IN THE COURT OF APPEAL OF LESOTHO

HELD AT MASERU

C OF A (CRI) NO. 3/2013

In the Matter Between

NKOLI MALIA **APPELLANT**

And

REX **RESPONDENT**

AND IN THE CROSS APPEAL OF:

REX **APPELLANT**

And

NKOLI MALIA **RESPONDENT**

CORAM: N. MAJARA CJ

P. MUSONDA AJA

M. CHINHENGO AJA

HEARD : 20th JULY 2015

DELIVERED : 7th AUGUST 2015

SUMMARY

Criminal Law – Murder – Appeal and Cross-Appeal against sentence – Factors to be taken into account in passing sentence – Court committing a misdirection in finding appellant guilty of murder with legal intent instead of direct intent having rejected his version as false – Sentence partly influenced by incorrect finding that appellant guilty of murder on the basis of dolus eventualis – Trial Court failing to attach sufficient weight to the seriousness of the offence vis-a-vis the other factors in passing sentence – Sentence of eight (8) years imprisonment set aside and replaced with that of twelve (12) years imprisonment.

JUDGMENT

MAJARA CJ

[1] The appellant was charged before the High Court with murder, attempted murder and assault with intent to do grievous bodily harm. He pleaded not guilty to all the three charges. He was however convicted on the murder charge on the basis of *dolus eventualis* and on the charge of assault with intent to cause grievous bodily harm. On the charge of attempted murder he was found guilty of the lesser offence of assault. He was sentenced to 8 years imprisonment on the murder charge, 3 years imprisonment on the charge of assault with intent to cause grievous bodily harm and 1year imprisonment on the assault charge. The sentences of 3 years and 1year imprisonment were ordered to run concurrently with the sentence of 8 years imprisonment. He is thus serving an effective sentence of 8 years imprisonment.

[2] This apparently is an appeal against the effective sentence of eight (8) years imprisonment because the appellant framed his grounds of appeal as follows-

> *"(a)… the Court a quo misdirected itself by imposing an eight (8) years custodial sentence regard being had among others, to the fact that that the appellant was a first offender and had paid compensation to the deceased next of kin;*
>
> *(b)… the learned judge a quo ought not to have meted sentence of eight (8) years imprisonment as appellant had shown remorse; and*
>
> *(c)… the learned judge a quo failed to consider all the mitigating factors in the matter and that an eight (8) years term of imprisonment was harsh and shocking."*

[3] In his written and oral submissions the appellant only challenges the sentence on the murder charge to the exclusion of the sentences on the other charges. He did not advance any argument for the reduction of sentence on each of the other charges. He targeted specifically and exclusively the sentence for murder. In substance therefore the appeal is against the sentence on the charge of murder only. I have considered the appeal on this basis.

1. The Crown filed a cross-appeal and set out the grounds thereof as follows –

> *(a) … the trial judge misdirected herself by holding that the accused was guilty of murder on the basis of dolus eventualis as opposed to dolus directus; and*

> *(b) … the sentence of eight (8) years meted by the trial court was shockingly lenient in the circumstances of this case."*

[4] Again the Crown also did not make it entirely clear that it was dissatisfied only with the sentence on the murder charge. Its submissions were restricted to the sentence on this charge thereby giving the impression that what was intended was to challenge the sentence on the murder charge only. I must observe that where a person has been sentenced on multiple counts and wishes to challenge the sentence on each count, it is incumbent on him to show why the sentence on each count must be reduced or quashed, as the case may be. It is impermissible to attack only the effective sentence arising from multiple convictions.

[5] In the indictment, it was alleged that on or about the 12 December 2008 at or near Lesotho Bank Tower in Maseru, the accused unlawfully and intentionally killed one **Mosa Lemphane** (the deceased) and that on the same day, he unlawfully and with intent to kill fired shots at **Joel Lerotholi, Letsie Masupha, Metsing Ntaha, Talima Thaabe, Keketso Phailana** and **Tumelo Malia** who were all travelling in a vehicle bearing registration number AR 602. It is apposite to mention at this stage that the said vehicle belonged to the appellant and that he had been looking for it on that fateful night. It is further that on the same day, the appellant unlawfully assaulted one **Potlaki Pelesa** by hitting him with the butt of a gun on the head with intention of causing him grievous bodily harm.

[6] A summary of the facts leading up to the death of the deceased and the injury of PW5 Potlaki Pelesa is that on the night in question, the appellant noticed that one of his fleet of taxis was missing from where it had earlier been parked by its driver. Notably he did not make a report to the police but went out to look for it. He found it parked next to Lesotho Bank along Kingsway road. He drove up to the taxi and upon noticing the appellant, the driver of the taxi, Tumelo Malia, who is the appellant's son, immediately drove off at a high speed and into the Shoprite parking lot. Together with the other occupants, the above named persons hurriedly disembarked from the vehicle and ran helter-skelter in different directions.

[7] The appellant, who happens to be a former military officer, fired warning shots. Two of the young men stopped and surrendered. They were the deceased and PW5 who is also the complainant in count 3. The appellant ordered them to get into the vehicle he was driving and when they both attempted to sit in the back seat, he ordered one of them to sit with him in the front. The deceased obliged. He then drove out of the parking lot and took a turn into Kingsway Road. Along the way, somewhere in the vicinity of the Lesotho Bank Tower, the appellant fired a shot at the deceased on the right temple and the bullet went through his head and exited on the left side. From there the appellant drove the vehicle to Queen II hospital where the deceased was certified dead a few minutes after their arrival. All this is common cause.

The real dispute in the murder charge is with respect to how the fatal shooting happened.

[8] According to the evidence of PW 5 who was the only other passenger in the vehicle, before the appellant shot the deceased, he uttered the words, *"Tumelo ke Satane",* loosely translated as "*Tumelo is a devil*". The said Tumelo is the appellant's son and the one who had been driving the allegedly stolen vehicle that the appellant had found missing from his home. Tumelo gave evidence as PW6. PW5 testified that after he was shot the deceased slumped sideways on to the appellant and the latter shoved him back with his elbow and said, "*Ke mo bolaile*", loosely translated, "*I have killed him*".

[9] This testimony was disputed by the appellant whose version was that, when he and the two young men were travelling up Kingsway Road with him intending to go to the main police Charge Office to report the theft of his vehicle, the deceased suddenly grabbed the steering wheel and the two of them struggled for control and in the process, the firearm that he was still holding in his right hand went off by accident and the bullet hit the deceased. He added that he decided there and then to drive to the hospital so that the deceased could be attended to. The deceased was however declared dead a short while after their arrival thereat.

[10] The rest of the evidence with respect to this count was in relation to the nature of the injuries that the deceased sustained

namely the entry and exit wounds, as well as the position of the firearm at the time the gun went off. Relevant testimonies in this respect were given by two medical practitioners and fire-arms examiner. Since it is not disputed that the injuries were caused by the gunshot from the appellant's gun, those testimonies do not really concern this Court for purposes of the issues that have been taken up on appeal and cross-appeal. It is however apposite to state that the defence evidence consisted of the sole testimony of the appellant.

[11] As earlier stated, the appellant was also convicted on the lesser verdict of assault on the attempted murder charge and was found guilty on the charge of assault with intent to cause grievous bodily harm to PW5, Potlaki Pelesa, who he caught with the deceased in the basement parking area at Shoprite. In this connection, the court *a quo* based its finding on PW5's evidence to the effect that after they disembarked from the taxi and were running away, the appellant came after them and fired some shots from his firearm. The deceased then suggested that they should stop running lest they got shot for something they did not know. They stopped and the appellant came up to them. At that time, the deceased had his hands up.

[12] According to PW5, the next thing that he saw was the deceased, Mosa, going down after the appellant went to him although he did not see what had been done to him. The appellant then came for him as well and he also went down. A

short while thereafter he noticed that he was bleeding. The witness was however insistent that he had no idea what the appellant had done to him, that is to say, whether the appellant had shot him or hit him with the firearm but added that at that time he had heard a gun report. He said that when they arrived at the hospital, the two wounds he had sustained were sutured by a doctor.

[13] The unchallenged evidence of PW7, the medical doctor, is significant in the determination of this court. His evidence corroborated that of PW5 that indeed he did examine him on that fateful day and observed two wounds on his forehead that necessitated suturing. The trial court accepted this evidence.

[14] It is my view that the court below cannot be faulted on its finding in this regard. The judge and assessor had the opportunity to hear the evidence and to observe all the witnesses as they gave their respective testimonies. At paragraph 60 of her judgment, the learned judge stated as follows –

> *"It is hard to understand how the accused could not have seen PW5 bleeding in view of the evidence presented so far. There is no doubt that PW5 was injured on the 12th December, 2008. It would be reasonable to ask therefore, whether PW5 was injured by the accused or not. It is to be noted that the accused in his evidence showed that the two (2), PW5 and the Mosa* (sic) *were never hostile. The accused even suggested that when he was accosting them* (sic) *to his van, they wanted to carry their six (6) pack of beer with them but he refused. Even though the accused denies it, I am satisfied that PW5 was injured by the hand of the accused hence the injuries*

> *as evidenced by Exh "A", which was the medical form handed in as an exhibit by PW7, the doctor who had attended PW5. There cannot be any big mystery there because, before the accused appeared on the scene, PW5 was fine. Alarmingly as soon as he came into contact with the accused, he sustained two (2) lacerations on the occipital area. I find therefore, that the accused is the one who assaulted PW5."*

[15] At any rate, I have already shown that this is an appeal and cross-appeal against the sentence imposed by the Court *a quo*. Thus, the real issue for determination before this Court is whether in passing the effective sentence of 8 years imprisonment and ordering that the sentences should run concurrently, the trial court misdirected itself. If the answer is in the affirmative, the second issue for inquiry is whether the misdirection was of so gross a nature as to warrant interference by this Court.

[16] It is apposite to state at this stage that sentence is a matter that predominantly lies within the discretion of the trial court and that the appellate court will normally be chary to interfere with its sentence. However, where it is clearly established that there was a misdirection resulting in a miscarriage of justice, then the appellate court is duty bound to interfere with the sentence, set it aside and substitute it with an appropriate one.[1]

[17] Over and above this principle, the Court of Appeal is clothed with statutory powers to interfere with a sentence if is of the view

[1] Serame Linake v Rex; Rex v Serame Linake C of A (CRI) NO. 08/10

that a different one should have been passed. [2] The relevant provision in this regard reads as follows-

> *"On an appeal against sentence, the Court shall, if it thinks that a different sentence should have been passed, quash the sentence passed at the trial and pass such other sentence warranted in law (whether more or less severe) in substitution thereof* (sic) *as it thinks ought to have been passed, and in any other case shall dismiss the appeal."*

[18] In this appeal, **Adv Shale** contended that the sentence of the trial court constituted a misdirection for the reason that the court did not exercise its discretion judiciously by disregarding or paying little attention to the personal circumstances of the appellant and failing to consider amongst others, the age of the appellant, the fact that he is a first time offender and that he is the sole breadwinner in the family. Further that it failed to pay adequate regard to the 'extreme remorse' shown by the appellant by compensating the family of the deceased with over one hundred thousand Maloti (M100,000.00) and having taken steps to prevent the death of the deceased by rushing him to hospital after the shooting. Counsel for the appellant concluded by submitting that 'the learned Judge *a quo* imposed a sentence that is too harsh and gruesome in the circumstances of this case'.

[19] In support of his submissions **Adv Shale** made reference to the case of **Mokone v R** [3] in which this Court set aside the sentence of 9 years imprisonment that had been imposed by the trial court and substituted it with that of 4 years. In that case, the

[2] Section 9 (4) of the Court of Appeal Act of 1978
[3] Molupe Mokone v Rex C of A (CRI) No. 5/10

Appeal Court found that the trial Court had failed to attach sufficient weight to the appellant's personal circumstances and to the long delay of 17 years in bringing the appellant to trial, itself a denial of his constitutional right to a speedy trial and the fact that at the time he committed the murder, the appellant had just passed the threshold of boyhood in that he had just turned eighteen years of age. I will come back to these issues.

[20] On the other hand, the cross-appeal is premised on the grounds that the trial Judge misdirected herself by finding that the appellant was guilty of murder on the basis of *dolus eventualis* as opposed to *dolus directus* and that the 8 years imprisonment is shockingly lenient in the circumstances of this case.

[21] To this end, **Adv Fuma**, who appeared for the Crown, submitted that in sentencing, the court was enjoined to have regard to the triad consisting of the offence, the offender and the interests of society. Needless to mention, this submission is correct as this principle has been reiterated in a plethora of cases both within and beyond this jurisdiction. Thus, in one of the oft-quoted cases, **S v Zinn**[4]**,** Rumpff, J instructively stated:

> *"I think that this conclusion that the learned JUDGE-PRESIDENT is not merely the strongly-worded but justified condemnation of the indignant censor, but rather a hyperbole, exaggerating beyond permissible limits the nature and effect of the crime, and*

[4] 1969 (2) SA 537 (A)

> *minimising the personality of the offender and the effect that punishment might have on the offender. The over-emphasis of the effect of the appellant's crimes and the underestimation of the person of the appellant, constitutes, in my view, a misdirection and in the result sentence should be set aside."*

[22] These remarks indeed encapsulate not only the standard guidelines applied in sentencing but the very principle of considering the triad of factors as already mentioned above with a proper balance having to be struck between them. Indeed to do otherwise would create an imbalance that is weighed too favourably towards the one to the possible and unfair trivialisation of the other two which can in turn constitute a travesty of justice.

[23] Coming back to the present case, it is indeed correct that in her judgment the learned Judge did make a general statement when considering the personal circumstances of the appellant viz; *'the court considered the factors pleaded in mitigation in the accused' favour'.* She further stated that the court was 'alive to the fact that the accused showed remorse to the extent that he paid compensation to the family of the deceased as a way of "raising the head" in conformity with the Sesotho customary practice and adding that this was commendable indeed.

[24] In my view, while the learned Judge cannot be faulted for having considered these factors, albeit she seems to have paid a cursory attention to them by not being specific in reference to them, the difficulty that arises is that she did not consider all the relevant factors. It is my view that personal factors do not only

mean the ones raised in mitigation but all the other relevant factors that will assist the court to arrive at a fair and just sentence, all circumstances considered.

[25] Over and above this, there is another crucial aspect that needs consideration by this Court, which was also raised by **Adv Fuma** with respect to the trial court's finding that the appellant is found guilty of murder on the basis of *dolus eventualis.* It was his submission that this finding constituted a misdirection on the part of the Court and that it ought to have found the appellant guilty of murder with direct intent.

[26] The distinction between direct intention (dolus directus) and indirect intention (dolus eventualis) is best summed up thus: *'dolus directus comprises a person's directing his will towards achieving the prohibited result or towards performing the prohibited act. This result or act is his goal'*.[5] Whereas *dolus eventualis* has best been summed up in these terms: a person *'subjectively foresees the possibility that his prohibited result may flow from his act, and reconciles himself to this possibility'*.[6] In other words, in the case of *dolus eventualis,* while the actual result may not have been the main goal, the possibility of the result ensuing is foreseen and the person reconciles himself to this possibility.

[27] Coming back to the judgment of the trial Judge, it is significant to note that she unequivocally rejected the version of

[5] Snyman; Criminal Law, 2nd Edition; Butterworths p197
[6] Snyman (supra) p 198

the appellant insofar as he testified that he accidentally shot the deceased whilst they were wrestling for the steering wheel. I find no fault with this finding, regard being had to the factors that the learned judge took into account in reaching it. Briefly, it is common cause that the two young passengers had meekly surrendered and boarded the appellant's vehicle without any resistance. And yet the appellant, a well-trained former soldier, who was well aware of the hazards of his actions would want us to believe that he thought nothing of holding a loaded firearm in his right hand while driving the vehicle with other occupants on board despite the fact that he was facing no resistance and or danger from them. The trial Judge accepted the evidence of PW5 that the appellant intentionally pulled the trigger and shot the deceased on a most delicate part of the body and at close range.

[28] In her own words, she stated as follows in relevant parts of paragraph 80-81 of her judgment:

> *"**I also find as false the accused's version of events**. It is simply inexplainable* (sic) *how any one would wrench the steering wheel of a vehicle driven by someone who is displaying a firearm. The accused was driving with one hand while holding the firearm in another* (sic) *hand. This means that the gun was visible for all to see. How could the same Mosa, who decided to stop immediately as the accused shot behind them to avoid being injured over something they did not know, do soothing* (sic) *so brazen. The same Mosa who had raised his hands in surrender from the basement, suddenly is so brave as to grab the steering wheel of a moving car. **The accused's story is so incredible that it rings false. Put differently it cannot be reasonably possibly true that the deceased would have risked his life by grabbing the steering wheel away from the accused who was also***

> ***holding on to a gun***. *The accused was angry at his son's behaviour and he simply took it out on the ones he caught. He was well aware all along that it was his son who had taken his taxi without his permission."* (my emphasis)

[29] The same finding was reiterated at paragraph 82 where the Judge stated, *'I therefore disbelieve the accused's version of events as not being reasonably possibly true.'* This, in my view, was a finding properly made after a careful analysis of the evidence of all the witnesses. I am satisfied that there is no basis to find fault with it as it was premised on a well thought out analysis of the evidence. However, the problem arises with the succeeding paragraphs of the judgment which cannot be reconciled with the correct finding of the court in its well-reasoned rejection of the appellant's version. Unfortunately this caused some confusion because she then turned around and made the irreconcilable finding in parts of paragraph 84 of her judgment, as follows -

> *"The accused in his defence attempted to shift the blame to the deceased by going to great lengths in showing us how he had wrenched the steering wheel from him and thereby causing his own death. Even if he was to be believed, the accused was reckless in driving around with a corked gun.* ***He must have foreseen that in doing so death would occur just as it did. He was therefore, reckless whether death did result or not since he did not bother to secure his gun after he left the basement area and also knowing that he had no place to put it away safely.... I believe that he is relegating his contribution to negligence. He was not merely negligent, he was infact reckless.*** (My emphasis)

[30] Erroneously in my view, it is on basis of this reasoning that the court returned a verdict of guilty of murder on the basis of

dolus eventualis. While it cannot be disputed that by his conduct the entire time while he was driving his vehicle with the two young men inside, especially with the deceased sitting right next to him, the appellant was indeed reckless, this factor should not have been conflated with the fact of the actual and intentional shooting that ensued over and above his reckless conduct in the way he was handling a loaded firearm. In my opinion, this is where the confusion arises. The appellant was to be properly censured for such recklessness if the shot had indeed rung off by accident. However, as a matter of fact, his act went beyond mere recklessness as he unlawfully and intentionally shot a defenceless deceased who had earlier surrendered and posed no threat and or danger to him. I am therefore persuaded that the trial court's finding that the accused did not have the direct intention to commit murder was a misdirection and it ought to be set aside and substituted with a finding that of murder with direct intent.

[31] I am of the further view that this incorrect finding had a direct bearing on the sentence of the court aside from the other factors that have been brought to the attention of this Court. It has been emphasised time and again that a distinction must be drawn between murder with direct intent, murder without direct intent and murder with legal intent as well as culpable homicide and they most certainly cannot be treated similarly. [7] In addition, the fact whether or not the act might have been premeditated, which **Adv Shale** contended was essential, is not relevant for

[7] Molikeng Ranthithi

purpose of determining direct or indirect intention. Whilst premeditation may indicate the existence of direct intention, it is not an essential element of murder but rather, an aggravating factor in a murder conviction.

[32] Coming back to the sentence, **Adv Fuma** properly submitted that murder is a capital offence. Indeed taking another person's life is one of the most serious offences. However, one of the most worrying phenomena in this country is that this heinous offence is on the rise. People are murdered for the flimsiest of excuses, or for no reason whatsoever. The Courts have decried this culture of impunity for many years to-date but it does not seem to abate. It is a culture that not only needs to be discouraged but also deserves harsh punishment. In this regard, the remarks of the learned **Ramodibedi P** in ***Serame Linake (supra)*** where he reiterated the remarks in *Ranthithi v Rex*[8] case are very instructive. Therein the court stated thus:

> *"As regards the consideration relating to the crime committed, there can be no doubt that murder is a very serious offence indeed. This Court believes in the sanctity of human life.* ***It is in the interests of society that people convicted of murder be put away for a long time****. This is so in order to protect society itself against such people. There must also be a distinction drawn between sentences for murder and sentences for culpable homicide. Viewed in this way, I accept that the sentences in this case, ranging as they do from "a sentence to a period until the rising of the court" in respect of the third, sixth and eighth respondents, to an effective sentence of 4 years imprisonment in respect of the second respondent, are woefully inadequate for a murder conviction in the circumstances of the case. Such sentences in my view amount to a travesty of justice."* (emphasis mine).

[8] Ranthithi v Rex

[33] By a similar analogy and as was stated by this Court in the case of ***Serame Linake,*** I am of the opinion that the trial court did not pay sufficient weight, not just to the circumstances of the appellant but also the offence and the interests of society. Firstly, the appellant is a trained former soldier. He shot a defenceless young man on the temple at close range. He had recovered his missing vehicle which was still in one piece. The young men had surrendered without any resistance. The appellant allowed his anger get the better of him, which certainly runs contrary to his professional training. He had had ample opportunity to cool down after he found his missing taxi and having captured the young men and taking them in his custody.

[34] On the other hand, the appellant is indeed a first offender at the age of forty years which means he stands a good chance of being rehabilitated. He is also the sole breadwinner for his family, and had paid the amount of compensation in no small amount to the family of the deceased. Whether or not this was prompted by the institution of a civil case against him, as elsewhere stated in the record of proceedings, is not really material. He also drove the deceased to the hospital immediately after the shooting. And he faithfully attended his trial to its finality.

[35] It goes without saying that the appellant unnecessarily took away the life of a young man whose family harboured hopes of seeing him grow to become his own man and possibly have a family of his own and make something of himself. Their loved one

has been taken away from them for good while those of the appellant will still have the opportunity to visit him while in prison and to eventually reunite with him once he finishes serving his sentence.

[36] Taking into account all the above mentioned factors, it is my view that the sentence of eight years imprisonment on the murder charge is insufficient and so lenient as to induce a sense of shock when all factors are weighed against each other and a proper balance is struck between all of them.

[37] Thus, the case of ***Mokone (supra)*** on which **Adv Shale** sought to rely in support of his submission that the sentence is too harsh and should be substituted with a lighter one, is clearly distinguishable and not applicable. I have already shown that in the case of ***Mokone*** the appellant had barely made it into adulthood. It had taken all of seventeen years for his case to be prosecuted to finality. The murder weapons used were of a lesser lethal nature and his family had earlier been attacked by the deceased, as the evidence established. All these cannot be said to apply to the present appellant.

[38] Lastly, it has been stated that an accused person cannot benefit twice from a single factor in the matter of sentence as a factor of mitigation and in extenuation as a factor tending to reduce his moral blameworthiness, as happened in this case. **In**

the Botswana case Gaonakala v The State (2006) 2 BLR485 it was held that:-

> *"It cannot be emphasized too strongly that the factors that go to establish the presence of extenuating circumstances may not generally be relied upon as grounds for mitigation of sentence. See Gabaakanye v The State [1994] B.L.R. 17, CA."*

[39] In the circumstances, it is my opinion that, bearing in mind the principles of sentencing and taking into account the now well established triad consisting of the crime, the offender and the interests of society, setting aside the sentence of 8 years imprisonment and substituting it with a tougher and more appropriate one would meet the justice of this case. I must also observe that the trial judge did not give reasons for ordering the sentences to run concurrently. The offences committed by the appellant were directed at three different persons each of whom became a victim of his criminal conduct. He must suffer appropriate punishment for these distinct acts of criminality. I would however not go so far as to completely disregard the accepted principle that, in matters of sentence, the trial judge has a wide discretion. In this case she had exercised her discretion, albeit without adequate justification, and determined that the sentences should run concurrently. I will not depart too far from that determination. I consider that one year of the sentence of three years should be ordered to run concurrently with the sentence on the murder charge. Similarly should the one year sentence on the assault charge.

[40] In the result, the appeal is dismissed and the cross-appeal upheld. The sentence of 8 years imposed on the appellant by the court a quo on Count 1 is set aside and substituted with an enhanced sentence of 12 years imprisonment. The sentences in Counts 2 and 3 are confirmed. The sentence of the court *a quo* is therefore altered to read –

> "**Count I (murder)**: the accused is sentenced to 12 years imprisonment.
>
> **Count 2 (assault)**: the accused is sentenced to 1 year imprisonment.
>
> **Count 3 (assault with intent to cause grievous bodily harm):** the accused is sentenced to 3 years imprisonment.
>
> One year in **Count 2** and 2 years in **Count 3** are ordered to run concurrently with the 8 years in **Count 1**.
>
> The accused shall therefore serve an effective sentence of 13 years imprisonment."

_____

N.J. MAJARA

CHIEF JUSTICE OF LESOTHO

I agree:

DR P. MUSONDA
JUSTICE OF APPEAL

I agree:

M. CHINHENGO
JUSTICE OF APPEAL

For the Appellant	**:**	Adv S. Shale
For the Crown	**:**	Adv T. Fuma