

Constitutional Case No.3 of 2010

IN THE HIGH COURT OF LESOTHO

In the matter between:

RETHABILE RATHOMA

Applicant

and

DIRECTOR OF PUBLIC PROSECUTIONS

1st Respondent

COMMISSIONER OF POLICE

2nd Respondent

MINISTER OF CONSTITUTIONAL AFFAIRS

3rd Respondent

ATTORNEY-GENERAL

4th Respondent

Coram: Hon. Hlajoane J

Date Hearing: 13th December, 2011.

Date of Judgment: 13th December, 2011.

Summary

*Provisions of the Constitution – Section 12 (5) Right to fair trial –
Accused having been tried convicted and sentenced – Decision on
Review – Order on review setting aside proceedings after accused has*

served his term of imprisonment – Application for permanent stay of proceedings granted in the absence of any opposition.

ANNOTATIONS

Cited Cases

Ketisi v DPP 2005 – 2006 at 503

DPP and Another v Lebona 1995 – 99 at 474

Statutes

The Lesotho Constitution 1993

- [1] The applicant in this constitutional case has approached Court asking for a permanent stay of pending criminal proceedings per case number 795/2006.
- [2] The facts briefly being that applicant had on the 2nd May 2006 been charged with bribery in CR795/2006 before the Maseru Magistrate Court.
- [3] He was convicted as charged on the 27th June, 2006 and sentenced to two (2) years imprisonment without an option of a fine.
- [4] He was committed to prison of course and served a term of two years imprisonment.

- [5] Whilst serving his term of imprisonment the applicant lodged an application for review by the High Court on the 10th August, 2006.
- [6] Review application was heard on the 25th September, 2006. However the decision of the review was only released on the 4th May 2009 on which date a Court order was given to the effect that the trial should start *de novo* before a different magistrate. The conviction and sentence were set aside.
- [7] It will be clear that the review order regrettably was delivered after the applicant had already served his full term of two years imprisonment.
- [8] Applicant had already been dismissed from the Lesotho Mounted Police Service following his conviction. But he was then reinstated upon receiving the review order which had set aside the conviction and sentence and ordered a re-trial.
- [9] Subsequent to that reinstatement, applicant received a letter from the 2nd respondent in terms of the **Police Service Act 1998**. The letter requested the applicant to make representations why he should not be interdicted from service pending finalization of the proceedings against him.

[10] On the 13th July 2009 applicant received a letter of interdiction on full pay on instructions by the 2nd respondent pending resolution of the criminal proceedings against him.

[11] It has been the applicant's case that it has taken an inordinate delay for his trial to be completed as he has already served his two year term of imprisonment, whilst still awaiting judgment on the review application. That the due process of law has been rendered to near the condition of ineffectiveness in view of the fact that an *ex tempore* order setting aside his conviction was only made after he had served his two year term already.

[12] Applicant argued that his constitutional rights to fair trial have been violated beyond comparison. That it would not be proper for him to be re-charged after he had already served two year imprisonment for the same offence.

[13] Applicant showed that the crown has further delayed in commencing the proceedings *de novo*. That the prejudice he has already suffered and continue to suffer has become self evident.

[14] It has been the applicant's further argument that since he has been interdicted from work he has suffered and still continue to suffer serious restrictions on his liberty. He has been inconvenienced in his carrier development.

[15] Applicant has lost all opportunities of advancing his status in the police services. He has suffered unimaginable social stigma of being a convict but at the same time a perpetual accused. He has suffered serious mental stress whilst waiting for the machinery of justice to take its course.

[16] He submitted that if he is to be charged *de novo* and end up being convicted, he stands susceptible to serve yet another sentence despite the two years he has already served. So that his guaranteed rights under the constitution to a fair trial are susceptible to violation if the pending proceedings against him are commenced.

[17] He therefore prays for a permanent stay.

[18] Applicant's counsel has supported his argument by relevant authorities, viz: **Ketisi v Director of Public Prosecutions**¹ and **Director of Public Prosecutions and Another v Lebona**², which

¹ (2005 – 2006) 503

² (1995 – 99) 474

lay down the proposition that an order of permanent stay of proceedings can be granted when there is unreasonable delay that is unattributable to the conduct by the person who stands accused. He submitted that the present case is such a case and would not agree with him more.

[19] Since the papers were duly served on the respondents as far back as the 24th February, 2010 and the respondents though have filed a notice of intention to oppose, have not filed any opposing affidavit, the application is granted in terms of prayer (a) of the Notice of Constitutional Motion.

[20] The pending criminal proceedings against the applicant per case No.795/06 before Maseru Magistrate Court are permanently stayed.

A. M. HLAJOANE
JUDGE

For Applicant: Mr Molise

For Respondent: No Appearance

