

IN THE HIGH COURT OF LESOTHO

In the matter between

REX

v

MATSOSO JOHN BOLOFO

1st Accused

LELINGOANA DAVID JONATHAN

2nd Accused

LEPOQO SEOEHLA MOLAPO

3rd Accused

MAKARA SEKAUTU

4th Accused

REASONS FOR SENTENCE

Delivered by the Honourable Mr. Justice M.M. Ramodibedi
On the 12th day of March, 1997

On the 6th March, 1997 accused No.1 Matsoso John Bolofo, accused No.2 Lelingoana David Jonathan and accused No.4 Makara Sekautu were each found guilty of the common law crime of sedition on their own plea to the first alternative to the indictment they faced.

In order to fully appreciate the background to the charge and the resultant plea as aforesaid it is necessary to reproduce the whole indictment which was certainly a formidable one embodied in the following terms:

“Count 1 - High Treason

That the said accused are guilty of High Treason in that:

WHEREAS during the whole period covered by this indictment all the said accused owed allegiance to the Kingdom of Lesotho (hereinafter referred to as the State) upon or about the dates and at or the places hereinafter set out, the said accused, each or the other or all of them, despite such allegiance, did unlawfully and with hostile intent and with the intention of coercing by force or overthrowing the government of the State commit one or more or all of the following hostile acts:-

- A. On or about the 9th day of January, 1996, at Old Europa, in the Maseru Reserve, district of Maseru, the second, third and fourth accused did unlawfully combine and conspire with one another and with other persons to make preparations for the overthrow of the government of the State and did at the meeting they held on or about the 9th January, 1996 aforesaid decide that they were going to announce the overthrow of the government over Radio Lesotho on the 10th January, 1996 and thereafter take control of the government.
- B. Pursuant to and in furtherance of such conspiracy -

- (i) Accused No.2 and accused No.4 were assigned to meet an army officer known to them who would facilitate the accused's contemplated objective of overthrowing the government.
- (ii) Having failed to get assurance that they (accused No.2, No.3 and No.4) would be provided with secure transport and access to Radio Lesotho premises on the 10th January, 1996, the said 3 accused and their co-conspirators decided to abandon proceeding with their intention to overthrow government on the 10th January, 1996. They decided to defer carrying out their intended objective of overthrowing government to some other day.
- (iii) Accused No.1, No.2, No.3 and No.4 subsequently met at Lithabaneng on or about the 3rd February, 1996 to decide on how to approach the commander of the Lesotho Defence (LDF) with a view to soliciting his support for the accused's intended objective of overthrowing the government. Accused No.1 agreed to approach the commander of LDF with a view to asking him to support them in their intended objective.
- (iv) Accused No.1 some time in February, 1996 (the exact date to the prosecutor unknown) approached the commander of LDF and the director of National Security Services (NSS) to ask for their assistance and

cooperation so as to ensure that their conspiracy succeeded.

(v) Accused No.1 and No.2 met on the 28th February, 1996, at or near Speedy Complex Centre, near the Roman Catholic Cathedral to hold discussions concerning a document that was to be read over Radio Lesotho on the 29th February, 1996 announcing the overthrow of the government.

(vii)(sic) Accused No.1, No.2, No.3, No.4 and other co-conspirators met at Maseru on the 29th February, 1996 to make final preparations concerning the making of the announcement of the overthrow of the government over Radio Lesotho.

C. Pursuant to and in furtherance of the conspiracy, accused No.1 and No.2 together with another conspirator proceeded to the Radio Lesotho premises on the 29th day of February, 1996 where they gained entry to the studio rooms; held the workers at Radio Lesotho captive by force so as to enable accused No.1 to announce, without hindrance or interference the overthrow of the government.

D. Pursuant to and in furtherance the (sic) conspiracy; while accused No.2 held the workers of Radio Lesotho confined in a room, accused No.1 broadcast over Radio Lesotho that in the

name of leaders of political parties, traditional leaders and the Basotho nation he had dissolved government and parliament; that he had suspended the 1993 Constitution of Lesotho; that he was asking for good cooperation from government departments; and that government departments should await further announcements from time to time.

Alternatively

Count 2 - Sedition

That the accused are guilty are guilty (sic) of the crime of Sedition.

In that, upon or about the 28th to the 29th day of February, 1996, and at or near Maseru, in the district of Maseru, the said accused, each or the other or all of them, did unlawfully and with seditious intent participate in a gathering of a number of people which gathering had intent unlawfully to defy and subvert the authority of the Government of the Kingdom of Lesotho and making an unauthorised broadcast over Radio Lesotho that His Majesty's Government, the Government of the Kingdom of Lesotho, had been destabilising the country and undermining peace since the 1993 general elections:

1. By causing disunity and dissention in the army, the police and prison warders, resulting in deaths of Basotho children, and also humiliating these forces in the National Assembly.

2. By illegally bringing into the country dangerous weapons of war through some of the parliamentarians.
3. By parliamentarians misusing public funds for the benefit of the Basotoland Congress Party (BCP).
4. By inviting foreign armies to come and attack and dissolve the lawfully constituted army of the Kingdom of Lesotho and therefore (the Government) thereby subverting the Constitution (1993 Constitution of Lesotho).
5. By causing disaffection among teachers' organizations and causing disunity among churches and also by not resolving the impasse concerning teachers salaries whereas Government continued to pay parliamentarians who had run away from the country.
6. By embarking on registration of voters for the 1998 general elections without any consultations with political parties.
7. By deliberately and maliciously ignoring constituting a commission of enquiry into the death of His Majesty King Moshoeshoe II.

Pursuant to and in furtherance of a conspiracy to defy and subvert the authority of the Government of the Kingdom, the accused further announced that as a consequence of of (sic) the aforesaid accusations

which they had levelled against the Government of the Kingdom of the Kingdom, (sic) they had dissolved the Government and the Parliament of the Kingdom; they announced further they had suspended the 1993 Constitution of Lesotho; they further asked for cooperation from the armed (security) forces so that their takeover of the Government could proceed smoothly and peacefully; and lastly they announced that they sought cooperation from all Government departments and that such Government departments should await further announcements from time to time.

Alternatively

Count 3 - Contravention of Section 7 of the Internal Security (General) Act, No.24 of 1984 (Internal Security Act).

That the accused are guilty of contravening section 7 of the Internal Security Act.

In that, upon or about the 28th or the 29th February, 1996, and at or near Maseru, the accused, did unlawfully and with subversive intent make an announcement over Radio Lesotho that was intended:

- (a) to prejudice public order and/or the security of Lesotho; and/or
- (b) counselling defiance to the law or lawful authority; and/or
- (c) undermine or overthrow or cause the downfall of the

Government,

by announcing that they had dissolved the Government and the Parliament of Lesotho; announcing that they had suspended the 1993 Constitution of Lesotho; calling upon the security (armed) forces to cooperate with them and support them in their purported takeover of Government other than by constitutional means; and seeking cooperation from all government departments in order to ensure that their proclaimed unlawful and constitutional (sic) takeover or government succeeded.

Alternatively

Count 4 - Kidnapping

That the accused are guilty of Kidnapping.

In that, upon or about the 28th or 29th February, 1996, and at or near Maseru in the district of Maseru, the said accused, did unlawfully and intentionally deprive a number of Radio Lesotho employees, all of them adults, of their liberty by holding them captive by force in a room at Radio Lesotho premises where they remained until they were subsequently freed by the security forces.”

It then becomes the task of this Court to impose the sentence which is suitable in the circumstances of the case. What this means in the end is that I must balance the mitigating factors against the requirements of reasonable punishment designed

to ensure maintenance of law and order and deterrence. It is thus upon this principle that I approach this matter.

I should mention straight away that I have had the benefit of full submissions from all counsel involved in this matter as far as sentence is concerned. I have taken into account all that they have said as well as personal circumstances of the individual accused.

I should also mention that I have mainly been attracted by Mr. Sello's submission that the Court must send out a clear message that this court is not going to countenance a situation whereby a democratically elected government of this country is destabilised as is the case here. In my view this is a candid and proper submission befitting of a senior officer of this Court. I hope therefore that the sentence I am about to impose shall have the desired effect.

The seriousness of the offence is highlighted by the fact that the accused admittedly announced over the radio that they had dissolved the Government and the Parliament of the Kingdom and also that they had suspended the 1993 Constitution of Lesotho which is the operative Constitution in the country. As if that was not enough the accused had the audacity to seek for cooperation from the armed (security) forces "so that their take over of the Government could proceed smoothly and peacefully."

In my view the accused's announcement over the radio as aforesaid is so serious that they must count themselves lucky that they have escaped a conviction for high treason by the skin of their teeth thanks to the power of plea bargaining by counsel involved. The intention to overthrow the Government may well be

gathered from the said announcement over the radio in which the accused were obviously so confident that they regarded the dissolution of the Government as an accomplished fact.

Be that as it may I remind myself that the accused have not been found guilty of high treason in this case. I must punish them in respect of the offence of sedition and nothing more.

In Rex v Mofelehetsi Moerane and others 1974-75 LLR 212 the highest sentence for sedition was six (6) years imprisonment, the court there took into account that the accused were not acting for personal gains but rather out of a sense of grievance. They were victims of political dissensions.

I accept that each case must be decided on its own merits. The difficulty here, though, is that the accused have not told me what motivated them to commit this offence. It has been suggested on their behalf that they were used as tools albeit dangerous ones. There is however no evidence to that effect. In this regard I am mainly attracted by the following remarks in S v Van Niekerk 1981 (3) S.A. 239: “In the criminal career of every person it is of the greatest importance how it came about that he committed his first crime. For the purposes of an appropriate sentence and his rehabilitation thereafter it is of material importance to investigate the matter and to consider carefully the accused’s explanation thereof. He is the best person to speak thereon.”

What is clear to me is that in these days of democracy in Lesotho political dissensions can easily be addressed through the ballot box. There is absolutely no need to resort to the unlawful acts such as the accused are charged with.

I should mention that it is agreed by all concerned in this matter that the accused have been found guilty of a very serious offence indeed prejudicial to the public interest. There is therefore a need to impose a sentence which will make a lasting impression upon the accused and other like minded persons and thus deter and restrain them from further defying and subverting the authority of the State by similar acts as are contained in the charge in this matter or at all.

On the other hand, this court subscribes to the principle that justice must be tampered with mercy. In Sekonyela and others v Rex 1981 (1) LLR 41 at 44 Mofokeng J, as he then was, had this to say :

“It is characteristic of Courts of Law to be merciful in their dealings with individuals who appear before them despite the horrible crimes they have been found to have committed.”

I entirely agree and discern the need to respectfully adopt these remarks in the matter before me. I shall therefore extend a hand of mercy to the accused in this matter.

In their favour, the accused are all first offenders. I find that this is commendable indeed as they may well be fallen angels as opposed to incorrigible rogues. At any rate there is absolutely no evidence before me that they fall in the latter category. In this regard I am further attracted by what was said in S v Van Niekerk 1981 (supra) in the following words:

“Where a court, in the imposition of sentence, has to do with a person who is a “first offender” or has “a clean record”, such a person can be

either a "fallen angel" or an "incorrigible rogue". All that can be contended in the interest of the latter is that he has not yet been punished by the court for his crimes or has not been warned."

There is then the fact that the accused have pleaded guilty and I am prepared to accept that this is a demonstration of penitence and remorse on their part. They have thus shown their willingness to square their accounts with society so to speak. Once more I have considered this factor in their favour. Moreover I have considered that they must be given a chance to reform rather than be broken.

I have also take into account the fact that the accused have been in custody for about twelve (12) months while awaiting their trial in this matter.

In all the circumstances of the case therefore I consider that justice will be done if the sentence in respect of each accused is four (4) years imprisonment half of which is suspended for five years on the condition that each accused is not found guilty of an offence involving sedition committed during the period of such suspension and I so order.

My assessors agree.



M.M. RAMODIBEDI

JUDGE

12th March 1997

For the Crown	:	Mr. Mdhluli (The DPP)
For Accused Nos 1 and 4:		Mr. Phoofolo
For Accused No 2	:	Mr. Sello