**CRI/APN/633/98**

## IN THE HIGH COURT OF LESOTHO

In the matter between:

KEKETSO SEKAMANE — APPLICANT

and

DIRECTOR OF PUBIC PROSECUTIONS — RESP0NDENT

## JUDGEMENT

**Delivered by the Honourable Chief Justice Mr. Justice J.L. Kheola**
**on the 20th day of November, 1998**

This is an application for bail. The applicant is charged with the offence of armed robbery allegedly committed on the 23rd September, 1998 at or near Lithoteng in the district of Maseru. The only weapon involved in the charge before Court is an AK47 rifle which was allegedly taken by force and at gun point from one Trooper Mokone. To say that there are other weapons and a motor vehicle involved in the robbery which have not been recovered does not help the Court in deciding this application.

The normal procedure is that when an accused person is charged with armed

robbery involving several complainants the charges must include all the complainants and state property taken from each of such complainants. In the present case there is only one charge involving one complainant and one AK47 rifle. The crown has not stated whether that AK47 rifle has been recovered or not. In any case the recovery of the property allegedly taken in robbery does not entitle the Prosecution to delay to frame the charges against the accused in such a way that he knows what charges he is facing. In the present case the Prosecution knows all the complainants who were robbed of their belongings. I see no reason why the applicant is not informed now what charges he is facing. I shall assume for the purposes of this case that the applicant is facing one charge involving the AK47 rifle the property or in the lawful possession of Trooper Mokone.

The Prosecution alleges that the crime is very serious because it took place during the recent political disturbances which took place from the 22nd September, 1998. The applicant was a member of a group of members of the Lesotho Defence Force. Their first destination was the Makoanyane Barracks where they intended to have access to the armoury so as to seize weapons therein. Upon seeing that the Makoanyane Barracks was inaccessible, the applicant and his party decided to go to the Police Headquarters. Having parked their vehicle at the gate of the Police Headquarters, a SADC armoured car arrived. They drove away and headed for

Ha Seoli. On the way they met a police vehicle. They stopped it and at gun point robbed the occupants of an assortment of firearms including an AK47 rifle which is apparently the subject matter of the present charge.

It is alleged that from ha Seoli they proceeded to Mafeteng. On the way they met another police vehicle. They stopped it and forcefully took it from its occupants.

In his replying affidavit the applicant denies all these allegations. In paragraph 4 of his founding affidavit the applicant raises the question of mistaken identity. In answer to that and in paragraph 3 of his opposing affidavit S/Lt. Daka simply says that "contents therein are denied". It seems to me that the allegation of mistaken identity cannot be dismissed with only one sentence that the allegation is denied. S/Lt. Daka must have explained the circumstances under which the applicant was identified. What time of the day or night was it? How was the light? Was the applicant well known by the witness or witnesses who saw him commit the alleged offence? If they did not know him was an identification parade subsequently held and did the witnesses identify him?

The applicant's defence of mistaken identity remains unchallenged. The

long story given by S/Lt. Daka is of little or no assistance to the Court because he does not even mention where he got it from.

I repeat what I have already said above that the fact that "a sizeable quantity of exhibits are still missing" is irrelevant because the applicant is charged with robbery involving one AK47 rifle. If after one and half months the exhibits have not been recovered, it seems to me that the chances are very slim that they will ever be recovered. It is not clear how the continued detention of the applicant will help the police to recover those exhibits more especially becaue it is alleged that his companions are still at large.

It is alleged by the Prosecution that there is a very high likelihood that the applicant will tamper with police investigations as he commands a lot of influence amongst potential witnesses. This bold statement is not evidence because no facts have been stated upon which it is based. How can a mere private in the army of more than three thousand men have that kind of influence?

**Mr. Ramaema,** Crown Counsel who appeared for the Crown was apparently not prepared to argue the case. He came to court late after **Mr. Nthethe,** Defence Counsel, had finished making his submissions and had prepared

good and sound heads of argument. **Mr. Ramaema** was completely unprepared. He had no heads of arguments. At one time, he purported to refer to a case, the citation and names of applicant he could not remember, in which a chief applied for bail. The application was refused on the ground that he had influence over his subjects some of whom were Crown witnesses. I thought the case was wrongly decided and demanded its citation so that I could read it and find out the real reasons for that decision. He was unable to help. I honestly hope that next time when **Mr. Ramaema** appears before me he will do a bit of his homework.

Regarding the general principles of law usually taken into consideration in bail applications I shall quote the words of **Rooney J** in **Ramakatane v. Rex** 1979 (2) LLR 531 at pp 535-536 where he said:

> "The general principles governing the grant of bail as set out in many cases are that the court must uphold the interests of justice. It will always grant bail where possible and lean in favour and not against the liberty of the subject provided that it is clear that the interest of justice will not be prejudiced thereby. The court's task is to balance the reasonable requirements of the State in its interest in the prosecution of alleged offenders, with the

requirement of the law as to the liberty of the subject. The presumption of innocence operates in favour of the person seeking bail even where it is said that there is a strong prima **facie case** against him. If on the other hand there are indications that the proper administration of justice may be defeated if an accused is let out on bail a court would be fully justified in refusing bail. (**McCarthy v. R.** 1906 T.S. 657. **Haffer Jee v. R** 1932 N.P.D. 518. **S. v. Essack** (supra). **S. v. Mhlawi and Others** 1963 (3) S.A. 795 and **S. v. Smith and Another** 1969 (4) S.A. 175)."

I agree that the applicant is facing a serious charge because armed robbery falls under that category but there is altogether no evidence of a likelihood that the applicant will abscond, tamper with police investigations or Crown witnesses.

I accordingly order as follows:

1. The application for bail is granted.
2. The applicant shall pay a cash deposit of M1,500-00 as bail.
3. He shall provide two sureties in the sum of m1,500-00 each who will undertake that the applicant shall attend his trial .

4. The applicant shall not tamper with police investigations and people known to him to be Crown witnesses.

5. He shall attend remands and his trial.

**J.L. KHEOLA**
**CHIEF JUSTICE**

**20TH NOVEMBER, 1998.**

**For Applicant - Mr. Nthethe**
**For Respondent - Mr. Ramaema**