

IN THE HIGH COURT OF LESOTHO

In the Matter of :

R E X

v

LESENYA MOKHUBU

J U D G M E N T

Delivered by the Hon. Mr. Justice B.K. Molai
on the 12th day of February, 1990.

Held at Butha-Buthe

The accused who is about 18 years old stands before this court on a charge of murder, it being alleged that on or about the 27th April, 1988 and at or near Matlameng in the district of Leribe he unlawfully and intentionally killed Lesenyeho Maqalika.

When the charge was put to him, the accused pleaded guilty to Culpable Homicide. The Crown accepted the plea tendered by the accused person. Section 240(1)(a) of Criminal Procedure and Evidence Act, 1981 provides:

"240 (1) If a person charged with any offence before any court pleads guilty to that offence or to an offence of which he might be found guilty on that charge, and the prosecutor accepts that plea the court may -

(a) if it is the High Court, and the person has pleaded guilty to any offence other than murder, bring in a verdict without hearing any evidence:"

(my underlining)

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I stress the word "may" in the above cited section to indicate the view that where the accused person pleads guilty to any offence other than murder before the High Court and the plea is accepted by the crown counsel, the court is not bound to return a verdict of guilty. It merely has a discretion to return the verdict. Once the accused has pleaded, the court is ceased with the matter and it may, in an appropriate case, say no to the plea of guilty tendered by the accused and order that evidence be lead.

In the present case a Preparatory Examination has been held. I have read the record of the Preparatory Examination proceedings. Mr. Qhomane for the crown has accepted the plea of guilty to culpable Homicide tendered by the accused who is represented by a lawyer in this case. I have no quarrel with the plea.

In terms of the provisions of S.240 (1)(a) of the Criminal Procedure and Evidence Act, 1981, I am prepared, therefore, to return a verdict of guilty of culpable Homicide and convict the accused on his own plea.

My two assessors entirely agree with this finding.

Sentence : Sentenced to eight (8) strokes, to be administered in private by a member of the Prison staff.

B K. MOLAI
JUDGE

For Crown : Mr. Qhomane
For Defence : Mr. Fosa.

12th February, 1990