

IN THE HIGH COURT OF LESOTHO

In the application of:

ISAAC CLASSON

APPELLANT

and

DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

J U D G M E N T

Delivered by the Honourable Mr. Justice G.N. Mofolo
on the 3rd day of May, 1996.

This is an application in which the Petitioner, Isaac Classon, approached this court seeking bail on the following terms and conditions:-

1. Payment of M100-00 cash deposit
2. Not to interfere with crown witnesses
3. Attend remands and stand trial
4. Report at Leribe Police every last Saturday of the month between 6.00 a.m.

The application is a sequel to the murder of Teke Nkalai of Serutle in the Butha-Buthe district and is opposed by the Director of Public Prosecutions. Significantly, in his bail conditions, the petitioner has not identified himself. Mr. Makotoko for the petitioner has submitted that there is no need for the petitioner to identify himself because other more

stringent bail conditions could be imposed to induce the petitioner to stand his trial. On the other hand, Mr. Sakoane for the Crown has submitted that though he is opposing the granting of bail, if the court were disposed to grant bail, it would be in the interests of justice if the court reserved its judgment until the petitioner was able to identify himself. I do not agree with either counsel.

In his petition the petitioner deposed amongst other things at paragraph 1. of his petition:

"Your Petitioner is ISAAC CLASSON, a male adult South African citizen who is resident at Phaphama, Butha-Buthe."

Here again, the petitioner does not mention his address in the Republic of South Africa but mentions a place in Butha-Buthe making it difficult for this court to know exactly where the petitioner is resident. Again, although the Petitioner made the allegation that he is resident at Phaphama, Butha-Buthe, when Sg.t Mofilikoane deposed in his affidavit Ad. Paragraph 5 (i) that

"I admit that Petitioner is the citizen of South Africa but further wish to state that petitioner is not resident at Phaphama, Butha-Buthe but rather temporarily stays at the village of Serutle."

in his replying affidavit the petitioner countered:

AD. Paragraph 4 thereof:

"I wish to re-iterate contents of my para.1. I don't know how deponent therein differentiates between temporary stay in one place and residences in that place. However, I do temporarily stay at Phaphama and not Serutle."

Not being satisfied that I could decide the petition without hearing the petitioner, I called the petitioner to testify in support of his application. Questioned by the Crown Counsel Mr. Sakoane, the petitioner contrary to what he deposed to in his affidavit above told the court that it was true that he resided at Serutle with his so-called concubine and not at Phaphama as appears in his affidavit and if granted bail he would stay at Serutle where he had been staying.

In his replying affidavit at paragraph 10 the petitioner deposed, inter alia in countering Sgt. Mofilikoane's assertions:-

"_____ He can only now raise this point about my not having documents as evidence on this point because he knows that he took my passport and has since denied ever having seen it."

Before me in his evidence the petitioner testified:

"Police took my passport at Serutle where I was building."

Questioned by Mr. Sakoane for the crown petitioner testified:-

"No policeman took a passport from me."

Put to him he said Sgt. Mofilikoane took his passport he said:

"When police searched I was absent and I was told what happened; it is my concubine who told me police took away my bag."

Also, in his affidavit to the police, petitioner had deposed that he came from Ladybrand when he came to Lesotho and yet asked by Mr. Sakoane for the Crown he said he came from home in Boksburg.

In Ramakatane v. Rex. LLR. 531 Rooney, J. (as he then was) quoting several cases including McCarthy v. R., 1906 T.S., Haffer Jee v. R., 1932 N.P.D. 518 said at p.536 - 7

"The general principles governing the grant of bail as set out in many cases are that the court must uphold the interests of justice. It will always grant bail where possible and lean in favour and not against the liberty of the subject provided that it is clear that the interest of justice will not be prejudiced thereby. The court's task is to balance the reasonable requirements of the state in its interest in the prosecution of alleged offenders, with the requirement of the law as to the liberty of the subject. The presumption of innocence operates in favour of the person seeking bail even where it is said that there is a strong prima facie case against him. If on the other hand there are indications that the proper administration of justice may be defeated if an accused is let out on bail a court would be fully justified in refusing bail."

In order not to refuse bail and so that proper administration of justice is not defeated, at least the petitioner should have given a detailed account of his work and told the court he had no intention of fleeing the country or taking steps to evade standing his trial and jeopardising his profession. On the contrary, I am not satisfied that the petitioner herein has a definite, assured and fixed profession

or endeavour - he appears to be an itinerant bricklayer (if I may call him that) with no fixed place or a reliable abode and the type likely to go anywhere according as exigencies of his work may require him to do.

And although the petitioner told me he has parents and a wife, none of them have come to inquire as to his whereabouts although he was arrested as long ago as July, 1995. I also found the petitioner to be shifty, evasive and not altogether truthful and I find that if he were released on bail at this stage interests of justice would be seriously prejudiced.

In *S. v. Mhlawli and Others*, 1963 (3) S.A. 795 (C.P.D.) it was said by Dietmont, J. at p. 796 that :-

"It has been said by the courts on several occasions that where the inducement to flee is great - as in this case - and where no extradition from the neighbouring protectorate would be possible - again as in this case - the court will not readily grant bail if the Attorney-General opposes the application. It seems to me that this consideration is conclusive in deciding the matter against the applicants, even though it may result in hardship to them ."

Although being a peregrinus where this is proved is not an absolute bar to granting bail, despite there being some evidence that the petitioner is a South African, none of the counsel addressed the court where extradition arrangements between Lesotho and the Republic of South Africa were in place in the event of the petitioner being granted bail.

Not fully satisfied with the identity of the petitioner or his place of abode, it seems to me granting him bail at this stage would not only be against the interests of justice but would be an extremely risky exercise given the charge accused is facing.

When the petitioner is able to identify himself and satisfy the court as to his place of abode he may renew his application on the same or additional reasons or on new facts coming to light. For the present this bail application is refused.



G.N. MOFOLO
JUDGE

30th April, 1996.

For the Applicant: Mr. Makotoko

For the Crown: Mr. Sakoane