

IN THE HIGH COURT OF LESOTHO

CRI/APN/428/12

In the matter between:

KHOLOLEKILE SELEMELA

APPELLANT

AND

THE DIRECTOR OF PUBLIC PROSECUTION

RESPONDENT

JUDGMENT

Coram : **Nomngcongo J**
Date of hearing : **1st November, 2012**
Date of Judgment : **15th February, 2013**

[1] This is an application for bail. In such applications the overriding consideration is whether or not the interests of justice will be prejudiced if the accused is granted bail. The other considerations are subsidiary to this overriding principle. FRANK J. put it succinctly thus in *S. v PINERO* 1992 (1) SACR 577 at 580.

“ In the exercise of its discretion to grant or refuse bail the court does in principle address one all embracing issue; will the interests of justice be prejudiced if the accused is granted bail. And in this context it must be born in mind that if an accused is refused bail in the circumstances where he will stand trial the interests of justice are also prejudiced. Four subsidiary question arise, if released on

bail, will accused stand trial, will he interfere with state witnesses or the police investigations will he commit further crimes, will his release be prejudicial to the maintenance of law and order or the security of the state at the same time, the courts should determine whether any objection to bail cannot suitably be met by appropriate conditions pertaining to release on bail.”

[2] In the present case the applicant was out on bail when he allegedly committed a similar offence for which he is now applying once again to be released on bail. The alleged victim is a brother of the alleged victim in the other offence and the Crown alleges that he would testify in that case. The accused does not seriously deny that he fired the firearm that killed his victim. He does not deny either that the firearm was in his possession illegally. That means he was already wallowing in crime when he committed a further crime seems to follow in his path.

[3] The accused himself brought up a very chilling prospect that he is apprehensive that of the deceased one Bonezekile may, to use his own words: “ ***still be ruthlessly seeking to avenge the death of his brother***”. This coming from the accused himself suggests the possibility of revenge killings. This is not a remote possibility where already two siblings have fallen down allegedly at the hands of the accused. The court will not fan the fire of revenge by releasing the accused into that kind of atmosphere.

[4] To sum up, it is not, under these circumstances conducive to the interests of justice to release the accused on bail. Bail is refused.

T. NOMNGCONGO
JUDGE

For Applicant : Mr Molapo
For respondent : Mr Mahao (Law Office)