

IN THE HIGH COURT OF LESOTHO

In the matter between:-

JESSIE RAMAKATANE

Applicant

And

THE DIRECTOR OF PUBLIC PROSECUTIONS 1st Respondent

THE ATTORNEY GENERAL 2nd Respondent

THE MINISTER OF JUSTICE 3rd Respondent

**THE MINISTER OF LAW AND
CONSTITUTIONAL AFFAIRS** 4th Respondent

JUDGMENT

Coram: Hon. Hlajoane J

Date of hearing: 26th November, 2013

Date of Judgment: 12th December, 2013

Summary

Application for cancellation of warrant leading to the extradition from South Africa- Others who had fled Lesotho for similar political reasons having been pardoned – Whether the forgiveness was all inclusive even to Applicant- Whether applicant to be taken to have been discriminated upon- The effect of findings by the criminal Court if to be binding on the Civil Court- Principles applying to the Courts of law being equally applicable to the Executive arm of government without exception- Application granted in terms of prayers 1, 2 and 3 of the notice of motion.

Annotations

Statutes

1. The Pardons Act No. 7 of 1996

Books

Cases

- 1. Pitso v Standard Lesotho Bank LAC/APN/09/2008 in [2009] LSLAC 6**
- 2. Ramaema v R [2000-2004] LAC 710 at 733**
- 3. Molapo v R [2000-2004] LAC 23 at 27**

[1] Applicant has approached the High Court for relief under the following prayers:-

- (a) Directing the Respondents to cause to be cancelled a warrant leading to his extradition from South Africa into Lesotho.
- (b) Applicant be granted amnesty for any offence which led to his seeking asylum in South Africa and which led to the warrant referred to above.
- © Respondents to pay the costs hereof in the event of opposition, one paying others to be absolved.
- (d) Further and/or alternative relief.

[2] There are facts which are common cause and are the following:-

- (a) That in 2007 Applicant fled to South Africa seeking political asylum in that country.
- (b) That when he so fled into that country he was not alone but amongst others was with the following:-
 - Ford Sekamane
 - Thabiso Mahase
 - Lefa David “maker” Ramantsoe
 - ‘Malefa Mapheleba.

[3] It is also common cause that in 2012 the new government came into power. The four people listed above returned to Lesotho same year after they had been pardoned or granted amnesty. It is the

common understanding that that pardon was not a legal pardon but a political decision that was adopted by the new government.

[4] Respondents in their heads in describing the kind of pardon that was given said that, the government had taken a political decision that would allow all the people that had fled the country for political reasons to come back. That general forgiveness was all inclusive, as to encompass even the Applicant. That it therefore goes without saying that in politically related incidences, then the Applicant is forgiven.

[5] First Respondent has attached Annexure "I" to his answering affidavit, being a charge sheet containing some 19 counts of offences alleged to have been committed during 2007 by the following:

- Jessie Ramakatane, present Applicant.
- Lefa Davis maker Ramantsoe who was pardoned in 2012.
- Thabiso Mahase also pardoned 2012.

[6] The Respondents in their opposition have however shown in their answering affidavit at paragraph 7 thereof that the people whom Applicant alleges were allowed to come home being Mahase and Sekamane had not been granted any amnesty. This is a

contradiction to what was said in Respondent's heads, that there was a political decision by the new government to pardon the above listed.

- [7] Respondents have however shown that Applicant was again involved in some criminal activities of offences that took place in 2009 affecting the security of the former head of government.
- [8] Applicant's counsel challenged that submission in that there has not been even an iota of evidence for the 2009 allegations as was the case with 2007 allegations. Such evidence if any must have been within reach of the Director of Public Prosecutions but chose not to provide such evidence possibly as an Annexure "2" to his answering affidavit. Counsel invited the Court not to accept such allegations for 2009 and the criminal case number referred to as CRI/T/50/2012 with no names of accused or copy of such.
- [9] The Respondents also claimed that the **Pardons Act**¹ (The Act) is a pre-prosecution amnesty for would be accused, and that the Applicant has not been granted pardon in terms of the Act.

¹. The pardons Act No. 7 of 1996

[10] But in response, Applicant's counsel submitted that such reliance on the Act is misconceived and has no place in this case. The relevant provision reads as follows:-

Preamble:

- (a) *AND WHEREAS it is expedient for the purposes of reconciliation in the national interest to grant a pardon to persons;*

- (b) *Who may be liable for criminal prosecution for or an account of or in respect of any act, matter or thing done or purported to be done during the period, 27th March 1993 to 31st December, 1995 by such person in the execution or purported execution of his duty or in the pursuit of any political objective.*

[11] The correct reading of that provision of the Act show that it was meant for persons involved in activities between the period of 27th March 1993 and 31st December, 1995 and not any other period before or after the specified period. So that as Applicant's counsel correctly pointed out reliance on the Act is misconceived. Applicant does not fall under any of the sections of that Act.

[12] Applicant's counsel argued further that, even assuming that reliance could be placed on the Act, there has been no explanation from the Respondents as to why the Applicant was left out when others were pardoned.

[13] 'Malefa Maphela has deposed to a supporting affidavit to Applicant's replying papers. She clearly pointed out that she was amongst the three whose names appear in Annexure "I" to the answering affidavit, when they fled Lesotho to seek political asylum in South Africa. That all have been pardoned except the Applicant to her dismay.

[14] Applicant's counsel in attacking reference to the **CRI/T/50/2012** pointed out that charges against Applicant were withdrawn, so that it could not be proper to say that he was implicated in that case where he was not charged. Even assuming that the above case were to be considered the law is very clear regarding the findings by a criminal Court to a civil Court. It was decided in cases such as **Yusaf v Bailey**² that, "the findings recorded by the Criminal Court are not final for determining the right, interest or title nor binding on a civil court". So that whatever could have been said in **CRI/T/50/2012** could not be binding in these proceedings.

² Yusaf v Bailey

[15] Applicant's counsel argued that similar cases have to be treated alike. He referred to the case of **Pitso v Standard Lesotho Bank**³ where the Court said:-

“In our view there must be an endeavour to reach uniformity in similar cases so as to achieve consistency and predictability. We therefore agree...that it would be in the interest of these principles that Courts treat like cases in like manner”.

[16] Same sentiments were echoed in a criminal Appeal of **Ramaema v R**⁴ in these words:-

“Offenders who have the same or similar degrees of moral guilt and involvement in the commission of a crime, should in the absence of circumstances that justify discrimination, be treated equally. The Court's impartiality and fairness could be seriously questioned if marked disparities between offences whose moral quilt is indistinguishable from one another were to occur”.

[17] Still on the same issue of discrimination Applicant's counsel referred to the case of **Molapo v R**⁵ where it was said

³ Pitso v standard Lesotho Bank LAC/APN/09/2008 in [2009] LSLAC 6

⁴ Ramaema v R [2000-2004] LAC 710 at 733

⁵ Molapo v R [2000-2004] LAC 23 at 27

“this is the more so in a country[Lesotho] where political stability has proved to be an elusive goal and coup d’états are not infrequent occurrences. However ...offenders who have the same or similar degrees of moral guilt and involvement in the commission of a crime, should in the absence of circumstances that justify discrimination, be treated equally”.

[18] Applicant’s counsel argued that if the above principles apply to the courts of law, they are equally applicable to the Executive branch of government without exception. I would not agree with him more.

[19] Respondents’ counsel conceded that the pardon that was afforded others was not in terms of the Act but a political decision. He also conceded that “Annexure I” to the answering papers related to 2007 events but that also reference has been made to 2009 events at paragraph 5 thereof. Therefore he submitted that Applicant’s position has been as a result different from all those who have been pardoned.

[20] It has therefore not been disputed that acts for charges for 2009 have not been placed before Court. It was within the first

Respondent's power to have supplied such documents like he did with Annexure "I". He has just made a bare allegation which is without proof.

[21] The position of the law has already been stated above on discrimination. On close look of things, the Applicant on what has been placed before this Court is not to be treated differently from others who have been pardoned through a political decision on similar acts. As for the acts of 2009 there has only been a bare allegation which has not been substantiated by proof of any documentation as has been the case with the events of 2007. Under the circumstances of this case the Court feels bound not to accept the allegations for events of 2009.

[22] Even assuming that such allegations were to be considered, Respondents as shown in the heads called the forgiveness of all others who were pardoned in 2012 a general forgiveness which was all inclusive and covered also the Applicant. Respondent's counsel in his heads at 2.5 showed that, "it therefore goes without saying that in all politically related incidences, then the Applicant is forgiven".

[23] For the reasons shown above the law allows no room for discrimination save under exceptional circumstances which are wanting in this case. The 2009 events which have not been substantiated before this Court are not going to be considered. This being Application proceedings every allegation needed proof and without such proof in the papers filed of record the allegations stand to be disregarded.

[24] The prayers as contained in the notice of motion under prayers 1, 2 and 3 are granted as prayed for with costs.

A. M. HLAJOANE

JUDGE

For Applicant: Mr. Ntlhoki

For Respondents: Mr. Letsie

