CRI/T/34/92

IN THE HIGH COURT OF LESOTHO

In the Matter of ·

R E X

and

MOTUMI RANTALANE Defendant

J U D G M E N T

Delivered by the Hon. Mr. Justice W.C.M. Maqutu, Acting Judge, on the 8th day of February, 1994.

The accused is charged with the crime of murder:

In that upon or about the 26th November, 1991 and at or near Lesobeng in the district of Thaba Tseka, the said accused did unlawfully and intentionally kill MAPHOEZANA METOANE

The accused pleaded not guilty to the charge but

pleaded guilty to the crime of Culpable Homicide This plea was accepted by the Crown.

The accused was according to the Preparatory Examination Record, first remanded to custody on the 2nd December, 1991. His Preparatory Examination was held and completed by the Magistrate for the district of Thaba Tseka on the 3rd of June, 1992 The Accused was committed by the said magistrate for trial by the High Court on that day

The accused has been in custody awaiting trial for over two years

According to the evidence of P.W 1 (Moshoeshoe Malatalıana) a boy of 13 years of age (who had been admonished to speak the truth) he and accused were ploughing accused's land While they were ploughing accused's land, accused ploughed "the edge connecting his field and that of deceased" Deceased stood in front of the cattle Accused went to his home and brought a spear Accused tried to stab deceased with the spear, deceased struck accused with a stick on the forehead Accused staggered and fell down When accused stood up, accused stabbed deceased with the

spear. Deceased fell down. P W 1 went to report what had happened to Seeiso

P W 2 Mofo Marou stated that accused who was ploughing his own land, for no apparent reason accused decided to plough over the boundary and entered the land of the deceased. Deceased told accused not to do so but accused did not reply Accused asked for seed from a child which was brought to the accused. Accused began to sow it on the land of deceased. Accused then proceeded to plough deceased's land despite a warning from the deceased that the accused should stop Thereupon deceased stood before the accused's cattle in order to stop them from entering his field. Accused then went home and brought a spear with him after asking deceased to wait for him.

P W.3 'Malesia Marou's evidence is to the effect that following a report from P W.1 (that accused had already stabbed deceased with a spear) she went to them. She found them wrestling on the ground. She failed to separate them and went to call 'Masetabele Ratalane who helped her to stop the fight She discovered that deceased was bleeding in the mouth as the accused stood up The account of events of P W.3

is substantially similar to that of 'Mamofo Marou P W 5 P W.4 Seeiso Phantsi and P.W.6 Alexander Malataliana deal with events following the fight. P.W.6 says this was not the first dispute about the boundary. Deceased had previously complained that accused had ploughed the edge of his field

The Crown and Defence agreed the fight began over the boundary. Witnesses never give full facts and sometimes exaggerate I will ignore the minor differences

It seems the Deceased was on this unfortunate day was guarding his land. He expected Accused to plough the area that is described as the edge of the Deceased's land. Deceased did stop accused by physically stopping accused's animals from ploughing. This event led to a fight which had fatal results for the deceased

Land disputes of this nature are very common. They are normally dealt with by resorting to the courts. There are those who use force to assert what they believe to be their rights. Self-help is not allowed. That is what courts are for

Whatever rights Accused believed he had, he was not entitled to go and get the spear in the hope that Deceased might yield to the show of superior force. According to P.W.2, Mofo Marou even after Accused had got a spear and addressed Deceased about what deceased was doing, the Deceased made it clear that he would not allow Accused to plough his land. What Accused did was incredibly stupid Indeed with the hindsight of the tragedy that followed Accused's act in going home to go and arm himself with a spear this could lead to an inference that he had the intention to kill deceased.

In our law for the court to find the accused guilty of murder, it must be satisfied beyond reasonable doubt that the accused had a subjective intention to kill. Holmes J A. in S v. Sigwahla 1969 (4) S.A. 566 at 570 CD put the test as follows -

> "The fact that objectively the accused ought reasonably to have foreseen such a possibility is not sufficient. The distinction must be observed between what went on in the mind of the accused and what would have gone on in the mind of a bonus paterfamilias in the position of the accused."

In the court's view; (even objectively speaking) the

fact that Accused went home to arm himself with a spear before coming back to demand that he should plough the area unimpeded does not conclusively exhibit an intention to kill. The reason is that (as already stated above) the evidence discloses that the accused possibly expected the Deceased to be intimidated by Accused's show of force. It is also possible to infer that the Accused intended to kill Deceased if he did not give way There is no evidence beyond reasonable doubt that this is so.

Nevertheless, the accused embarked on a very dangerous exercise in which he should have foreseen that Deceased who had a claim of right over the area he was ploughing would not yield to the threat of superior force It is for this very reason that people are not allowed to resort their own devises to settle disputes In an orderly society such as the one to which the accused belongs there are chiefs to settle disputes amicably at village level If the matter cannot be settled at that level, then legal proceedings have to be instituted in the courts of law.

The accused in the situation he found himself

claims provocation He seems in the court's view to have been aggressor who did not inflict any wounds before he himself had been assaulted, wounded and fallen down. Accused is the one who struck or attempted to strike the first blow but this is not very clear. P.W.1 seems to say it is the accused who attempted to stab deceased with a spear. Deceased then landed stick blows that felled the deceased. As P.W 1 is a single witness on this point, the accused is given the benefit of doubt on it Even so, it is the accused who precipitated the fight

Snyman in Criminal law at page 146 crisply states.-

> "The reason provocation can never be a complete defence is that the law expects people to keep their emotions in check; the fact that certain persons are quick tempered and impatient is no excuse for their criminal behaviour "

It seems a bit of a mystery for the Deceased to have been present at that place at that point in time and to have been just there to stop Accused cattle physically when they crossed the boundary. If he knew this would happen he should have called the chief to stop Accused Deceased should not have done what he did It would seem therefore, that although the

Accused initiated the chain of events, the Deceased was far from passive in the matter,

It has to be born in mind that the use of a stick does not often lead to death while the use of a knife or a spear often causes death Indeed a spear is a traditional killing instruments, it was used for war before the gun was preferred The accused caused the death of the deceased by stabbing him with a spear below the arm-pit of the right, a dangerous thing to do There is no doubt that appellant ought reasonably to have foreseen that his assault on the deceased might result in his death. See S v Bernadus 1965(3) S A 287 at 306 G

The accused is lucky that he pleaded guilty to Culpable Homicide and his plea was accepted because if a full trial had taken place evidence might have emerged which might have disclosed the crime of murder. On the Preparatory Examination Record as it stands, the crime of Murder is not objectively and subjectively apparent There are only possibilities that the crime of murder might have to be proved

The Accused is accordingly found guilty of

Culpable Homicide

SENTENCE:

This is a borderline case of Culpable Homicide which might have been murder.

The deceased had a family and responsibilities. We cannot consider only the accused's family

Conduct of the type which accused embarked upon might destabilise society. Lands dispute are so common and numerous that if people were to behave as accused has done, there would be anarchy in the country

Accused did not respect boundaries and was destroying a boundary Boundaries are central to Lesotho's agricultural economy where small parcels of land have to be delineated Deceased was killed for trying to stop accused from doing a social wrong.

People have to be discouraged from using weapons of war to settle land disputes.

This case is very similar to that of Rex v Mohlakola Matsoai and 2 Others, CRI/T/45/89 in which self-help in an agricultural dispute of this nature occurred. In that case Kheola J's words with which I associate myself are as follows·

> "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 "

The accused is aged 62 years, has nine children, has an injury round the waist that makes him limp when he walks. There will be a civil claim and his neighbours will consider him a killer. There was some dispute as to boundary which witnesses might not have properly articulated in the accused favour out of resentment Accused was never granted bail

Taking all these factors, the sentence that this court passes is that of SEVEN YEARS IMPRISONMENT. This sentence is to run from the 2nd December, 1991. when accused was first remanded in custody

W.C.M. MAQUTU.

ACTING JUDGE.

8th February, 1994

For Crown Mr Sakoane
For Defence Mr Putsoane.