

IN THE HIGH COURT OF LESOTHO

In the matter of:

REX

VS

MABUSETSA MABUSETSA

JUDGMENT

**Delivered by the Honourable Mr. Justice B.K. Molai on
13th day of November, 2001**

The accused is before this court on a charge of murder, it being alleged that on or about 30th August, 1997 and at or near ha Motšoane, in the district of Leribe, he unlawfully and intentionally killed Mojalefa Majoro.

When the charge was put to him, the accused pleaded guilty to culpable homicide. Mr. Thulo, who represented the accused in this trial, informed the court that the plea of guilty to culpable homicide, tendered by

the accused, was in accordance with his instructions. Miss Maqutu, the crown counsel, told the court that the crown accepted the plea of guilty to culpable homicide, tendered by the defence. The plea of guilty to culpable homicide was accordingly entered.

It is significant to observe that section 240 (1) of the **Criminal Procedure and Evidence Act, 1981** provides, in part:-

- “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.....”

In my view, culpable homicide is an offence of which a person charged with murder may be found guilty i.e it is a competent verdict on a charge of murder. In the instant case, the accused, who is charged with the offence of murder, pleaded guilty to the offence of culpable homicide. The crown counsel accepted the plea of guilty to culpable homicide, tendered by the accused. In the circumstances, this court is empowered, by the provisions of the above cited section 240 (1) (a) of the **Criminal Procedure and Evidence Act, 1981**, to return a verdict without hearing any evidence, at all.

Consequently, the accused is, on his own plea, found guilty of culpable homicide. Both my assessors agree with this finding.

SENTENCE

Having convicted him of culpable homicide, it now remains for the court to determine what punishment will be appropriate for the accused person, in the circumstances of this case.

Miss Maqutu, the crown counsel, told the court that the accused had no record of previous convictions. He was, therefore, a first offender. Mr. Thulo, the defence counsel, told the court that the accused had never attended any formal school and was, therefore, illiterate. Immediately before committing the offence, the accused had been drinking alcoholic beverages and was, therefore, under the influence thereof at the time he committed the offence. The deceased and another person tried to rob the accused of his money. The accused, therefore, acted in self-defence or in defence of his property although he admittedly exceeded the bounds of that defence.

The court also took into account that, in accordance with the Sesotho custom, the relatives of the deceased would probably sue the accused for

compensation or “to raise the head”, so to speak. In that eventuality, this court is only the first to punish the accused. Another court is yet to punish him. According to the Preparatory Examination charge sheet, the accused was, in 1997, already 25 years old. He is, in all probabilities, now a married man. He has a wife and children to support. In punishing the accused, his innocent dependants are the ones who will suffer most. According to the record of Preparatory Examination proceedings, the accused surrendered himself to the police at Hlotse police station, on 31st August 1997. He had, therefore, co-operated with the police in their investigations of this case, hopefully as a sign of remorse.

In assessing the appropriate sentence for the accused, the court considered all the above stated factors, in his favour. However, the court could not turn a blind eye to the seriousness of the offence with which the accused had been convicted. He had unlawfully deprived another human being of his life. The life of a human being is God-given and for that reason sacred. In our law nobody is allowed to unlawfully deprive another person of his God-given life. The accused is no exception to that. If he thought the deceased had wronged him, the accused ought to have brought him before the courts law, so that their dispute could be resolved in a civilized manner. He simply had no right to take the law into his own hands and kill the deceased.

In the result, I come to the conclusion that the appropriate sentence for the accused, under the circumstances, is that he should go to goal and serve a term of six (6) years imprisonment, with no option of a fine.

The accused is accordingly sentenced.



B.K. MOLAI

JUDGE

For Crown : Miss Maqutu

For Defence : Mr. Thulo