IN THE HIGH COURT OF LESOTHO

HELD AT LERIBE **CRI/APN/0009/2022(ND)**

In the matter between:

RETHABILE RAMAHATA	**-**	**1ST PETITIONER**
THABISO TLAILE	**-**	**2ND PETITIONER**
and		
THE DIRECTOR OF PUBLIC PROSECUTIONS	**-**	**RESPONDENT**

IN THE HIGH COURT OF LESOTHO

HELD AT LERIBE **CRI/APN/0010/2022(ND)**

In the matter between:

SEAKANYANE MAJORO	**-**	**PETITIONER**
and		
THE DIRECTOR OF PUBLIC PROSECUTIONS	**-**	**RESPONDENT**

IN THE HIGH COURT OF LESOTHO

HELD AT LERIBE **CRI/APN/0011/2022(ND)**

In the matter between:

TSIETSI KELETSANE	**-**	**PETITIONER**
and		
THE DIRECTOR OF PUBLIC PROSECUTIONS	**-**	**RESPONDENT**

Neutral citation: Rethabile Ramahata & one Seakanyane Majoro and Tsietsi Keletsane (CRI/APN/0009/2022, CRI/APN/0010/2022 and CRI/APN/0011/2022 LSHC-ND 01 (4th July 2022)

RULING

CORAM: H. NATHANE J

FOR PETITIONERS (IN CRI/APN/0009/2022(ND))	**:**	**ADV. MOTŠOEHLI**
FOR PETITIONERS (IN CRI/APN/0010& 11/2022(ND))	**:**	**ADV. THUHLO**
FOR RESPONDENT	**:**	**ADV. MASIPOLE**

Heard on : 13th June 2022

Delivered on : 4th July 2022

Summary – unopposed bail applications – petitions not containing sufficient information for the court to exercise discretion – sloppy presentation by practitioners.

ANNOTATIONS

CITED CASES:

R vs KEKELETSO TLALI 1991-1996 LLR 1377

S vs BENETT 1976(3) SA 652 AT 655

SOOLA vs DPP 1981(2) SA 277 AT 280

REFUOE SHESHE vs DPP 1982-1984 LLR 222

THABO TSUKULU vs DPP – CRI/APN/0431/2017 (unreported)

MAJOOA MOFOKENG vs DPP – CRI/APN/487/95 (unreported)

LETLATSA MATLANYANE vs DPP – CRI/APN/192/0004(unreported)

THE CROWN VS T. THAHANE C OF A(CRI) NO.1/2016

STATUTES

Constitution of Lesotho

Penal Code Act No. 6 of 2010

INTRODUCTION

[1] All the petitioners herein filed petitions on different dates praying this court to release them on bail. Since the serious and material shortfalls inundating the three petitions are generically similar, I decided to pen down a single ruling covering all of them.

[2] These petitioners came before me for adjudication on the 13th June 2022. Counsel for the Crown Adv. M. MASIPOLE informed me in respect of these petitioners that the Crown has no opposition to their release on bail on the conditions set out in the respective petitions, save for certain amendments and

/or additions which she tabled before me. I then invited the two Counsel representing the petitioners to address me in respect of the glaring shortcomings in their respective petitions. Both Counsel, **ADV. L. MOTŠOEHLI and ADV. THUHLO** made a number of concessions, and I heartily commend them for doing so, which concessions, as I will demonstrate herein under, went to the root of and were dispositive of the three petitions.

[3] The attitude and/ or position of the Crown notwithstanding I gave an ex tempore ruling in all the petitions dismissing them, and undertook to hand down written reasons on the 4th July 2022. These are the reasons –

SUMMARY OF THE FACTS IN THE RESPECTIVE PETITIONS

RETHABILE RAMAHATA & ONE vs DPP - CRI/APN/ 0009/2022 (ND)

[4] In this petition, which was filed of record on the 10th June 2022, the petitioner stands charged with the offence of contravening the provisions of section 40(1) of the Penal Code Act No. 6 of 2010, in that upon or about the 20th May 2022 and at or near Mokhoekhoe in Mokhotlong district

> *"The accused each or both did unlawfully and intentionally killed one Tohlang Mphohla during his lifetime by assaulting him with sticks all over the body injuring him which cause his death on the same day and place."*

[5] Although the petitioners are silent as to when they were apprehended, the record shows that they appeared before the remand Court on the 1st June 2022, hence their petition.

[6] The facts which are relevant to the inquiry at hand can be found in paragraphs 4.1, 4.2, 4.3. 4.4 and 4.5 of their petition. It is perhaps apposite to quote verbatim, the contents of paragraph 4.5 of the petition where they say that,

> *"4:5 On the fateful day, the deceased wanted to control the movements of the Petitioners. The Petitioners refused to be controlled by the deceased. The deceased tried to assault them. A stick fight ensued. The deceased was injured in the fight. He sustained wounds on the head. The fight was reprimanded by the village people and it stopped. The wounds on the head of the deceased were nursed later on that day, the deceased stopped talking and later died……."*

[7] It is worth mentioning at this juncture that the deceased was the Petitioners' mother's live-in lover, a fact which they admittedly did not like.

[8] Their aforementioned account of what actually transpired on the fateful day has more questions than answers, to it, to refer to but a few:

(i) what is meant by wanting to control their movement?

(ii) what is trying to assault them mean?

(iii) what weapon if any did the deceased try to assault them with?

(iv) how soon after the fight did the deceased succumb to his injury?

(v) who was the instigator of the alleged fight in the first place?

[9] To all these questions, the Petitioner's Counsel was not able to furnish any plausible answer.

SEAKANYANE MAJORO vs DPP – CRI/APN/0010/2022 (ND)

[10] This petition was filed on the 8th June 2022, and the petitioner therein is charged with the crime of murder in contravention of section 40 read with 109 of the penal Code Act 2010,

"In that upon or about the 28th day of May 2022 and at or near Kolonyama Makhalong in the district of Leribe, the said accused did wrongfully, unlawfully and with intent to kill shoot one Lekhooa Sekonyela and inflict four gun wounds in his body thereby

bringing about the death of the said Lekhooa Sekonyela on the same day"

[11] In support of this petition, the facts which are relevant to the matter at hand are to be found in paragraphs 6.2, 6.7 and 7 of the petition. In the nutshell they are to the effect that,

(a) on the 28th day of June 2022, he went to a local shop when he saw the deceased with whom he had previously fought.

(b) when the deceased saw him, they got into a fierce brawl and altercation, with the deceased attacking him with a stick. It was at that time that "a firearm was accidentally discharged and hit the deceased".

(c) about five of "the deceased" friends attacked him and he fled, only to learn about the deceased death on the same day.

(d) he surrendered himself to the Kolonyama Police and was arrested on the 2nd June 2022, held in custody and brought to court on the 6th February 2022.

[12] Not only is the narrative of events furnished by the petitioner herein extremely inadequate in so far as the events surrounding the charge are concerned, but it is also a comedy of errors, for lack of a better expression, as evidenced by the following extracts:

(i) he states in paragraph 6.1 that he fought with the deceased on the 28th June 2018, when the petition was filed on the 8th June 2022 and was before me on the 13 June 2022. How this could have come about, remains a mystery to me.

(ii) as if that was not enough, in paragraph 7 he states that he was arrested on the 2nd of June 2022 and taken to court on the 6th February 2022. This really cups the cake.

[13] With regard to the circumstances surrounding the fatal incident, he gives what can at best be described as a flippant account in paragraph 6.2 when he says that when the deceased saw him "they got into a fierce brawl and altercation ……..that a firearm was accidentally discharged and hit the deceased". This is far from satisfactory, as it has left me completely bemused as to exactly what happened that fateful day. Once again the petition is riddled with questions and no answers.

[14] For instance, there is absolutely not explanation as to what is meant by a fire arm accidentally being discharged, let alone the number of times it was allegedly discharged which impliedly was once, *vis a vis* the averments in the charge-sheet that the deceased was shot four times. I can go on and on **ad infinitum** as his narration is completely a morass.

[15] As was the case with the previous matter, Counsel for the petitioner was unable to reconcile the above inconsistencies and improbabilities, and

understandably so. He nonetheless conceded that they go to the core of the petition.

TSIETSI KELETSANE vs DPP – CRI/APN/001/2022 (ND)

[16] The petitioner in this matter approached the court on the 8th June 2022, seeking his liberation on bail. He is facing two counts of attempted murder and unlawful possession of a fire-arm (in respect of which the petition is dead silent). The attempted murder charge (count 1) alleges the contravention of the provisions of section 22 read with section 40 of the Penal Code Act No.6 of 2010 by him,

> *"In that upon or about the 26th May 2022 and at or near Romeng Ha Seetsa, Leribe, and with the intent to kill did fire gun shots at one Mapoloko Keletsane and shot her on the thigh and did commit the crime of attempted murder."*

[17] His narration of the events relating to the incident in issue herein, is contained in paragraph 4.1 of the petition where he states that on the 29th May 2022, he got into a heated argument with one Mapoloko Keletsane, during which the latter slapped him, and "at that time he accidentally discharged a fire-arm and shot Mapoloko on the thigh".

[18] Conveniently, he does not explain exactly how this incident took place, and in particular how the fire-arm was accidentally discharged.

[19] This sums up the contents of the three (3), petitions, the subject of the ruling.

THE ROLE OF THE COURT

[20] As I have indicated earlier on herein, the patent shortcomings to which I have alluded notwithstanding, the Crown did not oppose the said petitions for bail. It is however, a well-established principle of practice over the years and which has crystallised into law that courts of law are not passive by-standers and/or onlookers when it comes to the cases over which they preside. They are not nodding automatons and rubber stamps, nor passengers on the ships which they are entrusted to captain. Cases before the courts are actually court driven.

[21] Although this was said in a different context (the principle is nonetheless the same) Guni J in the case of R vs KEKELETSO TLALI[1], had this to say at page 1377,

> *"Uniformity in sentencing is one aspect which the courts endeavour to establish. That is to say, in like cases, the accused person must be treated in like manner, this being so, the courts nonetheless must treat every accused person as an individual, deserving separate, individual and different treatment. The*

[1] . 1991-1996 LLR

considerations are mainly for the purpose of avoiding to act as automatons or robots."

[22] I have no doubt in my mind that it is on the basis of this sound principle that the authorities in this country and elsewhere have granted bail even when the prosecution was opposing same, as the court retains its discretion every step of the way. **A case in point is that** of **S vs BENNETT**[2] where **Vos J** said,

"Accordingly in my view, while not overlooking the weight to be attached to the Attorney-General's attitude, the court is in a better position than he is to consider the case as a whole. In short, the Attorney-General's ipse dixit cannot be substituted for the court's direction"

See also **SOOLA vs DPP**[3] and **REFUOE SHESHE vs DPP**[4].

THE LAW ON BAIL

[23] In Lesotho, as is the case in other foreign jurisdictions, the right to bail and /or personal liberty is constitutionally protected, but it is not an absolute right. The provisions of section 6(1) of The Constitution of Lesotho 1993, state that,

"6(1) Every person shall be entitled to personal liberty, that is to say, he shall not be arrested or detained save as may be authorized by law in any of the following cases, that is to say……"

[2] . 1976(3) SA 652 at 655
[3] . 1981 (2) LLR 277 at 280 (also on Leslii)
[4] . 1982 – 1984 LLR 222

[24] Section 6(5) of the said constitution talks to the conditions under which one can be released on bail – **Peete J** in the case of **THABO TSUKULU vs DPP**[5], articulated the law on the subject in the following instructive words (and with which I agree),

> *"[6] It must be understood that although the right to bail is provided under section 6(5) of the Constitution of Lesotho, like under constitutions, it is not absolute and it may be attenuated by law, and that the courts of law are vested with judicial discretion to grant or refuse bail……"*

ON THE CONTENTS OF THE PETITIONS

[25] Earlier in the judgment, I narrated in detail the contents of the three petitions the subject hereof, and it goes without saying that the view I hold is that they are seriously inadequate in material respects. They did not disclose sufficient facts on the basis of which I could exercise the discretion vested in me in their favour, the absence of opposition from the Crown notwithstanding. The view I take in the matter is that just like in application proceedings, a petitioner must disclose in the petition, all relevant and material facts that may sway the court's decision in his favour.

[5] . CRI/APN/0431/2017 (unreported and also available on Leslii)

[26] I derive solace on this point from the dicta espoused by **MONAPHATHI J** in the case of **MAJOOA MOFOKENG vs DPP**[6] where he said,

> *"My understanding is that, in a similar manner to civil proceedings by way of application, a petition or founding affidavit in a bail application constitutes both the pleadings and evidence. That is to say, not only must the affidavit or petition contain a semblance of a defence, there must be sufficient facts upon which a court may act in determining whether to release an Applicant to bail in the context of or against the background of the charges and the circumstances surrounding the alleged unlawful acts……"*

See also **LETLATSA MATLANYANE & two vs DPP**[7]

[27] Before concluding this judgment, I wish to make an **enpassant** the following observation, mainly that allowance can and should be made for the difference in drafting proficiency amongst practitioners. It is however a different kettle of fish for legal practitioners to present sloppy papers before a court of law especially a superior court. I have over the years as a practitioner seen such a practice which evidently continues unabated. It must come to a stop. It is the duty of practitioners to observe and maintain certain standards in their conduct and approach to proceedings before this and other courts, as to do otherwise may bring the administration of justice into disrepute. Perhaps practitioners should be reminded that, although it has rarely if at all exercised, this court has a discretion, even in criminal matters to impose penal sanctions in

[6] . CRI/APN/487/95 (unreported-also in Leslii)
[7] . CRI/APN/192/2004 (unreported-also on Leslii)

the form of a costs order, even **de bonis propriis**, in compelling circumstances.

See the **CROWN vs TIMOTHY THAHANE**[8]

ORDER

[28] I therefore make the following order:

(i) all the three petitions are dismissed.

(ii) the petitioners may re-apply for their release, and in accordance with the law and procedures governing re-applications for bail.

JUSTICE H. NATHANE

[8] . C of A(CRI) No. 2016 (unreported-also in Leslii)