

IN THE HIGH COURT OF LESOTHO

CRI/T/112/2004

In the matter of:

REX

V

RANTOANE MOTSOETLA	Accused 1
MOEKETSI MALLELA	Accused 2
MBUESELO BADELA	Accused 3
MATETE LEROTHOLI	Accused 4
LEBOHANG NTJA-NTJA	Accused 5
LIMPHO MAHLOANE	Accused 6
TSIETSI MASEELA	Accused 7
CHEKA MABOTE	Accused 8

RULING

ADMISSIBILITY OF RECORD OF INQUEST PROCEEDINGS

The crown has led viva voce evidence and seeks, now to close its case by handing in the record of inquest proceedings that preceded this trial. The application is opposed by the defence.

The crown's case as appears from the Heads of argument submitted by Mr. Leppan is essentially that during the course of the inquest proceedings statements by the accused were handed in by consent. He refers the court to p.42 of the transcribed record. He emphasized that since the accused were represented by their present counsel and he made no objection, they cannot now object to their being handed in. He says the issue of their admissibility did not arise during the inquest proceedings and therefore the statements of the accused handed in at the inquest remain admissible. In any case, so it is argued the accused will suffer no prejudice as those statements are mostly exculpatory although they contain some admissions. It may be gathered therefore that it is not the whole record of the inquest proceedings that the crown is interested by that portion that contains the accused's statements.

Mr Mda denies that the statements were handed in by consent as contended for. He says the record does not bear out this contention. He further says that for those statements to be admissible it must be proved by the Crown that they were freely and voluntarily made. No such proof had been forthcoming.

The relevant record to which Mr. Leppan relies starts with Mr. Mda objecting to a witness, N0.19256 D/Tpr. Mallela who is accused N0.2 in casu, *"being called to answer any question relating to the statement"* p.41 of the transcript. It is further recorded *"The court could, however have all the statements it may wish to have"* This is followed by a ruling that: *"The court directs that which ever statement relating to the inquiry which could be in the possession of the suspects should be availed to it"*. In my view this is hardly consistent with the argument that Mr Mda had consented to the handing in of the statements. This is more consistent with the court ordering that they be handed in above the initial objection of Mr Mda. So it cannot be accurate to say as Mr Leppan does that *"The issue of the admissibility of the statements did not arise during the inquest proceedings."*

Now, an inquest must be differentiated from a criminal trial. The one is the nature of a mere inquiry into the circumstances surrounding the death in certain circumstances of a person and not as in a criminal trial the guilt or otherwise of those who appears a magistrate at the inquest. The rules of procedure that apply in a criminal trial are not the same as those that apply in an inquest. The latter is of an informal nature where even statements which may be hearsay will be admitted simply

for the purpose of establishing the cause of death and whether anyone may be held responsible for such death. *See Wessels v Additional Magistrate, Johannesburg 1983 (1) 530, at 532 to 533.*

I do not know for what purpose the crown seeks to introduce the statements of the accused into the evidence. But the tenor of the crown's heads of argument seems to indicate that apart from being exculpatory the statements contain certain admissions. If that is so the crown must prove beyond a reasonable doubt that the statements were freely and voluntarily made *see Hoffmann and Zeffert: The South African Law of Evidence 4th Ed. p.222*. That question is then decided at a trial within a trial see again Hoffman + Zeffert (supra) p. 228. The crown cannot just hand in statements through the conduit of an inquest.

The application to hand in the inquest record is dismissed.

**Nomngcongo
Judge
July 1, 2010**