

CRI/APN/426/2000

IN THE HIGH COURT OF LESOTHO

In the Application of :

CHURCHILL MALUNGA MATEE

Applicant

vs

R E X

Respondent

J U D G M E N T

Delivered by the Hon. Mr Justice M L Lehohla on the 31st day of July, 2000

The applicant has filed a petition before this Court accompanied by his verifying affidavit.

In paragraph 21 of his petition he prays that he be granted bail on the following conditions :

- (a) that he attends remands
- (b) that he pays M500-00 cash

- (c) that he finds surety in the sum of M3000-00
- (d) that he stands trial.

The petitioner is charged along with one Sefafe Ramosana as reflected in Annexure "A"

- in Count I with Murder allegedly committed on 19th June 1999;
- in Count II with attempted murder allegedly committed on 19th June 1999;
- in Count III with contravention of Section 3(2)(a) Act No.17 of 1966 (Arms and Ammunition Act) allegedly committed on 19th June 1999.

In Count I the deceased is one Lebohang Agente while in Count II the complainant is Trooper Mahase.

This is in case CR 657/1999.

In another charge sheet to which is attached another annexure "A" the petitioner is charged along with Bereng Khitsane with the attempted murder of Seithheko Selialia allegedly committed on 9th April 1999. This is in case CR 654/99.

In the next charge sheet to which is attached another Annexure "A" the petitioner is charged alone

- in Count I with the attempted murder of Trooper Nyooko on 2nd April, 1999.
- in Count II with the attempted murder of Trooper Mothe on 2nd April, 1999
- in Count III with the attempted murder of Trooper Maphatšoe on 2nd April, 1999.

This is in case CR 349/2000.

In the face of this formidable list of charges *Mr Teele* for the petitioner anticipates the natural reaction that the list looks disturbing but he is quick to caution that this is so far as looks go; and that looks can be deceiving.

The petitioner denies the charge involving Selialia in case CR 654/99 and says he does not even know the alleged complainant. He explains that he is a victim of a very wild suspicion based on the fact that he happened to have been seen drinking with Khitšane who has since been admitted to bail.

The chronology in the instant matter appears most likely to throw the light on the dispute between the petitioner and the Crown and in the process would most

. certainly help bring a solution to the problem.

The events concerning Selialia in CR 654 are said to have occurred on 9th April, 1999.

In CR 349 three policemen are complainants. Events here are said to have taken place on 2nd April, 1999.

The murder charge consists of three counts relating to events alleged to have occurred on 19th June, 1999.

In paragraph 4 the petitioner avers that he is alleged to have pointed a firearm at the three complainants, discharged a bullet and missed the three complainants.

In paragraph 5 he is adamant that he knows nothing of the alleged incidents.

In paragraph 8 of his opposing affidavit Sgt Makoae admits contents of the petitioners averments in paragraph 4. He adds further that there are two more counts wherein the petitioner is charged with attempted murder. He elaborates that the petitioner fired the shots while resisting arrest. Again it is stressed that the

complainants were police officers who were shot at while trying to arrest the petitioner. Reference is made to CR 654/99.

While in paragraph 3 the petitioner says he doesn't know Selialia; in opposition thereto Sgt Makoe in paragraph 7 vehemently denies the petitioner's denials and goes so far as to assert that the applicant/petitioner knows Selialia and furnishes the reason for so saying; namely that the two resided in the same Nyenye village.

In reply at paragraph 3 the petitioner reiterates contents of his founding affidavit reflected in paragraph 3 thereof. The petitioner challenges Sgt Makoe by indicating that not even the complainant has furnished evidence that he and the petitioner know each other. Indeed the statement by Selialia in "CM2" which is among statements by witnesses in police dockets gives credence to the petitioner's assertion in this regard.

Mr Teele himself having been stung to the quick by the Crown Counsel Mrs 'Matahleho Matiea's unfortunate averments in paragraphs 3 and 4 which seem to have endorsed Sgt Makoe's misleading evidence filed an affidavit that seems to expose inaccuracies and wrong presumptions on which Mrs Matiea's contentions are

based.

The simple application of common sense would show the baselessness of the Crown's endeavour to justify the arrest connected with the counts relating to attempted murder of police officers.

The Crown maintains that the arrest which was resisted by the applicant was in pursuance of an offence committed in CR 654/99. The natural reaction would be that the offence in CR 654/99 was committed before the one which resulted in attempted murders of the police officers. But surprise! surprise!! it appears that on 2nd April, 1999 when an offence relating to CR 346/2000 took place the petitioner was being arrested in respect of a crime that had not yet been committed i.e. a crime that was to be committed on 9th April, 1999. This gives credence to the version by the petitioner that there is a concerted effort to fabricate false evidence against him and give substance therefore to the petitioner's version that the police told him that they would make sure he didn't leave prison.

The Court being alive to the principle that in order to deny an applicant bail it should be indicated that he had either previously interfered with witnesses or

attempted to abscond, invited *Mr Hoeane* for the Crown to say whether the alleged attempt to resist arrest would fit the bill in this case despite the awkwardness revealed by evidence. The learned Crown Counsel was unable to give any clear answer; understandably so. I say understandably so because no worthwhile attempt was made to breach this gaping hollow and embarrassingly indefensible voidness in the Crown's case.

The Court cannot ignore the fact that this incident has been relied upon by the Crown to strengthen its case against the granting of bail. Thus if it turns out that the chronology of events tends to leave the Crown with an egg on its face, surely it would be absurd to hope that the Court should close its eyes to the illogicity that is at the very core of the Crown's case.

Furthermore the Crown has tried to show that there is likelihood of the petitioner absconding occasioned by multiplicity of serious crimes committed. But one such multiplicity appears to me to be a single case multiplied by three for reasons of making it appear that more crimes were committed than the facts reflect. I fail to see how a single shot alleged to have been fired by the petitioner can be said to have

amounted to attempted murder on each of the three police officers without evidence that a shot was fired at each one of them or that they were positioned in a single line in which case a shot fired at the first would apprehensibly strike the next policeman in line and the next thereafter till it goes out of steam.


Mr Teele took the trouble to attach the Preparatory Examination record to the instant proceeding to negate the Crown's allegations that the Preparatory Examination record would show that the petitioner drew a pistol in the murder charge. Instead of pointing at the evidence to substantiate the Crown's assertion the deponents annex the order made by the Magistrate committing the petitioner to trial in the High Court. However the random statements taken at the Preparatory Examination show that the deceased is the one who drew a gun.

The Crown cannot be allowed to adopt the unwholesome tactic of renegeing from its own evidence at Preparatory Examination in order to frustrate the petitioner's application for bail. Moreso because at this stage of proceedings the petitioner is presumed innocent until convicted. His application can be refused if it can be shown on proper evidence that the interests of justice would be defeated if he is freed on bail.

The Court has taken into account that the petitioner is a Lesotho citizen, has a wife and children in this Kingdom and has a fixed place of abode and work.

He is accordingly granted bail as prayed and on conditions set out in paragraph 21 of his petition and subject to a further condition that he report at Maputsoe Police Station every Saturday between 6 a.m. and 6 p.m.

Finally I must thank both Counsel for their invaluable sets of heads of arguments filed timeously at very very short notice.


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J U D G E
31st July, 2000

For Applicant : Mr Teele
For Respondent : Mr Hoeane