

**IN THE HIGH COURT OF LESOTHO**

**In the matter between:-**

**REX**

**V**

**LEFU MAKHABENG**

**ACCUSED NO.1**

**‘MALEBESE MOLATI**

**ACCUSED NO.2**

**JUDGMENT**

Coram : Hon. Majara J.

Date of hearing : 2<sup>nd</sup> August 2011 – 27<sup>th</sup> November 2012

Date of judgment : 12<sup>th</sup> March 2013

**Summary**

*Accused charged with murder – Accused 1 at large at the commencement of the trial and application for separation of trial granted – Evidence consisting of accomplice testimony, confession and pointing out – Confession challenged on grounds that it was not made freely and voluntarily – Trial within the Trial held and evidence of confession admitted – Lack of prima facie case against Accused 2 – Accused 2 discharged in terms of Section 175 (4) of the CP& E at the close of the*

*Crown's case – Facts discovered at the pointing out that a murder was committed – Accused found guilty of murder with extenuating circumstances.*

## ANNOTATIONS

## BOOKS

1. Hoffmann & Zeffertt; The South African Law of Evidence 4<sup>th</sup> Edition
2. Schwikkard and Van der Merwe; Principles of Evidence 2<sup>nd</sup> Edition, Juta 2000

## STATUTES

1. The Criminal Procedure and Evidence Act No. 9 of 1981

## CASES

1. R v Difford 1937 AD 370
2. R v. Malakeng 1956 (4) 232 (T)
3. Ramone v R. 1967-70 LAC 31
4. Sosolo Maqeba v R. 1981- 96 LLR 579

[1] Three accused persons were indicted for murder before this Court at the commencement of this trial, on the allegation that on or about the 9<sup>th</sup> July 2001, and at or near ha Mosebo in the district of Leribe they each or all unlawfully and intentionally killed one Paballo Molefi. At the start of the trial, one of them who had hitherto been the first accused had absconded and after several attempts to have him re-arrested came to naught, the Crown moved an application for a

separation of their trials which this Court granted and the trial proceeded with respect to the two accused herein.

[2] After they both entered a plea of not guilty the Crown called six (6) witnesses to testify whereas the defence admitted some of the prosecution witnesses' statements. The first witness to take the stand was one 'Mamolefi Paballo the mother of the deceased. Her testimony was to the effect that on the stated day, she last saw the deceased at night when she retired for bed. She later discovered that the deceased was not in the house and concluded that he had gone to accused 2's (A2) house as the two were known to be lovers. When the deceased did not come home, she sent one Thabo to enquire from A2 about his whereabouts and the latter reportedly told her that she had last seen him a longtime ago on horse back. After PW1 reported the deceased's disappearance to the chief, the latter ordered that he be looked for at A2's place. After about 3 to 4 days, the deceased's dead body was discovered in the veld outside the village.

[3] PW2 was one 'Matebello Khusu who testified that she is a neighbor of A2 and that around the date of the incident, she was home when she saw police officers who were in the company of A1, A2 and Sofonia Lefisa, the co-accused who is at large going to A2's house. She and some other villagers went to see what was happening and upon arrival thereat she heard A1 telling the police that they had killed the deceased at A2's place and had carried his corpse in a bath tub to a place outside the village where they buried it. Further that after a few days they went to remove it and left it out in the open fields.

[4] The witness added that the accused led the police to the place and she and the others followed and when they came to a forest, A1 said they had dug a hole there and buried the deceased's body. It was her further testimony that she

observed some blood drops around the place. She then heard A1 say that after a few days they went back to that place in the company of one Paramente, the accomplice witness herein to disinter the body. They were driving a donkey. The witness stated that when the accused led the police to where they had allegedly left the body in the veld, she and the other villagers were ordered to go back home.

[5] During her cross-examination, the defence suggested to PW2 that it was not A1 but Sofonea who was narrating the events on that day and that A1 did not kill the deceased as on that night he was not even present. PW2 did not dispute that some of the things might have been said by Sofonea but she insisted that she heard A1 say that he had killed the deceased. In this respect it was submitted by the defence Counsel that for the reason that this witness accepted the suggestion under cross-examination that she was not very close to the accused at the time they were explaining what happened at A2's house it is possible that she did not hear clearly what was being said, her testimony should be regarded as unreliable and should therefore be disregarded.

[6] While indeed PW2 accepted that suggestion, it is my opinion that that factor per se did not necessarily make her an unreliable witness. The witness also explained that the events took place a long time ago but she was firm and insisted that it was A1 who was doing the explanation and the pointing out. In my view, had she wanted to give false testimony, there is no reason why she did not just shift all the blame onto A1. This is especially so when no reason was ever tendered why she could have been biased and deliberately gave false evidence against him as opposed to Sofonea.

[7] The third witness to take the stand was Paramente Letsoso, the accomplice witness. It was his evidence that he did not know the deceased as he resides in a

neighbouring village. He told the Court that sometime in 2001 A1 and Sofonea Lefisa came to him at around 9.00 p.m. and asked him to go and help them convey some dagga. He went with them and they walked a long distance. When they came to a forest at a gorge, the two asked him to wait for them and they proceeded to go down below where he noticed a donkey. They then came back carrying a heavy looking manure sack. It was then that he noticed legs dangling outside the bag which was covering the body of a human being down to the thighs. They then loaded the body onto the donkey and when he asked them how they came to be carrying a human being they told him they had shot that person at A2's house. They then tied the body on to the donkey's back. A1 got hold of the donkey and pulled it while PW3 and Sofonea walked behind.

[8] The witness added that he asked the two who had fired the shot at that person but none of them answered. They walked for some distance in silence. After they had passed the village of ha Mosebo, the witness told them he had to relieve himself and the two proceeded ahead and he went to his parents' place and spent the night there. On the following morning Sofonea came to his house and gave him a 9 mm firearm which he asked him to keep and indicated that he would come back for it. Later at night, some police officers came to his house and asked him to hand over the firearm that Sofonea had left with him. They then arrested him and took him to the police station where he found A1 in the holding cell. The witness confirmed that the firearm that was tendered in as part of the evidence and was marked exhibit 1 was the one he was referring to.

[9] It was his further testimony that on the next morning the police released him but later on he was told to go back to the police station. This time, he found A1 in the company of Sofonea. They got into a vehicle and went to a place which he learned was A2's. He remained in the vehicle whilst A1 and Sofonea pointed out

the place they had been to and where they said they had abandoned the deceased's body. It was his evidence that A1 was doing the talking. He further told the Court that he knew Sofonea very well as they sometimes drank together.

[10] During his cross-examination, PW3 admitted that he deals in dagga and that it was not the first time him and Sofonea would be conveying dagga. It was put to the witness that his version was not true as it was him and Sofonea that approached A1 and asked him to help them carry dagga and not the other way round. He however stuck to his story that it was A1 and Sofonea that approached him and asked him to accompany them to the forest. He also admitted that after Sofonea asked him to keep the firearm he did not report this either to the chief or the police.

[11] When the Crown was about to call the Magistrate who took down A1's confession into the witness box, the defence challenged its admissibility on the grounds that the accused did not make it freely and voluntarily whereupon the Court ruled that a trial within the trial should be held.

[12] At the trial within the trial, the Crown called five (5) police officers and Senior Resident Magistrate Manyathela Kolobe to the stand. The crux of the witnesses' testimony was that A1 made the confession freely and voluntarily and in his sound and sober senses before the Magistrate. The Magistrate's evidence was that the accused came to his office and indicated that he wanted to make a confession. He then advised him of his rights and created a friendly atmosphere. He posed some questions to him and observed that he was in his sober and normal senses. He added that he was satisfied that the accused was not coerced to make the statement. He also observed that he had no visible injuries and appeared to be in good health. The Magistrate stuck to his story under cross-examination that the

accused made the confession freely and voluntarily in his sound and sober senses and in a friendly environment.

[13] The defence's version was that A1 was tortured and threatened to make the confession days before he was taken to make the confession up to the time he was left outside the Magistrate Court. At the end of the trial within the trial the Court made a finding that the confession was made freely and voluntarily and gave its reasons for so finding. They form part of the record. The main reason was that the first two witnesses' evidence was not challenged at all by the defence whose version of the events was introduced at a late stage of the trial within the trial and that effectively denied the said witnesses the opportunity to react to the defence's version. In addition, all the police officers and the Magistrate's testimonies were not successfully rebutted during their respective cross-examination.

[14] The confession was consequently admitted as evidence after which the Crown called one Sergeant Habofano Mopeli whose testimony was that A1 surrendered to the police in respect of the murder in question and he asked him if he wished to make a statement before a Magistrate and A1 agreed. Only one question was put to the witness namely that A1 did not surrender but said he had been told to report himself and the witness disputed same.

[15] PW5 Sergeant Motlalepula Mzilikazi's testimony was to the effect that he found the accused persons at the police station and they gave him an explanation and volunteered to take the police for a pointing out. They then took them to the village of ha Mosebo at A2's house where they pointed out where the deceased was lying when he was shot and killed. From there the accused took them to where the corpse had earlier been buried before his body was exhumed and removed to where it was found after a few days. It was suggested to this witness

that the accused made the confession and did the pointing out because he had been tortured but he disputed same.

[16] The evidence of PW6 Komanyane also a police officer was more or less the same as that of the other police officers in most of the material aspects. He told the Court that the accused surrendered to the police and he advised him of his rights after which he gave an explanation. The witness also denied under cross-examination that the accused was either tortured or threatened to make a confession and or the pointing out. His evidence and that of PW5 was also to the effect that both A1 and Sofonea did the pointing out. In this respect, **Mr. Tsenase** made the submission that the two witnesses used a pluralistic term yet under cross-examination PW5 admitted that it was Sofonea who was doing the pointing out.

[17] In this regard, it is the opinion of the Court that if the witness was only interested in falsely implicating A1 and A2 because Sofonea was not before the Court, he could have told the Court that both of them did the pointing out and totally excluded Sofonea. Further, I am of the view that what the evidence establishes is that both A1 and Sofonea were in this together and that it does not really make a difference who was actually doing the pointing out. The evidence before the Court is that the two were together during the shooting, the conveying of the deceased's body to the forest where it was buried and later when it was exhumed and removed to the open veld.

[18] I might also observe that one person would not be able to carry the dead body alone, bury it and later dig it out and remove it from the grave in the forest to the veld. As a result, the witnesses' use of the term they instead of he does not in my view carry much weight. What is crucial is that a grave was indeed discovered in the forest with blood thereat and the dead body of the deceased was found as a



result of the pointing out. This evidence is therefore admissible in terms of our criminal and evidence law.<sup>1</sup>

[19] Further evidence consisted of the admitted statements the first being that of Thabo who corroborated PW1 that he was sent by her to A2's place to enquire about the whereabouts of the deceased and that A2 told her that she had not seen the deceased for a long time. The other one was that of Moferefere Paballo which was to the effect that he identified the deceased before an autopsy was conducted. Tankiso Paballo's admitted statement was similarly that he also identified the dead body as being that of the deceased in this matter.

[20] Tseliso Rapitso's admitted statement was that he received a report concerning a corpse that was found at the Mabunyane valley which he in turn reported to the headman and that when they went to the stated place they discovered the dead body which lying face down and was covered all over with stand. He added that the matter was reported to the police. In this regard, he is corroborated by the headman Thibeli in his admitted statement.

[21] The other admitted statement is that of Thite Montlha who stated that on the 27<sup>th</sup> July, 2001, PW3 arrived in the company of the police and handed a lebetlela stick over to them. Makala Lekhotla whose statement was also admitted was that he had exchanged a pair of gumboots with Sofonea and that the police subsequently came and requested that he should hand it over to them which he did. The post-mortem report which was also admitted by the defence and was marked exhibit "A" revealed that the deceased had two (2) gunshot wounds on the chest and that the cause of death was 'acute ensanguination from a gunshot to the heart'.

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<sup>1</sup> Section 9 of the Criminal Procedure and Evidence Act N0.9 of 1981 (Supra)

The contents under the item Remarks, further reads that the deceased was shot on the heart and on the head.

[22] At the close of the Crown's case the defence applied for the discharge of A2, 'Malebese'.<sup>2</sup> After considering the evidence that had been placed before it the Court granted the application on the grounds that the Crown had not established a prima facie case against her upon which it might convict her.<sup>3</sup>

[23] This is because but for the fact that it is common cause that the deceased and A2 were known lovers and that the deceased was shot and killed at her place, no other evidence connected A2 with the actual shooting of the deceased. This is more so in the light of the fact that the projected defence on her behalf was that at the time of the shooting she was in another room/house and this was not disputed. While there is a likelihood that A2 might have been involved in the commission of the crime, especially because the evidence has shown that she had lied when asked about the whereabouts of the deceased on the night that he disappeared, it is well established that before an accused can be called into the witness box to testify, the evidence has to establish a prima facie against her on the basis of which she might be convicted. In the opinion of this Court the Crown did not successfully discharge this onus as far as she is concerned.

[24] After the discharge of his co-accused, A1 elected to take the witness' stand and he was the only witness for the defence. Most of his evidence was basically on allegations of police torture against him from the time he reported at the police station after he had received a request that he should do so. The testimony was a detailed narration of the alleged torture both at the police station including when he was transported to a place that he believes was a river as his eyes were allegedly

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<sup>2</sup> Section 175(4) of the CP & E (Supra)

<sup>3</sup> Hoffmann & Zeffertt; The South African Law Evidence 4<sup>th</sup> Edition p504

covered and back to the police station up to the point where he was escorted to the Magistrate to make a confession. He added that all this time he was told to implicate himself in the commission of the murder.

[25] It was his further evidence that it is not he that led the police to A2's house but that Sofonea did so and that it is the latter that was doing all the pointing out. He added that whilst he was in custody the police told him what Sofonea had allegedly told them and forced him to admit the story. Further that they told him that Sofonea had said he and A1 had killed the deceased and carried him in a bathtub and buried him somewhere and that he eventually admitted it all as a result of the torture.

[26] It was his further evidence that one day whilst he was still in police custody, Sofonea arrived in the company of A2 and he was taken along without being told where they were going. When they got to A2's house the latter was asked where the deceased used to sleep. He further stated that then they, presumably the police, raised the beds after which they went out. The police then seized the bath-tub and spade and asked Sofonea if those were the ones and the latter confirmed that they were. From there they left and went to the valley and Sofonea was asked where the place was and he led them to a grave and pointed it out. He added that he had no idea what that was. They then went back into the vehicle and took the direction of Mphosong and stopped at a place that Sofonea pointed out.

[27] DW1 added that he recalled PW3's testimony "concerning the events of one night about a donkey and so on and so forth". He added that what he knows is that one night Sofonea arrived in the company of PW3 and the two asked him to help them carry their dagga and take it near the road on a promise to pay him M20.00 per bag and he agreed. He left with them and when they went past the village of ha

Mosebo the two asked that they take a short cut from the public road. When they approached a cliff they told him to wait for them. He then heard a gun report and as he did not know what was happening he ran away as he was scared because he does not normally transport dagga.

[28] During cross-examination most of the questions that were put to the accused were a regurgitation of the crown witnesses' evidence and the accused evidence was not seriously challenged. However, it cannot be disputed that his version of the events left too many important questions unanswered. Firstly, while he disputed that he did not kill the deceased on the stated date and told the Court both during cross-examination of the Crown's witnesses and in his testimony that he was not at home, A1 did not tell the Court his whereabouts on that fateful day.

[29] Secondly, he failed to tell the Court why PW2 would tell untruths about him and testify that he is the one who was giving the police an explanation and led them to where the deceased was buried after he was shot and killed which evidence remained unchallenged. In addition, in his testimony, the accused told the Court that he was incarcerated from the time he went to report at the police station. He never said when and if he was ever released yet he also testified that on the day of the pointing out, Sofonea and A2 arrived at his place in the company of the police.

[30] Further, in his narration of the events, DW1 spent a lot of time on the alleged torture in the hands of the police and not much on the murder which is the reason why he stands charged before this Court. Instead, he gave a very brief narration how Sofonea and PW3 went to him one night and asked him to help them carry dagga to the side of the road. PW3's evidence was so crucial that if indeed it was true that DW1 had nothing to do with the killing and the subsequent burying of the

deceased in the forest, he would in my opinion, have given a more probable version of events to gainsay that of PW3.

[31] As his version stands, it is palpably weak and unbelievable. In my opinion, it was a mere attempt on his part to shift the blame from himself to PW3 whose evidence remains unchallenged. I am fully cognizant that the evidence of an accomplice has to be approached with caution. However, it should be remembered that this should be so where such is the single evidence of the Crown.

[32] In addition, when that version is taken together with that of PW2 who testified that A1 gave an explanation to the police and led them to the place where the deceased was buried and which corroborated the testimony of PW3, as well as the accused' own weak and improbable version, it is my finding that PW3's evidence was satisfactory and should be accepted as true. The fact that PW3 did not even dispute that he deals in dagga which is a crime in itself is further indication that his testimony was reliable. He also did not dispute that he agreed to keep the firearm that Sofonea left with him for safekeeping which was clearly used in the commission of the murder in question.

[33] In my opinion, the evidence of a witness who is not afraid to implicate himself before the Court in the commission of a crime cannot be in all fairness, found to be incredible. Indeed, if he wanted to white wash himself, there is no reason why he would not dispute anything else that had the possibility of tainting and getting him into trouble. Further, if he had simply wanted to falsely implicate the accused, he could have disputed everything that cast him, i.e. PW3 in a bad light but he did not do so. It therefore cannot be true that the deceased was only shot on the day PW3 and Sofonea allegedly asked the accused to accompany them to carry dagga. Instead the evidence is clear that it is on that night that the body

was exhumed having been buried there days earlier and was carried elsewhere and left in the open so that it would be found. This is fortified by the evidence that the body was covered with sand all over, which in my view correlates with the evidence that the body had earlier been buried.

[34] Further in his evidence, the accused never said the deceased was present on the night he was allegedly asked to carry dagga safe for him to say that when the two went down the cliff leaving him at the top, he heard a gunshot and ran away. The unchallenged evidence before the Court is that the deceased was taken in a bathtub to the forest after he had been shot at A2's house and that the tub and spade were later collected by the police on the day of the pointing out. Indeed all the evidence suggests that the deceased was carried to the forest after he had already been shot and killed and was exhumed and removed some days later. For these reasons, the Court finds the accused evidence not only improbable but false beyond doubt.<sup>4</sup>

[35] I have already stated that the accused testified that he was tortured and threatened to make a confession before the Magistrate. While it is likely that this might have happened, when account is taken of police brutality in this country, the evidence of two of the police officers at the trial within the trial to the contrary remains unchallenged. Further, I also cannot take judicial notice of the fact of police brutality because the police service is made up of a collective of people and it would be dangerous to simply paint all of them with the same brush without exception and conclude that all of them carry out acts of torture against suspects. In this regard, each case has to be dealt with on the basis of its own particular facts and evidence.

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<sup>4</sup> R V Difford 1937 AD 370 at 373

[36] In addition, the testimony of the Magistrate was to the effect that the accused gave his confession freely and voluntarily and in his sound and sober senses. Further, the contents of the confession are a far-cry from what the accused told the Court he was forced to say before the Magistrate. For instance, he did not tell the Magistrate that he and Sofonea shot and killed the deceased as he told this Court that he had been forced to say to the Magistrate.

[37] Instead, his statement was that he and the deceased fought over a firearm which the deceased was holding at A2's house and that he had his finger on the trigger and it went off by accident hitting the deceased in the chest. In other words, while the accused did place himself at the scene in his confession, his story was more an attempt to exonerate him-self from the offence of murder rather than an unequivocal admission of guilt to the crime of murder.<sup>5</sup>

[38] At any rate, the accused' statement was in my view an admission of facts that could make him guilty of the crime of culpable homicide and not of an intentional killing of the deceased. Thus as it has been stated:-

*“It does not matter whether the accused subjectively intended to exculpate himself – if objectively his statement amounts to an unequivocal admission of guilt, then it will amount to a confession to a lesser offence.”<sup>6</sup>*

[39] In addition, since the statement is not the only evidence before this Court, when it is taken in conjunction with the rest of the evidence, more especially that of PW2, PW3 and the discovered evidence at the scene of crime, it is the opinion of the Court that for the reason that he placed himself at the scene of the murder, it

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<sup>5</sup> Hoffmann & Zeffertt (Supra p312)

<sup>6</sup> Schwikkard and Van der Merwe; Principles of Evidence 2<sup>nd</sup> Edition, Juta 200 p310

should accordingly be admitted especially when account is also taken of the conduct of the accused and Sofonea post the death of the deceased.<sup>7</sup> They clearly intended to hide the fact of the death of the deceased because they had unlawfully and intentionally killed him. Further if indeed the intention was not present, there is no reason why A1 and Sofonea as well as ‘Malebese did not report it to the authorities.

[40] It should also be remembered that it was suggested to some of the Crown witnesses that A1 was not present on that night albeit no explanation was given in connection to his whereabouts. In his own testimony, he told the Court that he accompanied PW3 and Sofonea to transport dagga one (unstated) night and supposedly heard a gunshot and ran away. This is the night according to PW3’s evidence that the body of the deceased was removed from the shallow grave. If this was on any other night according to DW1, he should have unequivocally stated so in the light of this damning evidence and that of PW2. In this regard, DW1’s evidence was contradictory on this material aspect.

[41] I have already stated that aside from the confession, there is further evidence that a crime was indeed committed in that the body of the deceased, Paballo Molefi was found dead in an open veld and was covered with sand which factors corroborate the evidence that after he was shot and killed he was removed from A2’s house, and taken to the forest where he was buried in a hole and was later exhumed and left in the open veld where it was eventually discovered. This evidence further tallies with that of PW2 and PW3.

[42] In my view, all these factors, especially the conduct of the accused post the death of the deceased, i.e. their concealing the fact of his death by acting in such an

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<sup>7</sup> R v Malakeng 1956 (4) S.A. 232 (T)



inhumane manner lead this Court to find beyond a reasonable doubt that both he i.e. and Sofonea possibly with the knowledge of A2, killed the deceased. Further, the admitted post mortem report revealed that the deceased had two gun shot wounds on the chest and head and evidence does not tally with that of A1 in his confession that the gun went off by accident whilst they were wrestling over it but that instead, the deceased was shot twice on two different parts of the body. In addition, even if this Court were to believe the version that the shooting was accidental, the second shot cannot still have been accidental.

[43] The next issue for my consideration is whether the accused should be found guilty of the crime of murder. Murder is defined as the unlawful and intentional killing or causing the death of another human being. From the evidence as analyzed above, two of the elements of murder have already been established, to wit, unlawfulness and causing the death of the deceased.

[44] The next question to consider is whether on the basis of the evidence, the killing was intentional. In a plethora of authorities, it has been stated that for the crime to be murder the Crown has to prove intention beyond a reasonable doubt as against negligence. I have already shown that the conduct of the accused in the present case subsequent to the death of the deceased namely, their failure to report the death, the removal and burial of his body from the scene with the intention to conceal the fact of the death and the evidence that Malebese had told Thabo that she had last seen the deceased a long time ago, yet it is shown that he was shot at her house on that fateful night and she was aware of his presence, leads me to draw one conclusion namely that this was a manifestation of a clear intention on the part of the accused and that he should be found guilty as charged.

## **VERDICT**

[45] For all the foregoing reasons, I find that the Crown has successfully discharged its onus of proving its case of murder against the first accused beyond a reasonable doubt. The last issue to decide is whether extenuating factors exist in this case. It is now well established in terms of our decided cases **Ramone v R.**<sup>8</sup> that the subjective test of the accused's state of mind is more important than the objective test of the factual basis for that state of mind. I must however point out that the evidence before this Court is very scanty in this regard and does not assist this Court much on this aspect.

[46] However, having heard the Defence Counsel's submissions on this issue, which were not contested by Counsel for the Crown, the Court accepts that it should make a finding that extenuating circumstances exist herein, namely that there is no evidence whatsoever to suggest that the accused and Sofonea had planned and/or premeditated the murder. This finding is also made on the strength of other authorities of the Courts in this Kingdom which the defence brought to the attention of this Court, more especially the case of **Sosolo Majebe v R.**<sup>9</sup>

My assessors agree with me on this verdict.

## **SENTENCE**

[47] The Court has now come to the most difficult part of the trial which is the passing of an appropriate and just sentence especially where the conviction is on a capital offence. It has been stated that the three main factors that have to be considered are the nature of the offence, the interests of the accused and the

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<sup>8</sup> 1967-70 LLR 31

<sup>9</sup> 1981-96 LLR p579 at 580

interests of society. The Court is enjoined to strike a proper balance between all these factors.

[48] In light of the above I have taken into consideration that the accused is a first offender and that he has his dependants who stand to suffer as a result of his incarceration. I have also considered that from the commencement of this trial he has been attending proceedings faithfully to-date a factor which our Courts have always considered to be a show of remorse. In addition, this incident happened over ten (10) years ago and it is through no fault of the accused that it was not heard and disposed of on time. I am also cognizant of the lengthy suspense that left the accused apprehensive, not knowing his eventual fate, especially after his co-accused decided to abscond and leave him and 'Malebese to face the music alone. Indeed had he been tried timely, he would probably have served almost half of his sentence or at least a good part thereof.

[49] On the other hand, I have taken into account the fact that the deceased was brutally taken away from his family and dependants and that they will never see him again without any justifiable cause. I have also considered that there is so evidence to suggest that the deceased could have somehow invited this fate upon himself by his conduct towards the accused and Sofonea. Needless to state, his loved ones, other peace-loving people, his community and society as a whole want to see justice done so that they can be secure in the knowledge that the taking of human life can never be countenanced in this Kingdom.

[50] That murder is a capital offence which carries with it maximum punishment in this country no longer seems to be a deterrent anymore. In cases of this nature, where the Court finds that the death sentence is not appropriate under the circumstances, imprisonment is the only other appropriate option. People who

murder others deserve harsh prison sentences which indeed must be coupled with rehabilitative measures so that when they finish serving and re-integrate with their families and communities, they are better people.

[52] Having said this, I wish to respectively incorporate the sentiments of the Honourable Molai J <sup>10</sup> where he stated that Lesotho prisons are not some Nazi concentration camps where people used to be subjected to the most inhumane treatment. He wisely added that instead, our convicts are given the basic necessities of life free of charge. They undergo rehabilitation so that they can fit back into society at the end of their term. They also get different kinds of training in order to help them make a better life for themselves and their dependants once they are out of prison. Over and above this, they still enjoy visits from family and friends until they finish serving their sentence.

[51] In this case, the family and friends of the deceased can never see him nor hear his voice again. He is taken away from them forever, including his financial, emotional and other support. Thus, over and above striking a proper balance between these interests, the Courts also have the duty to discourage and punish crime. It is undisputable that the taking of human life with impunity has become the norm in this country. People have lost the respect for other people's right to life. This is evidenced by the increasing number of murder cases that are reported and/or tried every week, a worrying trend indeed. Instead of abating, the crime of murder is escalating at a rate that is serious cause for concern. People are killed for every little thing including but not limited to petty quarrels, their hard-earned cash and/or property, power struggles, and lately for the most demonic of rituals. None of us irrespective of age, sex, status, religion, etc, is safe either at home, in the

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<sup>10</sup> Rex v Moferefere Mphuthi CRI/T/107/201, (unreported)

streets, at work, at social gatherings or any place that one can think of from these wanton murders. People are killed with impunity. This kind of attitude towards human life and the disrespect for the law must be totally discouraged by the Courts.

[52] In trying to strike a balance between all these factors, I accordingly find that while it can never bring the deceased's life back, imprisonment for a period of ten (10) years will meet the justice of this case and I accordingly so sentence the accused. I also order that exhibit 1 should be forfeited to the state.

**N. MAJARA**  
**JUDGE**

For the Crown : Adv. Mkorosi

For the defence : Adv. Ts'ense