

IN THE HIGH COURT OF LESOTHO

In the matter of :

R E X

v

1. MAHLOMOLA SEMOLI
2. THABISO MORIA
3. MALEFETSANE THABANE

JUDGMENT AND SENTENCE

Filed by the Hon. Chief Justice, Mr. Justice
T.S. Cotran on the 1st day of October 1980

On the 24th September 1980, the three accused before me, who were indicted on a charge of murder, or alternatively with the crime of Public Violence, pleaded not guilty to the main charge, but guilty to the latter. Crown Counsel invited the Court to accept that plea. The evidence as disclosed by the depositions at the Preparatory Examination is contradictory and unsatisfactory, as it usually is when a multitude of people are involved in a communal fight. Furthermore all the witnesses appear to be supporters of one faction and the possibility of bias cannot be excluded. After hearing further argument I was satisfied that the subjective intent to kill was difficult of proof. The Court accepted their pleas of guilty to the alternative charge. A1 was sentenced to four years imprisonment partly suspended, and A2 and A3 to three years imprisonment wholly suspended, in both instances for three years on condition that the accused be not convicted of an offence involving violence to the person during the period of suspension.

A resume of the facts, the Court comments thereon, and reasons for sentence were fed into tape which would not normally, unless there is an appeal, appear in print. An appeal is not contemplated. Counsels for the State and the Defence asked me to put these into writing so that they would bring the attention of the administrative authorities to one kind of dispute that is rampant in the countryside which often leads to bloodshed or serious injury in the hope that more strenuous efforts are made to solve these disputes before they really get out of hand.

/From what

From what I understand from Crown Counsel's opening address and outline of the facts, and from the defence address, is that the two adjoining villages of Makopela and Makhoakhoeng in the district of Mafeteng are administered by two different chiefs who are at loggerheads and have been so for sometime. Neither the two chiefs nor their respective subjects, or so it seems, dispute the land boundaries between them. The cattle owned by the inhabitants of both villages however have to drink from one water hole which is situated within the land area of the other village with the result that cattle from that village are driven across lands belonging to inhabitants of the other to get to the water hole. Mr. Maqutu tells me that each village has more than a hundred inhabitants most of them, if not all, cattle owners. It seems to be agreed that there is no other way for the cattle to get to the water except by passing through land of the villagers within which the water hole is situate. Each cattle owner has a herdboys. To drive the cattle to the water each owner's herdboys apparently acts independently using the easiest and quickest route to the water. On their way to and fro the animals are all over land owned or cultivated by others. When the land is planted with maize or other crops these are damaged and when the land is reserved for pasture there is unlawful grazing. The customary legal position is that if there is damage to crops, or unlawful grazing, the offending cattle may be impounded. Owners do not like this and trouble ensues by them attempting, rightly or wrongly, to retrieve their cattle. One side says the cattle have not come to the hole to drink but also to eat, whilst the other side says they were only on or from their way to drink.

The trouble arose when the maize crops of one Khomonyane Makhanya were damaged. He sent his son Moeketsi (PWL) to impound the trespassing cattle. As they were being taken to the chief's pound their owners managed to release them and drove them off to their own homesteads. The chief of Makopela was informed and he sent a group of people, which included the deceased (Matale Tekane) to go to the other village to identify the owners of the offending cattle and also probably to sieze them. A battle ensued involving some 30 persons on either side. In the melee the deceased received fatal injuries. The fight was a free for all. No one knows exactly who caused deceased's death. All what we know is that A1, A2 and A3 were on the side

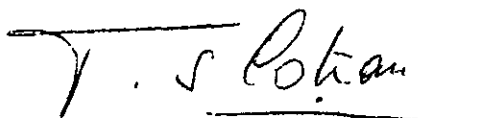
/of the group

of the group who owned the cattle.

It is apparently not the first time that blood had been shed. I think it will go on, unless that is, the chiefs of both villages meet to agree on a solution, if necessary, with the assistance and encouragement of the District Administrator or his aids. One hopes that common sense will prevail. I do have a suggestion. The chief and inhabitants of Makopela must recognise that cattle must drink, and the chief and inhabitants of Makhoakhoeng must recognise that unless there is strict control their cattle will damage the crops of their neighbours or unlawfully graze in their pasture. If this is the only issue that separates the parties, I think that the chief of Makopela should allow a passage, (or two passages), through his land, demarcated by means of large stones or other beacons at suitable intervals, to enable the cattle of the adjoining village to be driven through to the water at certain defined times of the day. He can also insist, and the chief of Makhoakhoeng and his subjects must accept that the former chaotic state of affairs where every herdboys did as he pleased cannot continue: owners must instruct their herdboys to assemble with the cattle at the specified time of the day, supervised by an overseer or other responsible person, to see the cattle through to the water and back. In this way the herdboys and the owners of the straying cattle can be easily identified. The cattle owner must accept, and expect, that impounding in these circumstances is justifiable and necessary and that amends would have to be made.

It is essential, in a situation like this, to impress upon the accused the seriousness with which the courts view the inability of their chiefs to find a way out of this impasse, and to warn them that a long period of imprisonment awaits them in case of repetition.

I have referred to the sentences I imposed earlier in this Judgment, and I need only say that A1 had two previous convictions of violence to the person, whilst A2 and A3 had none, and hence the differentiation. Incidentally all accused have spent nine months in custody awaiting their trial.



CHIEF JUSTICE
1st October, 1980

For Crown : Mr. Mdhluli

For Defence: Mr. Maqutu