

IN THE HIGH COURT OF LESOTHO

In the matter of :

SEBOLAI NKHOOA

APPELLANT

vs

REX

RESPONDENT

JUDGMENT

Delivered by the Honourable Mrs Justice K.J. Guni
on the 10th day of May 2001

This matter came before me on appeal against the granting of excessive bail by Quthing Magistrate .

At Quthing Magistrate's court the accused (now the appellant) was charged with the crime of contravening section 5 (c) (d) of Motor Vehicle Theft Act N0.13 of 2000 read with section 3 (1).

The section under which the accused is charged provides for presumptions which reduce the burden of proof laid upon the crown in order to prove the accused

person's guilt in criminal cases. The section in fact shifts such burden of prove upon the accused person. Section 5 (c) (d) Motor Vehicle Act N0.13 of 2000 reads as follows:-

“ Presumptions

5. In any proceedings, where it is proved to the satisfaction of the court that a person -

- (a) was found in possession of a motor vehicle reasonably suspected of being stolen;
- (b) was found in possession of a motor vehicle of which the engine or chassis number or the registration marks of numbers, or other identification marks have been altered, disfigured, obliterated or tampered with in any manner;
- (c) was found in possession of a motor vehicle and is unable to produce a bill of sale or other satisfactory evidence or ownership, identifying the vehicle and the person from whom it was obtained, and from which such person can be traced;
- (d) was found in possession of any forged registration book, papers, or other documents of registration or ownership in relationship to a motor vehicle;

- (e) has imported into Lesotho a motor vehicle or parts thereof in contravention of any law for the time being in force in relation to the importation of motor vehicles or parts thereof;

Section 3. (1) provides that “a person who steals a motor vehicle or receives a motor vehicle knowing or having reason to believe it to be stolen vehicle, is guilty of an offence and notwithstanding the provisions of any other written law, liable for a first offence to imprisonment for a period not less than eight years but not exceeding sixteen years without the option of a fine, and for a second or subsequent offence to imprisonment for a period not less than ten years but not exceeding twenty years without the option of a fine”

The charge has been put in a very clumsy fashion which has resulted in the confusion that seemed to have prevailed before the magistrate’s court in Quthing. It is being alleged -“that the accused was found in possession of a motor vehicle registration number G 0548 engine N0. TD274305 chassis N0. J 083145 and failed to give satisfactory evidence of ownership and had in his possession a forged document of the said motor vehicle”.

The accused was being routinely remanded in custody under the pretext that the

police investigations are pending. On the 26th March when further remand into custody was applied for it was before a different magistrate who questioned the type of police investigations that were still pending regard being had of the nature of the offence alleged against the accused. The magistrate did not see the reasons for which the trial of the accused is not able to proceed. The prosecutor was unable to furnish the court with the reasons for not proceeding with the trial. Nevertheless the accused was further remanded into custody. His application to be admitted to bail was granted on condition that he paid the deposit of [M15,000-00] fifteen thousand maloti. No reasons are given for granting that bail on that condition.

The accused has appealed against the granting of bail on that condition on the grounds shown on the notice of appeal as follows:-

1. “ The learned magistrate erred in stipulating the amount of bail deposit without enquiring into Appellant’s ability to raise same.
2. The bail deposit required is so grossly excessive it amounted to a denial of bail.
3. The amount required is more in the nature of a sentence than a security to attend trial.

The accused has appealed before this court in terms of sections 107 and 108 of Criminal Procedure and evidence Act N0.9 of 1981. Section 107 of Criminal Procedure and Evidence Act entitles the judicial officer before whom an application for bail is made to exercise his or her discretion to determine the amount of bail. The amount so determined by the judicial officer shall not be excessive. Where an accused person considers himself aggrieved either by refusal of the magistrate to admit him to bail or by magistrate having required excessive bail or by imposing unreasonable conditions, such an accused shall appeal against the decision of the magistrate to the High Court [Section 108 CP & E Act N0.9 of 1981].

The magistrate in the present case did not enquire into the accused person's means before setting the amount of bail to the sum of fifteen thousands maloti [M15,000-00] The magistrate further gave no reasons why he has set the bail of such an amount.

The provision with regard to bail under MOTOR VEHICLE THEFT ACT 2000 provides -

- 15 (1) Where a person is charged with an offence under section 3 or 10, of this Act the amount of bail to be fixed by a court shall

not be less than half the value of the motor vehicle suspected of having been stolen.


- (2) Where a person is charged with any other offence under this Act the amount of bail to be fixed by a court shall not be less than half the amount of the maximum fine fixed for that offence.
- (3) No person charged with an offence under this Act shall be released on his own recognisance.

Perhaps the learned magistrate regarded himself as applying the terms of the above proviso. There are difficulties if that was the case. First of all there is no evidence of the value of the motor vehicle suspected of being stolen. It remains a mystery how the learned magistrate arrived at the figure of M15,000-00. The learned magistrate exercised his own discretion to determine, without any evidence whatsoever, the amount of bail to be paid by the accused. The order was made by the High Court directing the magistrate to enquire into the circumstances of the accused so that an appropriate amount of bail could be determined. The learned magistrate refused to comply with the order. The accused's lawyer appeared once again before me and indicated that the accused has been denied the opportunity to show the court his personal circumstances and those pertaining to the commission

of the alleged offence together with his financial standing which entitles him to a reduction of that excessive bail.

Despite the fact that there was no explanation why police investigation are still continuing for more than three months after the accused was found in possession of the motor vehicle and the papers produced by him for being in possession were allegedly forged, the accused was further remanded. He has been in custody awaiting trial now well over three months. This is unreasonable. The accused should have been charged. The trial should have been concluded as speedily as indicated under The Lesotho Constitution. The appeal succeeds.

The bail is reduced to fifty maloti. [M50.00]



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K.J. GUNI
JUDGE

For applicant: Mr Lenono
For Respondent: Mr Kotelo