent years there has been a change of attitude by a very small number of our migratory labourers. Once they are released on bail and allowed to have their passports, they never return and attend their trials. Once these people are outside the jurisdiction of this Court we have no power over them because there is no extradition ^{Treaty} between Lesotho and the Republic of South Africa. I am now convinced that it is unwise to allow

/people.....

people facing serious charges of murder to get outside the jurisdiction of this Court.

The applicants are charged with three counts of murder, two counts of attempted murder and one count of arson. The deceased persons and the complainants are members of the same family. The house involved belongs to the father of the same family. The evidence of the two investigating officers in the present case is to the effect that the two victims of the attempted murder charges are critically ill in Hlotse Hospital. They can hardly speak and are likely to die any day from now. Although the police officers are not experts to tell whether or not a person is going to die, I accept their evidence that the two victims are critically ill in hospital as a result of the injuries they sustained.

It seems to me that the lives of the victims are in the balance. The alleged offences took place on the 21st January, 1991 and as early as the 7th February, 1991 this application for bail was already before this Court and was set down for hearing on the 8th February, 1991. It was postponed to the 19th February, 1991 because the respondent wanted to be given more time to contact the investigating officers in Leribe. In my view the Court should not release people on bail if the lives of their alleged victims are still in the balance. The charges of attempted murder seem to me to be only provisional because of the uncertainty concerning the lives of the victims. I do not mean to say that in all applications for bail in which the victim is critically ill the Courts must not grant bail. If

/the victim.....

the victim remains critically ill for a long time or is in a coma for several months, the Court may consider granting bail and imposing very stringent conditions. In my view the present application was launched rather too soon after the commission of the alleged offences and the fact that the lives of the victims were still in the balance was not seriously considered. It means that there is a real likelihood that the gravity of the offence may increase if the two victims die.

The second reason why this application should be refused is that the offences with which the applicants are charged are very serious and if convicted they are likely to be sentenced to long periods of imprisonment. For this reason the likelihood of absconding is very great. (See Colonel Sekhobe Letsie v. Director of Public Prosecutions, CRI/APN/101/90 (unreported). In the Letsie's Case the applicant faced four counts of murder and two counts of attempted murder. The application for bail was refused on the ground of the gravity of the offence. I am of the view that the gravity of the offences with which the applicants are charged in the present case is more or less the same as in Letsie's case. The applicants or some of them may decide that rather than face long terms of imprisonment or even death sentence, it would be better to remain in the Republic of South Africa for an indefinite time.

In the result, the application is dismissed.

G.L. KHEOLA
JUDGE

20th February, 1991.

For Applicants - Mr. Sello
For D.P.P. - Miss Moruthoane.