

# **IN THE HIGH COURT OF LESOTHO**

**HELD IN MASERU**

**CRI/A/0006/2014**  
**CR: 29/12**

In the matter between:

**LELOKO SHEMANE**

**APPELLANT**

**AND**

**THE LEARNED MAGISTRATE THABA-TSEKA  
THE DIRECTOR OF PUBLIC PROSECUTIONS**

**1<sup>ST</sup> RESPONDENT  
2<sup>ND</sup> RESPONDENT**

## **JUDGMENT**

Coram : Hon. Moiloa J.

Date of hearing : 11<sup>th</sup> May, 2015

Date of Judgement : 18<sup>th</sup> May, 2015

## **ANNOTATIONS:**

**Rex vs Majoro & Others 1976 LLR 245**

1. Appellant in this matter pleaded guilty to a charge of Attempted Murder before Thaba-Tseka Magistrate (Mrs. M. Sekonyela) on 12 September 2013. He was sentenced to a 3 year prison term without the option of a fine. Appellant was unrepresented although the record of the Magistrate's file discloses that had been represented by Advocate L. E. Molapo as early as on 29<sup>th</sup> November, 2012 when the matter was set down for trial on 7

February 2013. On 7 February 2013 magistrate was unavailable and the matter was allocated a fresh date of 16 July 2013.

2. Eventually this matter proceeded on 12 September 2013 without Mr. Molapo. Accused pleaded guilty. An outline of facts by the Public Prosecutor is as follows below. Complainant Rotheli Lehlehla missed his cattle on or about 16 September 2011. The matter was taken up by the Village Area Crime Prevention Committee. These are liaison law enforcement auxiliary village committees that assist police in combating crime in the villages. The committee received intelligence that one Letsebang Masaile might know about the whereabouts of the stolen stock. On 18 September 2011 the Committee Members went to Letsebang's village very early in the morning. They found him with other men of his village. They made their inquiry to him about the lost cattle and he denied knowledge of alleged stolen stock. He gave them information concerning Accused and suggested that they direct their inquiry to him. At this time of conversation Appellant was inside a house thereat. The party called Appellant out from the house. Appellant came out. Appellant was asked about the stolen cattle. Appellant took out a 6.65 mm S/N 670652 small arm and shot at complainant. He missed him. Appellant then ran away and people of the village chased him throwing stones at him. As Appellant was running away he kept firing shots at his pursuers while in flight.

Fortunately he missed. Villagers of neighbouring village of Ha Maanela assisted Letsebang's villagers and caught Appellant. Appellant was found in possession of the small firearm already mentioned plus a single live bullet. They drove him to the Chief of the Area who called Thaba-Tseka Police. The Thaba-Tseka police arrived and took Appellant away together with his firearm in its bullet.

3. Accused confirmed facts as narrated above. He pleaded guilty to the charge that he had shot at Rotheli Lehlahla with a firearm with intent to kill him. Appellant pleaded guilty to the charge. Magistrate returned verdict of guilty of Attempted Murder. After representations of magistrates in mitigation of sentence Appellant was sentenced to 3 years imprisonment without an option of a fine.
4. Mr. Molapo appeals against both conviction and sentence. In regard to conviction Mr. Molapo submits that on the facts Appellant is not guilty of attempted murder on the grounds that he lacked intention to kill complainant when he fired at him and missed him. I asked Mr. Molapo to point to me on record what the intention of Appellant was when he fired the shot that missed complainant. He replied that Appellant's intention was to scare complainant and his party to open up a way for him to escape their capture of Appellant. However, Mr. Molapo was unable to point to a fact or facts that pointed to an intention of Appellant to escape when he

fired at complainant but missed. Neither could he point to any facts on the admitted facts that pointed to lack of intention to kill his pursuers when he kept on firing several times at them with his pistol at crowds chasing him.

5. On sentence Mr. Molapo submits that time Appellant has already served to date is adequate punishment for the offence he has committed; he deserves to be released from prison immediately. It is common cause that following his arrest on 18 September 2011 Appellant was in custody at Thaba-Tseka gaol until 20 January 2012 when he was released on bail. That means he spend 4 months in prison before being admitted to bail. This takes the period in which appellant has been custody up to September 2015 which in turn would mean that if Appellant were released now he would have been in custody for a total of 2 years.
6. Mr. Fuma for the Crown contended on the issue of “lack of intention” to kill complainant that the nature of intention was *dolus eventualis* in the sense that when Appellant pointed a firearm at Complainant and fired that first shot at him Appellant must have foreseen that he might hit his target but was prepared to accept that eventuality should it happen. Luckily he missed his target. But the intention to kill complainant was there nevertheless only that he missed.

7. There is no suggestion that Appellant fired up in the air to scare the Complainant or deliberately or completely off target to scare him. The evidence on record is that Appellant fired at Complainant but missed. In my view on the evidence before me Appellant shot at Complainant but missed him. Appellant's intention was to hit Complainant. A firearm being a lethal weapon intended to kill complainant when directed at his body. I accordingly confirm the magistrate's verdict as it stands.
8. As regards sentence, the law is that the court on appeal will not lightly interfere with the trial court's sentence unless such sentence is so severe that it induces a sense of shock as inappropriate. Appellate court will not substitute its own sentence for that of the trial court even if the court feels that it might have imposed a different sentence perhaps to that imposed by the trial court. **See Rex vs Majoro & others 1976 LLR 245.** Sentencing is pre-eminently within the competence of a trial court. The sentence of 3 years without option of a fine in my view is not shockingly severe in the circumstances as to induce a sense of shock in me as to call for my intervention in the interest of justice. Incidents of use of firearms against owners of stock or law enforcement agencies in our rural areas is too frequent. It needs to be dealt with firmly by the courts. The magistrate does allude to this scourge in his reasons for sentence. I agree with him. Accordingly I dismiss Appellants appeal on both conviction and sentence.

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

**For Appellant : Adv. L. E. Molapo**

**For Respondents : Adv. A. T. Fuma**