

**IN THE HIGH COURT OF LESOTHO**

**In the matter between:**

<b>MOEKETSI MOTLOHELOA</b>	<b>1<sup>ST</sup> APPLICANT</b>
<b>KABELO 'MAMALO</b>	<b>2<sup>ND</sup> APPLICANT</b>
<b>BOITUMELO LETELE</b>	<b>3<sup>RD</sup> APPLICANT</b>
<b>TŠEPO RAJAKE</b>	<b>4<sup>TH</sup> APPLICANT</b>
<b>BOKANG MASEBEKO</b>	<b>5<sup>TH</sup> APPLICANT</b>
<b>MATHIBETSANA KHALALA</b>	<b>6<sup>TH</sup> APPLICANT</b>
<b>SEABATA MOTLOHELOA</b>	<b>7<sup>TH</sup> APPLICANT</b>
<b>MANYATANE MOTLOHELOA</b>	<b>8<sup>TH</sup> APPLICANT</b>
<b>TUMANE MATSELA</b>	<b>9<sup>TH</sup> APPLICANT</b>
<b>DAEMANE MOFOSI</b>	<b>10<sup>TH</sup> APPLICANT</b>
<b>MOROALLO TAUHALI</b>	<b>11<sup>TH</sup> APPLICANT</b>

**AND**

**DIRECTOR OF PUBLIC PROSECUTIONS**

**RESPONDENT**

**JUDGMENT**

**Coram** : **Hon. Moiloa AJ**  
**Date of Hearing** : **31<sup>st</sup> May 2012**  
**Date of Judgment** : **4<sup>th</sup> June 2012**

**Summary**

*Petition for bail by eleven individuals of ages ranging from 17 to 28 years – Court's primary function is to determine whether interests of justice will be prejudiced if petitioners were to be admitted to bail. Factors that must be borne in mind in considering petitions for bail includes – Petitioners ages are important consideration as well as the seriousness of offence with which petitioners are charged – Liberty of petitioner awaiting trial a very important consideration but*

*must always be balanced with interests of justice to ensure petitioners stand trial –  
Petitioners released on bail on suitable conditions aimed at ensuring their  
attendance on trial date.*

- [1] Applicants were arrested on 24/02/2012 afternoon it being alleged that on 23/02/2012 they murdered ‘Malihalahala ‘Mamokebe Rabiri by stoning her and beating her with various objects to death.
- [2] Of these applicants Kabelo ‘Mamalo (17), Tšepo Ratjeka (18), Bokang Masebeko (18), Tumane Matela (18), Daemane Mafosi (17) and Moroallo Tauhali (17) are all under age while the ages of the balance of the applicants range between 21 and 28.
- [3] Moeketsi Motloheloa is the main deponent to the founding affidavit. In a nutshell he denies any involvement in the alleged killing of the deceased. He says they just saw police came to their chief’s “khotla” where they were called and told to get into police vehicles and taken to Mafeteng Police Station where they were there told that they are arrested in connection with the death of ‘Malihalahala Rabiri who, it was alleged, they killed on 23/02/2012.
- [4] They allege that they harbour no intentions of evading justice. They allege they have their permanent homes at Likhoele where they live with their families and relatives. They look after cattle and have strong ties with their families within Lesotho and have no relatives beyond jurisdiction of the court. They were indigent and are being assisted by Legal Aid.

**[5]** Bail is apposed by the Crown. The following are grounds upon which bail is opposed and are set out in the Answering Affidavit of No.9214 D.P.C Leqela:

- 5.1. Applicants premeditated killing of deceased and proceeded to kill her on 23/2/2012 on an allegation that deceased was a witch.
- 5.2. Deceased was a defenceless person of 83 years of age.
- 5.3. She was invaded at night at her house by the mob consisting of Applicants among others.
- 5.4. Policeman alleges that besides deceased Applicants plan to kill three other persons in the village as soon as their released on bail. These three are also alleged to be witches.

**[6]** Police attitude in opposing bail though important, must be based on credible evidence. It is not sufficient that such opposition consists only in bold allegations not backed by credible facts from which the Court can see for itself the basis of police attitude. The Court needs to see for itself the credibility of such opinion and make a value judgment on such police opposition based on facts placed before Court. In their reply Applicants continue to deny their involvement in the murder of ‘Malihalahala. They alleged they have been assaulted by police to confess to the crime but have steadfastly denied any involvement in the killing of ‘Malihalahala. Some of the Applicants are school children. Again, petitioners’ petitions must contain sufficiently credible facts as to allow the Court to have insight into their case reliably. It is not enough for petitioners to make assertions that are not backed by credible evidence. The issue of some petitioners being school boys was referred to casually in passing by petitioners even though it is an

important matter. It should have been properly articulated in the founding petition.

- [7] My primary function is to determine whether the interests of justice will be prejudiced if the Applicants were admitted to bail. Such prejudice can be manifested in a number of ways e.g. interference with Crown witnesses or police investigations; or if petitioners are likely to commit further crimes while on bail; or if maintenance of peace and public order is likely to be disturbed if Applicants were released on bail; or if there is any disposition to violence on the part of petitioners evidenced by their past conduct; or if there is the likelihood that the petitioners if released on bail, will undermine or jeopardize the objectives of the proper functioning of the criminal justice system, including the bail system.
- [8] I start from the premise that Applicants are innocent of the alleged crimes until proven guilty in a court of law. I note that seven of the Applicants are minors and that the other four Applicants are young men. I also note that the main deponent of the founding affidavit of Applicants mentions flirtingly in his replying affidavit that some of the Applicants are school going children. But he does not say who of the Applicants these are or where they attend school. Presumably, they are among the seven minors mentioned above. This piece of information is very important and Applicants counsel should have given proper attention to it to articulate it more fully to the court. It should have been mentioned in the founding affidavit for presumably the answering affidavit would have addressed it as well. I note however that the answering affidavit is very barren in that it does not deal with the issue of the very young ages of some of the Applicants especially 2<sup>nd</sup>, 10<sup>th</sup> and 11<sup>th</sup>

Applicants who are only 17 years old according to the charge sheet. The relative youth of some of the petitioners is a very important fact that influences the relative merit of releasing such petitioners and impacts on the nature of conditions that may be attached to their release on bail.

[9] Opposition by the Crown is perfunctory and based on the opinions of the investigating officer and is on the basis that the crime was allegedly brutal and that Applicants may commit further crimes, to wit, murder three other persons if they were to be released on bail. But the court is not informed the basis of this fear on the part of the investigating officer. I have a duty to balance the liberty of the subject with the crime alleged against him when he is not yet tried; and to consider whether there is a real possibility that if Applicants were to be admitted to bail there is a real (as opposed to imagined) possibility that the interests of justice will be prejudiced if Applicants were indeed released on bail with suitable conditions attached to such release.

[10] I accept that the crime alleged against Accused is serious and that it may be an incentive to escape trial. But nothing has been proffered by the Crown that in the circumstances of this particular case, any such eventuality is likely or even reasonably feared. There is, no suggestion that Applicants will evade their trial or that they will intimidate witnesses or conceal or destroy evidence or that there is a disposition to violence on the part of the accused from their past conduct or that there is a prevalence of this type of crime against alleged witness in the Likhoele area or neighbouring areas.

[11] In the circumstances of this case, I elect to lean in favour of the liberty of the subject and admit the Applicants to bail on suitable conditions as follows:

- (a) Applicants 2, 10<sup>th</sup> and 11<sup>th</sup> are released to their parents on their own recognizance;
- (b) Applicants 1, 3, 4, 5, 7, 8 and 9 are admitted to bail upon payment of a bail cash deposit of M300.00 each;
- (c) Applicant 6 is admitted to bail upon payment of M500.00 deposit;
- (d) Applicants to attend remands;
- (e) Applicants not to interfere with Crown witnesses or police investigations;
- (f) Applicants to report to Mafeteng Police Station between 6am and 6pm on remand days.

**J.T.M. MOILOA**  
**ACTING JUDGE**

For Applicants : Adv. M.S. Masoabi  
For Respondent : Adv. M.E. Tšoeunyane