

IN THE HIGH COURT OF LESOTHO

In the matter between:

MAHLOMOLA SEENYANE

1st Applicant

MOTSIE MONOANA

2nd Applicant

And

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

JUDGMENT

CORAM:

HON. HLAJOANE J

DATE OF HEARING:

10TH SEPTEMBER, 2012.

DATE OF JUDGMENT:

11TH DECEMBER, 2012.

Summary

Application for bail – Whether existence of prima facie case a bar to admitting suspect to bail – Absence of exceptional circumstances in terms of section 109A of the Amendment to Criminal Procedure and Evidence Act 1981- Bail refused.

- [1] This is an application for bail which is being opposed. Both Applicants are facing a charge of armed robbery before the Maseru Magistrate's Court. They have both been in custody since 4th May, 2012.
- [2] Both Applicants have advanced similar factors for consideration in dealing with their application for bail. They are the following:-
- (a) They are worthy of being admitted to bail as they pose no threat to the administration of Justice.
 - (b) They have each a wife and children of tender ages to look after and siblings and mothers who are sick and old.
 - (c) One applicant is sick suffering from rheumatitis which would be aggravated by exposure to cold whilst the other has a liver and kidney problem and is under medical treatment.
 - (d) That presumption of innocence operates in their favour.
- [3] It has been the applicants' case that they know nothing about the case they are charged with, and as such they would not pose any threat to the interest of justice as would not interfere with the crown witnesses as they were even cooperative during their arrest.
- [4] Applicants further showed that they are not likely to abscond as they are citizens of this country and have dependants. Further that they are part-time workers and had left the building work where

they have already been paid in full and the owner of the building is threatening to take their property for that payment in advance.

- [5] The two main considerations in this application being whether the case has been made out in terms of **section 109A of the Amendment**¹ entitling the applicants to be released on bail, and also whether the applicants are going to stand trial considering their chances of absconding and frustrating the hands of justice.
- [6] Applicants' counsel has rightly stated the position of the law applicable in instances of this nature, by emphasizing on the main consideration being whether or not the applicants will stand trial. That other considerations as seriousness of the case and likelihood of conviction and severity of punishment come but secondary.
- [7] It has been argued for the applicants that they have been very co-operative during their arrest as they did not resist arrest and were even not armed when arrested.
- [8] Respondent's side has been that applicants have not been co-operative as having been arrested they denied any involvement in the commission of the offence charged. Further that they are a high flight risk and danger to society considering their relapse in crime as they have similar pending cases before the Courts.

¹ Criminal Procedure and Evidence Amendment Act of 2002

- [9] In the opposing affidavit the investigating officer has mentioned case numbers for five criminal cases dating between 2008 to 2012 which he alleges are all charges of armed robbery and involve the present petitioners, hence why Respondents allege that the petitioners are recidivists who relapse in crime.
- [10] The above has of course been denied by the petitioners showing that whatever has been alleged by the Respondent has not been supported by any evidence.
- [11] Let's look at the case numbers which the investigating officer has mentioned in his opposing affidavit. There has been no concrete proof that such cases in fact exist. It would have been prudent if copies of such charge sheets were attached. But an investigating officer as an officer in the prevention of crime should not be doubted in what he deposed to under oath.
- [12] On the contrary, the Applicants are saying that the Respondent has not substantiated its point in saying Applicants are a high flight risk. They further submitted that the fact that there is a *prima facie* case against the applicants cannot warrant their denial to be granted bail.
- [13] Applicants referred the Court to the decision in **Molapo vs DPP**² that "The presumption of innocence will ordinarily operated in

² 1997 -98 LLR & LB 38 @ 39

favour of an applicant for bail even whether there is a *prima facie* case against him provided his release on bail will not defeat proper administration of justice.”

Like already said above of importance is for the accused to stand trial.

[14] On the requirement of demonstrating the existence of exceptional circumstances, the **Amendment to the Criminal Procedure and Evidence Act**³ has taken care of the situation. As was said by my brother **Nomngcongo J** in **Matlanyane and Others vs DPP**⁴, that:-

“It is not enough in motivating a bail application under this section to lay bare facts which do not inform the Court what is exceptional about the circumstances of the application and why it is necessary in the interest of justice to release him on bail”.

[15] In considering whether or not to release a suspect on bail the Court has to draw a balance between prejudicing the administration of justice and safeguarding the liberty of such a suspect.

[16] Under the circumstances of this case the applicants have failed to place before this Court what could be considered as exceptional circumstances to each one of them that might enable this Court to

³ S 109A of Criminal Procedure and Amendment Act 2002

⁴ CRI/APN/192/2004

evaluate their position and thus conclude that a case exist for each of them to be admitted to bail.

[17] As was said by my brother **Moiloa AJ** in ‘**Mabathoana and One v DPP**⁵ listing activities common to most honest men of engaging in piece jobs, maintaining family and parents, there is nothing exceptional about all those. They have also made bare statements of claiming to be sick which have not been substantiated.

[18] Given the nature of the crime alleged to have been committed and other cases still to be heard against the same suspects of a similar nature, coupled of course with the absence of any exceptional circumstances the court feels that it would not be in the interest of justice to release the applicants on bail.

[19] That would of course not be a bar to making a fresh application when there is a genuine and substantiated change of circumstances for each or both of the applicants. For now, the circumstances of this case are not in favour of admitting the Applicants to bail.

Bail is thus refused.

⁵ CRI/APN/373/2004

A.M. HLAJOANE
JUDGE

For Applicants: Ms. Lesaoana

For Respondent: Ms. Nkoe