IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

CR/APN/307/2010
CR131/2010-LERIBE

In the matter between:-

POTSO RATABANE	**APPLICANT**
AND	
LERIBE MAGISTRATE (MRS. MAHAMO)	**1ST RESPONDENT**
DIRECTOR OF PUBLIC PROSECUTIONS)	**2ND RESPONDENT**

JUDGMENT

Coram : Hon. Mahase J.
Date of hearing : Various dates
Date of Judgment : 15th December, 2014

Summary

Criminal Procedure – Criminal Trial – Irregularities – What constitutes same – Duty of Judicial Officer to inform an unrepresented accused of his legal rights – Whether or not accused thereby prejudiced – Fairness of trial.

ANNOTATIONS

CITED CASES:

- **'Metli Sfe v. Magistrate Berea and D.P.P. CRI/APN/262/2005**
- **S. v. Radebe and S.V. Mbonani 1988 (1) S.A. 191 at 196.**
- **S. v. Baloyi 1978 (3) SA at 293**
- **Mokoetlane v. D.P.P and Another – CRI/APN/70/2001**
- **Lehlohonolo Pulumo v. D.P.P and Another – CRI/APN/37/1983**

STATUTES:

- **Constitution of Lesotho 1993**

BOOKS:

- **(1967) Maryland Law Review 154 at 166 – Criminal Procedure Handbook page 129**

[1] This is an application for review against the conviction and sentence upon the accused/applicant by the Court of the Resident Magistrate for the district of Leribe/first respondent herein.

[2] The applicant appeared before that Court on the 5th February 2010. He was charged with having committed various criminal offences as follows:

Counts 1 and 3 – house breaking with intent to steal and theft.
Count 2 – Contravention of the various provisions of section 3(1) and (2) (a) of the Internal Security (Arms and Ammunition) Act No. 17 of 1966 (as amended) read with section 8 of Internal Security (Arms and Ammunition) Act No. 4 of 1999.

[3] The particulars to the said charges are all clearly spelt out in annexure "A" of the charge sheet. Same are incorporated herein.

[4] In brief in count 1 it is alleged the applicant broke into the Ellerines Furniture Shop at Maputsoe and stole property therein listed in the said annexure "A" to the total monetary value of M50,710.00, which property was the property of or in the lawful possession of Xue Yue Long.

[5] In count 3, it is alleged that the applicant unlawfully and with intent to steal, broke into the shop of Mahomed General Dealer and stole property to the

total monetary value of M52,721, the property of and or in the lawful possession of one Hassim Moosa. The said criminal offences were allegedly committed upon or about the 11th day of January 2009 respectively. The offence in count 2 was also allegedly committed on the 11th January 2010 when a 7.65 auto pistol whose serial number had been rubbed off was found in the applicant's possession. The crown alleges that the applicant had no firearm certificate authorizing him to possess same.

[6] At the end of the day, the applicant was convicted and found guilty on all the three counts after he had, on the 5th February 2010 tendered pleas of guilty when the charges were put to him. He was subsequently sentenced to an effect period of eleven (11) years and a total amount of fined amounting to M11,000.00 (eleven thousand maloti). The sentences were broken down as follows:

- Count 1 – M5,000.00 or years imprisonment
- Count 2 – M1,000.00 or 12 months imprisonment
- Count 3 – M5,000.00 or 5 years imprisonment

The sentences are to run consecutively.

[7] The applicant has approached this Court by way of review wherein he is asking this Court to correct and or set aside the proceedings of the Court a quo because he alleges that:

- He was not advised of his right to bail
- He was not advised of his right to legal representation.
- He was therefore not afforded a fair trial.

[8] Reliance has been placed upon the provisions of section 6 (5) of the Constitution of Lesotho (1993), among others in support of the applicant's application. Refer to applicant's written submissions, from paragraph 4 and 5 at sub-paragraphs 4.1 up to 5.4.

[9] Without much deliberations on the above, it is noted by this Court that the applicant's reasons advanced in support of this application are not supported in any way by what appears on the Court minute of the 5th February 2010. It is on record that indeed, the learned Magistrate did inform the applicant about his right to bail and to representations of a lawyer of his choice.

[10] Not only did the applicant tender plea(s) of guilty to the said charges; but at the end of the outline of the facts of the case by the crown; the applicant is also on record as having accepted the outlined facts. This therefore disposes of the point raised on behalf of the applicant as the crux of his application.

[11] While it is a cardinal principle of the law that an accused person has to and should always be adviced about their right to bail and to legal representation of a lawyer of his own choice for their defence, it is stretching that requirement or that principle of the law too much to say, allege as the applicant does that he must also be warned of the existence of Legal Aid Counsel. In the view of this Court, applicant knows about Legal Aid Counsel, hence why he refers to it in the way he has done in this application. Why should this court have singled out Legal Aid Counsel? The right to legal representation includes Legal Aid Counsel.

[12] The crown has, correctly in this view of this Court argued, in opposition, how the applicant's complaint is opposed to what the record of proceedings reveals. In fact, this Court subscribes to the argument of the crown which has correctly also strongly objected to the culture of some litigants boldly alleging, in their affidavits that which lacks any moral fibre of truthfulness.

[13] There are no reasons at all advanced on behalf of the applicant why the learned Resident Magistrate before whom the applicant appeared and who later convicted and sentenced him; would deliberately write on the record of proceedings that indeed the rights in question were explained to the applicant and further that he was informed of his legal right to brief a legal representation of his own choice.

[14] Most importantly, there is nowhere where it is alleged by and or on behalf of the applicant that the information as recorded in the very first paragraph of the record, dated the 5th February 2010 has resulted into a miscarriage of justice and or that, such information or explanation has caused prejudice to the applicant and or that in the circumstances of this case, the applicant has not been afforded a fair trial.

[15] In any case, there is nowhere where it is argued on behalf of the applicant that a miscarriage of justice has been occasioned by the applicant merely because the learned Magistrate has not written that the applicant elected to appear in person; how this "omission" is said to have resulted into an irregularity, which justifies the setting aside of this proceedings has not been explained.

[16] It has also been argued on behalf of the applicant that, among others, that the Court should have realized that the applicant might have had financial problems, and that therefore he should have been warned about the existence of Legal Aid Counsel. How the Court should have realized that has not been explained. This Court has not been referred to any authority which obliges Judicial or Presiding Officers to be able to realize whenever an accused person has financial problems for it to warn such a person of the existence of Legal Aid Counsel. There is no indication by which measure or yardstick, a Judicial Officer should be able to say whether or not an accused person appearing before it has financial problems.

[17] As has been noted above, such arguments and or expectations are stretching the principle of a fair trial beyond limits. Indeed, as has been correctly submitted by the crown, which submission the applicant has conceded to, the Learned Resident Magistrate has clearly not only advised, informed, and explained all the rights cognizable in law to the applicant; she has also recorded what transpired in court very clearly and procedurally step by step.

[18] In the absence of any miscarriage of justice, injustice and prejudice ex facie the record of proceedings, the reasons upon which the applicant relies in support of his application to the effect that the proceedings therein be set aside and or be invalidated, constitute an abuse of court process.

[19] The principles of the law and cited cases relied upon by both counsel for and against their respective arguments are correct. This Court is however alive to the fact that, each case has to be viewed and treated on its peculiar facts and circumstances.

[20] It has been argued on behalf of the applicant that he was not afforded a fair trial because he was not given adequate time and facilities for the preparation of defence. The crux of applicant's argument in this regard is apparently that the Learned Magistrate should not have dealt with the case on that same day, the 5th February 2010, when she did so for the first time.

[21] No reasons have been advanced why it is argued that affording a person who tenders a plea of guilty a speedy hearing and disposal of his case to finality on the same day he pleads is tantamount to denying such a person a fair trial. One wonders if by this, it is meant that the efficient, speedy prosecution of this case within a reasonable time constitutes unfairness.

[22] A proper reading of the record of proceedings reflects that most of the property alleged stolen and the gun in question had been recovered hence why they were presented to Court as exhibits; why then could the court, not proceed to dispose of the matter when investigations by police had been completed?

[23] This argument is untenable, particularly because the applicant has had his rights clearly explained to him. This Court has not been referred to any provision or principle of the law which prohibits any Court of law from proceeding to dispose off a case to finality once when the matter is ripe for hearing.

[24] It is the considered view of this Court, that these few cases in which the Court a quo has indeed afforded the accused/applicant a speedy, efficient trial, and which goal all Courts should strife to achieve whenever

circumstances so permit is commendable. It would have been most unfair and unjust for the Court a quo to have refrained from having this case prosecuted and disposed off to finality and have the applicant remanded into custody for no justifiable reason. There is nowhere, where the applicant complains that the Learned Resident Magistrate, opted to have the case disposed off to finality on the same day, despite any protestations from or on behalf of the applicant for whatever reasons.

[25] This Court has not been successfully persuaded that the above fact is a factor which calls for the setting aside of the proceedings in question. This is an exemplary case demonstrating how Courts should efficiently and within a reasonable time, dispose of cases in deserving cases.

[26] For the foregoing reasons, it is the considered view of this Court that the application should be and is accordingly dismissed.

M. Mahase

Judge

For Applicant: Adv. T.J. Mokoena

For Respondents: Adv. L. Mahao