CRI/A/3/2002
CR. 942/98

IN THE HIGH COURT OF LESOTHO

In the matter between:

MOSOTHOANE THAMAE

v

R E X

For Appellant : Mrs Majeng-Mpopo

For the Crown : Miss L. Mahanetsa

Judgment

Delivered by the Honourable Mr. Justice T. Monapathi
on the 15th March 2002

This was an appeal from the magistrate of Maseru. The Appellant (who was unrepresented) was convicted on his own plea of attempted murder and contrary to section 32(a) of the Internal Security (Arms and Ammunition Act) 1966 (as amended) Appellant was accordingly sentenced to 4 years without an option of a fine and 4 months or M200.00 respectfully for the two counts. I had noted that a plea of guilty has always been regarded as a judicial confession. See **Rantsoti Nkhatho v Rex 1978 LLR 160.**

I raised my concern about whether the above sentences which were ordered

to run consecutively were tenable or practical. See **R v MATHABA** 1989(1) LLR 83 where it was held that prison sentence in default of payment of a fine not to run consecutively with the other sentence of imprisonment.

This Court found it difficult to entertain the additional grounds filed only yesterday even if they may have been served on 13th March 2002. This included the charge that the Appellant was never advised of his rights as an unrepresented accused. Most magistrates seem to feel that investigating whether an accused needs representation is a kind of a privilege to be dispensed when it suits their fancy.

I had to consider that as long ago as the 6th March 2002 when the matter was postponed this provided ample time for the Appellant's Counsel to have filed additional grounds of appeal timeously. Original grounds of appeal had bee filed on 22nd August 2000. I wondered whether it was appreciated by Appellant's Counsel that sufficient notice was of essence in matters that needed preparation such as appeals before the High Court.

The Court noted its disapproval of the manner in which additional grounds 2 and 3 were recorded which was as follows:

> "2 Evidence before Court failed to prove an offence of attempted murder."

And

> "3 The learned (Judge) failed to consider the element of self-defence.

I thought it was imperative that facts upon which the grounds of appeal are premised must be stated.

As for the complainant contained in the submission that the evidence in the Public Prosecutor's outline (**in terms of section 240 (1) (b) of the Criminal Procedure And Evidence Act 1980**) did not disclose all the elements of the offence or that the Appellant's admission of the facts elicited by the public prosecutor was not unequivocal. I thought it was intimated well in advance on the 6th March 2002. I considered therefore that this could be taken as included in the above defective grounds as inelegantly as they had been put.

The Court record read at page 2:

> Accused accepts all the facts as outlined by the public prosecutor and informs that Tlelima just pounced on and hit him. They were about five people hitting me I managed to (shot) Tlelima. A friend of mine left the rifle with me." (My emphasis)

It was on the basis of the statement that Appellant's submission was made.

After hearing argument the appeal was allowed in that the outline did not disclose an offence. Furthermore that at the end of the statement what was revealed showed that the admission of guilt was not unequivocal. See **Rantsoti Nkhato v Rex** (supra) and **R v Matjola** 1977 LLR 1.

As Crown Counsel correctly conceded a defence in the nature of self-defence could have been intended to have been pleaded as was suggested by the Appellant in his statement. The Learned magistrate should have accordingly returned a plea of "not guilty" in the circumstances.

Appellant is to be tried *de novo* before another magistrate. Conditions

relating to bail are to revert and remands are to resume until the matter is finalized.

Appeal fee is to be refunded to Appellant.

T. Monapathi
Judge

15th March 2002