

IN THE HIGH COURT OF LESOTHO

CRI/T/112/2004

In the matter of:

REX

VS

1. D/TPR. RANTOANE MOTSOETLA
2. D/TPR. MOEKETSI MALLELA
3. D/TPR MBUEZELO BADELA
4. D/TPR MATETE LEROTHOLI
5. D/TPR. LEBOHANG NTJA-NTJA
6. DTPR. LIMPHO MAHLOANE
7. D/TPR TSIETS MASEELA
8. D/TPR CHEKA MABOTE

,

JUDGMENT

Delivered by the Honourable Mr Justice T. Nomngcongco

On the 26th August 2011

The accused are charged with the Crime of Murder in that upon or about the 11th day of March 2002, at or near Lesotho Distance Teaching Centre, one, the other or all of them unlawfully and intentionally killed **Selala Constantinus Bereng Letsie.**

The Crown led eight witnesses to prove its case against the accused. The Crown then ought to lead the evidence of a ninth witness, the Chief Magistrate who had held an inquest into the events that led to this trial. Mr Mda for the defence said he had no objection to the handing in of the inquest proceedings provided only that if such handing in was for the purpose of showing that an inquest had been held. He objected however to any reference to the statements or evidence. Mr Leppan for the Crown said he wanted to refer to certain reports made by the accused which were exculpatory. If they were indeed exculpatory, they were irrelevant. But there was always a danger that they might be self incriminating (**See S. V RAMALIGELA 1983 (2) SA 424**). On both counts such evidence, apart from being hearsay, is inadmissible and I did not allow its introduction. Mr Leppan, as he so curtly put, It disagreed with me and said he had contemplated appealing at that stage but had thought better of it. Perhaps he will appeal later as he has every right to do so.

After this the Crown closed its case. Mr Mda for the defence applied in terms of **section 175 (3) of the Criminal Procedure and Evidence Act** for the discharge of the accused. Mr Leppan said nothing in opposition of such an application because as he said he could contribute nothing to the debate in view of the court's ruling on the inadmissibility of the inquest proceedings. I don't know if by that he meant that the crown's case rested entirely on the evidence led at the inquest.

Be that as it may, the deceased in this case died under a hail of bullets from a posse of policemen. This followed an altercation between the deceased, a companion, PW1 and four policemen. After that encounter the two parties drove away in their respective vehicles apparently in different directions. They appear to have met up later whereupon the police vehicle gave chase to the deceased's and companion's vehicle. The police let off a hail of bullets until they arrived at an intersection

near the Lesotho Distance Teaching Centre where the vehicle in which the deceased and his companion Pw1 overturned. Both went out and ran in the northerly direction. The shooting continued. By this time reinforcements appear to have joined the original chasers. The shooting was now concentrated on a spot near the walls surrounding the Lesotho Distance Learning Centre. Ultimately PW2 (Serabele) ordered a cease-fire. At the spot where the police were shooting, was the deceased lying pistol almost in hand and very seriously injured. There injuries appeared to have been concentrated on the lower part of the body a photo album shows these to have been on the waist and the groin as well as right hand. The deceased died from these wounds.

The problem that immediately presents itself is the identification of the policemen who shot the deceased. P.w.1 did not identify anyone of them. Pw.2 who attempted to do so, could not deny under cross-examination that the two accused, A2 and A7 whom he placed at the

scene of the shooting at Lesotho Distance Learning Centre were not there at all. None of the other witnesses could be of any assistance. To ask the accused now to even place themselves on the scene would be to ask them to close this gap that was left wide open by the Crown. The duty to adduce evidence in a criminal case rests throughout on the crown. The accused cannot be asked to convict themselves and I think such an attempt was made by trying to introduce the inquest proceedings wherein the accused apparently gave evidence.

The application for discharge is granted and the accused are found not guilty and discharged.

T. NOMNGCONGO
JUDGE

For Crown: Adv. Leppan S.C

For Accuseds: Adv. Mda