

IN THE HIGH COURT OF LESOTHO

CRI/REV/10/2013

In the matter between:

BOKANG MOLIKO

1ST APPLICANT

MOTHOBI TLAILE

2ND APPLICANT

And

THE LEARNED MAGISTRATE (MR. MOTANYANE)

1ST RESPONDENT

THE CLERK OF COURT

2ND RESPONDENT

DIRECTOR OF PUBLIC PROSECUTIONS

3RD RESPONDENT

REASONS FOR JUDGMENT

Coram	:	Honourable Acting Justice E.F.M. Makara
Dates of Hearing	:	17 December, 2013
Date of Judgment	:	17 December, 2013

MAKARA A.J

[1] The Court having considered the representations for the applicants and the respondents, respectively, has come to a conclusion that:

- (a)** The Magistrate was at large to base his decision upon the complainant's evidence if he believed it to be true. The Cautionary Rules do not apply any longer in sexual offences. It has long been considered constitutionally suspect. Side by side with this consideration, the applicant was also at large to have called for a counter evidence against that of the complainant with a view to

indicate to the Court that the evidence was, on the balance of probabilities possibly false.

- (b) There would be no basis *ex facie* the papers before the Court for it to *read* or *inferred malice* on the part of the Magistrate. He deserves to be presumed to have acted regularly as a Judicial Officer.
- (c) The Magistrate could have reached his conclusion on the basis of the complainant's evidence exclusively. He was judicially at large to have done so.
- (d) The time taken between the hearing and the writing of the judgment cannot unless, the contrary is clearly shown in the papers, be, indicative of a miscarriage of justice or *mala fide* on the part of the Magistrate. This cannot be a sound ground for the proceedings and the judgment of the Court *a quo* to be set aside.

[2] In the premises, the application is refused. The Court however, directs the Resident Magistrate and the Prosecution to expedite the hearing lest the rights of the applicants are indefinitely placed in jeopardy.

E.F.M. MAKARA
ACTING JUDGE

For the Applicant	:	Adv. L. Ketsi Instructed by Attorneys V. Mokaloba & Co.
For the Respondent	:	Adv. Tsutsubi instructed by Law Office