

IN HIGH COURT OF LESOTHO

In the matter of:

REX

VS

1. POSHOLI PHEELLO MOSILI
2. MONTS'O RAMALEFANE
3. REENTSENG JACKSON PHALALI
4. TS'IU MOPELI
5. LIN LING REN
6. THABO LEKHOAA
7. THATO MOSILI

JUDGMENT ON EXTENUATING CIRCUMSTANCES

Delivered by the Honourable Mr Justice WCM Maqutu
on the 23rd day of August, 2001

This is a Judgment on the Existence or non-existence of extenuating circumstances. This is an unusually serious case of Murder. Deceased was going about his normal business. He was way laid and his vehicle was taken and he was killed and thrown in a donga. Now, the deceased had done nothing to these Accused. They were motivated purely by greed. What this court has to determine is to whether there are factors that reduce the moral blameworthiness of the Accused that a reasonable man might find. In Sesotho it has been said men are

alike only because they have a beard. When it comes to this question of existence or non-existence of extenuating circumstances opinion will always differ. At the root of all Criminal Law is the protection of Society from those who seek to destabilise this Society. That is the first principle. The second one which is really the purpose of law is to protect life and property and maintain order so that everybody can live in peace. Each person knowing where his rights begin and where they end. Now these Accused have breached the first and principal end of the law which is the protection of life, they took life for no conceivable reason except for their enrichment. They are in the category of people who have committed ritual murder so that they can enrich themselves or gain more power, and courts have always found that there are no extenuating circumstances.

Robbery which results in death has always been categorised as a situation that makes the finding that there are no extenuating circumstances inevitable. In the case of **Mont'so Maliehe and others 1997 to 1998** LESOTHO LAW REPORTS AND BULLETIN AT PAGE 168. This court (as the court of first instance) had found there were no extenuating circumstances, because Maliehe had been employed to kill somebody. The Court of Appeal however found there were extenuating circumstances. The deceased person had done nothing to the Accused, he was even unknown to the Accused. But the Accused did it for

money, and was so to speak a HITMAN. Now this finding of extenuating circumstances in the Maliehe case has in fact moved the goal posts a little.

In other words extenuating circumstances are now found in cases where in the past they wouldn't and the Court of Appeal is the highest Court in the land, it is the one that blazes the trail. It is precisely because of this case that in May this year in the case of **Refiloe Mokalanyane CRI/T/44/2000** extenuating circumstances were found.

Mokalanyane had done a similar thing to this Accused. He had asked for a lift with somebody from the deceased, and on the way the vehicle was stopped on pretext that they were going to the toilet or something, and as soon as the deceased stopped the vehicle Accused and his companion the deceased and took the deceased vehicle and went to change it so that they can sell it. In that case this court found there were extenuating circumstances because of the lead that was given by the Court of Appeal.

Now coming to the case before me, it is clear that not all the people who have something to do with this case are before this court. For example **Pw1 Leuta Mahao** seems to feature strongly in this matter, and it is not only him there

are other people who are in the Army whose role is not clear in this crime. There is no evidence that links these Accused did the actual killing, because even the fire-arm the Cerska pistol that was used was found by this court not to have been properly identified. Murderers have been identified by inference. They have not been identified as the murderer directly. The court found these Accused guilty of murder as principal or accessories after the fact. It merely said they are either murderers as principal offenders that actually perpetrated the offence or there were with other people who are principals. They are guilty in the sense that they may have participated in the acts that followed the of murder and Robbery knowingly. What happened has not been determined clearly, because all that was necessary to make them Robbers and Murderers was that they should have been that the deceased had been killed and murdered when they took his property and started disposing of it. Therefore they are Murderers and Robbers as accessories after the fact. Perhaps they are the real Murderers the court doesn't have to determine that, to find them guilty of Murder and Robbery. This court very reluctantly find that there are Extenuating Circumstances on the off chance that they might not be the principal offenders, although the circumstantial evidence leaves no real room that they are not.


W.C.M. MAQUTU
JUDGE