

HIGH COURT CIRCULAR N0 03 OF 2003
REGISTRAR'S CHAMBERS
P.O. BOX 90
MASERU 100

18th December 2023

TO: Honourable Judges
All Magistrates
Director of Public Prosecutions
The Law Society
The Commissioner of Police
The Commissioner of the Correctional Services
The Director-General, DCEO
Chief Legal Aid Counsel

Re: Abuse of the Law and Court Process In Bail Applications

1. It has come to the attention of the Honourable Chief Justice that:
 - (a) lawyers file bail petitions in the High Court and withdraw them upon the Director of Public Prosecutions informing the presiding Judge that she is opposing;
 - (b) the withdrawals are not made instantly but some days pending the filing of opposing papers;
 - (c) the withdrawal is not made in writing and notice to the presiding Judge who will be waiting for the filing of opposing papers and reply (if any);
 - (d) while the judge is still seized with the petition, the petitioner approaches the remanding court for release under the **Speedy Court Trials Act, 2002**;

- (e) unaware that the accused had applied for bail in the High Court but withdrew it in face of opposition by the Crown, the unsuspecting Magistrate doing remands releases the accused.
2. The net result of the above is that accused persons whose offences are not bailable in the Magistrates Court get released by that court contrary to the prescripts of the **Criminal Procedure and Evidence Act, 1981**. This constitutes a clear and serious abuse of law and court process in that:
- (a) The purpose of bail law under the **Criminal Procedure and Evidence Act, 1981** is to regulate the detention and release of the accused pending commencement and completion of trials;
 - (b) The CP&E also restricts release on bail in specified, serious offences if the accused does not prove exceptional circumstances;
 - (c) The purpose of release from remand in custody served by the **Speedy Court Trials, Act 2002** is to regulate remand in custody where investigations stall;
 - (d) The **Speedy Court Trials Act, 2002** does not authorize derogation from the bail regime or take away the right of the Crown to oppose release of accused persons whose detention on remand is in excess of 60 days by relying on the grounds put forward in the withdrawn petition.
2. Wherefore, one statute cannot be used to defeat the purpose of the other. Whether an accused is on remand pending finalization of investigations or in custody pending trial, he is entitled to apply for bail. The Crown is correspondingly obliged to resist the bail petition and have the court's final say in the matter. The accused should, therefore, not be allowed to run away from the High Court to the remand court without full disclosure.

4. In any event, even where the accused does retreat from the High Court and choose to remain in detention on remand until the expiry of sixty days, the Crown should still be put on notice so that the Crown can follow the accused to the remand court to ventilate reasons for opposing his release.

5. In order to curb this abuse of release from custody by the remand court, the Honourable Chief Justice directs that:
 - (a) All bail petitions should state the RCI number below the petition number on the front page of petition;
 - (b) Next the names of the petitioner should be stated his / her Identity Number e.g. XB (Identity No);
 - (c) In similar fashion, the charge sheet filed in the remand court should have the accused's Identity Number written next to his name;
 - (d) Where the accused files a bail petition and withdraws before the High Court disposes it off, the Crown must bring this to the attention of the Magistrates Court as the remand court and Magistrates should call for the petition if the accused disputes that he attempted to apply for bail but withdrew it because it was opposed.



Adv. M.P. Sekoai
The Registrar of the High Court