

IN THE HIGH COURT OF LESOTHO

CRI/T/22/2004

In the matter of:

REX

And

RASELEBELI MABOEE	ACCUSED 1
ANTIPASE SELOMO	ACCUSED 2
THAPELO NTAOPANE	ACCUSED 3
NEO MACHERE	ACCUSED 4
MALEFANE THAMAE	ACCUSED 5
MOCHEMA MOCHEMA	ACCUSED 6
MONYANE MOKOATSI	ACCUSED 7
BULARE MOILOA	ACCUSED 8
MOHALE KHEMISI	ACCUSED 9

JUDGMENT

Delivered by the Honourable Mr Justice T. Nomngcongo

On the 26th October, 2009

Twelve persons were initially charged with one count of murder, six of robbery and one of malicious damage to property. One died prior to the commencement of the trial and two other turned Crown witnesses as accomplices and all charges against them.

The charges read as follows:

COUNT 1: MURDER

In that upon or about the 23rd of September 1998 and at or near Mafeteng Police Station, in the district of Mafeteng, the accused, acting in concert, one or the other or all of them, did unlawfully and intentionally kill Bonang Serabele, an adult female.

COUNT 2: ROBBERY

In that upon or about the 23rd of September 1998 and at or near Mafeteng Police Station, in the district of Mafeteng, the accused, acting in concert, one or the other or all of them did unlawfully and with the intention of inducing submission by Mendore Makaliana to the taking of the goods listed herein below (**The goods**), threaten and/or use force and violence and did thereafter take and steal **the goods**, the property of Mendoro Makaliana or in his lawful possession and did rob him of the same.

The goods: 1. SLR Rifle – 7007850
2. A.K-47 Rifle 9709P

3. M65 Rifle – 030955
4. M65 Rifle – 030997
5. LMG Rifle – 02430
6. Gallille Rifle – 78745A1
7. 9mm Victor Pistol – 5101650
8. 9mm Victor Pistol – 5101414
9. 7.65 Pistol – 734501
10. Ammunition

COUNT 3: ROBBERY

In that upon or about 23rd September 1998 and at or near Mafeteng Government Hospital, in the district of Mafeteng, the accused, acting in concert, one or the other or all of them, did unlawfully and with the intention of inducing submission by Tlali Mpholo and/or Moloi Sethinyane to the taking of various medical suppliers, threaten and/or Tlali Mpholo Sethinyane, or in their lawful possession and did rob them of the same.

COUNT 4: ROBBERY

In that upon or about 23rd of September 1998 and at or near Hotel Mafeteng, in the district of Mafeteng, the accused, acting in concert, one or the other or all of them, did unlawfully and with the intention of inducing submission by

Mabafokeng Mosoeunyane to the taking of various goods, including rice, meat, cheese, polony, margarine, beers, soft drinks and a dish, threaten and /or use force property of the Mabafokeng Mosoeunyane, or in her lawful possession and did rob her of the same.

COUNT 5: MALICIOUS DAMAGE TO PROPERTY

In that upon or about the 23rd of September 1998 and at or near Mafeteng, in the district of Mafeteng, the accused, acting in concert, one or the other or all of them, did unlawfully and intentionally damage 4 public telephones and /or telephone booths, the property of the post office and/or the Lesotho Government, by shooting said public telephones and/or booths, with intent thereby to injure said post office and/or Lesotho Government in their property.

COUNT 6: ROBBERY

In that upon or about the 23rd of September 1998 and at or near Lengoe's shop, Matelile, in the district of Mafeteng, the accused, acting in concert, one or the other or all of them, did unlawfully and with the intention of inducing submission by Ntebohelong Mahamo to the taking of beer and bread, threaten and/or use force and violence and did thereafter take and steal said goods, the property of

the Nteboheleng Mahamo, or in his lawful possession and did rob him of the same.

COUNT 7: ROBBERY

In that upon or about the 23rd of September 1998 and at or near Motsekuoa, in the district of Mafeteng, the accused, acting in concert, one or the other or all of them, did unlawfully and with the intention of inducing submission by Michael Khoboko to the taking of a 2.4 D Toyota Hilux motor vehicle, bearing registration letters and numbers X7431, threaten and/or use force and violence and did thereafter take and steal said motor vehicle, the property of Michael Khoboko, or in his lawful possession and did rob him of the same.

COUNT 8: ROBBERY

In that upon or about the 23rd of September 1998 and at or near Matelile Roads improvement Unit, in the district of Mafeteng, the accused, acting in concert, one or the other or all of them, did unlawfully and with intention of inducing submission by Tsietsi Ramothobi to the taking of the goods listed herein below **(the goods)**, threaten and/or use force and violence and did thereafter take and

steal **the goods**, the property of Tsietsi Ramothobi or in his lawful possession and did rob him of the same.

The Goods:

1. 2.4 D Toyota Hilux motor vehicle, bearing registration letters and numbers X 2925
2. 2.4 D Toyota Hilux motor vehicle, bearing registration letters and numbers X 7430.
3. Two hammers.
4. One star screwdriver.
5. One measuring tape
6. One wood chisel
7. One spider chisel
8. Petrol.
9. Diesel.

At the close of the Crown Case Counsel applied for the discharge of the accused. In the event accused 4 and accused 9 were discharged on all the charges and the

rest were discharged of one or other of the charges but it was found that these was a *prima facie* case against them in respect of the rest.

As indicated in my ruling on the application for discharge the immediate events leading to these charges began on the 23rd September 1998 when the Lesotho Defence Force (LDF) was attacked – this is not disputed by the crown – at its Makoanyane Barracks by members of what witnesses for both the crown and the defence referred to as either Boer soldiers, or SADC forces. Apparently the ensuing battle was fierce and members of LDF suffered heavy casualties forcing them to flee and scatter in different directions. Some of them latter re-grouped at a place called Ha Matala, some distance from the battle scene. This group included A3, Thapelo Ntaopane, A7 Monyane Mokoatsi, A8 Bulare Moiloa and Pw7 Corporal Matsoso who is one of the accomplice witnesses. Pw7 had earlier that day with other colleagues commandeered a 4 x4 Toyota Van from persons who were driving it. It would appear that this gave them the idea or wherewithal to secure arms and ammunition to fight back the attacking force. A plan was therefore hatched to drive to Mafeteng Police Station. The group agreed, according to Pw7. That they would get the arms peacefully or by force if need be. They then set out to Mafeteng in the commandeered vehicle.

On arrival at Mafeteng the group was led into the police yard by A7 who was then a sergeant and appeared to take charge of the operation. It seems that some of them took positions outside the yard. Their arrival caused quite a stir. They accosted the police at the gate and put their demand for guns. Other police hid and took such cover as they could. There were clearly frightened by this armed group. A7 was finally led to the officer commanding Major Makaliana (Pw2). They then informed him of their “request” for guns, to help their colleagues who they said were dying in Maseru at the hands of foreign forces. They said that was all they wanted and that they were not fighting the police but they made it clear that they would brook no resistance and they would kill if their request was not acceded to. They then demanded a gun, an AK47 then in the possession of lieutenant Sehlabo (now superintendent). Sehlabo resisted until she was called away and into the radio room where she managed to hide the rifle. She was followed there by these men who were insistent that she hand over her rifle to them. I may add here that Sehlabo testifies that on entering the radio room she found she was followed in by a number of people who tried to hide themselves in thereafter hearing a gun shot. Amongst such people was Pte. Selomo – A2.

It was in this atmosphere that Major Makaliana (Pw2) and the armourer, Tpr. Moilola, as well as D/sgt Lejaka were herded at gun-point to the armoury. I may point out that A1 who had been one of the people who first came into contact with the group from Maseru had been persuaded to change from his uniform into private clothes. He was a member of the police force stationed at Mafeteng. When the accused's group finally led the police into the armoury he joined hands with them. In the armoury various sorts of arms and ammunition were then packed with the active help of A1 who even remarked that the taking must be speeded up as these people were going far. He was to later join this group when it departed from Mafeteng. The arms and ammunition were taken to the waiting van that the group had come in.

In the confusion of that day the sequence of events is not very clear from the various accounts of the witness. It is clear however that A2 had earlier before the arrival of the group himself arrived at Mafeteng from Maseru where he had fled the fighting at the Makoanyane Barracks. He had arrived tired, dejected and hungry looking for a policewoman relative who worked at Mafeteng station. The police had taken pity on him, bought him food and listened to his tales of the war at Makoanyane. Then there is evidence that as soon as the group from Maseru

arrived all that changed; he immediately regained his spirits, jumped and enthusiastically joined them saying his colleagues had arrived. This is in sharp contrast with the evidence of Pw4, Sehlabo and another policewoman who testify, as indicated earlier, that A2 was among the people who fled into the radio room after a gun-shot or gunshots were heard. Pw4 even notes that A2 shouted that someone should stop. He was apparently pleading against the shooting. A voice then then shouted from outside that he should get out from among those people. He then went out followed by Sehlabo. I therefore doubt that he joined his colleagues immediately and with the enthusiasm that the crown would have us believe.

It is around this point that the deceased policewoman Serabele sustained gun shot injuries which proved to be fatal a few days later. Pleas to render assistance to the deceased were at first angrily resisted. A1 was amongst those who pleaded on her behalf. Eventually they relented and Pw4 took her to Mafeteng Hospital.

Having secured the arms at the police station the group, now joined by A1, proceeded to Mafeteng Hospital where at the suggestion of A8 it had been

decided to go and commandeer medical supplies. There three of the group alighted and demanded supplies. The protests of medical staff including Dr Thinyane who was apparently known to one of the group (A7) fell on deaf ears. Drips, bandages and other supplies were taken and removed to the waiting vehicle. As they left A7 shot at a public telephone booth. He gave the reason for that as cutting off communication between Mafeteng and Maseru where it was said those Boers might then have access to them. I must confess, I found this quite absurd considering that they had just left a hospital where there is no doubt there are telephone facilities.

From the hospital the group moved to Mafeteng hotel. At the hotel A7 and Pvt. Moilola went inside. They met staff at the hotel and at gun point demanded food and beverages. Mosilo Khula Pw9 testifies that they took food from the kitchen and proceeded to the bar where they took quantities of alcohol. They brought the latter themselves to the vehicle. Trays of food were carried by two ladies who brought them to vehicle. There the ladies demanded payment for the food but were told by A7 that the food would be paid for by the Prime Minister. The group then left but it was not before A7 had ordered one Pvt. Maphathe to shoot at the

public call box on the premises for the reason he had already advanced at the hospital.

From the hotel the group proceeded to the charge office to collect others who had been left there, more particularly Ntaopane (A3). Pw7 seems to think that A1 had also been left behind. This cannot be so because everyone else including A1 himself testified that he was at the hospital with the group that went there. There was also one Khemisi 9former A9) whom I have already discharged.

From here the group now drove to the place of one businessman Leuta whom Pvt. Maphathe described as a friend. Leuta gave them drinks whose nature was described. They drove back in the direction of Maseru.

At Motsekuoa the group met up with a rather large group of their colleagues who were milling about. They said they had been looking in vain for petrol. This group included, Pvt. Mochema (A6) Pvt. Mohau (Pw13), Pvt. Thamae (A5) Pvt. Motene and Pvt. Ramataboee (Pw8). There food was unloaded. It was apparently the food that had been obtained at Mafeteng hotel.

During this time there appeared a vehicle with Government registration numbers. It was inscribed with a logo RIU on its doors. It was a Toyota Hilux 2 x 4 Van. It had two occupants. A6 flagged down this vehicle. It stopped. A6 says he knew one of the occupants well. They engaged in a conversation. A6 intimated to the occupants that they needed the van. It appears that the matter of petrol was discussed at that point. A6 would have us believe that this was done quite amicably. Pw18, Mokhesi disagrees because he says the employees or RIU were not authorized to hand over their property to just anybody other than those authorized by RIU itself.

Be that as it may, the two occupants got out of the vehicle and A2 immediately took charge and took the driver's seat. A5 took the passenger's seat. The former occupants took to the van.

The group of soldiers that was found at Motsekuoa had arrived there in a number of vehicles and had stopped there to look for petrol, which as I said, they did not find. The occupants of the recently commandeered vehicle had apparently told them that there was petrol to be found at RIU camp at Matelile. A2 and Pvt. Seleke then joined a convoy of their vehicles some of which bore government

registration numbers to the said camp at Matelile. The rest of the group that had been to Mafeteng, did not join this convoy but rather proceeded in the direction of Maseru and finally stopped at Matsieng where other soldiers who had fled the fighting at Makoanyane had gathered.

The arrival of the convoy at the camp at Matelile caused such a stir and fright that the workers there started to flee. The visitors were all armed with rifles and the atmosphere prevailing in the country in those days must no doubt have added to their panic. All of the visitors then alighted from their vehicles. After that A2 tried to assure the fleeing workers that they (the soldiers) were not fighting and all they wanted was petrol and diesel. A number of these soldiers then entered the camp. These included A2, A5 and Pw8, Ramataboee. Others took positions outside the camp so that, as Pw8 put it, they should not be attacked from behind. The vehicles of the convoy were then filled up with either diesel or petrol. After this vehicles were demanded. It was pointed out that some of the vehicles were out of repair. Ultimately two vehicles were seized and driven away, with the convoy now proceeding back to Maseru. After this Pw8 and A5 drove to some place in Matelile where the latter said he had a relative. There Pw8 remained outside when A5 went into a café whence he came out with bread and drinks.

This is the case for the Crown. The case for the defence is not much different except for the explanations and justifications for their actions for that day. A1 agrees that he made common cause with the soldiers who arrived at Mafeteng police station demanding arms. He says he did so out of fear of these people especially as they had just shot one of his colleagues. But does one accompany those that he fears and leave behind the protection at least in numbers, of his own colleagues. It is not insignificant that Tpr. Moilola (Pw5) who also helped, at gun point, to load the arms and ammunition from his armoury did not join the group and no harm came to him. He returned to the police station without further incident. In my view therefore it is not true that he was induced by fear to join the soldiers but by his willingness to associate himself with their actions. The original plan had been to obtain not only arms but also medical supplies. This suited the paramedical training of A7, Pvt. Motkoatsi. See the evidence of A3 in this regard. Although A1 was not part of the original plans, when the group proceeded to Mafeteng hospital he could not have thought that they were popping in for a check-up. None of them had presented any symptoms of illness. He must have known and therefore by implication did know that they were going to get medical supplies. By remaining there and doing nothing he associated

himself with their actions. The same may be said about events at the Mafeteng hotel. The same cannot however be said about the shooting of public telephones, which appear to have been random, mischievous and spontaneous acts of A7 or at his instruction. Significantly the crown did not press for conviction of A1 on this count. A2 Antipas Selomo, presented a pathetic figure when he first arrived at Mafeteng police station. He was treated with sympathy by the police. When the soldiers arrived, I accept that he like the police ran for cover. He was in fact in hiding with the deceased policewoman Serabele. It was when they were running to the radio room that Serabele was shot. He came out of hiding after Serabele had been shot after he was told to go away from those people. Obviously it was somebody who knew him at that he was a soldier and not part of the Mafeteng police. It cannot be correct therefore that he enthusiastically joined his colleagues as soon as they arrived. But join them he did later because by the time the soldiers left Mafeteng police station he was even holding as AK47 rifle where he had none on arrival. He joined the group when they went to Mafeteng hospital which was raided for medical supplies and again when they went to Mafeteng hotel and raided it for food and drinks.

A3 was part of the original plan to proceed from Ha Matala to Mafeteng to get arms and by his own admission to get medical supplies. It is true that he did not ultimately join the group when they went to the hospital but I do not believe that it was because he was disassociating himself from their actions. If he was, he would not have rejoined them after their raid.

A7 and A8 played a leading role in the seizure of arms at gun-point at Mafeteng police station as well as the raids at the hospital and at the hotel. A7 specifically shot at or gave instruction to shoot at telephone booths.

Proceeding to the events at Motsekuoa, the accused joined their colleagues there who included A5 and A6. They shared food there. After this, A5 stopped a vehicle. He and A2 took out its occupants and took control of the vehicle with A2 driving it. They then proceeded in a convoy to a camp at Ha Sehlabo. On arriving there they alighted and staff who were there started fleeing. They had to be assured that the visitors were not fighting and all they needed was petrol. Nevertheless they took positions around the camp while others proceeded to help themselves to petrol and diesel as well as the only two serviceable vehicles obviously leaving the owners with nothing to work with. To say that these

properties were given willingly is laughable in the circumstances. The rest of the group had not joined in this raid but had proceeded in the direction of Maseru. The crown does press for their conviction on count 8. Surprisingly this is so with regards to A2 who actually drove in the convoy that went to the camp.

In the circumstances I come to the following conclusion. The party that left Matala did so with the express intention of obtaining arms and medical supplies. These are tools of trade that would not be given willingly. That resistance would be offered was therefore clearly a possibility and it must have been foreseen. That resistance would be met with force. Indeed when it was perceived that one of the policemen posed a threat she was shot and that proved fatal. All these people were acting in concert not only at the charge office but at the hospital and the hotel. Those that participated at Motsekuoa and Ha Sehlabo were also acting incernert. The Crown has been able to prove this beyond reasonable doubt. I find therefore that in as far as each participated in the offences that:

A1 is guilty of counts 2, 3 and 4 and not guilty of the rest.

A2 is guilty of counts 2, 3, 4, 7 and 8 and not guilty of the rest.

A3 is guilty of counts 1, 2, 3 and not guilty of the rest.

A5 is guilty of counts 7 and 8 and not guilty of the rest

A6 is guilty of counts 7 and 8.

A7 is guilty of counts 1, 2, 3, 4 and 5 and not guilty of the rest.

A8 is guilty of counts 1, 2, 3 and 4 and he is not guilty of the rest.

My assessors agree.

T. Nomngcongo
Judge

For Crown : Law Office (Mr Leppan)

For Accuseds : Mr Sooknanaan

Mr Pitso

Mr Maieane

Mr Nteso

Mr Molapo

Mr Mpaka