

IN THE COURT OF APPEAL OF LESOTHO

Held at Maseru

C of A (CRI) 3/08

In the matter between:

**DIRECTOR OF PUBLIC
PROSECUTIONS**

APPELLANT

and

**NTABEJANE KERESIANE
RESPONDENT**

FIRST

**KHONTSI KERESIANE
RESPONDENT**

SECOND

**SEHLOHO HLONGOANE
RESPONDENT**

THIRD

CORAM: RAMODIBEDI, P

SMALBERGER, JA

MOSITO, AJA

Heard : 1 October 2008

Delivered : 17 October 2008

Summary

Criminal law- Murder charge - Respondents convicted of culpable homicide on their own plea - Sentence - Respondents sentenced to three (3) years imprisonment two and half (2½) years of which suspended for three (3) years - In addition, respondents sentenced to community service for a period of six (6) months - On appeal the appellant taking the point that the trial Judge erred in treating culpable homicide as a minor offence and thereby ordering community service in addition to custodial sentence - The Criminal Procedure and Evidence (Amendment) Act 1998 on community service interpreted.

JUDGMENT

RAMODIBEDI, P

[1] On 1 December 2000, and at Ha Belo in the district of Butha-Buthe, Mamoeketsi Thuube (“Mamoeketsi”) had the indiscretion to surreptitiously bring her boyfriend Tsetsetso Motsamai (“the deceased”) into the home of her maternal cousins, namely, the first and second respondents, who are siblings, without their consent. Astonishingly, as it turned out, she proceeded to bathe while the deceased watched her from the comfort of a chair in the same room. As fate would have it, the first respondent burst into the house at that point. Admittedly incensed, he enquired from the deceased what was

going on, striking him with a stick even before the latter could respond.

[2] Pursuant to the attack on him by the first respondent, the deceased took to his heels, with a whole crowd of villagers chasing him amidst a hue and cry. In the process, he was severely assaulted. He sadly died on the spot. It is common cause that the respondents took part in the unlawful assault on the deceased. The post-mortem report revealed that the deceased's cause of death was due to "several bodily injuries including intracranial (haemorrhage) injuries".

[3] Consequent upon this incident, the respondents were charged with the murder of the deceased. Upon arraignment, they all pleaded guilty to culpable homicide, a plea which was duly accepted by the Crown. The trial court in turn returned a verdict of guilty of culpable homicide. The respondents were sentenced to three (3) years imprisonment two and half (2½) years of which were suspended for a period of six (6) months on condition that they were not found guilty of an offence involving violence to the person of another during the period of suspension. On all accounts then, so far so good. However,

and here comes the parting of ways between the protagonists in this case, the court *a quo* did not stop there. It additionally imposed community service on the respondents for a period of six (6) months. It is this latter part of the sentence which is the subject matter of this appeal.

[4] The Crown is aggrieved by the trial court's imposition of community service following a conviction of culpable homicide. In a nutshell, the Crown contends that the trial court erroneously treated culpable homicide as a minor offence punishable by community service.

[5] It will thus be seen from the foregoing that the real question for determination in this appeal is the appropriateness or otherwise of community service following a conviction of culpable homicide involving an assault. Put differently, is culpable homicide a minor offence?

[6] It is convenient to pause at the outset and observe that community service was introduced in this country by the Criminal Procedure and Evidence (Amendment) Act 1998 ("the Act"). This Act confers jurisdiction on the courts to impose

community service as an option to custodial sentences.

Section 4 is decisive in the determination of the instant matter.

It amends section 314 of the principal law by inserting a new

section 314A in the following terms:-

“314A (1) Where a person is convicted of a minor offence or any other offence other than any of the offences specified in Schedule IV, the court may, instead of sentencing that person to imprisonment or detention, suspend the sentence and order that person to perform community service.

(2) Where the court wishes to impose the punishment of community service, it shall proceed in accordance with the Rules made by the Chief Justice under Section 320A.”

As can be seen, the section prescribes in plain and unambiguous language that community service applies to

minor offences. By simple analogy, community service is decidedly inappropriate for serious offences.

[7] For the avoidance of doubt, the term "minor offence" is defined in section 2 of the Act as an offence for which the court may pass sentence not exceeding 18 months with or without an option of a fine and which in the opinion of the presiding officer was committed under circumstances which mitigate the offence.

[8] In casu, it will be remembered that the trial court imposed a sentence of three (3) years imprisonment, albeit a partly suspended sentence. Since such a sentence was patently beyond the 18 months sentence stipulated in section 2 of the Act, it did not qualify as a minor offence in the first place even on the trial court's own approach. Nor can anyone seriously question the fact that in principle culpable homicide attracts a heavier maximum sentence than the 18 months imprisonment stipulated in section 2 of the Act. But more fundamentally, the seriousness or otherwise of the offence of culpable homicide may be gauged from the fact that it is essentially the unlawful

and negligent killing of a human being. It is a competent verdict on a charge of murder. Needless to stress that murder is itself a Schedule IV offence for which community service is expressly excluded.

[9] It is indeed correct to say that courts of law believe in the sanctity of human life. Section 4(1) of the Constitution of Lesotho ranks the right to life in the forefront of all fundamental human rights and freedoms. That in itself is a measure of the seriousness of offences relating to unlawful killing of human beings such as culpable homicide. Viewed in

this context, I have not the slightest doubt that in enacting sections 2 and 4 of the Act, the Legislature did not intend to include culpable homicide as a minor offence. On the contrary, I have come to a concluded view that this offence is in fact a serious offence for which community service is decidedly inappropriate. That then is the short answer to the question in this appeal.

[10] The result is that the appeal is upheld. The court *a quo's* order of community service imposed on the appellants is set

aside. This leaves each respondent to serve an effective six (6) months imprisonment.

M.M. RAMODIBEDI

PRESIDENT OF THE COURT OF APPEAL

I agree: _____

J.W. SMALBERGER

JUSTICE OF APPEAL

I agree: _____

K.E. MOSITO

ACTING JUSTICE OF APPEAL

For Appellants : Adv A.T. Fuma

For Respondents: Adv C.J. Lephuthing