

IN THE COURT OF APPEAL OF LESOTHO

In the matter between:

GLEN TEBOHO SEROBANYANE
MOKOMA MANUEL MOTHAKATHI
GEORGE MANUEL LEHLOKA
DANIEL MASIA

Applicants/Respondents
(Appellants)

vs

REX

Respondent/Applicant

CORAM:

Grosskopf, JA
Plewman, JA
Gauntlett, JA

RULING

31 March 2006

GAUNTLETT, JA:

There are before us this morning three applications, each brought on notice of motion supported by affidavits. To limit confusion, I shall refer to the parties in the terms in which they are described in the trial in the High Court.

Accused Nos.1 and 3 seek a postponement of the hearing because it was only three days ago that they learnt the Crown had lodged a cross-appeal against their acquittal by the trial judge. This happened by chance, through attending the roll-call for this session of the Court of Appeal as spectators. They immediately re-engaged counsel, but he has not been able to prepare adequately in relation to a bulky record and substantial legal issues. They emphasize that this situation is not of their making.

Mr. Louw, for the Crown, accepted that there had been a failure to serve the cross-appeal on Accused 1 and 3, and accordingly in the circumstances conceded that their application could not be resisted.

Mr. Louw then himself moved the second application. This, too, is for the postponement of the hearing. It reads that Accused 2 and 4 only received the Crown's heads of argument on Friday 24 March (with certain procedural applications), and wish now to deal with the issue of pointing out. An affidavit by the DPP himself supports a postponement in these circumstances of both the appeal and cross-appeal (thus in relation to all four Accused now before this Court as either appellants, or respondents in the cross-appeal) to avoid a piecemeal dealing with issues.

The DPP proposes a postponement until the October session of the Court of Appeal, and furthermore that Accused 2 and 4 be granted bail.

This is what is sought in the third application, brought by Accused 2 and 4. It asks for their release on their own recognisances, pending the final determination of the appeal and any cross-appeals. It points to the late service of the cross-appeal on Accused 1 and 3; the acceptance by the Crown that the matter accordingly

cannot proceed; and that in the circumstances the proceedings as a whole should properly be postponed.

Accused 2 and 4 adopt the stance that they are not at fault; they would support a postponement but only if they are released on their own recognisances.

It would appear in all these circumstances that the hearing scheduled for this session cannot proceed. The matter cannot be dealt with piecemeal. It is most unfortunate that the errors and failures I have recorded occurred, particularly as this matter was enrolled for the present session at the particular request of the parties.

The residual question relates to the position of Accused 2 and 4. This Court, in its judgment in this very matter at the last session (C of A (CRI) 9/05, 20 October 2005) held that it cannot exercise its powers to admit persons to bail in terms of s.14 (1) (a) of the Court of Appeal Act, 1978 unless there has been a material change in the situation since the application for bail was refused by the trial court.

We are satisfied that there has now been such a change. Instead of the appeal being disposed of this session, as had been sought by the Accused and agreed by the Crown, it must now be postponed for a period of at least six months. Secondly, this has arisen through no fault of the Accused but through failures for which the Crown bears responsibility. This moreover is in the context of the

Accused serving relatively short prison sentences which may, in relation to at least one of them, be served by the time the appeal is heard.

Mr. Louw indicated that the Crown furthermore supports the Accused being released not on bail but on their own recognisances, in view of their exemplary attendance at the trial.

One further matter must be recorded. This is that the record – two volumes of which reached us only last week – is in an unsatisfactory state. All the documentary exhibits have been omitted. This in itself placed in serious doubt our capacity to hear the appeal and cross-appeal this session. That further failure by the Crown remains unexplained.

The following order is made:

1. **The appeal and cross-appeal are postponed sine die.**
2. **The Registrar is requested to enroll the appeal and cross-appeal for the next session, if possible.**
3. **The Office of the D.P.P. is directed to check, correct and complete the record in the appeal and cross-appeal forthwith.**
4. **The Office of the D.P.P. is directed to ensure that proper service of all heads of argument, notices and of the record, to the extent this has not already happened, be effected on all parties forthwith.**

5. **Accused 2 and 4, that is, GLEN TEBOHO SEROBANYANE and MOKOMA MANUEL MOTHAKATHI, are to be released on their own recognisances, pending the final determination of this appeal and cross-appeal.**

J.J. Gauntlett

JUDGE OF APPEAL

I agree:

F.H. Grosskopf
JUDGE OF APPEAL

I agree:

C. Plewman
JUDGE OF APPEAL

Maseru
31 March, 2006