

IN THE HIGH COURT OF LESOTHO

In the matter between:-

MAKUOE MAQHOBELA

and

THE DIRECTOR OF PUBLIC PROSECUTIONS

JUDGMENT

Delivered by the Honourable Mrs Acting Justice
A.M. Hlajoane on the 24th July, 2001

On the 12th July, 2001 Mr Phafane appeared before me and moved this application for bail. Mr Semoko was for Crown. There were also many other bail applications that were moved that day other than this one.

I first read all the papers for all the bails that I had to consider that morning and later called all counsel whose files were before me to come and move their Applications. I must have read this Application out of context because I took this as an Application for bail on Robbery Charge. I was keeping a list of all cases that

I had dealt with.

The following week as I was going through the list of cases that I had dealt with, I discovered that the Criminal Application referred to above in fact dealt with Motor Vehicle Act of 2000 copy of which I did not have. I had to send my secretary to Government Printing to secure me a copy of that Act.

After reading the relevant Section under that Act, Act 13 of 2000, Section 3(I) and (2) I came to realize that, in granting bail, Section 3(I) and (2) had to be read together with Section 15(I) of the same Act.

I then instructed the Assistant Registrar to call before me both Mr Phafane and Mr Semoko in order for them to come and address me on the question why I could not revisit my decision in having granted bail without having addressed my mind to the relevant Law. I did this by invoking the provisions of Section 45(1) (b) of the High Court Rules Legal Notice 9 of 1980.

The Section reads; "The Court may, in addition to any other powers it may have *mero motu* rescind or vary -

- (b) An order or judgment in which there is an ambiguity or a patent error or omission, but to the extent of such ambiguity, error or omission;”

I took it that there had been an error and an omission in that I read the charge against the accused/applicant out of context. The Court could therefore not be considered to have exercised its discretion judicially in granting bail and fixing the amount at only two hundred and fifty maloti (M250.00) cash deposit. For the Court to have exercised a judicial discretion, it ought to have been supplied with sufficient information, which in this case would be the provisions under the relevant Law, see *Bolofo and Others vs DPP C of A (CRI) No. 8 of 1996*.

Mr Phafane contended that the order was not granted on error as the facts were clear. He was asked to address Court on why he had chosen to bring the application before the High Court yet the offence was bailable at the Magistrate’s Court. The Court felt, the matter could only have been placed before it either on appeal or review. Mr Phafane showed that the High Court with its unlimited jurisdiction was not barred from dealing with matters falling within the jurisdiction of the Subordinate Courts.

On the question of determination of bail under the Act, Section 15(I) which requires that the amount of bail “shall” not be less than half the value of the motor

vehicle, subject matter of the offence, the Crown showed it had tried all that was possible in trying to get hold of the vehicle which had been released to the complainant in the criminal charge but all in vain.

The question that remained to be answered was, who actually had to determine the value of the vehicle? Surely both the Police as investigators and the Crown cannot be considered to be competent to exercise such powers under the Act.

The other issue would be whether for purposes of determining the value of the vehicle, it had to be physically seen, or the blue card would suffice? Would it be the market value or the book value?

The Court came to the conclusion that to determine the value of a motor vehicle, be it book value or market value, there has to be an expert evidence to that effect in order to assist and guide the Court in the determination of the amount of bail to be imposed.

In the present case, the Court considered that, having made the initial order in granting bail was not *functus officio*, C of A (CRI) Review 1 of 1999 M.

Molapo v. DPP and Another in as far as the amount fixed was concerned as it could not be said its discretion was exercised judicially. The offence under which the applicant was charged even though the allegations displayed armed robbery, was in fact theft of a motor car under Act No. 13 of 2000 S. 3(I) and (2) read with Section 15(I)

My brother, Mofolo J, had already granted bail to the applicant's co-accused and fixed it at one thousand maloti (M1000) cash deposit. I therefore alter the initial order to read, bail granted at one thousand maloti (M1000.00) cash deposit, and other conditions will remain the same.



A. M. HLAJOANE
ACTING JUDGE

For Applicant: Mr S. Phafane
For Crown: Mr Semoko