

IN THE HIGH COURT OF LESOTHO

In the matter between:

R E X

v

MATOOANE THOBAKAE

For Crown : Miss Lesupi

For Defence : Mr. Mahase

Sentence

Delivered by the Honourable Mr. Justice T. Monpathi
on the 11th day of November 2002

I found the Accused guilty on his own plea. This Accused person had been charged with murder of Mr. Makhobalo Senekane on the 14th August 1999 at Tsitsa Ha Tšoeute in the District of Berea.

The original charge had been that of murder. Murder means killing of a human being, with intention. He has pleaded guilty to Culpable Homicide which means that Accused killed without intention but negligently. Mr. Mahase

acknowledged that this was in accordance with his instructions. The Crown accepted the plea. What I eventually returned as the verdict was that this Accused was guilty of Culpable Homicide.

Now the Accused proceeded into the witness box where he gave evidence in mitigation. His case was a pathetic case. He says his tree plantation had been troubled by people who cut his trees without his permission. Eventually on this day of the 14th August he came to know that there was somebody who was interfering with his plantation because he was informed by one Kaizer and another. Unfortunately that person who turned out to be the Deceased was found in the act of interfering with his plantation. He was then cutting trees. Accused questioned him as to why he was interfering with his trees.

Accused and Deceased then fought. This person found in the forest was a person the Accused said he feared. The suggestion is that the Deceased was the original aggressor who picked up a stick from a tree and attempted to assault the Accused. This Accused ended up picking up two stones with which he assaulted this Deceased who got seriously injured. The suggestion is that he must be a good shot. On the serious note, this Deceased died eventually. He lost his life five days later as the result of the assault by this Accused.

Loss of a human being's life is a serious thing. A person who has died goes away from this life for ever. According to our law there is virtually no complete excuse for killing of a human being by another except a killing in self-defence or defence of property.

Indeed the Accused gave us a small history of his family circumstances. Most pathetically that he is without a wife and he has got many school going children and most importantly he appeals to this Court that the Court must consider his situation. His children will end up suffering when he is in prison because without a wife he was the sole person taking care of the needs of his children. That I noted. This I noted together with the fact that Accused was being disturbed and provoked in the ownership of his plantation.

Thirdly, I have been told that Accused is a first offender and that he has no previous convictions.

Fourthly, that Accused even reported himself to the police because he felt concerned and he was sorry for the plight of the injured deceased person. He now feels sorry about the death of the deceased which resulted. This I have noted.

I come back to say that the death of a human being is a serious thing. And unavoidably it calls for a very tough kind of sentence which marks the Court's view about serious offences like this one of killing other people. Our people find it easy to kill other human beings. One does not understand why there is this situation. There are often killings of this kind all over the country. Sometimes people are killed for petty reasons. This the Court cannot tolerate and we will show this by imposing heavy sentences on people committing offences like this.

The Courts must set an example because the life of a human being is a precious thing. I note again that a person who has died cannot come back. He leaves dependants, he leaves his wife and relatives who will lose his benefits and support. But not quite in the same way as this Accused has. The Deceased, as it is colloquially said, has left on a "one way ticket."

Another aspect is that the Courts are for service of the public. When they administer justice in cases they do so because they are agents for the public. They don't do things for their own sake. They do punishments because they are much aware that the eyes of the public, to whom they are accountable, are on them.

That accountability goes far. That is why Courts are very careful not to

give nonsensical and unreal sentences. Nonsensical sentences are sentences that are too harsh or too lenient. So that at all times Court must sensibly indicate their displeasure at offences of this kind.

One of these sentences is imprisonment. It is not because imprisonment is the best sentence. It is because by sending people to prison can be deterrence to others and protection to the society. There is a well-founded belief that somebody who is sent to prison will be rehabilitated because prisons nowadays are intended to rehabilitate offenders.

Courts are advised not to appear to be angry. Courts should not be angry. That is why Mr. Mahase spoke correctly about the need that justice means a mixture of certain aspects with mercy. Mercy is an aspect of justice. But sentences must be balanced against factors that I have spoken about including this what I have called the attitude of the public towards sentences that the Courts impose.

To reiterate an important consideration is that the Courts are dealing with a very sensitive public. It is that community which will be sensitive to a situation where a known killer is on the loose. The public will for example question seeing somebody who has killed being released on bail on a second

week after his arrest. Indeed it has got a right to question decisions of the Courts in cases like that. And a society that behaves like that behaves within its rights to question why courts are doing certain things because it has got a right to make such a comment. That is why the Courts rightly are always mindful of that the public's views. This is different from the public dictating what punishments to impose

I decide to be lenient to this Accused person. Accused please stand up. That is why I sentence you to a period of three years imprisonment and that term of imprisonment will be without option of a fine. That is my order. You understand Sir? That is all.

A handwritten signature in black ink, appearing to be 'T. Monapathi', written over a horizontal line.

T. Monapathi
Judge