

CRI\APN\133\94
CRI\APN\171\94

IN THE HIGH COURT OF LESOTHO

In the matter of .:

MOTEBANG TLAHALI
MOJALEFA MOKOTSO

and

DIRECTOR OF PUBLIC PROSECUTIONS

JUDGMENT

Delivered by the Honourable Mr. Justice T. Monapathi
on the 16th day of June 1994

At the hearing of the two applications this Court was forced to look at several other applications involving the two Applicants and Others. On the 6th December 1993 when the two Applicants and one Teboho Mokotso appeared before the Chief Justice under CRI\APN\554\93 the following other applications were considered CRI\APN\607\93, CRI\APN\609\93 and CRI\APN\617\93 as more clearly shown in the written judgment of the Chief Justice. No wonder that when Mr. Qhomane for the Crown appeared before me there were various attempts to put the matters into perspective that all he could say was that he left everything in

the hands of the Court. I could not blame him.

If we go by the number of charges facing these Applicants there is no doubt that the Applicants are quite an enterprising lot. But what this Court was faced with was that at all times and up to the stage of the hearing of the Applications the matter of the charges were all under investigation and in none had any trial commenced. Incidentally one of the cases was a magistrate's court case. One of the problems was the confusion between the names Teboho Mokotso and Mojalefa Mokotso. I was not informed whether they were relations.

Not only were the Applicants on enterprising lot but their lawyers were similarly quite enterprising and persistent in filing of one application after another. This is shown by the fact that even after the Chief Justice's decision the said Teboho Mokotso somehow came back and was allowed on bail under the same case number 607\93 and 617\93 on the 4th February 1994 whereupon the following conditions were imposed.

- (a) Payment of M200.00 in cash bail deposit.
- (b) To report at Maseru Charge Office once a week on a Monday morning between 8.00 am and 12.00 noon.
- (c) Attend remands and stand trial.
- (d) Not to interfere with Crown witnesses.
- (e) Surrender passport to Police.

In this CRI\APN\607\93 concerning Criminal number 132 of 1993 Motebang Tlahali and Teboho Mokotso the accused were charged with:

COUNT 1 "Unlawful and intentional killing of one Felix Kuezinski" and

COUNT 2 With robbery having unlawfully assaulted one Felix Kuezinski and stole a BMW from him.

In this CRI\APN\617\93 it appears that there had been under case No. 93\93 of the magistrate's court the following are shown to have been charged: Mojalefa Mokotso, Rathabane Hebbert Pitso, Motebang Tlahali, Bilal Osman and Adil Osman. I am not aware if all were charged and remanded. In this one the Accused are charged with Armed Robbery it being alleged that they "unlawfully assaulted Johannes Willen Wessels and by intentionally using force and violence to induce submission by Johannes Willem Wessels did steal and take from him or his presence out of his care and protection certain property to wit a motor vehicle Toyota Hilux Van, Registration number AD 195, Engine Number ZL 292799, Chassis Number LN 653000486, the property of or in the lawful possession of Johannes Willem Wessels and did rob him of the same."

In this CRI\APN\133\94 the Accused are charged with two counts similar to that under CRI\APN\607\93 shown above. Indeed the charge is also before the magistrate's court of Maseru under case number CR.1329\93 I did not find any explanation for the

duplication or proliferation of the applications.

In this CRI\APN\171\94 the Accused Mojalefa is charged with one Teboho Mokotso, Motebang Tlahali and 'Mileng Leanya on two counts namely Count I that of Motor Vehicle Registration X 0683 and Count II Theft of Motor Vehicle Registration X 0642. It is these charges that are probably to be proceeded with in the magistrate court in Maseru. It is clear that there must have been some similar applications preceding this one, that is why the Chief Justice on the 8th April 1994 refused the application and said "nothing has changed since the Original Application was refused."

While it was clear that on most instances the Applicants faced serious charges on which (there was no attempt to persuade the Court) there could have been strong *prima facie* cases for presumption of the accused persons. It is a matter of great concern that as at the time of hearing of the bail applications no trials had commenced. This now resulted in the pile of applications which more than confused the situation.

I formed an opinion that this were matters on which Applicants could be released on bail on such necessary conditions that would be stringent enough. I imposed the following conditions:

- (a) Each Applicant to pay in cash bail in the sum of M1,000.00 each.
- (b) Each Applicant to furnish one independent surety in the sum of M2,000.00.
- (c) Each Applicant to hand over his passport to the Police.
- (d) Each Applicant to report once a week on Fridays at the Royal Lesotho Mounted Police headquarters in the Criminal Investigation Section between hours of 8.00 a.m. and 4.30 p.m.
- (e) Applicants not to interfere with Crown witness.
- (f) Applicants to attend duly on days set for remands and trial.

T. MONAPATHI
JUDGE

16th June, 1994

For the Applicants : Advocates Mafantiri, Phafane, Khasipe

For the Crown : Advocate Qhomane