

It is to be observed that in terms of paragraph 6 of the opposing affidavit with which the respondent fully associates himself the above averments appearing in the applicant's paragraph 4 of the founding affidavit are admitted. So are the ones appearing in paragraphs 5 and 6 stating that

"The respondent furthermore in terms of Clause 21.2 undertook to pay all legal costs including costs as between attorney and his own client, charges and disbursements incurred by the Seller in enforcing any of the provisions of this agreement."

and

"The respondent in terms of Clause 24 of the agreement chose domicilium citandi et executandi for all notices and processes in terms of the agreement and in pursuance thereof at the address given on page 1 of annexure "B" hereto being the address set out in paragraph 3 hereof."

It is admitted on behalf of the respondent that in pursuance of annexure "B" i.e. the Instalment Sale Master Agreement, the applicant sold and delivered the vehicle to the respondent, and the parties signed annexure "C" which is the first schedule of the Instalment Sale Agreement. The cash price is reflected as R85,000.00. The agreement constituting annexure C was entered into on 7th September 1988. The instalments were to be paid at the rate of R2079.89 per month starting on 5th October 1988. The total number of the instalments is reflected as thirty six. The final instalment is shown as due and payable on 5th September 1991.

In paragraph 8 it is denied on respondent's behalf that he has committed any breach of the contract. The reason advanced is that

"the applicant has caused the respondent to incur financial losses in so far as the vehicle in question is concerned in that right from the onset (sic) the vehicle in question had numerous mechanical problems, which problems the applicant was made well aware of the same⁽⁵⁰⁾ per the letter dated the 30th December 1988"

I do not think that the above assertion detracts from the averment that the respondent failed to make payment of the instalments due as prescribed for in the schedule. See Annexure "D".

In Clause 17.1 of annexure "B" it is specifically stipulated that

"the Buyer shall not cede any of its rights or assign any of its obligations or lease any of the Goods hereunder without the prior written consent of the seller."

It thus would appear that Sello Abel Molati has neither lot nor part in these proceedings. The question to be determined is whether the respondent is in arrears. I find that he is. If so then in terms of the agreement the applicant is entitled to judgment.

The rule nisi is confirmed in terms of subparagraphs 2.1 and 2.2 of the Order of Court that was issued on 8th December 1988.

J U D G E .

12th February, 1990.

For Applicant : Mr Steyn
For Respondent : Mr Mphalane.

IN THE HIGH COURT OF LESOTHO

In the Matter of :

R E X

v

SELLO MOKOENA

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 is before me on a charge of murder, it being alleged that on or about 20th December, 1988 and at or near Lekokoaneng in the district of Berea he unlawfully and intentionally killed Mphele Lebesa.

When the charge was put to him, the accused, who was represented by Mr. Fosa, pleaded guilty to culpable homicide. Mr. Mokhobo who represented the Crown in this matter, told the court that the crown would accept the plea of guilty to culpable Homicide, tendered by the accused. The plea of guilty to culpable Homicide was accordingly entered.

It is to be observed that S.240(1)(a) of the Criminal Procedure and Evidence Act, 1981, provides:

"240(1) If a person charged with any offence before any court pleads guilty to that offence of which he might be or to an offence of which he might be

2/ found

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."

As it has already been pointed out, the accused, who is charged with the crime of murder, has pleaded guilty to a Culpable Homicide which is a competent verdict of murder i.e. an offence of which he might be found guilty on^a charge of murder. The Crown has accepted the plea of guilty to Culpable Homicide tendered by the accused person. In terms of the provisions of the above cited Section 240 (1)(a) of the Criminal Procedure and Evidence Act, 1981, I would, therefore, convict the accused of Culpable Homicide in accordance with his own plea.

Both my assessors agree with this finding.

Sentence : 18 months imprisonment.

B.K. MOLAI
JUDGE

12th February, 1990.

For Crown : Mr. Mokhobo

For Defendant : Mr. Fosa.

IN THE HIGH COURT OF LESOTHO

In the Matter of :

R E X

v

PHONDO KHESUOE

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 person is before me on a charge of murder, it being alleged that on or about the 10th day of August, 1988 and at or near Thabang in the district of Mokhotlong he unlawfully and intentionally killed one Thabang Mfundisi.

When the charge was put to him, the accused, who is represented by Mr. Fosa in this case, pleaded guilty to culpable homicide. Mr. Mokhobo for the Crown, accepted the plea of guilty to culpable homicide, tendered by the accused person.

Section 240 (1)(a) of the 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

2/ offence

offence other than murder, bring in a verdict without hearing any evidence;"

As it has already been indicated, the accused who is represented by a lawyer has pleaded guilty to culpable Homicide which is an offence of which he may be convicted on a charge of murder. The Crown has accepted the plea of guilty to culpable Homicide tendered by the accused person. In terms of the provisions of the above cited Section 240 (1)(a) of the Criminal Procedure and Evidence Act, 1981, I would, therefore, convict the accused of culpable Homicide in accordance with his own plea.

Both my assessors agree.

SENTENCE : Coming now to accused's sentence, the court has been invited to consider a number of factors in mitigation. They have been eloquently tabulated by the defence counsel and there is no need for me to go over them again. Suffice it to say, in addition I take into account the fact that in accordance with our custom, the deceased's relatives will, in all probabilities, sue the accused civilly to raise his head. In other words, this court is only the first to punish the accused person. There is still a civil court before which he is likely to appear for yet another punishment. To avoid the accusation that the courts of law punish a person twice for the same offence, I want to make it clear that in imposing the sentence I am going to impose on the accused I have taken into account the fact that there is yet another court which will, in all probabilities, punish him.

3/I am also concerned

I am also concerned about what I have been told in mitigation viz. that the relatives of the deceased want to retaliate on the accused person. Assuming the correctness of this, I am of the opinion that there is the need to keep the accused away from the relatives of the deceased with the hope that by the time he returns to their midst their tempers will have subsided.

Having considered on behalf of the accused person, all these factors I am, however, not prepared to turn a blind eye to the offence with which he has been convicted. It is a serious offence calling for a commensurately serious punishment - A punishment that will deter the accused and serve as a reminder to people of his mind that the courts of law do not encourage people to take the law into their own hands. I am saying this mindful of what I have been told viz. that the accused acted in self-defence. I agree that the accused may have initially tried to defend a woman who was apparently being molested by the deceased. However, it seems the accused got a chance to leave the deceased and went to his house from where he returned armed with a knife with which he stabbed him. When he thus returned from his house and stabbed the deceased, the accused was the aggressor and, in my view, self-defence could not avail him.

4/ By and large

By and large, I come to the conclusion that the appropriate sentence for the accused person would be four (4) years imprisonment. I accordingly sentence him.

B. K. MOLAI
JUDGE.

12th February, 1990.

For Crown : Mr. Mokhobo

For Defence: Mr. Fosa.