CRI/T/1/97

IN THE HIGH COURT OF LESOTHO

In the matter between

LEPOQO SEOEHLA MOLAPO **APPLICANT**

and

DIRECTOR OF PUBLIC PROSECUTIONS **RESPONDENT**

JUDGMENT

Delivered by the Honourable Mr. Justice M.M. Ramodibedi

On the 18th day of June, 1997.

This application concerns the right to a fair trial in terms of the Constitution of Lesotho. It arises from the criminal trial before me in which the Applicant is facing the following charges namely:

Count 1- High Treason; alternatively

Count 2- Sedition; alternatively

Count 3- Contravention of Section 7 of the Internal Security (General Act); alternatively

Count 4- Kidnapping.

On the 6th March 1997 the Applicant pleaded not guilty to each of the aforesaid counts and because his co-accused offered a plea of guilty to Count 2 (which plea was accepted by the Learned Director of Public Prosecutions) the Court ordered separation of trials.

On the 28th April 1997 the case against the Applicant duly commenced and the Crown has since called the following witnesses PW1 Masupha Molapo, PW2 Lennox Ntente Sesioana, PW3 Francis Ramatona Maseela, PW4 'Maliketso Natalia Masupha, PW5 'Mamosili Ntene and PW6 Tefo 'Musi.

I should mention that in the middle of his cross examination of PW2 Mr. Phoofolo for the Applicant made an application from the bar for discovery of the Crown witnesses' statements. He however abandoned the application indicating that he would consider making such application on notice and in a substantive way. This was on the 30th April 1997.

Mr. Phoofolo then proceeded to cross examine PW2 right up to the end and indeed proceeded to do so with the rest of the witnesses mentioned above. What is significant about Mr. Phoofolo's approach is that he duly informed the Court at the close of his cross examination of each of the Crown witnesses thus far that he had "no further questions." He did not reserve his cross examination subject to discovery of statements. I shall return to this aspect later.

It was only on the 21st May 1997 at the close of the court's session for the day and after PW5 had already completed his evidence that Mr. Phoofolo drew the

Court's attention to the fact that he had now filed a substantive application on notice of motion for discovery of the Crown witnesses' statements. It is this application which is the subject matter of this judgment.

It proves convenient to reproduce the prayers sought in this application. In his Notice of Motion the Applicant applies for an order in the following terms:-

"1. A Rule Nisi be issued and returnable on the Day of 1997 calling upon the respondents to show cause if any why:-

(a) The periods of notice provided for by the Rules of Court should not be dispensed with on account of urgency of this matter.

(b) Declaring the privilege against access by the applicant to the witnesses' statements in the police docket null and void for being inconsistent with Section 12 (2) of the constitution.

© Directing the respondent to avail to the applicant or his attorney the statements of the witnesses who have already given evidence and those who are to give evidence in the accused ongoing trial.

(d) In the event that this application is granted, that this Honourable Court directs that the prosecution witnesses who have already given evidence be re-called if the need

arises.

(e) Granting applicant further and/or alternative relief.

2. Prayer 1 (a) to operate with immediate effect."

The application is opposed by the Director of Public Prosecutions.

It should be observed straight away that this application assumes huge constitutional importance in this country. It is a matter of considerable public importance to the extent that it seeks a decisive break between the past and the future as far as the notion of a fair trial is concerned in this country. It seeks to shake the very foundations of the criminal justice system and the notion of a fair trial as courts have perceived it in this country.

It has thus fallen upon this court to interpret the Constitution and give true colour, flesh and meaning to it.

I should mention that the application before me is without precedent in this country. Accordingly I shall take the liberty to seek guidance from other jurisdictions with similar constitutions to Lesotho. It is my considered view that our law should fall in line with the international trend.

I start from the premise that the Constitution is the supreme law in the country. This is so in terms of Section 2 of the Constitution of Lesotho which provides as follows:

"2. The Constitution is the supreme law of Lesotho and if any other law is inconsistent with this Constitution, that other law shall, to the extent of the inconsistency, be void."

It is important to note that the Constitution of Lesotho provides for a justiciable Bill of Rights which basically guarantees fundamental human rights and freedoms.

Now Section 12 of the Constitution on which this application is based is entitled "Right to fair trial, etc" and it provides in part as follows:-

"12. (1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) Every person who is charged with a criminal offence -

(a) shall be presumed to be innocent until he is proved or has pleaded guilty;

(b) shall be informed as soon as reasonably practicable, in a language that he understands in adequate detail, of the nature of the offence charged;

© shall be given adequate time and facilities for the preparation of his defence;

(d) shall be permitted to defend himself before the court in person or by a legal representative of his own choice;

(e) shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution."

In order to make a meaningful and purposive interpretation of Section 12 of the Constitution it is necessary to give a little background to the legal history of this country leading to the Constitution which came into force in 1993.

The Lesotho Independence Constitution of 1966 which contained a Bill of Rights never had a chance since it was unlawfully suspended by the Government of the day hardly four years later namely in 1970. What then followed was autocratic rule spanning more than twenty-two years marked by repression and detentions without trial. There is no doubt in my mind therefore that the framers of the 1993 Constitution had this unpleasant history in mind hence they included a justiciable Bill of Rights entrenched in the Constitution.

Seen against the above mentioned background I accept that the Constitution has ushered in a new order. It is a decisive break from the unacceptable past and has introduced a culture of equality, openness, justification, transparency and universal human rights all of which are protected in the Constitution. I shall bear these noble principles in mind in interpreting Section 12 of the Constitution.

Courts in Lesotho have till now traditionally followed the common law principle of privilege namely that a witness statement is a privileged document and that the accused is not entitled to it. The same privilege has always been extended to police dockets. In this regard our courts have up to now followed the principle of the "blanket docket privilege" expressed in R v Steyn 1954 (1) S.A. 324 (A) which was in turn based on the English law as it was at that time.

The question that arises for determination by this Court is therefore whether or not the common law privilege to witnesses' statements is consistent with the Constitution.

I turn now to examine the approach of other jurisdictions to the problem as promised earlier. Since our common law on the subject is derived from the English law it is no doubt appropriate to commence where it all started namely England.

ENGLAND

It is important to note that English law has in recent years undergone drastic changes from the traditional standpoint that witnesses' statements are privileged. The changes were brought about by a number of mistrials caused by indiscretions on the part of some of the police investigators, state experts and public prosecutors to leave out relevant materials or statements favouring the defence. The case of R v Ward (1993) 2 ALL ER 577 (CA) serves as a perfect example.

In that case the prosecution had failed to disclose material relevant to both the accused's confessions and scientific evidence relied upon. The accused had then been convicted of the murder of 12 people who died after a bomb had exploded on

board a coach in which soldiers and their family members were travelling.

In overturning the conviction on the ground of non disclosure by the prosecution the Court of Appeal held:

> "(1) The prosecutions' duty at common law to disclose to the defence all relevant material, ie. evidence which tended either to weaken the prosecution case or to strengthen the defence case, required the police to disclose to the prosecution all witness statements and the prosecution to supply copies of such witness statements to the defence or to allow them to inspect the statements and make copies unless there were good reasons for not doing so. Furthermore, the prosecution were under a duty, which continued during the pre-trial period and throughout the trial, to disclose to the defence all relevant scientific material, whether it strengthened or weakened the prosecution case or assisted the defence case and whether or not the defence made a specific request for disclosure. Pursuant to that duty the prosecution were required to make available the records of all relevant experiments and tests carried out by expert witnesses. Furthermore, an expert witness who had carried out or knew of experiments or tests which tended to cast doubt on the opinion he was expressing was under a clear obligation to bring the records of such experiments and tests to the attention of the solicitor who was instructing him so that they might be disclosed to the other party. On the facts, the non-disclosure of notes of some interviews by the police to the Director of Public

> Prosecutions, the non- disclosure of certain material by the Director of Public Prosecutions and prosecuting counsel to the defence and the non-disclosure by forensic scientists employed by the Crown of the results of certain tests carried out by them which threw doubt on the scientific evidence put forward by the Crown at the trial cumulatively amounted to a material irregularity which, on its own, undoubtedly required the appellant's conviction to be quashed."

It is important to bear in mind what was said by Gildwell LJ at page 601 J of the judgment namely:

> "....'all relevant evidence of help to an accused' is not limited to evidence which will obviously advance the accused's case. It is of help to the accused to have the opportunity of considering all material evidence which the prosecution have gathered, and from which the prosecution have made their own selection of evidence to be led."

I am mainly persuaded by the fact that the developments in England have occurred so drastically despite the fact that that country does not have the benefit of a written constitution or a Bill of Rights.

NAMIBIA

I have had the benefit of reading the judgment of the Supreme Court of Namibia in S v Scholtz 1997 (1) BCLR 103 (NMS). That case has now settled the

legal position in Namibia regarding the right to a fair trial by ruling that in criminal prosecutions the accused should ordinarily be entitled to the information contained in the police docket relating to the case against him or her, including copies of statements of witnesses whether or not the prosecution intends calling such witnesses at the trial. The Court in that case has also held that the state is entitled to withhold any information contained in the police docket if it satisfies the Court on a balance of probabilities that it has reasonable grounds for believing that the disclosure of any such information might reasonably impede the ends of justice or otherwise be contrary to the public interest such as for instance where the information sought would disclose the identity of an informer or where it would disclose police techniques of investigation which it is necessary to protect or where such disclosure might endanger the safety of a witness.

What is of great importance about the Namibian approach as highlighted above is that Article 12 (1) (a) of the Constitution of that country bears a very close similarity to our own Section 12. It provides as follows:-

> "12.(1)(a) In the determination of their civil rights and obligations or any criminal charges against them, all persons shall be entitled to a fair and public hearing by an independent, impartial and competent court or Tribunal established by law....."

I further note with interest that one of the judges who sat on the Bench in S v Scholtz (supra) is the then Chief Justice of Namibia Mr. Justice I. Mahomed who is the former President of the Court of Appeal of Lesotho.

In the circumstances I find that the decision in S v Scholtz (supra) is highly

persuasive to this Court.

SOUTH AFRICA

It is important to note that of all the neighbouring countries this is where the winds of change all started. In S v Shabalala and others v Attorney General of the Transvaal and Another 1995 (R) BCLR 1993 (CC) reported in 1996 (1) S.A. 64 the Constitutional Court of South Africa firmly upheld the accused's entitlement to have access to the statements of prosecution witnesses. It expressly held that the "blanket docket privilege" expressed by the rule in R v Steyn (supra) is inconsistent with the Constitution to the extent to which it protects from disclosure all the documents in a police docket, in all circumstances, regardless as to whether or not such disclosure is justified for the purposes of enabling the accused properly to exercise his or her right to a fair trial in terms of Section 25 (3) of the Constitution of South Africa. The Court recognised however that the prosecution may, depending on the peculiar circumstances of a case be able to justify the denial of such access on the grounds that it is not justified for the purposes of a fair trial.

It is significant that the judgment of the Constitutional Court in Shabalala & others v Attorney General of the Transvaal & Another (supra) was written by none other than Mahomed DP (as he then was - He is now Chief Justice of South Africa). Significantly he wrote this judgment at the time when he was still President of the Court of Appeal of Lesotho.

What is even of more importance is that Section 25 (3) of the Constitution of South Africa on which the decision in Shabalala's case is based is substantially similar to Section 12 of the Constitution of Lesotho. It reads in part:

"25 (3) Every accused person shall have the right to a fair trial, which shall include the right -

(a) .....

(b) to be informed with sufficient particularity of the charge;

© to be presumed innocent and to remain silent during plea proceedings or trial and not to testify during the trial;

(d) to adduce and challenge evidence, and not to be a compellable witness against himself or herself;

....."

Admittedly it is hard to imagine any country with a worse record of violations of human rights than South Africa. That however is of no consequence as far as the exercise before me is concerned. This is so because in my judgment any violations of human rights regardless of the degree thereof deserve to be stamped out in a just democratic society that prides itself with a Bill of Rights entrenched in the Constitution such as Lesotho is. Accordingly I am prepared to adopt the approach of the Constitutional Court in Shabalala's case. After all Lesotho has had its own fair share of repression, autocracy and or dictatorship of some sort as well as power struggles in which fundamental human rights inevitably took the back seat. The experiences of South Africa are therefore not without relevance to this country.

CANADA

In Canada an accused's right to a fair trial is contained in Article 11 of the Canadian Charter which reads thus:

> "11. Any person charged with an offence has a right
>
> (a).....
>
> (b) to be tried within a reasonable time;
>
> © not to be compelled to be a witness in proceedings against that person in respect of the offence;
>
> (d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal."

Now in R v Heikel (Ruling No.8) 5 CRR (2d) at 362 the Court stated the following remarks which are very illuminating and indeed persuasive at 363 thereof:

> "I am in complete agreement with Tallis JA, in R v Bourget (supra), that with the advent of the Charter, full and timely discovery of 'documents' that are material or relevant to the offences with which the accused are charged, ought properly to be considered a guaranteed right of an accused person within sections 7 and 11(d) of the Charter. To deny the accused such timely discovery, to my mind, is contrary to the principles of fundamental justice and will deprive an accused of his or her right to make full answer and defence and thereby infringe or deny the accused's sections 7 and 11(d) Charter rights to liberty and security of the person. Such right, of course, must be subjected to

certain exceptions such as 'documents' which fall within a category of privilege, those which may require protective orders, the possible timing of the disclosure of Crown witness statements and editing of same by the court and other exceptions which may arise."

Indeed on 7 November 1991 the Canadian Supreme Court gave judgment in R v Stinchcombe (1992) LRC (Crim) 68 affirming the accused's right to full disclosure adding at page 9 thereof that "the right to make full answer and defence is one of the pillars of criminal justice on which we heavily depend to ensure that the innocent are not convicted."

The Court cautioned however that the obligation to disclose is not absolute.

THE UNITED STATES OF AMERICA

A similar trend is to be found in the United States where an accused is entitled to information that will enable him to understand the nature of the charge he is facing. However, it is important to bear in mind the remarks of the Supreme Court in the case of Roviaro v United States of America I L ed 2d 639 at 646 that:

"We believe that no fixed rule with respect to disclosure is justifiable. The problem is one that calls for balancing the public interest in protecting the flow of information against the individual's right to prepare his defence. Whether a proper balance renders non disclosure erroneous must depend on the particular circumstances of each case, taking into consideration the crime charged, the possible defences, the possible significance of the informer's testimony, and other relevant

factors."

These remarks commend themselves to me.

In the interpretation of Section 12 of the Constitution of Lesotho it is relevant also to have regard to the provisions of Section 19 which guarantee the right to equality before the law and the equal protection of the law in the following words:

> "19. Every person shall be entitled to equality before the law and to the equal protection of the law."

In interpreting a similar Article in the Namibian Constitution namely Article 10 (1) thereof Dumbutshena AJA delivering the judgment of the Appeal Court in S v Scholtz (supra) had this to say at 112:-

"Courts of law have to interpret and enforce the protection of fundamental rights and freedoms. Article 10 (1) provides: "All persons shall be equal before law." Apart from this, equality pervades the political, social and economic life of the Republic of Namibia. A reading of the Constitution leaves one in no doubt as to what is intended to be achieved in order for the people of Namibia to live a full life based on equality and liberty.

It is in this light that Article 12 should be looked at and interpreted in a broad and purposeful way. And the courts must ask whether the retention of privileges of witness statements accords with the exercise of the rights in the Constitution. If the constitutional purpose or intention is equality for all, one must ask whether non-disclosure accords with that purpose or intention? I think not. To achieve equality

between the prosecution and the defence is what the Constitution demands when it says "All persons shall be equal before the law."

I respectfully share the views expressed by the Learned Judge of Appeal.

I further accept the view that a trial cannot be fair, just and balanced if the prosecution is allowed to keep relevant material such as witness statements close to its chest and thereby hope to spring a surprise on the defence for the purposes of securing a conviction. It certainly cannot have been the intention of the framers of the Constitution to place the accused at a disadvantage in relation to the prosecution. Such a disadvantage in my view does not accord with the tenor and spirit of the right to equality before the law as enshrined in the Constitution. I accept that the Constitution is premised on openness, transparency and accountability which are the corner stones of democracy. Viewed in this context the word "facilities" used in Section 12 of the Constitution must obviously be interpreted in a meaningful and purposeful manner that is to say in such a way as to include witness statements. Indeed I hold that the Bill of Rights as are entrenched in the Constitution must be given a generous and purposive interpretation and not a restrictive one.

Accordingly I hold that the "blanket docket privilege" as stated in R v Steyn (supra) is inconsistent with the Constitution. The privilege has in my view been overtaken by the Constitution which has now entrenched a Bill of justiciable Rights. The Constitution must therefore prevail as the supreme law.

As earlier stated there may be cases where non disclosure of witness statements is justified depending on the circumstances of a particular case. In such cases the prosecution should seek directions from the court rather than act as a judge

in its own cause by deciding what should be discovered or what should not. That is preeminently the domain of the court.

It remains then to consider whether the Applicant has succeeded to make out a case for disclosure of statements of prosecution witnesses who have already given evidence and the recalling of such witnesses for further cross examination.

As earlier stated Mr. Phoofolo informed the court at the close of his cross examination of each of the said witnesses that he had "no further questions." Nor did he seek to reserve his cross examination of such witnesses.

I have looked at the founding affidavit of the Applicant. Nowhere does he deal with the need to recall the witnesses and the justification for it. Nor does he explain why the application was made so belatedly. I have taken these factors into consideration.

While the Court is prepared to order discovery of the statements of witnesses who have not yet given evidence the court feels however that an application for late discovery and indeed for recalling of witnesses is in the nature of an indulgence. The court has a discretion whether or not to grant such application but the discretion is however one that must be exercised judicially and not capriciously or arbitrarily. The court must look at all the relevant factors.

Undoubtedly the Applicant is facing a very serious charge indeed. That is a factor in his favour. But the matter does not, however, end there. I also observe that the Crown has not expressly shown in its papers that it stands to suffer prejudice if the application in this particular prayer is granted. It is the duty of the

Court however to determine the existence or otherwise of prejudice. In this regard I hasten to say that any delay in the prosecution of a criminal trial is clearly prejudicial to the ends of justice. Indeed justice delayed is justice denied.

In S v Scholtz (supra) Dumbutshena AJA had this to say at p 121 :-

> "For disclosure to be effective it must be done at the earliest possible time. In some instances soon after arrest and in others long before the accused is asked to plead and in some cases only after the witness has given his evidence in chief. This depends on the circumstances of each case. However, the overriding factor should be the sufficiency of time in which the accused should prepare his or her case. In my view it won't be sufficient time to hand witness statements and other materials to the accused a few minutes before plea. There should be reasonable time to allow the accused to prepare thoroughly his reply to the charge and his defence."

I respectfully agree. I should add however that what is reasonable time must depend on the circumstances of a particular case. It is the Court that must determine what is reasonable or what is not reasonable time.

I have taken the Applicant's timing in bringing this application in a very dim light. This is so because the Applicant was served with the indictment in this matter as far back as February 1997. His attorney Mr. Phoofolo then wrote to the Director of Public Prosecutions on 28th day of February 1997 requesting inter alia, "copies of statements of witnesses to the trial" adding "the above request is made on the basis of the constitutional right to a fair trial."

It is significant therefore that despite the fact that the defence was aware of the Applicant's "constitutional right to a fair trial" no attempt was made however to make a timeous application to Court to enforce the right.

On the contrary I find that the defence took a deliberate and well calculated decision to proceed with the trial in the absence of the statements of the prosecution witnesses. Accordingly I have taken this factor into consideration in deciding this aspect of the application.

In this regard the Applicant states as follows in paragraph 6 of his founding affidavit:-

"6.

6.1 When the trial commenced without any response from the respondent for the said statements, my attorney advised me that the indictment seemed to have been sufficient in its summary of particulars to inform me of the case I have to meet. I agreed to have my trial proceed as usual, but I indicated to my attorney that I was not at all waving my right to request those statements should I feel the need to see them during the course of the trial."

It is significant however that the Court was never told that the Applicant was not thereby waiving his right to request the statements.

As earlier stated it was only very late in the trial when on the 21st May 1997 an application for discovery of witness statements was made from the bar but even

then it was not persisted in then.

While this Court accepts that there can be no strict time limits to applications for discovery of witness statements and that each case must be determined on its own merits it must be stated that applications of this nature are generally a pre trial exercise. Where such applications are made belatedly during the course of a trial it is necessary, at the very least, that the accused concerned should give, even if only briefly, specific reasons for his request. More importantly the accused in such a case must give sufficient explanation as to his delay in making the application to Court. In this regard it must always be borne in mind that once a trial has commenced different considerations come into play such as the importance of the case, the respondent's interest in the finality of the case in question, the convenience of the Court, the avoidance of unnecessary delay in the administration of justice, the explanation for the delay in bringing the application to court, the bona fides of the applicant in making the application namely that the application is not made for the purposes of delay as well as the relevance of the information sought to the issues in the criminal trial (the list is not exhaustive).

As earlier stated the Applicant has offered no explanation at all why this application was not made timeously. The Court deserves to be treated with some measure of respect in this regard. Consequently the Court shall mark its disapproval of the defence conduct by refusing some of the orders sought as fully shown below. I have no doubt in my mind that the Applicant himself fully anticipated this ruling as a matter of common sense and logic. In this regard it is significant to quote paragraph 9 of the founding affidavit of the Applicant. He states:-

"9.

As the trial is already in progress I feel the need to have this application determined as a matter of urgency in order to avoid a situation where I might have to apply for recall of certain witnesses who have already given their evidence. Furthermore any delay in the determination of this application might be prejudicial to me as I might not be allowed to re-examine the past witness as it would seem like re-opening the matter for retrial."

A proper reading of this paragraph has left me in no doubt that the Applicant has actually not supported prayers 1© and (d), of the Notice of Motion in his founding affidavit to the extent that statements of the witnesses who have already given evidence be discovered and that such witnesses be recalled. On the contrary he is making it perfectly clear that he is avoiding just "such a situation."

I have taken this factor into account as well. Moreover the Court attaches due weight to the fact that as earlier stated Mr. Phoofolo unequivocally told the Court that he had "no further questions" in respect of each of the prosecution witnesses who have already given evidence.

In the result therefore and having regard to the cumulative effect of all the factors mentioned above the application is granted in terms of prayer 1(b) and © of the Notice of Motion to the extent that the Director of Public Prosecutions is directed to avail to the Applicant or his attorney the statements of the prosecution witnesses who are to give evidence in the trial of the Applicant.

Prayer 1(d) of the Notice of Motion is hereby refused.

In conclusion I should like to express my appreciation for the assistance rendered to the Court by both Mr. Phoofolo for the Applicant and the Learned Director of Public Prosecutions Mr. Mdhuli. I should also mention that the latter fully supported the development of the law as stated in this judgment.

As guidance in future prosecutions in which the accused seeks to obtain the contents of police dockets and/or statements relevant to the prosecution on any particular matter I hereby make the following declaratory order namely that:

1. The "blanket docket privilege" contained in the rule in R v Steyn 1954 (1) S.A. 324(A) is inconsistent with the Constitution to the extent to which it protects from disclosure all the documents in a police docket, in all circumstances, regardless as to whether or not such disclosure is justified for the purposes of enabling the accused properly to exercise his or her right to a fair trial in terms of Section 12 (1) of the Constitution.

2. In prosecutions before the High Court, an accused person (or his legal representative) shall ordinarily be entitled to the information contained in the police docket relating to the case prepared by the prosecution against him, including copies of the statements of witnesses whom the police have interviewed in the matter, whether or not the prosecution intends to call any such witnesses at the trial.

3. The Crown shall be entitled to withhold from the accused (or his legal representative), any information contained in any such

docket, if it satisfies the Court on a balance of probabilities that it has reasonable grounds for believing that the disclosure of any such information might reasonably impede the proper administration of justice or otherwise be against public interest such as for example where the information sought to be withheld would disclose the identity of an informer which it is necessary to protect, or where it would disclose police techniques of investigation which it is similarly necessary to protect, or where such disclosure might endanger the safety of a witness or would otherwise not be in the public interest.

4. The duty of the Crown to afford to an accused (or his legal representative) the right referred to in paragraph 2 above shall ordinarily be discharged upon service of the indictment and before the accused is required to plead in the High Court provided, however, that the Court shall be entitled to allow the Crown to defer the discharge of that duty to a later stage in the trial if the prosecution establishes on a balance of probabilities that the interests of justice require such deferment depending on the circumstances of any particular case.

5. Nothing contained in this declaration shall be interpreted so as to preclude an accused person appearing before a court other than the High Court from contending that the provisions of paragraphs 2, 3 and 4 hereof should mutatis mutandis also be applicable to the proceedings before such other court.

M.M. Ramodibedi

JUDGE

18th day of June 1997

For the Applicant : Mr. Phoofolo
For the Respondent: Mr. Mdhuli (Director of Public Prosecutions)