CRI/APN/84/2000

IN THE HIGH COURT OF LESOTHO

In the matter between

LEKHOOA NAMANE **APPLICANT**

and

HER WORSHIP PINDA - SETŠABI **1ST RESPONDENT**
DIRECTOR OF PUBLIC PROSECUTIONS **2ND RESPONDENT**

For the Applicant : Mr. R. M. Masemene

For the Respondent : Mr. R. M. Rantsane

JUDGMENT

Delivered by the Honourable Mr. Justice T. Monapathi
on the 12th day of June 2000

The Accused had been convicted of assault with intent to do grievous bodily harm and was sentenced to three (3) years imprisonment with an option of a fine of Three Thousand Maloti (M3,000.00) by the magistrate of Maseru (First Respondent). This application for review was refused. The proceedings were

substantially in accordance with justice and fairness including the sentence which was not harsh in the circumstances. Nor did it require the Court's intervention for any reason whatsoever.

The fact of the Accused not being advised of his right to legal representation alone, which resulted in no prejudice to the Accused, cannot vitiate the proceedings where as in the instant case, the Accused understood the proceedings and particularly the charge which was a simple one and where he was offered an opportunity to defend, reply and state his case. Nothing was reviewable at all. That is why the application ought to fail- contra MAKHEBE RAMOKOENA v DPP CRI/APN/152/2000 of 3rd May 2000.

In the RAMOKOENA CASE what the Court was mainly concerned with was the requirement which is constant and unambiguous, namely: That a magistrate is required to cause proceedings to be interpreted from Sesotho language to English language and vice-versa. It did not appear that this had been done. Hence the absence in the record of those proceedings of any statement to the effect nor indication on the charge sheet that there had been an interpreter. I also referred in that case to R v TŠELISO MAFEKA 1991-1996(2) LLR 1119 in that regard.

I also felt in RAMOKOENA case, on the force of section 12(d) of the Constitution of Lesotho, that the provision could only be given force, strength and efficacy when a practice is entrenched whereby magistrates be obligated and enjoined to ask accused persons whether or not they have lawyers of their choice:

> "That would lead to the issue of whether a subsidized representation
> (Legal Aid) would be sought if events led to that."

In that way the right of an accused to A fair trial would be clothed and given a

proper Constitutional effect and not a pious pronouncement.

It remains a useful attitude by the Crown, though not frequently adopted nowadays, to protest that matters raised in some of these complaints against convictions and sentences belong to appeals procedure and not review procedures strictly speaking. This appeared to be one of them.

One clearly sees in most of these criminal applications for review a manifest abuse of process of Court. It cannot be said that any minuscule non-compliance with principles of natural justice, unfairness, unreasonableness and errors of law or fact is a vehicle for these proliferating applications which conveniently avoid launching of regular appeals for the least of excuses.

T. MONAPATHI
JUDGE