

**IN THE HIGH COURT OF LESOTHO**

**In the matter between:**

**REX**

**VS**

**MOTHIBELI MOHALE MAKOKO**

**JUDGMENT**

**Coram** : **Hon. Moiloa AJ**  
**Date of Hearing** : **6 and 11 June 2012**  
**Date of Judgment** : **11 June 2012**

**Summary**

*Drunken Accused negligently discharges a revolver in direction of deceased and fatally wounds him and correctly pleads guilty to culpable homicide and gets convicted of same. Accused shows great remorse for his crime; sentence while reflecting seriousness of offence but must also take proper account of Accused's circumstances.*

- [1] Accused is charged with two counts. First count alleges that Accused on or about 13 October 2001 intentionally killed Molebatsi Paki at or near Senqunyane Ha Maime in the district of Berea. The second count alleges that Accused contravened Section 3(2)(a) read with Section 43 of the Internal Security Act 1966 in that on or about 13 October 2001 at

Senqunyane Ha Maime in the district of Berea he was found in possession of a .38 Special Rossi Revolver with serial number rubbed off, without requisite firearm certificate authorising him to own a firearm or to be in possession of one.

- [2] When Accused was asked to plead to the charges he promptly told the court that he pleads guilty to each of the counts although his counsel advised him to plead not guilty to both. I entered a plea of not guilty on both counts. Mr. Lephuthing for Accused informed court that actually they offered to plead guilty to culpable homicide but their offer had been turned down by the Crown. On court 2, Mr. Lephuthing advised that Accused also pleaded not guilty.
- [3] The Crown led evidence of its first witness Pusetso Mohapi. Pw1 testified that he lived in same area with Accused though in separate villages separated by a small gorge. On 13 October 2001 he had at early dawn that morning gone to the home of Keketso Molise of Tlokoeng village. Keketso Molise was going to take his brother to initiation school in the mountains. Men of neighbouring villages were gathered at Molise's home and were enjoying some Sesotho beer ahead of this great event. There, Pw1 found Accused who almost immediately engaged him in silly disrespectful insults which he also returned. At some point during this silly encounter Accused had produced a pistol but was quickly disarmed by one of the guests Mokhutle. The Accused continued with his silly insults against Pw1. Pw1 told court that he observed that Accused was drunk. When Accused rose from the ground where he had been fallen by Pw1, he picked up a stone from the kraal wall threatened to hit Mokhutle with it if Mokhutle did not return his handgun to him. Mokhutle returned the handgun to Accused.

Other men reprimanded Mokhutle for doing so but the gun had been returned to Accused anyway. The incident was reported to Molise who asked Accused to leave as Accused was disturbing the peace of his guests. Accused proceeded to a point below the kraal and appeared to load a pistol. Accused came back to the kraal again where he found Pw1 standing next to Molebatsi Paki, now deceased. Accused produced his pistol and fatally shot Molebatsi Paki as it turned out, below the armpit on the left side. Molebatsi fell down and died soon thereafter. Accused was shocked that he had killed Molebatsi. He immediately left for his home. Thereafter Accused left for Mapoteng Police Station a 2 day journey on foot through the mountains. At Mapoteng Accused surrendered himself to the police with his firearm.

- [4] Subsequently a postmortem was done on the body of Molebatsi and the cause of death was established to be “due to cardio-pulmonary failure secondary to gunshot wound”. Other findings of the doctor noted the following other injuries: “a scathing of the left ventricle” and “A damaged lower lobe. Huge haemothorax”. So, it is clear that the death of Molebatsi is directly caused by the gunshot wound inflicted by Accused through the discharge of his revolver in the direction of deceased and Pw1 which caught deceased’s lower armpit.
- [5] During the course of Pw1’s evidence it turned out that Accused was so remorseful for having caused the death of deceased that he shouldered the burial expenses of deceased. In addition Crown evidence revealed that Accused had paid 6 head of cattle to fulfil a Sesotho custom of “raising the head of deceased”. No wonder then that when we returned after lunch break there was a change of heart by the Crown.

[6] Following the evidence of Pw1, the Crown changed its attitude to Accused's desire to plead guilty was the end of the initial dispute regarding Accused's plea on both counts. I confirmed Accused plea on both counts and entered a verdict of guilty on both counts as now offered. I cannot emphasise hard enough the need for counsel to prepare thoroughly for trial in their brief.

[7] **Sentence**

I have taken into account that clearly Accused had been drunk on 13 October 2001 when he negligently fired his revolver at the direction of Pw1 and Molebatsi and ended in fatally injuring Molebatsi Paki. He had never quarreled with the deceased and he took his life stupidly in the circumstances revealed by the evidence of Pw1. I took into account the fact that Accused had immediately shown deep remorse for the death of Molebatsi which he had caused as evidenced by his surrender to the police, shouldering of burial expenses and payment of 6 head of cattle to try and raise Molebatsi's head. I have taken into account that Accused pleaded guilty to the charges. I have taken into account that Accused has borne this burden for almost 10 years await his fate at the hands of the court. I recognize that this wait must have been a heavy burden on his mind. But on the other hand the court looks at the loss of life of an innocent life as a serious matter.

[8] But then, I am also required to balance the gravity of the crime with Accused's circumstances. I am required to temper punishment with mercy. I have decided that the following sentence will meet the crime committed by Accused adequately in the circumstances of this case:

- (a) **Count 1:** 6 years imprisonment suspended for 3 years on condition that Accused is not found guilty of culpable homicide during the period of suspension. In addition on condition that Accused pays additional 4 head of cattle to the family of Molebatsi Paki to complete raising Molebatsi's head in accordance with Sesotho custom.
- (b) **Count 2:** 2 years imprisonment or a fine of M400.00.

**J.T.M. MOILOA**  
**ACTING JUDGE**

For Crown : Adv. M. Tlali  
For Defence : Adv. C.J. Lephuthing