

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

REASONS FOR SENTENCE

The offences for which the accused have been convicted took place against the backdrop of an attack by foreign troops on Basotho soldiers at their Makoanyane barracks. It has been urged upon me to take this into consideration in meeting out punishment to the accused, that seen in that light their actions were somehow honourable. Well, I agree that the battle would have had a traumatizing effect on the minds of the accused and I will take that into account for the purposes of sentencing. Having said that however, the accused had plenty

of time afterward, to reflect on their situation and I fail to see how that situation could justify disarming the police in the face of a possible attack, stealing from a hospital, stealing from a hotel and taking among other things intoxicating beverages and a random distraction of telephone booths.

The accused are all married persons and have various dependants. In the case of A3 it was also pointed out that at the time of the commission of offences he was but nineteen years of age.

An outstanding feature of this trial is the length of time it took to come to trial. The events took place on 23rd September, 1998. The accused were only indicted in 2003 and the trial itself commenced before me on 11.08.2005 and judgment was only delivered on 26th October 2009 and sentence is passed to-day the 29th June 2010. Some of the delay but certainly not all of it could be laid at the door of the accused. I have no doubt that this delay has caused all of the accused immense anxiety which in itself is punishment. It was held in R v Pretorius 1969(3) SA 152 while those who transgress the law should be adequately punished it is also public policy that the administration of criminal justice requires that there should be expedition in the prosecution of offenders. In that case the sentences of the accused were suspended. However and unfortunately for the accused, schedule III of the Criminal Procedure and Evidence Act 1981 proscribes such a course on convictions of murder and robbery.

The crown has called for lengthy terms of imprisonment but I demur to do so in the wake of this delay and indeed the infringement of accused's constitutional right to fair hearing within a reasonable time (section 12(1) of the constitution of Lesotho).

I am also mindful in respect of the murder convictions that none of the accused actually pulled the trigger that proved fatal. It was in fact Private Maphathe who did so and he appeared intoxicated.

In the circumstance I am of opinion that the following sentences will meet the justice of this case.

Count 1 : - for which A3, 7 and 8 have been convicted. (Murder)

A3 - **4 years imprisonment.**

A7 - he was the most senior and appeared to be directing operations - **5 years imprisonment.**

A8 - **4 years imprisonment**

Count II : for which A1, A2, A3, A7 and A8 (the seizure of arms and ammunition).

A1 – he had no business joining those who had attacked his own colleagues

5 years imprisonment.

A2 – 4 years imprisonment

A3 – 4 years imprisonment

A7 - 5 years imprisonment

A8 – 4 years imprisonment

Count III: in respect of A1, A2, A7 and A8 (the seizure of medical supplies)

A1, A2, A8 – 4 years imprisonment

A7 – 5 years imprisonment

Count IV : in respect of A1, A2, A7 and 8 (seizure of food and alcohol at Mafeteng Hotel)

A1, A2 and A8 - 4 years imprisonment

A7 – 5 years imprisonment

Count V : A7 the destruction of telephone booths. - **5 years imprisonment.**

Count VI : All accused were acquitted here.

Count VII : A2, A5 and A6 - the seizure of two vehicles at Motsekuoa - 4 years imprisonment.

Count VIII : A2, A5 and A6 the seizure of vehicles and fuel at Matelile Camp - 4 years imprisonment.

All of these sentences are to run concurrently.

**T. NOMNGCONGO
JUDGE
29 JUNE 2010**