CRI/T/24/96

IN THE HIGH COURT OF LESOTHO

In the matter between:

R E X

v

MOLAHLEHI LETSOEPA

For the Crown : Mr Mokuku

For the Accused : Mr Ntlhoki

Judgment

Delivered by the Honourable Mr. Justice T. Monapathi on the 14th day of November 2002

The Accused pleaded not guilty to a charge of murder. It was alleged that on the 25th December 1989 at Ha Mphatlalatsane Sekonyela, in the district of Mokhotlong the Accused intentionally killed Mokaka Roelane (Deceased). Accused admitted before this Court that he shot the Deceased who died on the same day, as a result.

Accused who was a policeman at the material time had been armed with a warrant of arrest Exhibit "A" against the Deceased. It was not disputed that the warrant had been issued by the magistrate of Mokhotlong because the Deceased had failed to attend a part-heard case in which he had been charged with rape.

On the last day of hearing of the said rape case the Accused had been allowed to look for his witness who would attend on the next day of hearing. Accused had failed to attend and had not since attempted to do so. It was not disputed that the Accused killed the Deceased on this day when Accused was attempting to execute the said warrant against the Deceased who was fleeing and resisting arrest.

As I commented during the application for discharge at the end of the Crown case there was a large body of evidence over which the Crown and the Accused agreed and did not dispute. Centrally the Accused had contended that he killed the Deceased in a justifiable homicide in terms of section 42(1) of Criminal Procedure and Evidence Act 1981 (CP&E).

While I accepted, in my ruling in that application for discharge, that there were cases where strictly speaking the Crown may be adjudged to have "failed to present a necessary degree of evidence" the Accused may not necessarily have to be discharged. One case is where as in the instant case attendant circumstances were such that "failure of justice could possibly result if the accused person were to be discharged." See **R v Herholdt And Others** 1956(2) 722 at 723 C-D.

It was necessary for the Accused to place himself under the protection of the Section 42(1) CP&E. Admitting that he killed the Deceased in a justifiable Homicide

in terms of the said section was not enough. I refused the application. In my discretion I felt the Accused had an onus to demonstrate how he fell under the protection of the said section. The result was that the Accused himself testified under oath in his own defence. He became the only witness for the defence.

A Preparatory Examination (PE) had been held and completed on the 30th May 1996 by the magistrate of Mokhotlong. Of the six witnesses led at the PE the depositions of three witnesses were admitted by consent. Matters admitted by Counsel included the post mortem report. The admitted depositions were of PW 4 (Masianokeng Seoete), PW 5 (Phororo Lejesa) and PW 6 (Det. Trooper Letsoepa).

The post mortem report was admitted and handed in by consent as aforesaid. It showed that the cause of death was due to a single gun shot wound on the left side of lower ribs. The doctor who examined the body (Dr Schumech) was no longer in Lesotho. The wound on the Deceased was described externally as:

> "From blister and falling off down on the abdominal wall. Single penetrating wound at the left side of the ribs. Single wound right flank which might be at a place where the bullet left the body."

PW 4's deposition at PE showed that he identified the body of the Deceased and that he was the one who reported the matter of Deceased's death to his family after a search for Deceased. He testified that he saw the Deceased's body carried to a mortuary

and the body did not sustain any further injuries along the way. The witness identified the body before the doctor who performed a post-mortem examination. After that he took the body to his village where it was buried.

PW 5 deposition was to the effect that after an alarm raised that there was a chase involving two men, he met one of them. It was the Accused in plain clothes who identified himself as a policeman and the one who had just shot the Deceased. Accused had a short pants on. He went on to show the witness where Deceased lay dead. The witness advised the Accused to report to Chief Mahomed. The witness accompanied Accused to that chief who wrote a report letter of the incident to the chief of Tlokoeng. Then to Mapholaneng police post. He learned that the Deceased's body was later removed by the police.

PW 6 who was in the Criminal Investigation Department of Lesotho Mounted Police was also a relative of the Accused and were at the same station. He knew that Accused had gone for patrol on the 25th December 1989.

The witness became an investigating officer in the case of the Deceased's death after he received a report from the Accused later in the day. It was about the Accused's killing of the Deceased which Accused reported in the presence of Warrant Officer Lechesa and the Sargent Mokheleli. The Accused gave an explanation to the two police officers about his killing of the Deceased with a revolver (Serial no. 452307) which was

later exhibited.

PW 6 was shown a revolver and four (4) shells of the 4.5mm type. These were later exhibited in Court. During argument Mr. Mokuku raised the issue that the empty shells could have been result of a shooting somewhere else but not at the scene when Deceased was being chased. I thought the issue was unfairly raised when Accused had not even been challenged on it. As will be this Court's position I inclined, when all circumstances were considered, to the Accused's version of this aspect as being the more probable. The report given to the police officers by the Accused included his possession of a warrant of apprehension with which as he alleged he had been armed with when he proceeded to seek to arrest the Deceased when the events leading to his death followed. It was produced in Court and exhibited.

The police ended up attending at the village where Deceased died and reported themselves to the chief. They examined the Deceased's body which lay "down the village on the edge of the fields and there was a path nearby". The body was examined as to its clothing which was later exhibited. A single entry wound was found "on the left side of the abdomen." The witness did not know if the gun was ever sent for ballistic tests.

The following witnesses testified before this Court PW 1 Thabang Rakholoane (who was PW 1 at the PE), PW 2 Monki Leoto (who was PW 3 at PE). As I observed

after close of Crown case there was a large body of evidence over which the Crown and the defence agreed and did not dispute. That is why Mr. Ntlhoki very safely concentrated on discussing the Accused's version in his address after close of defence case. That will be of more interest later. Accused became the only witness on his own behalf. It needs reminding that the test will still be whether or not his version was reasonably possibly true or whether it will be proved to be false and if false whether it was so beyond a reasonable doubt.

PW 1 testified that on the day in question he was riding on Deceased's horse after having drinks with the Deceased and other men. He was going to his home when he met with a vehicle occupied by two men and one of them said: "That is the man I am looking for, Mokaka!!. The same man alighted from the vehicle. He thereupon attacked the witness. He took his blanket, hat and the Deceased's horse. He must have realized that the witness was not the person he was looking for.

The man who had alighted from the vehicle inquired about the whereabouts of the Deceased. He was told where the Deceased was. He duly took the direction given by PW 1. PW 1 had earlier in the day been drinking with the Deceased. The witness went on to state that he went to his home as he was tired. He identified the man who was looking for the Deceased was the Accused before Court. I did not have any reason to question any material aspect in this witness' testimony.

PW 2 Monki Leoto testified that he knew the Deceased. On the 25th December 1989 he had been herding animals. The boys with whom he was herding cattle alerted him to what they said was a boy chasing a man. He identified the man being chased as Deceased while he was not able to identify the other one who had a short pants on. PW 2 in his testimony denied that he saw the two men get close to the point of touching.

PW 2 further testified that he observed the chase from the time the young boys asked him to come and watch the chase. He had then heard a gun report. He testified that after the sound of the gun discharge he no longer saw the person being chased. He could only see the person wearing a short pants who had been chasing. The witness also admitted that due to the terrain there were occasions when both the Accused and Deceased were out of sight. The witness however denied that there was even a point when Deceased bent down to pick up stones nor threw any stones at Accused.

The witness admitted that he could have heard more than two gun reports. That is precisely what he had testified to at the PE. Another witness spoke of about five gun report (PW 2 Mamatono Polinyane at the PE). Without pre-empting my observation on this aspect probabilities pointed at the Accused having discharged the gun on four occasions which was corroborated by the four shells which were handed to Trooper Letsoepa. I had the impression that the PW 2's recollection was dull and was compounded by his lack of sophistication. I found it difficult to understand why the witness struggled to have observed things which may in his community took for granted.

For example the cardinal points. In any event he was not a lying witness.

Accused story was straight forward and was mostly corroborated except that the Deceased had picked up stones and threw any at the Accused by way of fighting or fighting to resist arrest. Nor was there ever any testimony suggesting that the Accused got so close to the Deceased to the point of touching the Deceased physically to indicate that he was under arrest.

The Accused had been armed with a warrant of apprehension as alluded to before. He proceeded to Deceased's place to effect his arrest. Deceased was found to be absent at his place. Coincidentally one other person was looking for Deceased. He could be that gentleman who was later found with Deceased's horse.

Accused took the direction of Mapholaneng where he failed to locate the Deceased. On his way back from Mapholaneng Accused got information that the Deceased might have been at Ha Ramonakalali. On his way to Ha Ramonakalali Accused said he met a gentleman ho had in his possession Deceased's horse. When Accused spoke to the gentleman he was given direction leading to where Deceased could be found. Accused there and then took away the horse, the blanket and the hat from the man. It was not quite in issue whether the items were voluntarily handed to the Accused.

Accused took the directions suggested. He was then on horseback. At one point

Deceased was said to have become aware that it was the Accused who was in possession of his horse. He thereupon took flight. Accused then gave chase and in the process discharged three shots with his gun into the air in order to warn or frighten the Deceased. He ended up catching up with the Deceased who he even touched physically to indicate that he had effected his arrest.

I noted that this aspect of effecting arrest of the Deceased was not put to any of the witnesses. Mr. Ntlhoki's reply when shown how important and unfair this was to the Crown who had to anticipate this aspect of the defence case was simple and glib. This I say considering the total circumstances of the case.

Firstly, that PW 2 who was the witness who could have had the opportunity to vouch for having made any observation of the movements and chase had consistently said he had at most occasions lost sight of the two chasing gentlemen because of the terrain. So that putting the aspect to the witness would have elicited nothing in response.

Secondly, Mr. Ntlhoki's response was that inasmuch as he had before him PW 2 who could even testify to seeing the chase Counsel was only required to put to the witness as much as was relevant to what the witness had testified over. See **Small** v **Small** 1954(3) SA 434 (SWA) as quoted in **Phaloane** v **R** 1980-84 LAC 72 at 77 F-J.

Much as the answer was generally valid, I questioned the approach of Counsel where at the close of the Crown case matters that constituted Accused's defence or an important aspect of his defence could not have been shown the Court because a proper witness (according to Counsel's estimation) to put a version of the Accused had not come up. Whatever the approach my understanding has always been that it is desirable from the onset and ideally towards the first witness who comes by, that the defence should indicate what its defence or total version will be. Much as defence Counsel will almost always reluctantly do so this approach will work in favour of the Accused in the end.

On the other hand it becomes an unfortunate Court when a Court finds that at the end of the Crown case it does not know what the case or the version of the Accused will be. This showing of the Accused's defence or likely version must always be disclosed as early as possible. It does not matter what approach Counsel will adopt. It is a bad tactic not to do so. I repeat that putting the Court in the knowledge what the Accused's version will be can only work in favour of the Accused.

As said before Accused said that having been given guidance he rode the Deceased's horse and having been so disguised as PW 1 he came upon Deceased on the way. Deceased thereupon ran away. Accused testified that he chased Deceased and during the chase fired three shots into the air to warn him against being set in his ways.

Accused went on to say that he later caught up with Deceased and even touched

him physically on the shoulder to effect an arrest. Deceased then broke loose and started running again before stopping to pick up stones with which he started to pelt Accused. Accused safely ducked stones and advanced. He stopped when he realized that Deceased had picked up another stone and was definitely poised and aimed to hit Accused with that stone. As to the fact that Accused felt that he had effectively arrested raised a dimension that from then on the Deceased could have been resisting arrest by his actions if the Accused is believed.

Accused then said he would have had no option but to fire his gun in the direction of the Deceased, since he could not, at the time of seeking to avoid the stone poised in his direction, aim accurately at the lower part of the Deceased body, which he should have done. As he demonstrated he even had to shield his face with his left hand to anticipate a stone that would have been directed at his head. The Deceased must as the Accused said have been at a distance of about twenty paces away from the Deceased when Accused discharged his gun. The Deceased slumped on the spot and lay supine. Accused afterwards reported the incident as already stated elsewhere in this judgment.

Accused raised the defence of Justifiable Homicide as envisaged in section 42(1) of the Criminal Procedure and Evidence Act of 1981 (CP&E). His main reason for doing so was that the Deceased was fleeing and there was no other way to stop him except to kill him. In addition having been armed with a warrant as aforesaid Accused was bound to obey and execute such warrant in terms of section 34(1) of the CP&E. This the

Deceased was making difficult to arrest when Accused was already in hot pursuit. I would add that in no way was it basically suggested that the intended arrest had been unlawful for any reason. It ought to be clear by now that in terms of Accused's testimony there was an element of self-defence as in connection with the stone held by Deceased and poised to strike.

Subject to my comments about some aspects of the defence not having been put to the witness and what appeared to be a genuine perception on the part of Mr. Ntlhoki about the proper approach it cannot be as if the Accused had the onus to prove that he acted in self-defence. On the contrary the Crown had to prove that the Accused did not act in self-defence. I would add that in no way was it basically suggested that the intended arrest itself by the Accused had been unlawful for any reason.

The section 42(1) of the CP&E which Mr. Ntlhoki said was similar to the South African provisions in Criminal Procedure Act 1955 reads as follows:

> "42(1)When any peace officer or private person authorised or required under this Act to arrest or assist in arresting any person who has committed or is on reasonable grounds suspected to having committed any of the offences mentioned in Part II of the First Schedule, attempts to make the arrest, and the person whose arrest is so attempted flees or resists and cannot be apprehended and prevented from escaping, by other means than by the peace officer or private person killing the person so fleeing or resisting such killing shall be deemed justifiable homicide."

Mr. Ntlhoki submitted of the lack of certain requisites the above provision in comparison

with the present South African provision of section 49(1) and (2) of Criminal Procedure Act No. 51 of 1977 which reads:

> "49 Use of force in effecting arrest -
>
> (1) If any person authorized under this Act to
>
> (a) resists the attempt and cannot be arrested without the use of force; or
>
> (b) flees when it is clear that an attempt to arrest him is being made, or resists such attempt and flees,
>
> The person so authorized may, in order to effect the arrest, use such force as may in the circumstances be reasonably necessary to overcome the resistance or to prevent the person concerned from fleeing.
>
> (2) Where the person concerned is to be arrested for an offence referred to in Schedule 1 or is to be arrested on the ground that he is reasonably suspected of having committed such an offence, and the person authorized under this Act to arrest or to assist in arresting him cannot arrest him or prevent him from fleeing by other means than by killing him, the killing shall be deemed to be justifiable homicide." (My emphasis)

Counsel added that it would improper be interpret our section 42(1) in terms of the requirements found in South African section 49(2) which has other further requirements. As can be seen above there is no essential difference in the two provisions except that the South African one is much more elaborate. In addition I am persuaded that the Lesotho provision can wisely be interpreted in terms of the South African one to make interpretation of the former clearer and more effective. I would use the words in the South African statute such as where:

> "a particular form of words is used that has also been used in previous

> different statutes to express the same idea or concept as that expressed in the statute the Court is interpreting.....".

See **Interpretation of Statutes.** GE Devenish 1st Edition page 274. The basis for doing so would even be more compelling such as where we adopt the very persuasive South African precedents ".... on the basis of sound legal reasoning and value judgment". See **Interpretation of Statutes page 274** (supra)

A further approach in interpretation is a constitutional one. It calls for an attitude on the part of the Court which is consistent with an obligation on the part of the Court to construe existing laws (including customary law):

> "with such modifications adaptations qualifications and exceptions as may be necessary to bring them into conformity with the constitution."

See section 156(1) of the **Constitution of Lesotho.**

Mr. Mokuku stressed that our section however requires that before a person can be killed as a way of stopping him from fleeing, other means which are less tragic should have been tried and should have failed. One of them should have been to abandon chase and/or fire warning shots. As Mr. Mokuku emphasized if the Accused saw no chance of apprehending Deceased especially since he had lost his handcuffs he should have let the Deceased go. And he should have returned to his station and asked for backup from his colleagues to help him to effect arrest of the Deceased who was being recalcitrant and

dangerous as Accused perceived.

In the present case the Accused claimed that he chased Deceased and fired warning shots to try and stop him but failed. I thought with respect this was uncontradicted and was reasonably possibly true. In no way could Mr. Mokuku suggest that the Accused's action had been unreasonable that far nor that factually it was unreliable except to say that if true PW 2 should have seen all the occurrences. PW 2 himself has corroborated the Accused's story, which story proved less likely to be disturbed if the witness admitted (as he did) that at some stages, due to the terrain, he would not have been able to see the Accused and the Deceased. It was not suggested by the Crown that the Accused's story was inherently improbable.

I thought I could safely accept that the Accused believed that his actions were lawful. He had to effect arrest of the Deceased on the strength of a lawful warrant and or reasonable suspicion of having committed a serious offence. In **R v Khaliphile Gogo** CRI/T/44/91, 26th August 1992 Kheola J (as he then was) is recorded on page 25 thereof as having said about the accused:

> "He believed that the deceased had been properly arrested and he was authorised to stop him from fleeing. The belief was reasonable. That being so the accused is entitled to be acquitted of culpable homicide. He (Mr. Penzorn) made reference to the leading South African decision in **S v Blom** 1977(3) SA 513 (AD)."

The learned judge went on on page 26 to record that:

> "In the present case the Accused had a belief based on reasonable grounds that the deceased was under lawful arrest and he was escaping the lawful custody or that he was resisting arrest. (My emphasis)

The accused was acquitted and discharged. I however thought an important jurisprudential question still had to be asked learning from the interpretation of the said section of South African Law. And of course based further on influential South African precedents which approach I alluded on page 15 of this judgment. Although I wondered as to how for the debate would carry us. This I say in view of the fact that having accepted that the Accused's story would reasonably possibly be true, a combination of things included that he ended acting in self-defence. This was so despite that Accused had placed himself in the invidious position where he said he then had no choice but to act in the way he acted.

The debate in South Africa is about the greater element of the constitutional protection of life of an arrestee as his right. Hence Kriegler J said in **Ex Parte Minister of Safety and Security and Three Others and State v Edward Joseph Walters and Another** CCT 28/01 (Minister of Safety and security case) at page 36 [44]

> "Our Constitution demands respect for the life, dignity and physical integrity of every individual. Ordinarily this respect outweighs the disadvantage to the administration of justice in allowing a criminal to escape."

See section 4(1) (a) of the Constitution of Lesotho. That is how, since the right to life

is paramount, it has to be balanced against the duty of the state to maintain law and order and in respective cases for a law enforcer to effect an arrest in similar situation to the present. It should have been argued in this Court as to how best the right of the arrestee be protected by interpreting our section 42(1) which is similar to South African section 49(1). This is a common exercise in South Africa. Indeed

> "We proceed from the premise that human rights are simply the basic rights that inhere in each person by reason of the fact that he or she is a human being. The most basic human right is life itself. Therefore it is a human rights norm that a person's life cannot be taken by the State arbitrarily, without due process of law-or at all, in the view of many."

See THE DEVELOPMENT OF CONSTITUTION AND THE OBSERVANCE OF THE RULE OF LAW IN THE KINGDOM OF LESOTHO - A memorial lecture in honour of the late Mr. Justice M.P. Mofokeng, formerly a Judge of the High Court of Lesotho - - Address delivered on the 10th of October 2002 by the President of the Court of Appeal of the Kingdom of Lesotho the Honourable J.H. Steyn.

This interpretation of the said section 49(1) the South African Courts have brought about a pronouncement on how the old test (narrow test) ought to give way to a new test of reasonableness that is, that:

> "proportionality between the seriousness of the relevant offence and the force used should <u>be expanded</u> to include consideration of proportionality between the nature and degree of force used and the threat of the force

posed by the fugitive to the safety and security of the police officers other individuals and society as a whole."

See **Govender v Minister of Safety and Security 2001(11) BCLR** 1197 (SCA). See also **The Minister of Safety and Security case** (supra) per Kriegler J.

It was so argued in **Govender's** case that the old test as exemplified by **Matlou v Makhubedu** 1978(1) SA 946(A) at 957 C-F of what was "reasonably practicable" was unacceptable in its threshold requirement which was said to be too low and not complying with the constitutional standards of reasonableness and justifiability". See **Govenders** case page 1203 F-J.

Perhaps to better illustrate the old test in **Matlou v Makhubedu's** case (before 1977 **Criminal Procedure Act**) it will do no better than quote the extract from the headnote (the judgment being in Afrikaans) that:

"It must be stressed, however, that each incidentmust be judged on its merits in order to determine whether the arrestor had acted reasonably in terms of this section if he could reasonably have prevented the suspect from escaping in some way other than seriously killing or wounding him."

In speaking about the requirements of the said section 49(1) which came after 1976 the

learned authors of **Commentary on the Criminal Procedure Act** (du Toit et al) 1993 stated at page 5-27 :

> "(a) .....
> (b) .....
> (c) .....
>
> (d) The force which was used to overcome the resistance or to prevent the flight was reasonably necessary in the circumstance. the question at issue is whether the Accused arrester could reasonably have restrained the suspect from escaping in another less than drastic way than by injuring him or injuring him so seriously in the way he did. (**Matlou v Makhubedu** 1978(1) SA 946(A) 958. **Macu v Du Toit** 1983(4) SA 629(A) 635D. other methods need be weighed as alternative only if they were practicable and reasonably effect to overcome the resistence or to prevent flight ((**Macu v Du Toit** (supra) 635 H). A court should grand against *ex post facto* speculation as to what would have been more effective in the circumstances prevailing all the time of the incident (**D Kane v Minister Van Wet En Orde** 1992(2) SALR 211 (W)." (My emphasis)

What is underlined in the extract above centres around the degree of force used which will ordinarily be balanced against the seriousness of the offence hence the said proportionality. This will necessarily take into account the knowledge on the part of the arrester that the deceased had committed a serious crime, secondly that the arrester must have attempted to effect an arrest on the deceased who thereupon resisted arrest or took flight. And finally if deceased was killed while escaping, he must have been aware that an attempt was being made to arrest him.

The case of **Govender** further said that while use of force will be accepted to

overcome resistence such force is reasonable if there were objectively speaking reasonable grounds for believing that:

1. That the suspect posed on immediate threat of serious bodily harm to him or to her or a threat on members of the public or

2. That the suspect has committed a crime involving the infliction or threat of serious bodily harm." See page 1206.

In that case it was decided that the use of a firearm was excluded in the circumstances in that the "threat" or danger was not commensurate or such as to attract that kind of a weapon because the new test introduced a "consideration of propotionality between the nature and the degree of force used and the threat posed to the arrester by the fleeing suspect."

Ex parte Minister of Safety and Security case, at page 32, while approving of the principles enunciated in **Governer's** case, stresses what perhaps ought to be stressed being the impression that law enforcers may have had a licence to execute suspects extra-judicially by saying:

> "One needs to add to a weighty consideration before the live of suspects can be risked by using a firearm or some other form of potentially deadly force merely to prevent escape."

The learned judges develops the theme further by introducing the aspect of seriousness of offence or "the scheduling of the offences" on the same page at [41] by saying:

"Subsection(2) finds this additional consideration in the seriousness of the offence for which the fugitive is to be arrested. The legislature clearly wished to limit the licence to kill to serious cases. The spectre of a child being shot died for snatching a mealie meal is, after all, start. The mechanism chosen in subsection (2) to maintain reasonable propotionality with the use of deadly force, was to draw a distinction line between lesser and more serious offences and to permit the use of deadly force for arrest of fugitive suspected of having committed serious crimes in more serious categories. This was done by introducing the first schedule and providing that lethal force may be legally warranted in arresting fugitives suspected of having committed one or other of the offences. ....."

The learned judge then summarised the main points before dealing with other and more involved issues of the case and then said at page 45 [54] 46

"In order to make perfectly clear what the law regarding this topic now is, I tabulate the main points:

(a) The purpose of arrest is to bring before court for trial persons suspected of having committed offences.

(b) Arrest is not the only means of achieving this purpose, nor always the best.

(c) Arrest may never be used to punish a suspect.

(d) Where arrest is called for, force may be used only where it is necessary in order to carry out the arrest.

(e) Where force is necessary, only the least degree of force reasonably necessary to carry out the arrest may be used.

(f) In deciding what degree of force is both reasonable and necessary, all the circumstances must be taken into account, including the threat of violence the suspect poses to the arrester or others, and the nature and circumstances of the offence the suspect is suspected of having committed; the force being proportional in all these circumstances.

(g) Shooting a suspect solely in order to carry out an arrest is permitted in very limited circumstances only.

(h) Ordinary such shooting is not permitted unless the suspect poses a threat of violence to the arrester or others or is suspected on reasonable grounds of having committed a crime involving the infliction or threatened infliction of serious bodily harm and there are no other reasonable means of carrying out the arrest, whether at that time or later.

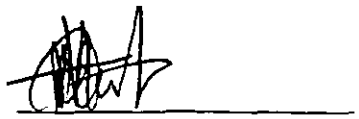
(i) These limitations in no way detract from the rights of an arrester attempting to carry out an arrest to kill a suspect in self-defence or in defence of any other person. (My emphasis)

I have concluded the last two points ought to be emphasized to illustrate what I considered to have been the greater issues of interest in this case in the context of the South African debate.

It should be clear by now that I would accept that the Accused's story of what transpired might reasonably possibly be true. See **R v Difford** 1946 AD 1023 at 1027. The Accused then deserves the benefit of doubt. And furthermore with the element of self-defence which his story contained it added more to his being entitled to shoot and kill in the context of a justifiable homicide in terms of section 42(1) of the CP&E.

The Accused is accordingly acquitted and discharged.

My assessors agreed.



T. Monapathi
Judge

14th November 2002