IN THE COURT OF APPEAL OF LESOTHO

C OF A (CRI) 9/2000

In the matter between:

MAOPELA MAKHETHA	**1st Appellant**
MOELETSI JANE	**2nd Appellant**
MOJALEFA MOSES PHUMANE	**3rd Appellant**

and

REX	**Respondent**

C OF A (CIV) 2/2009

In the matter between:

MOJALEFA MOSES PHUMANE	**Applicant**

and

THE REGISTRAR OF THE COURT OF APPEAL	**1st Respondent**
THE DIRECTOR OF PUBLIC PROSEUCTIONS	**2nd Respondent**
THE MINISTER OF JUSTICE, HUMAN RIGHTS, REHABILITATION, LAW & CONSTITUTIONAL AFFAIRS	**3rd Respondent**
THE ATTORNEY GENERAL	**4th Respondent**

CORAM: RAMODIBEDI, P
MELUNSKY, JA
GAUNTLETT, JA

Heard : 5 October 2009
Delivered : 23 October 2009

Summary

(1) Appeal C of A (CRI) 9/2000

Criminal Law – sedition – what constitutes. Gatherings of armed policemen in operational uniform protesting against lawful requirement that some of their members appear in court to face serious charges – such gatherings supporting refusal of suspects to face the charges.

The facts established that the aforesaid policemen, inter alia –

(i) Defied the orders of their superior officers;
(ii) Refused to carry out their duties;
(iii) Gathered in police buildings without authority to do so;
(iv) Surrounded and seized police headquarters;
(v) Obtained firearms from the armory;
(vi) Purported to dismiss senior police officers from their positions and forced them to hand over government property;
(vii) Purported to install a new Commissioner and Deputy Commissioner of Police;
(viii) Generally behaved in a defiant and aggressive manner.

Appellants' participation proved beyond reasonable doubt. First and second appellants correctly convicted of sedition.

Criminal Law – contravention of section 7 of the Internal Security (General) Act 24 of 1984 - third appellant correctly convicted of subversion in contravention of the Act.

(2) Application C of A (CIV) 2/2009

Third appellant applied for an order that the criminal proceedings and his conviction and sentence be set aside due to the failure to provide him with a record of proceedings to enable him to prosecute his appeal. Appeal noted on 28 August 2000 and application initially brought before the President of this Court in 2009. President granted Director of Public Prosecutions (DPP) leave to file a limited record and postponed application to be heard by Full Court.

Failure to supply record initially due to inexplicable failure to safeguard cassette tapes and volumes of evidence. Such dereliction of duty deplorable and third appellant justifiably aggrieved.

In terms of the order of the President, the DPP filed a limited record which was accepted by all appellants. Appeal fully argued on such record. Accordingly no prejudice to third appellant.

Application dismissed.

JUDGMENT

MELUNSKY JA:

[1] Thirty-three former members of the Royal Lesotho Mounted Police Force ("the RLMPF"), now known as the Lesotho Mounted Police Service ("the LMPS"), were arraigned before Molai J and assessors in the High Court on charges of high treason, alternatively sedition and further alternatively subversion, in contravention of the Internal Security (General) Act, 24 of 1984 ("the Internal Security Act"). The three appellants were among the accused and pleas of not guilty were entered on their behalf. After a lengthy and somewhat interrupted trial the first and second

appellants were convicted of sedition and each sentenced to a fine of M1000 or two years imprisonment, half of which was conditionally suspended for three years. The third appellant was convicted of subversion and sentenced to one years imprisonment which was conditionally suspended for three years. Of the other accused persons, twenty-one were convicted of sedition and one of subversion. Some of these also noted appeals to this Court but the appeals have been abandoned and were struck off the roll.

[2] The three appellants before us appealed in respect of their convictions in case C of A (CRI) 9/2000. Conditional cross-appeals by the Crown in respect of the first two appellants have since been withdrawn.

[3] Also before this Court is an application by the third appellant (case No. C of A (CIV) 2/09) in which he seeks an order setting aside the entire criminal proceedings and his conviction and

sentence due to the alleged "dismal failure" by the Crown to prepare a record of the proceedings and to make a copy available to him to enable him to prosecute the appeal. The application came before the learned President of this Court who was of the view that the relief sought by the applicant should be determined by at least three Justices of Appeal. He accordingly made the following order on 23 March 2009:

> "(1) The Crown is directed to produce the limited record in this matter and serve it on the applicant on or before 30 April 2009.
>
> (2) The applicant will make inputs to the record, if any, on or before 31 May 2009, failing which the matter will be heard on the limited record produced by the Crown.
>
> (3) The applicant's application, including the appeal in the matter (depending on the outcome of the application) will be heard in the next session."

[4] It is in terms of that order that the application is now before us. It is appropriate that the application and the appeals be dealt with together and that the application be considered first. In what follows the applicant will, for the sake of convenience, be referred to as the third appellant.

[5] More than eleven years have now elapsed since the criminal trial commenced in February 1998 and it is necessary to record the reasons for the delays that bedevilled the functioning of the judicial process. At the outset of the hearing one of the accused raised an objection to the trial court's jurisdiction. After evidence and argument on the point the objection was overruled and evidence on the merits commenced on 28 April 1998. Thereafter civil disturbances interrupted the proceedings for a number of months and, in the course of the rioting, the High Court building was set on fire and the learned trial Judge's courtroom and chambers, which contained the transcribed record, was destroyed. At the end of 1999, leading Crown counsel left Lesotho before the trial's conclusion. This resulted in a number of postponements and it was only in July 2000 that judgment was delivered and sentences passed.

[6] The third appellant noted his appeal to this Court on 28 August 2000. In order to prosecute the appeal he required the record of the proceedings in the High Court. He explained in some detail the numerous attempts which he made to obtain the record at the offices of the Registrars of the High Court and the Court of Appeal. He was given various, and sometimes conflicting, reasons why the record was not yet available. He resorted to applying to the High Court for relief and on 11 April 2007 Majara J made an order in the following terms:

> "The 1st respondent [the Registrar of the High Court] is and be hereby directed to make the record of the proceedings in CRI/T/43/97 available to 2nd Respondent [the Registrar of the Court of Appeal] and applicant on or before the 30th day of June 2007. This is to enable the applicant to prepare for the prosecution of his appeal in the next coming session of the Court of Appeal [October 2007]."

[7] The order was not complied with and eventually the third appellant brought the application mentioned in par [3] above. That application was opposed by the Director of Public Prosecutions ["the DPP"]. He, however, correctly conceded that the process of preparing the record should have commenced on

28 August 2000 and expressed his regret that the third appellant's right to appeal had been delayed. The practice relating to the transcription and preparation of records for criminal appeals from the High Court is contained in the following paragraphs of the DPP's affidavit:

> "27. Then, as now, the actual transcription and preparation of the record was undertaken by personnel employed or contracted by the Registrar of the High Court.
>
> 28. In this regard I acknowledge that, in terms of the practice note contained in Court of Appeal circular no. 9/2000 dated 13 October 2000 the responsibility for preparing records in criminal appeals to this court was placed on my office.
>
> 29. The principles set out in the practice note were adopted and expanded in the Court of Appeal Rules, 2006.
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> 30. Nevertheless, I stress that this administrative and legislative change was not accompanied by any provision of infrastructure (including the specialized equipment required for that purpose), personnel (who would have to be suitably qualified and trained) or budget, and it does not appear to have been intended that the actual transcription and preparation of records was to be undertaken by my office.
>
> 31. Matters therefore continued as before inasmuch the actual preparation of records in criminal cases was concerned, i.e. they were prepared in the Registrar's office, but now compliance with the required format had to be certified by Crown counsel."

[8] Most unfortunately the procedures that should have been adopted in this matter were either overlooked or simply disregarded. I have already referred to some of the difficulties

which led to the trial being delayed but it is what happened after the conclusion of the trial that gives us more cause for concern. Indeed, and even before the addresses in the Court a quo, the previous DPP had relinquished his office and his successor, the present DPP, ascertained that a number of cassette tapes relating to the evidence were missing and that only a small number of volumes of evidence were to be found in his office. Moreover various files relating to the trial could not be found in the offices of the DPP or the Registrar of the High Court. The present DPP, I add, was in no way to blame for this chaotic state of affairs.

[9] Nothing of assistance – apart from the summary of substantial facts - was found in the Registrar of the High Court's office but, unbelievable as it may seem, certain material relating to the trial was found in a prisoner's cell, used as a storeroom, in the Court of Appeal building in dusty and untidy conditions. These included some bound volumes of evidence, unbound copies of the Court a quo's judgment, loose pages of evidence

and some tape recording cassettes. At a later stage certain further volumes were found in the same cell by Crown counsel, Mr. *Suhr*.

[10] In his affidavit the DPP stated that in his view it would be possible to construct or reconstruct a record of the proceedings and requested leave for the appeal to be heard on the basis of such a limited record. The learned President accordingly made the order referred to in par [3] above.

[11] What remains to be considered in relation to the third appellant's application is whether this Court should accede to his request that the criminal proceedings against him be set aside. It is quite clear that he has been greatly inconvenienced and that he endured emotional hardship as a result of the conviction. He appeared in person before us and is obviously an intelligent and well-spoken individual. Due to the conviction, he was dismissed from the LMPS and was unable to obtain other suitable

employment. He took reasonable steps and made determined efforts to obtain a record of the proceedings for the purposes of an appeal and it gives rise to considerable concern that his exertions in this regard were apparently not treated seriously enough, particularly by officials in the Registrar of the High Court's office. Certainly nothing was done to pursue the search for the record until the DPP entered the picture. What is even more disturbing is not only that the order made by Majara J was not complied with for over two years but that, as far as I can ascertain, no explanation has ever been forthcoming from the Registrar of the High Court for the failure to do so.

[12] The obvious failure to safeguard the tape cassettes and the transcribed records of evidence is to be deplored. It is still unclear how parts of the record and loose tapes found their way into the cell in the Appeal Court building. This is by no means the first occasion on which recorded tape cassettes have been lost or, perhaps, have been unlawfully removed from the custody of

officials entrusted with their care. I cannot over-emphasise how important it is for the responsible officials of all the courts in Lesotho to ensure that records of proceedings and recorded tape cassettes are preserved and kept in a completely secure place. The loss of such material is the kind of occurrence that brings the administration of justice in this Kingdom into disrepute.

[13] There is no doubt that a proper record of proceedings should be made available to a prospective appellant in a criminal appeal to this Court within a reasonable time of the noting of an appeal. This is underscored by section 12(3) of the Constitution of Lesotho. It is also obvious that the third appellant is justifiably aggrieved at the failure to provide him with a record for almost nine years and at the absence of credible explanations for such failure. It does not follow, however, that the third appellant is now entitled to the relief which he seeks in the application. The DPP duly complied with the order of the learned President: a limited record was prepared; all the appellants were invited to make

inputs to the record but found it unnecessary to do so; and the appeal proceeded on the limited record. What is more, the appellants, at the hearing of the appeal, accepted the summary of evidence as set out in counsel for the Crown's heads of argument. There was no suggestion by any of the appellants that the record produced for the appeal was not completely satisfactory. In substance, therefore, the third appellant's complaints have been overtaken by subsequent events. Presumably this Court would be entitled in its discretion to grant him appropriate relief if he could establish that he was prejudiced in relation to the hearing of the appeal, for instance, if it was not possible to produce a record at all or if the record actually produced was materially defective but that is not what happened here. The late production of the record had no adverse effect on the third appellant's right to argue the appeal. Consequently he was not prejudiced in relation to the hearing before this Court. The application should, therefore, be dismissed.

[14] The facts relating to the appellants' convictions are not in dispute, apart from a relatively unimportant aspect raised by the third appellant. The trial Court covered the factual issues in a comprehensive judgment and they are admirably summarized by Crown counsel in his heads of argument. The appellants' contentions on appeal are indeed based largely on legal rather than factual grounds and, despite the lengthy record, I will attempt to set out the facts as economically as possible.

[15] It is clear from the evidence in the Court *a quo* including that given by the Commissioner of Police (PW14) that the charges against the appellants had their origin in a shooting incident which took place in the Maseru Central Charge Office ("the MCCO") on 31 October 1995. On that occasion three police officers were killed, two seriously injured and one kidnapped. Nine police officers, including some of the accused in the Court a quo (but not any of the appellants), were suspected of being involved in the said incident and charges of murder, attempted murder and

kidnapping had been drawn up against them. The Commissioner had instructed that the suspects be brought to the Maseru Magistrates' Court by their commanding officers to be formally charged on 9 January 1997: he prudently considered that violent confrontations might occur if the suspects were taken to court under arrest. However, only one of the suspects went to the court on that day. The remainder, together with a number of other police officers gathered at the Police Training College ("PTC"). A few of these were junior officers but the majority belonged to lower ranks. They were all dressed in operational uniform and were armed with rifles (all of which had not been authorized and was highly irregular). Apparently they had also ordered general purpose machine guns to be deployed. They demanded to see the Commissioner but PW14 sent his deputy (PW3) to meet with them.

[16] The Deputy Commandant of the PTC (PW1) addressed the defiant police officers and requested them to return to their

ordinary duties but they refused to do so. PW3 and PW1 met with the group of policemen later the same day. It emerged that they had taken their stand on the demand that none of their members should face charges in the courts of Lesotho in regard to the incident at the MCCO. The Commissioner himself addressed the policemen on the following day at the PTC. He observed that the suspects were supported by policemen from the response and band units, and, as on the previous day, they were dressed in brown operational police uniforms, were wearing steel helmets and were armed with rifles. One of their number informed PW14 that the suspects were not prepared to appear in court or to face arrest. He added that any attempt to arrest them would be met with resistance. The Commissioner's efforts to persuade the suspects to face their trial were unsuccessful. They agreed, however, that an attempt should be made to resolve the dispute by means of mediation by representatives of various organizations. After a few weeks of mediation meetings, the mediators resolved that an inquest should be held into the

circumstances surrounding the deaths of the victims at the MCCO but nothing came of this proposal because the DPP refused to implement it.

[17] At the end of January a certain Trooper Nthako was killed at his home. He was not part of the group of insubordinate policemen but his death had the effect of aggravating the situation, apparently because of an unfounded suspicion that the authorities were in some way responsible for his death. There were further acts of defiance, not only in Maseru but in other areas as well, but there is no need to recount all of these.

[18] On 4 February 1997 the Commissioner went to Botswana on official business. On the following day the Deputy Commissioner (PW3) and an Assistant Commissioner, Col. Mpopo (PW5), tried once more to resolve the impasse by meeting with the armed police at the PTC but again to no avail. On 6 February matters took a more serious turn. On that day the Police Headquarters

(PHQ) was surrounded and effectively taken over by a number of heavily armed policemen in operational uniform. After PW3 had arrived in his office, two armed sergeants ordered him to go to the hall. He was joined in the hall by Lt Col Sekatle (PW4) the investigating officer in the MCCO case, and by PW5, both of whom were also escorted into the hall by armed policemen. The three senior police officers were later taken to their homes, their uniforms (and in some cases their firearms), were removed from their possession and they were instructed not to return to work. The same conduct was meted out to Col Tlali (PW6), also an Assistant Commissioner of Police, who was told that he had been expelled from the LMPS. On the same day, 6 February, the armourer at PHQ, Sgt Ntili was forced to open the armoury and issue firearms to a number of policemen after the keys had been obtained from PW3.

[19] The insurrection had spread beyond Maseru, notably to Leribe. The District Commander of the RLMPF at the Hlotse

police station in Leribe Capt Lethunya (PW26), received an anonymous radio message from PHQ on 6 February to the effect that there was a police strike. He was unable to ascertain that the message had been properly authorized and he advised the officers under his command that its contents should be ignored. Despite this a number of policemen told him that they were embarking on a strike.

[20] More significantly, at a meeting held on 7 February 1997 at the PTC it was announced that Col Mokhohlane (PW12) and Col Monyeke (PW11) were to be installed as the new Commissioner and Deputy Commissioner of Police respectively. This was followed by their purported installations in a ceremony at PHQ.

[21] On the following day, the Regional Commander of the Northern Districts, Col Petlane (PW13) was confronted by armed policemen at the Hlotse police station, deprived of his uniform and purportedly expelled from the RLMPF. Counsel for the Crown

correctly submitted that had the Commissioner of Police not been in Botswana at the time when the expulsions occurred, he, too, would have had to endure the same treatment meted out to his colleagues. After the Commissioner's return from Botswana he wisely did not attempt to re-enter his office in PHQ. He tried to run the affairs of the Police Force from his home but had great difficulty in doing so, for the insurrection continued and at least three more senior officers were ejected from their offices. It was only on 16 February that the Lesotho Defence Force brought the rebellion to an end by entering PHQ and forcing those holding it to surrender.

[22] This is the appropriate stage to consider the part played by each appellant in the events outlined above and to decide whether they were correctly convicted. I commence this aspect by referring to the position of the first and second appellants. Counsel for these appellants contended that his clients' conduct amounted to taking part in a mutiny but not to sedition but he

accepted that the extent of their participation was correctly reflected in the court *a quo*'s judgment. He also conceded that if this Court were to hold that the conduct of the main participants did amount to sedition his clients were correctly convicted of that offence on the basis of the principle of common purpose.

[23] In view of the aforegoing, there is no need to do more than furnish a brief outline of the activities of the first two appellants. Both appellants took part in what was conceded to be a mutiny from the first day, 9 January 1997. They were both present at the gathering of armed policemen held on that day at the PTC when they were instructed to return to their duties but refused to do so. The first appellant was one of the spokesmen at the gathering held on the following day. He demanded that two witnesses to the tragic events at the MCCO should be brought before the gathering for questioning by the policemen. This directive was refused by the Deputy Commissioner. The first appellant was also identified as being present at a mutiny attended by armed

junior ranks at the PTC on 5 February. More significantly and on 6 February he was part of a group of heavily armed men who captured Col Mpopo at gunpoint in a public road, forced him to leave his vehicle and ordered him to get onto the back of a police van in which he was driven to PHQ where he was informed by a sergeant in the RLMPF that he was dismissed from the Force. The first appellant did not testify.

[24] As mentioned earlier the second appellant was one of the armed policemen at the initial gathering on 9 January. He was also part of a group who insulted and threatened Lt. Col. Maleoa and other senior police officers at the PTC on 31 January. The second appellant then went further and sought to assault the bandmaster, LT Phororo, and had to be restrained from doing so. A week later (6 February) the second appellant took part in an attack on Col Tlali (PW6) at Ha Bene. On that occasion he was one of a group of men who forced a vehicle, in which PW6 was being conveyed, to stop. They demanded that PW6's firearm and

uniform be handed to them and pointed their rifles at him. He was forced to go to his home with them where he handed over his uniforms, badges of rank, firearms and a police radio. It was also established that the second appellant was present at the meeting on 7 February which preceded the purported installation of PW12 and PW11 as the new Commissioner and Deputy Commissioner of Police respectively. The second appellant's evidence, which amounted to a denial of his participation in the events referred to, was rejected by the trial court and was not relied upon in the appeal.

[25] The main argument advanced on appeal by counsel for the first and second appellants was, as indicated earlier, that the insubordinate policemen had carried out a mutiny but that their conduct did not amount to sedition. In *Monyau v R* LAC (2005-2006) 44 at 49 E-F, par [9] this Court approved of the following definition of sedition put forward by Milton *South African Criminal Law and Procedure*: vol II "Common Law Crimes" (3 ed 1996) 42:

> "Sedition consists in unlawfully gathering together with a number of people, with the intention of impairing the *majestas* of the State by defying or subverting the authority of its government, but without the intention of overthrowing or coercing that government."

(See also *Molapo v R* LAC (2000-2004) 23 at 26 E – J). For the purposes of this appeal it is not necessary to decide whether the common law definition of sedition complies with Chapter II of the Constitution of Lesotho. This matter was not raised on appeal and, as was the case in *Monyau v R* (par [19], it is unnecessary to consider it and I refrain from doing do.

[26] The main argument raised on behalf of the first two appellants was that the acts of the insubordinate policemen were not directed at the government of Lesotho but were restricted to the "police authority". Thus, according to the submission, the gatherings were not intended to impair the *majestas* of the State or to defy or subvert the authority of its government. This argument overlooks the fact that the Police Force (now Police Service) is a public service institution and a vital one at that,

established under Chapter XIII (Section 147) of the Constitution of Lesotho. It also ignores the finding in *Monyau v R* (par [10]) that to intend to subvert the legitimate authority of such an institution is to intend to subvert the State. In short, the Police Service of Lesotho is part of the Government of this Kingdom.

[27] I will briefly revert to the evidence. It establishes that the insurrection persisted for over a month, that there were many gatherings of armed and battle-clad policemen and that they defied the legitimate requests and orders of their superior officers. They went so far as to take over the Police Headquarters. Notwithstanding the absence of substantial acts of violence, the policemen in question adopted an air of hostility and an attitude of aggression towards the most senior members of the RLMPF. All of this culminated in the forced and unlawful expulsion of senior officers who led the Force and the installation of their own nominees in their stead. Their conduct was rightly found to constitute an attack on police management that broke the

command structure of the RLMPF and the functioning of that organization. In the result there is no doubt that most of those involved in the insurrection, including the first and second appellants, were guilty of sedition.

[28] There was an additional argument advanced, however with no great enthusiasm, namely that the appellants could not be charged with treason, sedition or contraventions of the Internal Security Act. This argument was premised on the assumption that as the appellants were subject to the Police (Amendment) Act, 1974, they could properly be charged only under that Act before a Special Service Tribunal. This argument overlooks section 55 of the Act which unambiguously provides that nothing contained therein shall affect the jurisdiction of any civil court to try a person for any offence, including offences under the Act.

[29] The result is that the first and second appellants were correctly convicted and that their appeals should be dismissed.

[30] The third appellant's involvement with the other defiant police officers seems to have occurred only on 6 February. It was on that day that Capt. Lethunya (PW26) received the anonymous radio message relating to the alleged strike. The third appellant, a trooper in the Force, together with some of the other junior policemen, openly challenged his decision that the call for a strike should be ignored. In fact the third appellant went further: he told PW26 that the radio message probably came from the "new management" in Maseru. Former 2nd Lt Lebusa (PW33) was also stationed at the Hlotse Police Station in Leribe at the relevant time. He confirmed that the third appellant expressed the view that the radio message had been issued by "new management" and that it should be observed. After the meeting in PW26's office ended and the policemen dispersed, the third appellant and others returned and, according to PW33, informed PW26 that they were on strike, and that police vehicles should not be used without their consent. The third appellant (described by PW33 as

one of the ringleaders) and others proceeded to issue arms to the striking policemen. In effect, therefore, the strikers had unlawfully taken over the proper functioning of the Hlotse Police Station, if not the entire Police Force in the Leribe District. The evidence also disclosed that they associated themselves with, and fully supported, those who had occupied and seized the PHQ in Maseru.

[31] The third appellant submitted to us that there were substantial contradictions between the evidence of PW26 and that of PW33. This is not immediately apparent from a proper reading of the record. More importantly the court *a quo* accepted the evidence of both these witnesses and held, quite correctly in my view, that they corroborated each other. The third appellant, moreover, did not give evidence and I am left with no doubt that the evidence of the two witnesses implicating him should form the factual basis on which his appeal should be decided.

[32] The relevant provision of the Internal Security Act which has to be considered is section 7. The third appellant contended that he was charged with contravening sub-sections (a) (b) and (c) of that section but was convicted of a contravention of section 7 (f). In fact the appellant and the others were charged with contravening section 7 of the Act. The particulars furnished by the Crown set out in broad terms the grounds upon which it was alleged that the accused contravened the said section but nowhere is it alleged that any of the accused contravened any specific subsection. It is correct, however, that as a prelude to the particulars furnished, it was stated that

> "….. the said accused did unlawfully and with subversive intent do or make preparations to do or threaten to do the acts listed hereunder ……"

Section 7 reads:

> "A person who, with subversive intention, inside or outside Lesotho,
>
> (a) does any act;
> (b) makes any preparation to do any act;
> (c) threatens to do any act
> (d) utters or writes any words;
> (e) directs, organizes or trains a person or persons to do any act; or
> (f) supports or benefits a person who does, intends to do or has done, any act,

> is guilty of the offence of subversion."

[33] Similarly the trial court nowhere stated that the third appellant was convicted of contravening section 7 (f). In putting forward his argument the appellant appears to have latched on to the fact that the learned judge held that he (the third appellant) had

> "supported what the junior police officers were doing at the PHQ in Maseru …… ".

That statement was simply a true reflection of the evidence. The learned judge in fact concluded that the third appellant had committed an offence "under the second alternative charge" and found him guilty "as charged". The third appellant's argument that he was charged under section 7 (a) (b) and (c) and was found guilty under section 7 (f) appears to amount to sophistry. Moreover, the appellant suffered no prejudice: he was furnished with a summary of the substantial facts that the Crown intended to place before the court and knew what case he had to meet.

[34] The only other argument raised by the third appellant was that the trial court had no jurisdiction to try him. This was based on the supposition that he was subject only to the jurisdiction of a Special Service Tribunal. This has been dealt with in par [28] above and nothing further needs to be said in that regard. It follows that the third appellant was correctly convicted.

[35] In the result the following orders are made:

1. The application in C of A (CIV) 2/2009 is dismissed.
2. The appeals of all three appellants in C of A (CRI) 9/2000 are dismissed and their convictions and sentences are confirmed.

L S MELUNSKY
JUSTICE OF APPEAL

I agree:

M M RAMODIBEDI
PRESIDENT OF THE COURT OF APPEAL

I agree:

J J GAUNTLETT
JUSTICE OF APPEAL

Appearances:

The applicant in person in the application and appeal.

For the first and second appellants: Adv PT Nteso
For the Crown: Adv R.A. Suhr