The law governing self-defence has been stated in a number of cases as follows:-

In R. v. Attwood, 1946 (1) A.D. 331 at p. 340 Watermeyer, C.J. said:-

> "The accused would not have been entitled to an acquittal on the ground that he was acting in self-defence unless it appeared as a reasonable possibility on the evidence that accused had been unlawfully attacked and had reasonable grounds for thinking that he was in danger of death or serious injury, that the means of self-defence which he used were not excessive in relation to the danger and that the means he used were only or least dangerous means whereby he could have avoided the danger."

In Union Government (Minister of Railways & Habours v. Buur, 1914 A.D. 273 at p. 286, Innes, J.A. (as he then was) said:-

> "Men faced in moments of crisis with a choice of alternatives are not to be judged as if they had had both time and opportunity to weigh the pros and cons. Allowance must be made for the circumstances of their position."

Although this was a civil case dealing with negligence, the principles stated above were said to be applicable in criminal case by Holmes, A.J.A., in R.v. Patel, 1959 (3) S.A. 121 (A.D.) at p. 123.

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It is trite law that where the accused exceeded the bounds of reasonable self-defence and killed his assailant he may be found guilty of culpable homicide despite the fact that the killing was intentional (See R.v. Koming, 1953 (3) S.A. 220 (T) at pp. 232-3). However, if the excess is immoderate a verdict of murder will be returned (See R. v. Krull, 1955 (3) S.A. 393 (A.D.) at p. 399).

In the present case even if the evidence of the A1 were to be believed he would still be found guilty of murder because he immoderately exceeded the bounds of reasonable self-defence. In his own words he says that when the encounter started the deceased delivered a blow with a sword. He (A1) warded off that blow with his stick and immediately struck back at the deceased hitting him on the right arm and causing the sword to fall from the deceased's hand. He (A1) took the sword and struck the deceased on the head until he fell down. He does not remember how many times he struck him.

According to medical evidence the deceased had three wounds on the head and a fracture of the lower arm. The injuries clearly indicate that after disarming the deceased and taking his sword the accused viciously attacked him causing very serious injuries. At the time he did so his life was no longer in any danger because the deceased was disarmed. However, A1's story has been rejected by this Court. It is a lie. He was seen by several Crown witnesses when he attacked the deceased with his own brothers. There is overwhelming evidence that there was

wheat growing on that field. His belligerent conduct of destroying that wheat by grazing it with his cattle is a clear indication that he was determined to cause trouble. The fact that as soon as the deceased and his son arrived at the field, A2 and A3 also arrived is a clear proof that the whole thing was planned in advance.

The evidence of the Crown, which I have believed, is that the first blow delivered by the A1 was so severe that it caused the deceased to fall down. The rest of the injuries were inflicted after he had fallen down and were inflicted by the three accused. I have said that although three of the Crown witnesses were about one kilometre away they could and did see that there was a fight because they saw when one person fell down and the others hit him with certain objects.

Mr. Snyman, attorney for the accused, submitted that on fateful day in question the deceased became aware that A1 was in his field where the cattle were grazing. The deceased was on his way to work and did not have much time. He first visited two other people and then went down to A1 with the specific intention of fighting or killing him because of the fact that he was aleegedly grazing in his field. I do not agree that the deceased went there with one thing in his mind, i.e. to fight or kill the accused. There is overwhelming evidence that there was wheat growing on that field. It had been planted by the deceased. It was only a normal and natural reaction by the deceased to go to the field to investigate and to find out why the A1 was deliberately and maliciously

destroying the wheat crop. As I pointed out during arguments the deceased was entitled to go to the field and to impound those cattle. It was the accused who was bent on causing trouble by maliciously and openly grazing the deceased's wheat crop. When the deceased asked him what the cattle were doing there, he said they were grazing weeds because he wanted to plough the field. Thereafter he ordered his brothers to attack the deceased.

The evidence of Kholoang Letsoela (D.W.4) was to the effect that some weeks before the present incident he had some encounters with the deceased and that on the last of such encounters the deceased was armed with a panga. He went on to say the deceased was an aggressive person. The deceased may have been an aggressive person but in the present case A1 was the aggressor. He deliberately provoked the deceased by grazing his wheat crop with animals. However, the evidence which I have believed is that the accused were the aggressors and that the deceased did not own any panga; he was not holding any panga when he went to the field.

I come to the conclusion that the accused viciously attacked the deceased and hit him on the head and arm with dangerous weapons and were reckless as to whether death resulted from their acts or not.

I accordingly find the accused guilty of murder.

J.L. KHEOLA
JUDGE

17th October, 1990.

EXTENUATING CIRCUMSTANCES:

I have found that the accused had the intention commonly known as dolus eventualis. In S.v. Sigwahla 1967 (4) S.A. 566 (A.D.) the Appellate Division held that

> "(a) Trial courts in their conspectus of possible extenuating circumstances, should not overlook the fact (if it be such) that it is a case of dolus eventualis. (b) While it cannot be said that this factor must necessarily be an extenuating circumstances, in many cases it may well be so, either alone or together with other factors, depending on the particular facts of the case."

I have also found that there was a dispute about the field in question and that the accused persons were not happy that their father had been using the field for a long time it should suddenly be allocated to the deceased.

I find that there are extenuating circumstances.

In passing sentence I took into account the personal circumstances of the accused and the fact that they are first offenders. I also took into account that the accused took the law into their own hands and completely ignored lawful means to resolve the dispute. They decided to kill the deceased in cold blood.

SENTENCE: Fourteen (14) years' imprisonment each.

Order: Exhibits are forfeited to the Crown and are to be destroyed by the police.

J.L. KHEOLA
JUDGE

17th October, 1990.

For Crown ; Mr. Mokhobo
For Accused ; Mr. Snyman