

IN THE HIGH COURT OF LESOTHO

In the matter between:

KEKETSO TŠUKULU

Applicant

and

THE DIRECTOR OF PUBLIC PROSECUTIONS

1st Respondent

THE LEARNED MAGISTRATE MAFETENG

2nd

Respondent

ATTORNEY - GENERAL

3rd Respondent

JUDGMENT

Coram:

Hon. A. M. Hlajoane

Date of Hearing:

13th June, 2014.

Date of Judgment:

13th August, 2014.

Summary

The applicant charged before Magistrate's Court on attempted murder – Applicant's rights having not been fully explained to him – Accused pleaded guilty to the charge and given a term of

imprisonment without an option of a fine – Proceedings set aside on review as irregular and the case to start de novo before a different Magistrate.

Annotations

Statutes

1. Section 12 of Lesotho Constitution 1993

Books

Cases

1. R v Radebe and S v Mbonani 1988 (1) S.A 191 H-J

2. Phomolo Khutlisi v R 1993 LLR & LB 18 at 21

3. Mokemane v DPP 1990-94 LAC 614 at 615

[1] Applicant approached this Court for bail pending review. The Court on realizing that the copy of the proceedings to be reviewed was attached and that the handwriting was legible asked counsel to deal with the review itself.

[2] The Application was opposed but on the date of arguing the matter the respondents had withdrawn their opposition.

[3] The Applicant had appeared before the Magistrate's Court charged with the crime of attempted murder. The record reveal

that he was advised of his rights to bail and to legal representation.

[4] When the charge was read to him he pleaded guilty and an outline of facts was given. The firearm alleged to have been used was exhibited before Court and was labelled as such. The Applicant admitted the outline of facts as true.

[5] Applicant was accordingly found guilty as charged and turned out to be a first offender. In mitigation he explained that they had in the past quarreled with the complainant at Litotomeng in Welkom where they were illegally Mining Gold. The quarrel was the source of his shooting the complainant. He also had shown that he was sorry and was that he was yet not married.

[6] His grounds for review were that considering the seriousness of the offence he faced before the magistrate he felt that his rights were not fully explained to him, particularly the right to legal representation.

[7] It has been the applicant's argument that considering the seriousness of the offence, the 2nd respondent was obliged to have encouraged him to have a legal representation and ought to have also explained to him the possible consequences of a conviction.

See the cases referred to of **S v Radebe**¹.

[8] Applicant further argued that as a first offender this was his first encounter in Court and was therefore not familiar with Court procedures and the meaningful import of his constitutional right to legal representation. Also that when the Public Prosecutor handed in the exhibit he was never given the opportunity to object or accept the said handing in.

[9] Further that since we have Legal Aid Services, considering the complexity or seriousness of the charge the 2nd respondent was enjoined and obliged to have advised the applicant of the availability of Legal Aid Services which are readily available and open to indigent accused, as was the case in **Phomolo Khutlisi v R**².

[10] It was therefore not enough for the 2nd respondent to have just said, as reflected by the record attached that accused was advised of his rights to apply for bail to the High Court and to seek legal representation. The import of each and every right ought to have been fully explained to the accused and the nature of the offence he was faced with.

¹ S v Radebe and S v Mbonani 1988 (1) S.A. 191 H-J

² 1993 LLR & LB 18 at 21

[11] The duty of the Court to fully explain and advise the accused becomes even greater where the accused who is unrepresented pleads guilty to the charge he is faced with, **Mokemane v DPP**³. The consequences of pleading guilty ought to be fully explained to the accused, and failure to so explain results in a serious miscarriage of justice.

[12] As correctly pointed out by applicant's counsel, the right to fair trial is enshrined under **section 12 of our Constitution**⁴. So that where the rights of the accused have not been fully explained to him that amounts to denying accused a fair trial.

[13] As shown earlier on in this judgment, the respondents withdrew their opposition in this application and that was a clear indication that there was no dispute that the trial Court has committed some irregularity in the conduct of its proceedings.

[14] The Court has on review found that it was wrong for the trial Court to have not explained fully the rights of the accused to him. The proceedings of the 2nd respondent are therefore corrected and set aside and the case is to start **de novo** before a different magistrate.

³ 1990-94 LAC 614 at 615

⁴ Lesotho Constitution 1993

A. M. HLAJOANE
JUDGE

For Applicant: Mr Setlojoane

For Respondents: Mr Tsutsubi