

CRI/APN/585/93  
CRI/APN/690/93

IN THE HIGH COURT OF LESOTHO

In the matter between

TIMELLO LEROTHOLI	APPLICANT
AND	
DIRECTOR OF PUBLIC PROSECUTIONS	RESPONDENT

Before the Honourable Chief Justice Mr Justice B P  
Cullinan on the 8th February, 1994

For the Applicant	Mr M Mafantiri
For the Respondent	Mr J J Semoko, Crown Counsel

Cases referred to

- (1) Lerotholi v DPP CRI/APN/585/93, Unreported,
- (2) Mothobi v DPP CRI/APN/183/92, Unreported

JUDGMENT

The applicant is charged jointly with two co-accused  
with murder and armed robbery He applies for bail He  
previously applied for and was refused bail, in a judgment  
(1) delivered on 17th November, 1993 His present

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application is again opposed by the Director of Public Prosecutions

Mr Mafantiri submits that there have been three material changes of circumstances since the last application. Firstly, the applicant's co-accused have been released on bail. Mr Semoko, who relies on the affidavits filed in the previous application, has informed the Court from the Bar that one co-accused, Papi Chaole, has been re-arrested on a Bench warrant for breach of bail conditions. In any event, I do not consider the outcome of applications by a co-accused to be necessarily material. The reasons why I refused bail are contained in the judgment delivered on 17th November. Each and every application must be judged on its merits. I have no means of knowing what evidence was placed before the Judge or Judges who granted bail.

Secondly, Papi Chaole has now filed an affidavit in support of the present application. Therein he denies threatening anybody on the date in question. He confirms however that he "did borrow the applicant's gun as I was taking a long journey to T Y " and that he returned the gun at 9 p m. I fail to understand how a journey from Motimposo to Teyateyaneng could be regarded as "a long journey". Again there is no explanation as to what was the necessity

of carrying a gun, nor indeed why the applicant possessed a gun. Nowhere for that matter does Papi Chaole specifically deny that the applicant was with him on the date and time in question. Suffice it to say that the additional affidavit does not affect the conclusion that a strong *prima facie* case exists against the accused on the gravest of charges in the gravest of circumstances.

Finally, the applicant deposes that his health is suffering due to his detention and that there is a danger that he will lose his mind. The applicant has failed to adduce any medical evidence whatever in the matter. There is nothing more than his bald statement. Even if it is the case that he is ill, then he should receive medical treatment. Further, as I observed in the case of *Mothobi v DPP* (2) at p 4,

"If a prisoner is so ill that he requires hospitalisation, then I cannot see why, like any other member of society, he cannot be hospitalised, that is, under custody. If the Kingdom's prisons do not contain the necessary facilities for prisoners in need of hospitalisation, then the authorities must make arrangements for the hospitalisation of a prisoner, in need of such, in a hospital outside the prison, that is, under close guard."

I find therefore that there is no material change of

circumstances, sufficient to warrant a reversal of the Court's previous decision and the application is accordingly dismissed

Delivered at Maseru This 9th Day of February, 1994



B P CULLINAN  
CHIEF JUSTICE