

IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

CRI/T/69/2011

In the matter between:-

THE CROWN

AND

ADIL OSMAN

1ST ACCUSED

MAHAMED YUSUF OSMAN

2ND ACCUSED

JUDGMENT

Coram : Hon. Mahase J.
Date of hearing : 4th April 2013
Date of Judgment : 9th April 2013

Summary

Criminal Law and Procedure – Fraud charges further and better particulars

- [1] The accused are charged before this Court with having committed twenty five counts of fraud.
- [2] After a number of postponements of this case for various reasons; one of which was that the first two counsel which the accused had briefed to defend them, had withdrawn as attorneys of record due to the financial constraints on the part of the accused. However, when at last they had secured the services of a third counsel Adv. Patel to defend them, this counsel requested

the crown to furnish his clients with further particulars to the charges so as to enable the accused to plead. Same were duly furnished and served upon the accuseds' counsel on the 13th February 2013. This is about three weeks before the next date of the prosecution of this case.

- [3] It has since transpired that a few weeks before the next date for the further prosecution of this case, another application by which the crown was requested to file and or furnish the accused with further and better particulars, was filed and served upon the attorneys of Webber Newdigate who have been briefed to prosecute this case on behalf of the crown. The said application was filed and served upon the crown on the 18th March 2013; some ten days before the date allocated for the prosecution of this case.
- [4] The crown did not respond to same and so on the 4th April 2013, the day this case was to be prosecuted, the defence came to court prepared to argue an application for a postponement of the case until when the crown had filed and served the defence with further and better particulars to the charges. It also then transpired that the accused had then briefed a fourth lawyer, Mr. T.N. Price to defend them in this trial.
- [5] The obtaining situation on the 4th April 2012 was that the crown. Represented by Advocate Woker, had not supplied or furnished the further and better particulars which has been requested by the accused/defence.
- [6] It was therefore argued on behalf of the accused that since the crown had also not filed any notice indicating their intention to oppose the application

for the supply of further and better particulars, then the court should accept that the said application was unopposed.

[7] It was further argued on behalf of the accused that, crown counsel, Mr. Woker should not be allowed to address the court on this issue from the bar as he sort to do, because among others, he should have formally and through the filing of an affidavit explained to court why the crown has failed to supply or to furnish such further and better particulars and contrary to the express provisions of the Rules of this Court.

[8] It was argued, that should the court allow Mr. Woker to address it from the bar on this issue, and without him having filed an intention to oppose as well as an affidavit, he will have been allowed to give evidence from the bar that he will have denied the defence an opportunity to formally and under oath reply to any grounds which should have been formally raised in opposition of this application.

[9] Mr. Woker, on the other hand argued on behalf of the crown that there was no formal application for the supply of further and better particulars made as yet before this court, because, a proper reading of the last page of the so-called application for further and better particulars was yet to be made before this court.

[10] Mr. Woker's reply in this regard is based on the wording of the defence's last paragraph, last page. He does not address the issue that they have in fact been served with the notice requesting them to supply further and better particulars way back on the 18th March 2013.

[11] Mr. Woker has also attacked the format used to make this notice by which the crown is requested to furnish further and better particulars; which he says has not been made under oath, and that as such it is not an acceptable formal document in a trial of this nature. He has not referred this court to any specific Rule of this Court nor to any section of the Criminal Procedure and Evidence Act No. 9 of 1981 upon which he relies for this kind of argument.

[12] In other words, both parties are saying that the other has not complied with the procedural requirements in making their applications. Indeed it is undeniable that both sides to this proceedings have failed to file any affidavits in the application for further and better particulars, and in the argument in opposition to same as counsel for the respondents has argued his case from the bar.

[13] In fact, counsel for the crown has not opposed the application filed on behalf of the accused in which the crown is asked to furnish further and better particulars. While he says from the bar that the further particulars already filed and served upon the accused are sufficient and that same would allow the accused to plead to the charges and denies that the accused will suffer prejudice in their defence if such further and better particulars are not furnished; this he should have done in an affidavit form after he had duly indicated his opposition to the said application by having filed a formal notice of intention to oppose same.

[14] In the absence of any opposition to the application for a request for further and better particulars filed on behalf of the accused and duly served upon the

crown, it would be unjust, unfair and prejudicial to the accused if this Court were to refuse their application which is unopposed. The issues therein raised by the accused in support of their application cannot just be ignored or be dealt with by this Court satisfactorily without having had the benefit of the crown's written argument.

[15] In the premises, the application filed on behalf of the accused for the crown to furnish further and better particulars is granted as prayed.

[16] I have already indicated above that this Court has not been referred to any specific Rule(s) by both counsel in their argument of this application. Be that as it may, and regard being had to the fact that, even though counsel for the crown has not formally filed a notice indicating his intention to oppose this application; it is the considered view of this Court that the scales of justice will have been fairly balanced if each party is given a period of seven days to file its opposing papers and for an answer to be filed within that time after service of opposing papers.

[17] In other words, the crown is ordered to file its opposing papers, if it so wishes to do, seven days from the 10th April, 2013 and applicants to reply within seven days from the date of service of the answering affidavit.

[17] This case has been pending before the Courts of law for a number of years as it was first dealt with in the Magistrates' Court around 2008. It is accordingly proper that it be finalized within the most reasonable period, regard being had to its complexity and the number of charges as well as the

number of the crown witnesses which the crown intends to call in support of its case against the accused.

M. Mahase

Judge

For Applicants/Accused	-	Mr. Price
For Respondents/Crown	-	Mr. Woker