

## IN THE HIGH COURT OF LESOTHO

In the matter between:

R E X

v

TEBOHO POLISA

SENTENCE

Delivered by the Honourable Mr. Justice T. Monapathi  
on the 9<sup>th</sup> February 2000

In this case Teboho Polisa, the Accused, was charged with the murder of Sekoala Sello. It was said that in that upon or about the 13<sup>th</sup> day of April 1991 at or near Hlotse in the district of Leribe the said Accused did wrongfully, unlawfully and intentionally kill and murder the said Sekoala Sello.

This morning Counsel accepted an offer that a verdict of a lessor crime of Culpable Homicide be entered. In that the Accused could have committed the killing of the deceased negligently, not with the intention. The Court accepted the verdict and I accordingly recorded it as such. In terms of the Criminal Procedure

and Evidence Act of 1981 there was no need to summarize the evidence. I merely would have observed that there was a Preparatory Examination (PE) record held in these proceedings as a result of which the Accused was to be indicted before the High Court by the decision of the Director of Public Prosecutions on the 14<sup>th</sup> August 1997. It is during this session of the High Court that this Accused person stood charged before this Court. After yesterday's postponement we proceeded today and transacted as I have already recorded. That P.E. record would show that there were about twelve witnesses which includes PW 8 Maleabitsoa Matsoso whose name will at least once hereinafter.

As after the verdict the accused gave in sworn evidence in mitigation and his was the only evidence. The accused stated that his life with his wife had not been a pleasant one. It was a marriage characterized by drunkenness and adultery on the part of his wife. Indeed the family had met as on four occasions about complaints regarding this misbehaviour of his wife. I am satisfied that the Accused had always been intent on not leaving his wife who was however a problematic wife. This is the marriage that has begot two teenage boys who the Accused says had effectively been grown up by him without his wife. And that happened to be the situation even under normal times of that kind of marriage which they lived in. Accused said that on the day preceding the 13<sup>th</sup> April 1991 he prepared himself to go on patrol about some stock theft investigation. This did not materialize because people with whom he was to investigate some South African police did not turn up. Very late that day he come back to his home only to find that his wife was not present. He accordingly went to sleep. Much later in the night his wife and Maleabitsoa had turned up at his home in such a way that his wife effectively entered his home but she disappeared later and then until the following day.

It was that morning of the following day when then Accused attended at the

place of Maleabitsoa. He said his intention was to find out ways of getting to the place of one Mankopane for reasons to do with the problems of Mankopane. Accused suspected that his wife could be at that place. If I recall well it could have been his wife or Maleabitsoa who was related to Mankopane. What is important was that Maleabitsoa's house was a neighbouring house at which house he attended and spoke to Maleabitsoa about the whereabouts of his wife or particularly where the place of Mankopane would be. He least suspected that his wife could be at the place of Maleabitsoa. When he had moved a few paces away from the door it dawned on him that the reply given to him by Maleabitsoa could have been very unsatisfactory. He suddenly turned back and then came into what is called a sitting room of that house.

What struck him most was that having inspected one of the bedrooms when he was about to inspect the other then Maleabitsoa ran out. He was intent on looking into that other room which he did. It was then that he discovered that his wife was actually having sexual intercourse with a man unknown to him. The details of this act were sordid enough I need not repeat any detail of how this was carried out on this occasion. I am satisfied that it was a horrible act that this Accused saw. It was unsuspected and indeed he said he did not even suspect that his wife could be found in any of the rooms. The Accused had said that he had been armed with a small automatic 7.65 arm. He also had a sjambok and he was prepared to go to his place at Likhakeng in the Butha Buthe district and had harnessed his horse at ready when then he made this discovery as I have indicated. He described that all suddenly went black and he became very confused. He found himself holding an automatic gun with he shot at the gentleman whom he did not know.

It suffices to indicate that it was not less than five gun wounds found on the

deceased. This the Accused explained by way of the position in which the deceased was. The provocation and absence of control on his part and the action of this gun which he said it was an automatic one and that the deceased was so positioned that it was able for the gun to reach out one him at various parts of the body. It is important that immediately the Accused went to report himself at the police station. This gun was ultimately put in the hands of the police. Later on he went back to work after a few days. There must have been the normal investigation and which must have resulted in the holding of that P.E. in 1991.

He said further that in between that time of the charge and this time when he appeared before Court he had retired from the Police Force. He had also fallen off a horse and received serious injuries. It is these injuries that he says are likely to lead to disability on his part in that they touched on the spine or resulted in some paralysis which although cured but the prospects are not so good for the future. And he described the kind of trauma he has gone through as the result of this case. The manner in which it should have affected him mentally and affected him in his relations with other people. He is not very happy about himself.

Accused spoke about the fact that he made attempts to make amends with his wife indeed they reconciled and lived together for sometime. One of the things that this Accused said was that after his wife lost her employment as a nurse he found work for her at one hospital or clinic. It was sooner rather than later that his wife disappeared, deserted that job. Ultimately she was dismissed and the latter he came across by accident he had not been informed by his wife.

I became satisfied that the Accused is the one parent who virtually reared these two children of the family. It touches me that this could have been the position throughout the whole married life of the Accused and his wife. And when

reference was made to the fact that the last child appeared to be a late starter at school, this Accused attributes this to the discomfort and the discord in the family.

I am mindful of this aspect of what can generally be said the bad health of this Accused person presently. I believe what he says when he says he is in bad health that as a result of what he had gone through. This could be not only a perception but a condition that is in him. I need not emphasise the provocation that the accused person went through. It seems to speak for itself. What concerns me is the sentence that I must impose on the gentleman. This case is an old case. It has to do with over nine years since the date of the actual incident itself. I am satisfied when he says that the delay in prosecuting the case had always concerned him.

Sentencing is a discretionary matter. It has to do with a choice from various options as to an appropriate sentence. I warned myself that I may not impose a sentence that will destroy an already weakened man. I am informed that he has no previous conviction and he is an offender. This man was a policeman and he committed this offence of killing civilian while he was a policeman. Judges of this Court have warned that cases such as this one that is where policemen are perpetrators of serious offences must be taken in a serious light. It is even more serious when a policeman commits an offence over a civilian. It must be taken seriously and this the Court must show in its punishment.

I also have a choice whether this man is sentenced to a fine or is sentenced to imprisonment. The statement that a first offender ought not to be sent to imprisonment is not a fixed rule. It has to depend on the seriousness of the offence. I accepted that the fear that a convicted person who goes to prison has a risk of being contaminated is real. But now prison is intended to rehabilitate a convicted person. That is the intention. The balance which is tilted by the seriousness of an

offence will indicate whether a man ought to go to prison. Indeed there are theories from criminologists that sending a man out of his community is in itself dangerous. So that if there is some punishment which a convicted person can serve in his community so much the better.

In this case the Accused, as in other like cases, remains with a plea that he be allowed to grow up these children of his. It makes sense but then one has to ask another question: "What about that man who has lost his life and whose children are without a mentor? It is because that man will not come back. He has gone forever.

I have agonised over the problem of the sentence in this case. It has worried me because most things speak for the accused person except this one of the number of gun wounds which caused the death of the deceased. But one cannot afford (without challenging evidence) to be an armchair critic and to prescribe what the Accused should have done finding his wife with a man in those circumstances. Indeed when he spoke about this aspect I was satisfied that it touched him very much. It called for sympathy even from the hardest of hearts. But I must punish this accused person. I am saying I must.

Mr. Polisa stand up. I sentence you to imprisonment for five (5) years but the whole of this I suspend for three (3) years on condition that you will not commit any offence involving violence. I thought about this very seriously. I thought you deserved a punishment that ought to be suspended. To do otherwise would destroy you. The history of your life with your wife speaks volumes.

I forgot to ask you one question as to why you did not leave your wife even before these things happened and even after she caused you this trouble. Why didn't you leave your wife Mr. Polisa when she was causing you so much trouble? Accused

answered that he had loved his wife and his late father had had very high hopes about the marriage. It had showed in the way his father prepared for the marriage and sacrificed in paying out a large number of cattle for bohali.



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T Monapathi  
Judge

For Crown : Mr Rantsane

For Accused : Mrs Kotelo