

IN THE HIGH COURT OF LESOTHO

In the matter of :

REX

v

GOERGE MOKOTJOMELA

REASONS FOR JUDGMENT

Filed by the Hon. Chief Justice, Mr. Justice
T.S. Cotran on the 17th day of May, 1982

On the 6th May 1982 I found the accused George Mokotjomela, who was indicted before me on a charge of murdering Chaba Rantso (the deceased) at or near Ha Popopo in the district of Berea on or about 12th April 1981, guilty as charged but with extenuating circumstances and sentenced him to 9 years' imprisonment. I said reasons will be filed later and these now follow :

It is common cause that the accused inflicted six stab wounds on the deceased, five on the back, and one on the chest. The latter succumbed to his injuries after walking, assisted, some 50 yards.

The killing occurred in broad day light in the presence of the chief of the village Letsika Mokaoli (PW3) and others.

The only question for the Court to decide is whether the killing amounted to culpable homicide, as Mr. Snyman for the defence submits, or to murder with extenuating circumstances as the Crown submits. In the particular circumstances of the case I did not consider it necessary to have "two stages" in the trial.

There is no doubt at all that the deceased deliberately took three heads of cattle to graze on a piece of land situate

within sight of accused's house (see the sketch Exhibit A). The deceased, who claimed the land, left the animals with herdboys and he himself proceeded to a tree plantation (once in dispute between them but the deceased had, it was common cause, obtained a Court Judgment in his favour) to chop wood. The accused saw the deceased's animals grazing and called his neighbours to bear witness to this trespass and sent someone to call the chief of the village.

Chief Mokaoli arrived at the scene in the afternoon and sent a messenger to call the deceased. The deceased came. There was an argument between the accused and the deceased. The deceased (known as a litigious person) told the chief that he had obtained a Court Judgment in respect of the land. However the deceased did not produce a copy of this Judgment (and subsequent enquiries at the Local Court revealed no such Judgment) and chief Mokaoli, unable to resolve the matter himself, told the deceased to take his animals away but ordered that both he and the accused present themselves before the senior chief on the following day a Monday. The accused says that that decision was no decision at all. I do not agree. Chief Mokaoli thought that accused and deceased were satisfied and the meeting dispersed. The deceased departed taking a downhill northern direction.

The chief says that after a few seconds he heard the deceased scream "I have been stabbed" and looking back he saw the accused, from some 10 - 12 paces, pulling out a knife with both hands from deceased's back and again stabbed him several times. By the time the chief reached them, the deceased had turned towards the accused, and he stabbed deceased once again on the chest whilst the chief was almost between them.

Two other eye witnesses, Mpe Seeisa (PW4) and Mapeshoane Seeisa (PW5), who also were on their way home after the meeting (but not as close as the chief) give a different version from that of the chief although both agree that the deceased left the meeting first. They did not see the accused follow the deceased but they admit that he must have done so. Both say that their attention was drawn not by a scream from the deceased, but when they heard accused's angry voice "Are you saying here in my own father's home that this land is yours?" or words to that effect. These two witnesses say they saw

accused and deceased grappling face to face and Mpe thought that accused inflicted the wound on the chest first. Mapeshoane, who was immediately dispatched to call for help and inform the police says he did not see a knife. I accept however the chief's version as the true one for he was nearer and I could discern from these two other witnesses some bias in favour of the accused.

The only words that have been said by the deceased that could remotely be provocative are the words "I have a Judgment and anyone who does not like it can go to court or do whatever he likes". The chief says that these words were uttered by the deceased at the meeting. It was the deceased's attitude to the dispute throughout. Mpe and Mapeshoane on the other hand say that the deceased uttered these words as he left the meeting. I believe the chief is truthful. Even if the words were uttered at the end they do not amount in law to provocation justifying the reduction of the charge to one of culpable homicide.

CHIEF JUSTICE
17th May, 1982

For Crown : Mr. Lenono }
For Defence: Mr. Snyman } with copy of Judgment.

Notes on Sentence :

The deceased was an elderly man of 60-65, unarmed, and his back turned, when the attack commenced. The accused is only 44 and of the same built as the deceased. Provocation has already been taken into account as an extenuating circumstance and in my opinion. cannot be taken any further.

CHIEF JUSTICE