

IN THE COURT OF APPEAL OF LESOTHO

HELD AT MASERU

C of A (CRI) NO.2/14

In the matter between

BOKANG MOLIKO

1ST APPELLANT

MOTHOBI TAILE

2ND APPELLANT

And

DIRECTOR OF PUBLIC PROSECUTION

RESPONDENT

CORAM:

SCOTT AP

LOUW AJA

CLEAVER AJA

HEARD:

8 APRIL 2014

DELIVERED:

17 APRIL 2014

SUMMARY

Application for leave to appeal – leave previously refused by Court a quo – no prospect of success on appeal – application refused.

JUDGMENT

SCOTT AP

[1] This is an application for leave to appeal. The applicants have previously been refused leave to appeal by **Makara J** against an order made by the learned judge dismissing an application for the review and setting aside of a decision of Mr Motanyane in the Magistrates' Court, Mphahlele, refusing the applicants bail.

[2] The record placed before the Court *a quo* comprised a Notice of Motion and the joint accompanying affidavit of the applicants to which was attached a certified copy of the proceedings in the Magistrates' Court. **Makara J** declined to grant a rule nisi as requested and instead summarily

dismissed the review application without requiring the respondent to file an answering affidavit.

[3] The grounds of review set forth in the founding affidavit, shortly stated, are the following:

- (1) The Magistrate relied on a single witness when refusing bail;
- (2) The Magistrate should have recused himself because he had previously granted the applicants bail in another unrelated case;
- (3) The applicants were not given a chance to rebut the evidence tendered by the Crown;
- (4) The unreasonable delay between 11 November 2013 when the applicants were charged and 5 December 2013 when the bail application was heard and 13 December 2013 when judgment in the bail application was given is indicative of “*malice*” on the part of the Magistrate.

[4] Grounds (1), (2) and (4) are without merit and require no comment save to say that the suggestion of malice on the part of the Magistrate is wholly unjustified and worthy of censure. Ground (3) which was baldly stated without elaboration is, on the face of it, a serious allegation. It is, however, totally inconsistent with the record of the proceedings in the Magistrates' Court. It is clear that counsel for the applicants, **Mr Molapo**, presented his argument in support of the application for bail by making a number of *ex parte* statements from the bar regarding the personal circumstances of the appellants and the justification for bail. The prosecutor, **Mr Jonathane**, replied briefly before calling as a witness the complainant in the two counts against the applicants to demonstrate, as he put it, that the Crown had "a case" against them. The witness was cross-examined at length by **Mr Molapo**, whereafter **Mr Jonathane** completed his argument. At this stage **Mr Molapo** gave no indication of an intention to call a witness, which he would have been entitled to do. Instead, he presented what appears from the record to have been a lengthy argument, citing in the process a number of precedents in support of his application for bail. There is no basis for the bald allegation that the applicants were

denied the opportunity of rebutting the evidence of the complainant. On the contrary, it is clear that despite every opportunity to do so there was no request to lead such evidence.

[5] In these circumstances, the Court *a quo* dismissed the review application without the need of an answering affidavit. In my view, it was perfectly entitled to do so. There is no prospect of success whatsoever on appeal. The Court *a quo* correctly refused leave to appeal and the present application must likewise fail.

[6] The application is dismissed.

D.G. SCOTT
ACTING PRESIDENT

I agree

W.J. LOUW
ACTING JUSTICE OF APPEAL

I agree

R.B. CLEAVER
ACTING JUSTICE OF APPEAL

For the Appellant:

L. Ketsi

For the Respondent:

T.C. Tsutsubi