

CRI/APN/306/91

IN THE HIGH COURT OF LESOTHO

In the Application of :

SIMON NGATANE Applicant

and

DIRECTOR OF PUBLIC PROSECUTIONS.. Respondent

J U D G M E N T

Delivered by the Hon. Mr. Justice B.K. Molai
on the 15th day of August, 1996.

This is an opposed application for bail pending trail. On 11th December, 1991, I granted the application and stated that reasons therefor would be filed at a latter stage. These now follow:

Briefly stated the facts disclosed by the founding affidavit were that one Saturday in July, 1991, the applicant learned that Maputsoe police officers had been looking for him in connection with a suspicion that he had been involved in a crime. The following day, which was a Sunday, the applicant reported himself at Maputsoe Police Station when he was arrested and charged with a crime of armed robbery. He had since been remanded and kept in

custody at Leribe male prison. Hence the application for bail pending his trial.

The applicant further averred that he was a resident of Tsikoane in the district of Leribe. He was never involved in the commission of armed robbery and was prepared to stand trial to prove his innocence. He assured the court that he would abide by whatever conditions might be imposed in the event of his release on bail.

The answering affidavit was deposed to by D/Tper Chabalala who admitted that one Saturday in July, 1991, the applicant did learn that the police had been looking for him on a suspicion of being involved in the commission of a crime. He, however, denied that on the following day the applicant reported himself at Maputsoe police station, where he was arrested and charged with armed robbery.

According to the deponent, on further investigating the matter, he came to learn that immediately after the commission of the crime, the applicant skipped the country and sought refuge with his relatives at Tembisa, in the Republic of South Africa where he was eventually arrested on 28th July 1991, a fact which was, however, denied by the applicant in his replying affidavit. In his answering

affidavit, deponent further averred that if he were to be released on bail, the applicant would definitely abscond and fail to stand trial.

I must say I found it difficult to comprehend how the applicant who had allegedly absconded to the Republic of South Africa after committing the alleged criminal offence in Lesotho could be arrested in the Republic of South Africa and brought back to Lesotho to answer the criminal charge against him. This is particularly more so if it were borne in mind that in 1991 there was no extradition agreement/treaty between Lesotho and the Republic of South Africa. Moreover, it is significant to observe that the deponent did not even mention by whom the applicant had been arrested at Tembisa on 28th July, 1991. He himself clearly had no legal power to arrest people in the Republic of South Africa. It could only be assumed that the applicant was arrested at Tembisa by the South African Police who, however, filed no affidavit to that effect.

On the affidavits before me, I found it reasonable to accept as the truth the story of the applicant that he had reported himself at Maputsoe police station, where he was arrested, and reject as false the deponent's version that the applicant had been arrested at Tembisa in the Republic of South

africa. Assuming the correctness of my finding, the applicant was not, in my view depicted as a person who was likely to jump bail and fail to stand his trial.

It is, perhaps, worth mentioning that the office of the Director of Public Prosecutions filed no opposing affidavit in this matter until on 15th October, 1991, when the applicant had already filed his replying affidavit on 30th September, 1991. The filing of the belated opposing affidavit which was conveniently done after the applicant had filed his relying affidavit and, therefore, unable to reply was filed without leave of the court. That was, in my view, seriously prejudicial to the case of the applicant. I was, therefore, not prepared to consider the opposing affidavit belatedly filed by the office of the Director of Public Prosecutions.

As it has already been pointed out earlier, in this judgment, the applicant was, for the foregoing reasons released on bail, subject to the following conditions:

1. Payment of M300 cash deposit.
2. Surrender of his passport to the police.
3. Report himself to the nearest police station (Maputsoe) on every Thursday of the week at or before 12 noon.

4. Not to interfere with crown witnesses.
5. Attend remands and stand his trial.
6. Find an independent person to stand him surety in the amount of M600.00.

The M300-00 deposit must be made at the Magistrate court and not at the office of the Registrar of the High Court.



B.K. MOLAI

JUDGE

15th August, 1996.

For Applicant : Mr. Teele,

For Respondent : Mr. Thetsane.