

C of A(CRI) No. 11/07

**IN THE COURT OF APPEAL OF LESOTHO**

In the matter between:

**REX**  
**v**  
**MOKOALELI THAPELI**

**CORAM:**

Steyn, P  
Grosskopf, J A  
Melunsky, JA

**JUDGMENT**

**Summary**

*Appellant convicted of murder - Extenuating circumstances having been found he was sentenced to 4 years imprisonment by the High Court - On appeal it was contended that the provocation that prompted the unlawful conduct of the appellant was so severe and his passions so inflamed that he could not have formed the intention to kill the deceased.*

*Held: Having regard inter alia to the extensive and protracted assault on the person of the deceased by the appellant and his co-accused, the Crown had established that the appellant had indeed intended to kill the deceased - accordingly a verdict of culpable homicide would be inappropriate in all the circumstances. Appeal against the conviction on a charge of murder dismissed and the conviction confirmed.*

**STEYN, P**

[1] This appeal is limited to a determination as to whether the appellant was correctly convicted of murder. On his behalf it was submitted that on the evidence before it the High Court should only have convicted him of culpable homicide.

[2] The facts are the following: The appellant and five others were charged in the High Court with the murder of one Thabiso Shelile Rantsitile. It was alleged that on the 23<sup>rd</sup> of July 1996 and acting in

concert they had beaten, stoned and stabbed the deceased to death. All 6 of the accused were convicted and sentenced to 4 years imprisonment on the 31<sup>st</sup> of August 2007. Only the present appellant, who was accused No.1 in the court below, has appealed against his conviction. As indicated in para 1 above, he limited his appeal to the ground that the Crown had not proved that he had the requisite intention to kill the deceased. Therefore, although he had acted unlawfully he should only have been convicted of culpable homicide.

[3] The appellant is a farmer. It was submitted to, and accepted by the High Court, that a farmer's arable land is not generally available for communal grazing by other livestock owners; certainly not from the time planting takes place until harvesting. A breach of this embargo is regarded as a serious invasion of rights and can, in addition to other penalties, result in the impounding of such stock as is found to be grazing unlawfully.

[4] For purposes of this appeal it has to be accepted that the deceased had in contravention of this practice, allowed his stock to graze on fields planted by the appellant. It was when the deceased was confronted by the appellant and his co-accused that a serious confrontation took place which culminated in the death of the deceased.

[5] There is a dispute as to how the confrontation started and how it unfolded. The court *a quo* in a carefully reasoned judgment dismissed the contention advanced by appellant's counsel that the appellant's assault on the deceased was legitimate because he acted in self-defence. She (the learned trial Judge) pointed to the fact that the appellant himself conceded that he threw many stones at the deceased and that the appellant's version of the events painting a picture consistent with self-defence could not reasonably possibly be true. She says the following in this regard:

"I must say that I find this evidence highly improbable but false beyond doubt. In my view, a normal human being cannot manage to continue advancing towards an opponent and struggle over a stick with him yet his legs have been broken. The only inference I can draw from this admission that the deceased's legs broke during the fight is that this happened after he had already been dispossessed of his stick and had fallen down."

Indeed the evidence established that the deceased had been brutally assaulted not only with sticks and stones but also with a sword which was handed in to the police by the appellant. The injuries sustained by the deceased included two broken legs, four open wounds on the abdomen, and open wounds on the head, the left arm as well as a broken hand.

[6] The High Court also found:

"that it is also surprising that the deceased who was purportedly the aggressor according to A1 and D.W.7 did not manage to hurt him at all yet, he ended up not only with numerous wounds including broken limbs, but died as a result of the seriousness of the injuries. It was also D.W.7's evidence that A1 only threw one stone at the deceased yet A1 himself testified that he hit him with many stones. I accordingly find their evidence as not only highly improbable, but false beyond

doubt."

[7] The learned Judge, correctly in my view, also held that the only inference to be drawn from all the facts was that the appellant and his co-accused had acted with the intention to kill the deceased. Her reasoning in this regard is recorded in the judgment in the following terms:

"With regard to the question whether they acted with the intention to kill the deceased even assuming that at the time they assaulted him the accused did not possess the direct intention to kill the deceased, it is my view that they ought to have seen that their actions might result in his death but they went ahead with the assault, this possibility notwithstanding. In other words it is my finding that they reconciled themselves with the ensuing result and were reckless whether death would occur or not. See the case of **R v Mahloko Mahloko CRI/T/6/03** and that of **S v Malinga & Ors 1963 (1) SA 692 AT 695** quoted therein."

[8] I find this reasoning cogent and fully supported by the evidence. The appellant was correctly found guilty of murder and his appeal against his conviction is dismissed. The conviction is confirmed.

[9] There is no appeal or cross-appeal on sentence. It follows that the appeal is dismissed.

J.H. STEYN  
President of the Court of Appeal

I CONCUR:

F.H. GRASSKOF  
Judge of Appeal

I CONCUR:

L.S. MELUNSKY  
Judge of Appeal

Delivered on the 11<sup>th</sup> of April 2008

FOR APPELLANT: Adv L.A. Mofilikoane

FOR THE CROWN: Adv M.M. Tlali