

IN THE HIGH COURT OF LESOTHO

In the matter between:-

**SALLA MOKHESENG**

**APPLICANT**

and

**THE DIRECTOR OF PUBLIC PROSECUTIONS**

**RESPONDENT**

**JUDGMENT**

Delivered by the Honourable Mrs. Justice K.J. Guni  
on the 20<sup>th</sup> day of March 2000

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This applicant wishes to be admitted to bail pending trial. He is presently held in the Maseru Central Prison awaiting trial on a charge of murder. Admission to bail for anyone accused of murder, which undoubtedly, is one of the most serious offences in this Kingdom, is a routine process. Dozens of a applications for bail pass, unopposed, through these courts every week. The right to personal liberty is guaranteed and protected as provided by the supreme law of this land. [Chapter 11, Section 6: (1993) CONSTITUTION OF LESOTHO]. The courts,

pursuant to the constitutional provisions cited above, admit numerous applicants to bail at all times. It is in very exceptional circumstances where an accused person is refused bail. It did not come as a surprise to me when during the perusal of these papers filed of record in this application, it emerged that this applicant allegedly committed this crime of murder while on bail on another charge of the crime of murder - CR 95/95. Within the space of five years or so he has allegedly committed two murders.

It appears that this applicant was arrested and charged with the crime of murder in CR 95/95. He applied for and was released on bail. He has now been arrested again and has been charged with the crime of murder CR 11/2000. I am unhappy with regard to insufficiency of the facts put before this court. But nevertheless I have to come to a conclusion.

Bail applications are all the time hurriedly prepared. Most important and relevant facts are inadvertently or deliberately left out. The response to such application is also required to be provided forthwith without giving the police who are involved in the investigations of the crime, for which the applicant has been arrested, enough time to research the issues raised and those related to them, in order to give a complete picture of what sort of a case is under consideration.

As a result of having before me half truths of scanty facts, invariably I have to make a decision without being properly informed. Applicant withheld material relevant facts relating to his previous conduct. Respondent and those supporting the opposition to the granting of bail to this applicant, filed affidavits which raise those issues left out by this applicant. In an attempt to deal with the issues raised by respondent's affidavit in his replying affidavit, this applicant became a respondent - now answering charges levelled against him in the opposing affidavit, with total disregard of his Founding affidavit. The result is an untidy patch work which fails to show clearly the precise case of this applicant.

At the end of the passage through this maze , the haze picture which emerges therefrom is as follows: This accused was arrested and charged with murder in 1995. He applied for and was granted bail on specified conditions. Of those conditions, the following are relevant for the assessment of his future conduct:

1. He was ordered to attend remands as stipulated .
2. He was ordered to report himself at the Police Station at specified intervals.

This applicant does not deny that he was on bail and these were some of the conditions of his bail. He also does not deny breaching such conditions. He gives

flimsy excuses which show that he does not regard the matter with the seriousness it deserves.

The respondent has opposed the release on bail of this accused on the ground that he is likely to abscond. The fears that this accused will abscond are raised in the mind of the respondent, by the accused's previous conduct which is the factor which must be considered in order to determine whether or not this accused should be trusted to make himself available to stand trial S.V. Thornhill 1998 (2) S.A. Criminal Law Report 177.

The record of his previous conduct as indicated in his own averments in the replying affidavit, is as follows: He discontinued attending remands when he was "informed that the charge sheet against which his remands were recorded is lost. He reported at the Police Station until the record was full of reporting stamps when the police advised him to go and look for work until he could be summoned to court." These conditions of bail are made by the court as an order of court. As such, they can only be varied or cancelled by the court. The ease with which this accused cancelled them must be considered seriously. S.V. THORNHILL 1998 (1) S.A. Criminal Law report at page 177. The reading, of his excuses for the breach of the bail condition, gives the impression that he feels that he is in control

and has authority to vary, or cancel those conditions as he pleased. According to him the record of reporting was full of stamps.” He sounds fed up. He had been reporting for too long. He feels justified to take the law in his own hands and decide enough is enough. He is unemployed. He appears to have no fix abode. He can be anywhere for any length of period as shown in his founding affidavit that he was in his village on Christmas eve. He was at Maseru at Ha Thamae for new year. He was in Bloemfontein in the Republic of South Africa until his arrest.

The public prosecutor and police man, are members of the law enforcement agency of the crown. They know and must respect court orders. It is unlikely that they can instigate the breach of bail conditions or give directives such as those allegedly given to this accused by them. There is, undeniably, some corruption in the justice system. Court records do go missing: They are sold to accused persons or destroyed, for the sole purpose of defeating the ends of justices. As far as the Public Prosecutor is concerned, this accused has absconded. The Preparatory Examination which should have been held, failed to proceed because of this accused’s absence. It is argued on behalf of this applicant that it is not this Prosecutor who released him. The accused was released by the prosecutor who cannot be named nor described. The policeman who advised this accused to go and look for work and stop reporting himself as ordered by the court is also

nameless, unidentifiable and even indescribable. These excuses are so ridiculous, the accused must have concocted them hurriedly when he noticed that his passed was catching up with him. In order to strike a proper balance between his right to liberty and the interests of society for the proper administration of justice the applicant's previous behaviour must be considered in the light of his present averments that he will stand trial S.V ESSACS 1965 (2) S.A. 161. In our present application, applicant has not made any averments that he will stand trial. He supposedly will stand trial if ordered by this court to do so. I need not mention the indications made by his previous conduct as far as respect of court order is concerned.

Because he was arrested in the Republic of South Africa and handed over to the Lesotho Police by members of South African Police Service, the applicant in his founding affidavit dealt mainly with his departure from Lesotho and the reasons for such departure. The accused claims that for no apparent reason he was unlawfully attacked by some men of his village. He sought refuge in his relatives house. The men waited outside the house for him. He escaped, under the cover of darkness. He ran away by night because he feared that he will be caught when the day breaks. According to him he narrowly escaped death. Where does he run to? One might be inclined to think the man who is running for his dear life will

go to a refuge where his life would be secured and culprits brought to book. There is a police station nearest his village. The investigating officer in this case is from the Police Station. The applicant did not go to that Police Station. He came to Ha Thamae - Maseru.

There again, he did not consider running to the police station to report the matter and seek protection. He went to his brother in Bloemfontein. He had passed numerous Police Stations in Maseru when he went to report, that attack upon him by his fellow villagers, to his brother. He remained in Bloemfontein from 10<sup>th</sup> January, 2000 until he was arrested on 1<sup>st</sup> February, 2000. He was therefore nearly a month there. This accused does not show this court that he has any substantial ties with any permanent residence. He appears to live anywhere and every where for any length of period. All the issues discussed and considered in *S.V. Acheson*, for the purpose of striking proper balance between the interests of the society for the proper administration of justice and the interests of the individual right to liberty, are found missing in this application. *S.V. Acheson* 1991 (2) S.A. 805 at page 808 F - G. He does not say he has a permanent home anywhere. He says nothing about his family and the family ties. He is unemployed. There is just nothing to hold him anywhere. His previous record shows that he can very easily evade any bail condition *S.A. THORNHILL* [supra]. He was arrested while on the

run.

Another reason which was not directly raised by respondent, is his likelihood to continue committing similar offences, if released. The accused was on bail awaiting trial on a charge of murder when he allegedly committed this murder. There is a need if only for the protection of the society to keep this accused in custody in order to stop him from committing further murders.

It is an aggravation against release on bail for any accused who is likely to commit similar offences while on bail. This is a proper case to invoke the provision of section 6(e) Constitution of Lesotho 1993. Bail is refused.

  
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K. GUNI  
JUDGE

20<sup>th</sup> March 2000

For Applicant: Mr Mpopo

For Respondent: Ms Dlangamandla