

IN THE HIGH COURT OF LESOTHO

In the Application of:

'MAMAKOAOE MOKOKOANE Applicant

and

DIRECTOR OF PUBLIC PROSECUTIONS Respondent

REASONS FOR JUDGMENT

Filed by the Hon. Mr. Justice B.K.Molai  
on the 1st day of March, 1995.

On 17th February, 1995, I dismissed this application and stated that reasons therefor would be filed at a later stage. These now follow.

The applicant herein filed, with the Registrar of the High Court, a notice of motion in which she moved the court for an order framed in the following terms:

- "(a) Releasing applicant on bail on conditions appearing in paragraph 14 of the petition.
- (b) Granting applicant such further and/or alternative relief as this Honourable court may deem fit."

The notice of motion was accompanied by a petition and a verifying affidavit. The Respondent intimated intention to oppose this matter but filed no answering affidavit. It could safely be assumed, therefore, that the facts disclosed in the petition were common cause.

In as far as it was relevant, the applicant alleged, in her petition, that she had been convicted on six (6) counts of Theft by false pretences. A sentence of six (6) years was imposed on each of the counts. She was consequently kept in custody and serving her sentence at the Maseru Female Prison. An appeal against both the convictions and the sentences had been noted to the Court of Appeal and, therefore, pending.

The applicant further alleged that she was reliably informed that many appeals had, some time ago, been noted to the court of appeal. There was a backlog in transcribing the records of proceedings thereof in readiness for hearing by the Court of Appeal. The record of proceedings in her trial was long and it would be some time before it was transcribed and ready to be placed before the Court of Appeal. By the time the record was transcribed and finally ready to be placed before Court of Appeal, the applicant would have served a large portion of her

sentence. That would be prejudicial to her case as the applicant reasonably believed that she had ample prospects of success in the pending appeal. Hence the institution of these proceedings for an order as aforesaid.

I considered it worth noting that the applicant had been convicted and sentenced, as alleged, on 14th February, 1995. She had moved the court for the order aforesaid on 16th February, 1995 i.e. only two days after the trial had been completed. There was no definite proof that there would be inordinate delay in transcribing the record of proceedings. Her allegation that that would be the case was at the time, sheer speculation on which the court could not, in my opinion, properly rely.

It was not enough for the applicant to allege that she had ample prospects of success in the pending appeal and then rested. It was important that she disclosed the grounds upon which she relied for her allegation that there were ample prospects of success in the pending appeal. The applicant had not done so. Nor had I been shown the grounds of her appeal. I was not, therefore, in a position to judge the probabilities of success in the pending appeal.

The applicant had, in my view, been convicted of very serious crimes viz. six (6) counts of Theft by false pretences involving large sums of Government money. A term of imprisonment totalling 36 years had been imposed. I entirely agreed with Lewis, J. who at p. 549 of the decision in Rex v. Fourie 1948 (3) S.A. 548 had this to say on the issued.

"...in the case of a serious crime, a convicted person should not be admitted to bail. He has been convicted and his sentence is in force, and the fact that he has noted an appeal or had a point of law reserved does not entitle him to ask that the sentence imposed be stayed pending the decision of his appeal."

See also the decision in Makhoabenyane Motlounq and Others v. Rex 1974-75 LLR 370 where Cotran, J. (as he then was) had this to say at p. 372:

"Granting of bail pending appeal is not automatic from a superior court, and very strong reasons indeed would be needed to justify a departure from this."

I was not convinced that strong reasons existed to justify a departure from the general rule and release the applicant on bail in the instant case. As it has already been pointed out earlier, I

consequently dismissed the application.

B.K. MOLAI

JUDGE

1st March, 1995.

For Applicant : Mr. Pheko

For Respondent: Mr. Lenono.