

IN THE HIGH COURT OF LESOTHO

In the matter of :

R E X

v

ZWELINZIMA JOEL

HELD AT QUTHING

J U D G M E N T

Delivered by the Hon. Mr. Justice M.L. Lehohla  
on the 10th day of December, 1990  
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The accused pleaded guilty to the unlawful killing of his brother NKOTO JOEL who died on the 27th April, 1990. He, however, pleaded that he did not kill his brother intentionally.

The Crown accepted his plea. Accordingly the Court convicted him of Culpable Homicide on his own plea.

It is not very clear why the accused killed his brother. The facts as outlined in the evidence of P.W.1, 'Maleloko Letsie, shows that on 27th April, 1989 at about dusk the deceased was seated in his hut with the children while this witness was cooking outside. The accused's wife went past and got into the hut. Later the accused came along and proceeded into the hut also. A short while afterwards this witness heard the voice of the deceased inquiring why the accused was assaulting him. She proceeded to the scene and found the deceased sitting on a chair while the

/accused

accused's wife was standing behind the deceased and the accused was standing in front of the deceased himself. After this witness had entered she saw the accused strike at his own wife with a stick. Then the deceased stood up and caught hold of the stick and inquired of the accused why he was assaulting his own wife, but he was vouchsafed no reply. There was an on-going commotion which spilled into the outside between the accused and the deceased. It was at a later stage that the deceased's voice was heard to say "He has finished me". And there was also the deceased's voice to the effect that he inquired why the accused had stabbed him with a knife. There and then this witness saw the accused throw away a knife. At that stage the accused had pinned the deceased to the ground and was sitting on top of him.

There is no doubt, in my mind, that the accused was responsible for the cause of this fight, its duration and its detrimental effects on the deceased.

The doctor's medical report shows that the deceased died from massive haemorrhage.

I have heard, in mitigation, what counsel for the accused has advanced. But the accused has killed his own brother, something that will hang on his conscience throughout the rest of his days. I am told that the accused has the responsibility to look, not only after his children, but the children he has deprived of their father. While this may be so, it is also important to note that Court would be failing in its duty, if it could be moved by these pleas in mitigation to the extent that the sentence imposed verges on the ridiculous.

Accordingly the accused is sentenced to eight(8) years' imprisonment of which two are suspended for three years on condition that the accused be not convicted of a crime involving violence to another committed during the period of suspension.

J U D G E  
10th December, 1990

For Crown: Mr. Mokhobo

For Defence: Mr. Fosa