

IN THE HIGH COURT OF LESOTHO

In the matter of:

✓ R E X

v

1. THABANG MOHLALISI
2. REFELETSOE PHATE MPOBOLE
3. TSELISO JOHANNES ISAACA

REASONS FOR JUDGMENT

Filed by the Hon. Mr. Justice M. P. Mofokeng  
on the 27th day of November, 1980

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In the course of the trial of the accused in this matter, Crown counsel tendered evidence in terms of section 223 of 1938, of a confession made by accused 1 to a judicial officer. This evidence was objected to resulting in a trial within a trial, regarding its admissibility, taking place.

Mr. Nkuebe (hereinafter referred to as the judicial officer) stated in his evidence that the accused came into his office. He offered him a chair. They were only two in his office. He spoke in the Sesotho language as the accused also spoke the same language very fluently. He was informed by the accused that the latter wished to make a statement. He made sure that they were not being observed by anybody. The accused appeared to be in his sober senses, calm and composed. He saw no signs of any physical injuries. Certain questions set out in a format were put to him and accused's answers thereto recorded in the Sesotho language. According to answers to some of the

questions he said that he was aware that he<sup>was</sup>/in the presence of the judicial officer, that he had not been assaulted, threatened or influenced by any person to make that statement; no promises had been made to him nor influenced nor did he expect any benefits if he made that statement. He stated that he had made a similar statement to the C.I.D. on the 14th November, 1978 and on the morning of the 15th November, 1978 and wished to confirm it. The cross-examination of the judicial officer was superficial and had really no bearing on the matter I am enjoined to discuss.

After the judicial officer gave evidence, the Crown adduced the evidence of the police officers. Detective Sgt. Mohafa deposed that he met the three accused before Court on the 9th November, 1978. That night he spent with them in the house belonging to the manageress. They were handcuffed as they had been since their arrest that afternoon. Apparently they were joined together by means of these handcuffs and the last handcuff was fastened to the leg of a bed. Presumably to make sure that there would be no escape. The following day they were still so fastened when the shop and the cafe were being inspected. They left thereafter for Quthing camp where the police station is situate. There had been no assaults or any threats to any of the accused.

D/Sgt. Mara is the police officer who arrested the accused and handcuffed them. He parted company with these accused on the 10th November, 1978 after the inspection of the shop and the cafe which had been broken into. When the accused arrived at the police station he was not present. He only saw them after a few days. He was present when accused were interrogated and they were never assaulted. He denied

that he forced the accused to make a statement. It was then put to him that he taught this accused two things, namely:

- (1) that they broke into the shop;
- (ii) that they killed the night watchman.

This was denied. It was then suggested to this witness that the accused agreed that he would give the details and the witness agreed that this accused did give him the details of what took place and went on to say that on that same day he made arrangements with a magistrate through the latter's clerk for the accused to come and see him. The witness denied vehemently that he threatened the accused with physical violence or even death if he did not repeat the same story to the magistrate. The witness said that he informed the accused that as a police officer he had "no right" to write down what he, the accused, had said. Only a magistrate could reduce it to writing and the accused said he would rather then go and say it before a magistrate. The witness denied that it was he who took the accused before the magistrate on the 15th November, 1978. A police officer from the uniform section, unconnected with the investigation of the case, took the accused to the magistrate's clerk.

During the course of the main trial, Sgt. Liphamamo was cross-examined as to the part he had played in the vicious assault against the accused. In point of fact, it was from the cross-examination of this witness that the Crown knew the stance the defence was going to take. It was also suggested to this witness that he had taken the accused to the judicial officer.

The accused did not allege any assaults prior to the 10th November, 1978. However, he had been handcuffed quite tightly when they were arrested at the beerhall. He

described the vicious assaults meted out to him on three consecutive nights. According to him, not only were the handcuffs fastened tightly but D/Sgt. Mara stepped between his wrists thereby causing the handcuffs - made of iron - to cut deeper into the flesh. This process was repeated for a period of three nights. On the day, following the third night, he appeared before a judicial officer and said "things he did not know". In his own words he was "day-dreaming in the judicial officer's office." But the judicial officer saw no signs of injuries on his arms as he put his thumb-print on the statement he had made. He says he had been spun round and round placed between two tables while a pole had been inserted between his knees and hands which were fastenend with handcuffs as he was being hit with either sticks or sjamboks. He says he had bruises and wheals. None of those were shown to the Crown witnesses. I was shown what purports to be wheals at the witness's back. Clearly these were not.<sup>were</sup> These/straight lines of equal length and thickness and equidistant from each other. These lines were a continuation of tatoo drawings at the back of the accused. What were said to be wounds caused by the handcuffs were tiny specs. Some marks he said he forgot to show me. He had one over the right eye-brow which he never showed me. However, all these scars were discovered the previous week to his giving evidence in this Court. He asked his friends to tell him if he had any wheals at the back. There was no particular reason for so doing.

He now insisted that he had been escorted by D/Sgt. Mara to the judicial officer despite the fact that he heard it being put by his counsel to D/Sgt. Liphnamo that it was the latter who did so.

It was specifically put to Sgt. Mara and Liphamamo that they asked the accused to repeat two sentences to the judicial officer and these were:

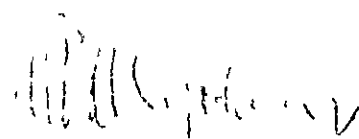
- (1) We broke into a shop
- (11) We killed a night watchman.

I saw the accused. He is not an imbecile. He could not be made to repeat those two simple sentences for a period of three nights in succession. These sentences are so meaningless anyway. To which shop did they break in and where did they kill a night watchman? As if the whole suggestion is not ridiculous enough, accused says he supplied the details. The accused told such patent lies that he found himself telling the Court that he appeared before the judicial officer two days before he actually did so. That was the climax.

It is trite law that the onus is on the Crown to prove that the provisions of section 223 of the Proclamation (supra) have been satisfied. The Crown gave evidence of the circumstances of the accused since the time of his arrest until he came to make a confession. D/Sgt. Liphamamo had been cross-examined at length during the main trial concerning his illtreatment of the accused. I believed him. When asked if he had undressed the accused he agreed and gave plausible reasons, one of which concerned the fact that subsequent allegations that assaults were inflicted on accused while in police custody causing certain injuries are frequently made. They were also checking on any injury the accused might have. It now comes as no surprise to me that Sgt. Mara and the other witnesses dare not be shown the so-called scars and wheals. The police witness impressed me as being truthful. On the other hand the accused has a very fertile imagination. He was plain lying. He told, palpably false story which I have no hesitation in

rejecting as being false beyond reasonable doubt. A man who had been so severely assaulted, whose private parts had been pricked with a sharp instrument for such a length of time would have shown signs of discomfort in the judicial officer's office. But he did not. The reason is simple: None of the assaults he described to me took place. The complainant has lied his head off.

I come to the conclusion that the accused is a liar of the first class order. The Crown speaks the truth when it says that the accused freely, voluntarily and in his sound and sober senses and with no inducement of any kind whatsoever, made the statement he now objects to, before the judicial officer. I therefore hold that the provisions of section 223 of the Proclamation (supra) have been fully satisfied.

  
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J U D G E  
27th November, 1980

For the Crown: Mr. E. Muguluma

For the Accused: Mr. Modisane