

**IN THE HIGH COURT OF LESOTHO**

**CRI/T/99/2002**

In the matter between:

**REX**

**And**

**NEO SHEKESHA**

**JUDGMENT**

**Coram** : Honourable Justice E.F.M. Makara  
**Dates of Hearing** :  
**Date of Judgment** : 4 August, 2014

**Summary**

CITED CASES

STATUTES

**Introduction**

[1] Particulars supportive of the charge read that the accused is charged with the crime of murder:

In that upon or about the 16<sup>th</sup> day of May 19992 and at or near Qeme Ha Ramorakane in the district of Maseru the said accused did unlawfully and intentionally kill one Tsibela Kolobe and thus committed the crime as aforesaid.

[2] The court had on the first day of the trial been advised by the counsel that all the potential witnesses save for identifying witness (Leu Kolobe) had died. This for clarity sake, includes the witnesses who were at the scene at the material time, the investigating officer and Policeman unto whom the accused surrendered himself and handed over to him okapi knife which he admitted to have used in the commission of offence.

[3] It in the circumstances transpired to the court that it would be fruitless to hear evidence under the normal procedure. Thus in recognition of the accused endeavour to demonstrate his remorse, the court suggested that the accused and relatives of the deceased could explore a restorative justice oriented settlement.

[4] Resultantly the accused and relatives of the deceased submitted themselves before Restorative Forum for it to facilitate towards a conclusion of a Deed of Settlement in terms of which the Accused has in unequivocal words acknowledged his responsibility in relation to the death of the deceased and undertook to raise his head in the amount of M12,500.00.

[5] Today the 4<sup>th</sup> August 2014, the Counsel brought the Deed of Settlement to the court and proposed that it be elevated to Order the Court. This notwithstanding, the court and the Counsel shared a common understanding that a foundation for the Deed to be made

an Order of Court, should be done through the procedure prescribed for under Section 240 (1) (a) CP&E.

[6] Initially, the Counsel maintained that the procedure prescribed under the section should be strictly adhered to. It however, emerged to them after the court had expressed its reservation, about the constitutionality of the approach that it would be save to have to hear the evidence. The outlined evidence reveals in the absence of any evidence to the contrary that the only justifiable verdict in the circumstances would be that the accused had unintentionally killed the deceased consequently a verdict of guilty of culpable homicide is retained against the accused.

**Reasons for sentence**

[7] The court has recognized the fact that the accused has demonstrated a sense of remorse concerning the death of the deceased. This has been evidenced by his preparedness to raise the head of the deceased by paying a sum of M12,500.00 in the understanding of the court, the accused is making gesture in order to settle his conscience. This is recognized as a typical case in which the sentencing procedure which is provided for under Section 314 (1) of CP & E would ideally be applicable. Gentlemen Assessors have shared a similar view. In the premises, the court acting in accordance with the stated provision, suspends a passing of sentence on condition that the accused raises the head of the deceased by

paying a sum of M12,500.00. This is to be paid commencing from 30<sup>th</sup> June 2014 and ending 30<sup>th</sup> June 2015.

**EFM MAKARA**

**JUDGE**

**For the Crown : Adv. S.v. Thaba Instructed by Law Office**

**For the Accused : Adv. M.J. Rampai**