

CRI/T/829/2002  
IN THE HIGH COURT OF LESOTHO

In the Matter Between:

MOSENENE MOTHOMANG  
and

THE MAGISTRATE OF MASERU  
THE DIRECTOR OF PUBLIC PROSECUTIONS

Applicant

1st Respondent

2nd Respondent

Judgment

Delivered by the Hon. Mrs Acting Justice A. M. Hlajoane on 13th September, 2002.

The Application was moved as one of urgency, the reasons for such urgency being that the Applicant had to be allowed out on bail so that he could go and make arrangements for the burial of his only brother whose burial was to take place on the 7th of September, 2002. Surprisingly, on looking at the date stamp on the papers from the Criminal Registry one noticed that it reflected the 9th September, 2002. By the same token the DPP's date stamp evidencing the date the papers were filed or served on them also reflected the 9th September 2002, which was a date after the funeral.

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Be that as it may, the Application in a nutshell was that the proceedings in a certain CRI/531/2002 be reviewed, corrected and set aside as irregular. In those proceedings before the Magistrate, the Applicant had applied for bail. Bail was granted in the amount of M2,500 with certain conditions after a document termed "Affidavit in terms of Sales Tax Act No.14 of 1995 Section 4 (3)" had been handed in by the Prosecution. In the so called affidavit an employee at the department of Sales Tax had given an assessment of the book value of the vehicle alleged to have been stolen, the value of the vehicle estimated at M5000.00.

I found it necessary to state the relevant Section on which the Prosecution relied in requesting the assistance of the sales tax in order to ascertain the value of the vehicle. Section 43 of Act 14 of 1995;

"Where the fair market value of a taxable supply or an import cannot be determined under subsection (2), the fair market value of the supply or import shall be such amount that, in the opinion of the Commissioner having regard to all the circumstances of the supply or import, is the fair market value of the supply or import."

On closer scrutiny of the above Section it will be observed that what is referred to is the market value. But on looking at the photocopy of the Proceedings from the Magistrate's Court, the Magistrate in his consideration for bail talked of the book value of the vehicle. He specifically granted bail in the amount of M2,500 basing himself on the assessment by an officer or employee of the Lesotho Government who worked at Sales Tax Department. This Officer has no title. The relevant Section demands that it would be the Commissioner of Sales Tax who should air his opinion

on the question of the assessment of the market value.

Earlier on in this judgment I referred to the document handed in by the Prosecutor as the so-called affidavit. I was saying this because that document has not been sworn in before any Commissioner of Oaths. It is just a document signed by its author and termed an affidavit. We know that an affidavit to be labelled as such, has to be a sworn statement in writing made under oath or on affirmation depending on individuals' belief. This document on which the Magistrate relied fell short of the requirements of an affidavit in the true sense.

It would be remiss of me not to mention the charge with which the Applicant in this matter faced before the Magistrate's Court. He was charged with the crime of contravening section 3 (1) of the Motor Vehicle Theft Act 13 of 2000. In considering bail under this offence section 15 (1) of the Act becomes relevant. Section 15 (1) of the Act reads:

"Where a person is charged with an offence under section 3 or 10, of this Act the amount of bail to be fixed shall not be less than half the value of the motor vehicle suspected of having been stolen."

Section 3 (1) of the Motor Vehicle Act is therefore not to be read in isolation, but has to be read together with section 15(1) above. As was indicated by this Court in CRI/APN/359/2001 *Maqobela v DPP*, that in cases of this nature the other issue worth considering would be whether in determining the value of the vehicle, whoever would qualify to give the assessment had to give the market value or the book value of the vehicle.

Unlike in the case of *S. Nkhooa v R CRI/A/8/2001* before my sister Guni J where the Magistrate just imposed an amount of M1 5,000 as bail deposit without necessarily giving reasons that influenced him for fixing bail in that amount. In the case before this Court at least an attempt had been made to give an assessment of the value of the vehicle. It has been an attempt as the person who sought to depose to an affidavit has not given his title and the statement was not sworn to. The document therefore had no force of law.

The Court has on review set aside the order for bail given by the Magistrate and varied it by granting bail in the amount of M300.00 with one independent surety in the amount of M500.00. The other conditions will remain the same as those which had been given by the Magistrate's Court.

A.M. HLAJOANE  
ACTING JUDGE

For Crown: Mr Mofoka  
For Defence: Ms Motinyane