

IN THE HIGH COURT OF LESOTHO

In the Appeal of:

PARAMENTE MOTHEA

Appellant

v.

R E X

J U D G M E N T

Delivered by the Hon. Mr. Justice J. L. Kheola
on the 2nd day of June, 1986

The appellant appeared before the Resident Magistrate for the district of Leribe charged with the offence of attempted murder. The charge sheet reads that on or about the 30th January, 1985 and at Tlhakoli in the district of Leribe the accused did unlawfully and intentionally assault Litheo and Senyane Mothea by pointing a firearm at them and discharging some bullets at them with intent to kill them. The appellant pleaded not guilty but at the end of the trial he was found guilty as charged and sentenced to eighteen (18) months' imprisonment. He is appealing to this Court against both conviction and sentence.

The Crown's evidence was to the effect that on the 30th January, 1985 the two complainants were harrowing a land which had been ploughed on the previous day. The land belongs to Rebecca Mothea (P.W.4) and she has been using it for many years. The appellant arrived at the field while the complainants were still harrowing. He angrily ordered

/them....

them to get out of his parents' land and threatened to kill them if they failed to comply with his order. Getting no answer from the complainants the appellant stood in front of the two oxen which were drawing the harrow. He took out a gun and pointed it at the complainants. At that moment the complainants were behind the harrow and were about fifteen (15) paces from the appellant. They turned and ran away. The appellant fired two shots at them but missed them. The two bullets landed in front of the complainants.

The learned Resident Magistrate believed the Crown witnesses and rejected the appellant's story that when he arrived at the field the two complainants attacked him with a sword but escaped before they caused him any harm.

The decision in the instant case was based mainly on credibility of the witnesses and, to some extent, on the probabilities. The trial court was in a better position to observe the demeanour of the witnesses and the Court of appeal is always very reluctant to disturb findings based on credibility (R. v. Dhlomayo 1948 (2) S.A. 677 (A.D.)). It is most unlikely that the appellant who claimed that the field belongs to his parents would go there unarmed when he intended to expel people from it. It is also unlikely that when the complainants failed to heed his warning that they should get out of his parents' field, he would not use force to drive them out.

Mr. Sooknanan, counsel for the defence, has pointed out some discrepancies in the Crown case. P.W.1 Litheo Mothea says that he and Senyane Mothea (P.W.2) were driving the oxen and that no boy led the oxen. P.W.2 denies this and alleges that a small boy led the

oxen, he (the witness) drove the oxen while P.W.1 held the rope attached to the harrow. On the other hand 'Maalina Chabalala says that P.W.1 led the oxen.

I agree with the defence counsel that these discrepancies do exist but it seems to me that they are not so material that I have to interfere with the finding of the trial court. What is important is that when the shooting took place the two witnesses were behind the harrow and the appellant was standing in front of the oxen. He expressed his intention to kill them if they did not leave the field. They did not immediately comply with his order until he took out his gun and pointed it at them. He fired at them but missed them. I am convinced that the crime of attempt to murder was complete when the appellant discharged the firearm at them having earlier expressed his intention to kill them. It is immaterial that he missed them. It would have been a different thing if the appellant had ^{the} pointed his firearm up and fired in air to frighten the complainants.

The sentence imposed by the learned Resident Magistrate has not struck me as being too severe. The appellant is a man in his late fifties and cannot be described as an old man. He deliberately used a firearm in a situation where the use of such a lethal weapon was not called for. The evidence before the trial court was that P.W.3 had been using the land in question for many years without any interference from the appellant. In any case if the appellant feels that he has a better title to the land than P.W.3 the courts of law are open to him. The sentences imposed by the courts must deter people from taking the law in their own hands. The appellant had no right to go to the land when he saw people harrowing it, he had to go to his chief and ask him to send messengers who would

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investigate the matter and make a report to the chief.

For the reasons stated above the appeal against both conviction and sentence is dismissed.

J. L. Kheola
J. L. KHEOLA
J U D G E .

2nd June, 1986.

For Appellant - Mr. Sooknanan .
For Crown - Mr. Seholoholo