

**IN THE HIGH COURT OF LESOTHO**

**In the matter between**

**CRI/T/123/12**

**REX**

**VS**

**LEHLOHONOLO SCOTT  
'MALEHLOHONOLO SCOTT**

**JUDGMENT**

**Coram: Hon. J. T. M. Moiloa**

**Date of Hearing: 29 October 2019**

**Date of Judgment: 23 March 2020**

**Date of Sentence: 23 June 2020**

## ANNOTATIONS

### Legislation

- Penal Code 2010 [Act 6 of 2010]
- Criminal Procedure and Evidence Act 1981

### Cases

- Makamole & two others vs Rex 1980/1984 LAC 29
- Rex vs Tšosane LAC (1995/1999) 639
- Sole vs Rex 004/04 LAC 612 (Full Bench Decision)
- Rex VS Blom 1939 A.D. 188 @ 202 – 3
- Nkosi vs Rex 1990 – 94 LAC 538
- S vs Zing 1969 (2) SA 537 (A)
- S vs Mafu 1992 (2) SACR 494 (A)
- R vs Karg 1961 (1) SA 231 (A) @ 236
- S vs Holder 1979 (2) SA 70 (A)
- S vs Berliner 1967 (2) SA 193 A
- Meyer vs DPP 1977 LLR 161
- S. vs Seegers 1970 (2) SA 506 (A)
- Phalatsi vs Rex 1971 - 73 LLR 92

[1] The two Accused persons before court are son (Accused 1) and mother (Accused 2). All are residents of Koalabata village on the outskirts of Maseru City in the District of Berea. Both Accused persons lived together in a 5 roomed house consisting of 3 bedrooms, a sitting room and a kitchen.

- [2] Both Accused are charged with 2 counts of murder of two boys named Moholobela Seetsa (Count1) and Kamohelo Mohata (Count 2). In addition to Counts 1 and 2 above, Accused 1 is also charged with escaping from lawful custody at Maseru Central Prison on or about 13<sup>th</sup>/14<sup>th</sup> October 2012.

### **COUNT 1**

- [3] Count1 alleges that on or about between 11<sup>th</sup> January 2012 and the 14<sup>th</sup> January 2012 (the exact date to the Crown unknown) at Koalabata village the two Accused persons acting in concert one or the other of them or both of them intentionally caused the death of Moholobela Seetsa and thereby contravened **Section 40(1)** read with **Section 40(2) of the Penal Code Act No.6 of 2010**.

### **COUNT 2**

- [4] Count 2 alleges that on or about between the 10<sup>th</sup> July 2012 and 12<sup>th</sup> July 2012 (the exact date to the Crown unknown) both Accused persons, acting in concert, one or the other or both of them intentionally killed and murdered Kamohelo Mohata in **Contravention of Section 40(1)** read with **Section 40(2) of the Penal Code Act No.6 of 2010**.

### **COUNT 3**

- [5] In Count 3 the Crown alleges that Accused 1 is guilty of **Contravention of Section 89 of the Penal Code Act No.6 of 2010** read with **Section 28 and Section 109** of that Act in that upon or about between 13<sup>th</sup> and 14<sup>th</sup> October 2012 and at or near Lesotho Correctional Service (Maseru Central Prison) in the District of Maseru, Accused one, sharing a common purpose together with person or persons unknown to the Crown and in the pursuit of such purpose did escape from lawful custody and/or

was assisted to escape from lawful custody and thereby did contravene the provisions of **Section 89** read with **Section 28** and **Section 109** of **Act 6 of 2010**.

[6] **Section 40(1) reads as follows:**

*“Any person who performs any unlawful act or omission with the intention of causing the death of another person, commits the offence of murder if such death results from his/her act or omission.”*

[7] **Section 89 of the Penal Code reads as follows:**

*“A person who escapes from lawful custody or who assists another to escape from lawful custody commits an offence.”*

### **BACKGROUND**

[8] On or about 11<sup>th</sup> January 2012 a young boy named Moholobela Seetsa of Koalabata village disappeared from his parents’ home. A search was mounted for him but for some days he could not be found. Later on his clothing and parts of his body were found through the combined efforts of police, the villagers and allegedly through the eventual cooperation of Accused 1. I shall return more to this aspect (cooperation of Accused 1) of the case as it formed the bulk of the Court’s consideration during Accused’s trial.

[9] On or about 10<sup>th</sup> July 2012 a young boy named Kamohelo Mohata disappeared from the care of his grandfather, and of his brother who lived with him at Koalabata village. Once again a search for Kamohelo was mounted by his parents and the police. Eventually Kamohelo’s body parts were found and his personal property identified by his relatives in the possession of Accused persons.

[10] On or about the 12<sup>th</sup> July 2012 both Accused were arrested by police led by Inspector Matamane of Mabote Police Station.

[11] The trial proper commenced on 12<sup>th</sup> April 2016 following the return of Accused 1 from South Africa where he had fled following his escape from Maseru Central Prison on or about 13<sup>th</sup>/14<sup>th</sup> October 2012 and following a long extradition trial process in Durban, South Africa which eventually returned him back to Lesotho on 21<sup>st</sup> October 2015.

### **THE EVIDENCE AND ITS NATURE**

[12] **PW1 BERENG SEETSA**

The first Crown witness was Mr. Bereng Seetsa. He testified that he was the biological father of the late Moholobela Seetsa – deceased in Count 1. He had last seen his son in early January 2012 before he left for Mokhotlong where he works. On 11<sup>th</sup> January 2012 his wife Mrs. Mamoholobela Seetsa (PW2) phoned him to give him a report that their son had not reported home. At the time Moholobela was 13 years old and was attending school at Methodist Church High School and in Form B.

12.2 On 12 January 2012 PW1 sought leave of absence from his employer and came down to Maseru to attend to the matter of disappearance of his son. On arrival in Maseru he found his neighbours already conducting a search for Moholobela.

12.3 The search covered all manner of terrain including dongas where some information had indicated that he had been seen riding a bicycle playing. PW1 testified that on 15<sup>th</sup> January 2012 he had received a report that

there had been human body parts found in the dongas between Koalabata and Sekhutlong. PW1 told the court that he proceeded there.

- 12.4 The body parts were found at different times and at different places. At first they found body without knees. The body was cut at the neck while the lower part was cut at the knees. These were discovered at the dongas though at different places there. The head was discovered at the same time though a little later.

On arrival he found the villagers together with the police already gathered there at the body parts. He identified the body parts as those of his son. The body parts were collected by the police and taken to the Lesotho Funeral Service (LFS) Mortuary. PW1 accompanied the police and the body parts to the mortuary. PW1 testified that police also requested blood samples from him and his wife explaining that it was to enable DNA tests to be undertaken to establish whether there was link between themselves and the dead body parts that had been discovered. He and his wife gave their blood samples to enable police to continue with their further investigations.

- 12.5 Cross-examination of this witness was superficial and of no consequence.

[13] **PW2 – MRS. ‘MAMOHLOBELA LINTLE SEETSA**

PW2 is the wife of PW1. She is the mother of Moholobela Seetsa deceased in Count 1. She lived with Moholobela at their home at Koalabata village. She testified that on 15<sup>th</sup> July 2012 she and her husband PW1 attended at Mabote Police Station where they were invited to identify certain items of clothing if they could. Present at this identification as well was also Accused 1. Items shown to the group were

an underwear and a belt. She identified both items as Moholobela's clothing. Further, PW2 testified that the underwear had in fact been bought by her for her son in Durban while she was there on a school trip. As for the belt she told the Court that the belt in fact had been hers originally and that she had given it to Moholobela later for use by him.

Prior to the death of her son, she already knew both Accused persons as they are her neighbours at Koalabata village. Accused's home is not far from their own home in the village.

- 13.2 Cross-examination of this witness like that of PW1 was inconsequential and did not alter the material nature of her evidence. She was asked where the identification of the clothing was done and she confirmed her evidence in chief that it was at Mabote Police Station. She was asked if the Accused persons were present when that happened and again she replied that it had been done in the presence of herself, PW1 and Accused 1.

[14] **PW3 RAMOJAKI MOHATA**

This witness testified in relation to issues material to Count 2. He testified that he was the uncle of deceased Kamohelo Mohata. He told the Court that in his lifetime the late Kamohelo lived at Koalabata village with his younger brother while he (PW3) lived at Ha Tšosane. I pause to mention here that Tšosane village and Koalabata village are next to each other at the base of Lancer's Gap and Koalabata Escarpment respectively.

- 14.2 PW3 testified that on 12<sup>th</sup> July 2012 he received a phone call report from one Matooane concerning Kamohelo. Kamohelo had been born in 1992 and was living with his younger brother Refiloe at their parents' home at

Koalabata village and that Kamohelo was a student at Limkokwing University. Kamohelo and Refiloe's father lived in South Africa where he worked.

14.3 PW3 testified that he attended at Mabote Police Station with relative Matookane and his sons, Makhetha Mohata, and Motlatsi Mohata, on 12<sup>th</sup> July 2012. He was asked to attend with police at Lesotho Funeral Services on 14 July 2012 to see certain body parts and see if he can identify them. On 14<sup>th</sup> July 2012 PW3 did attend at Lesotho Funeral Services as requested by Police. There he was shown a human head cut off at the neck and he was asked if he could recognise it. He recognised it as that of Kamohelo. He also saw other body parts including hands. When they left Lesotho Funeral Services he was asked to proceed to Mabote Police Station. There in the presence of Accused 1 and 2 and policemen, he was shown items of clothing and was asked if he could identify any of the clothing he was shown. He quickly identified a pair of jeans and a Cenez High School jersey as property of Kamohelo. PW3 said the other items of property displayed to him he could not positively identify. However, his sons Makhetha and Motlatsi who had accompanied him positively identified them as property of Kamohelo too.

14.4 Cross-examination of this witness once again did not shake the materiality and relevance of his evidence concerning the charge in Count 2. He corrected himself that Accused 2 was not at the identification of clothing just discussed above. As to Accused 1, PW3 confirmed that he was present and that when police asked him to comment on his (PW3) identifications he declined to comment.

[15] **PW4 – REFILOE DANIEL MOHATA**

Refiloe is the younger brother of the late Kamohelo. As indicated earlier Refiloe and Kamohelo lived together alone at their parents' home at Koalabata. Refiloe testified that he was 3 years younger than Kamohelo which means he would have been born in 1995 and therefore 17 years old. He testified that their mother had died some time earlier and their father worked in South Africa. Their home was at Koalabata village. Kamohelo attended school at Limkokwing University in Maseru. Refiloe attended school at Cenez High School which is located at Koalabata.

15.2 Refiloe's testimony was to the following effect. On the morning of 10<sup>th</sup> July 2012 they had woken up at home at Koalabata with his elder brother Kamohelo as usual. Kamohelo had left earlier than him that morning for school as usual. Refiloe had prepared himself for school later on that morning after Kamohelo had already left. Kamohelo left for Limkokwing wearing the following clothing: blue Levis Jean trousers, a maroon and white takkie pair of shoes, brown belt (Relay label), a sleeveless black cardigan jersey, a long sleeved CENEZ High School jersey, a black Identity Top with grey and green colours, and a red KFC cap.

15.3 On this day (10<sup>th</sup> July 2012) that was the last day he had seen his brother alive. Refiloe then narrated to the Court a series of events of the 10 July 2012, the significance of which will become clear later in this judgment. As far as he was concerned he had known his brother to have gone to school. However during the morning hours of that day he had received an "sms" message on his phone emanating from Kamohelo's cellphone. The "sms" message said: *"we are going to Johannesburg on a school trip. There are things we are going to do but I have not taken my*

*passport.*” The message continued to the following effect: *“please leave the door unlocked as I don’t know when I will return.”* Refiloe continuing with his testimony told the Court that as he did not have airtime at that moment he did not respond to the “sms” from his brother’s phone. However later in the afternoon about 3 pm he got airtime and tried to call his brother but Kamohelo’s cellphone responded that he was not available. He went home in the afternoon as usual after school.

15.4 At about 4p.m. that day while at home someone arrived at his home and enquired about the whereabouts of Kamohelo. Refiloe testified that he responded that his brother was not at home. Refiloe then enquired from the person who he was so that he might tell his brother that he had come looking for him. The stranger had replied that his name was “Lehlohonolo”. He says Lehlohonolo then left. Between 6 – 7 p.m. the same day Lehlohonolo returned to Refiloe’s home again and inquired if Kamohelo had not arrived. Refiloe told Lehlohonolo that Kamohelo had gone to Johannesburg. Lehlohonolo went away. On 11<sup>th</sup> July 2012 Lehlohonolo arrived at Refiloe’s home again at about 4 p.m. and asked Refiloe if he had Kamohelo’s South African cellphone number to which inquiry Refiloe replied that he did not have it. Later that evening about 6 – 7 p.m. Lehlohonolo again returned and inquired once more if Kamohelo had not arrived back alleging that he (Lehlohonolo) had lent Kamohelo his “hard drive”. Refiloe told the Court that his response to Lehlohonolo was to tell him that he had never seen Kamohelo bring home a “hard drive” nor seen him in possession of any such item. Refiloe told the Court that he further told Lehlohonolo that if Kamohelo had any such item in his possession he (Refiloe) would have seen it. Refiloe told the Court that Lehlohonolo left.

15.5 Later same evening about 5 minutes since departure of Lehlohonolo, Refiloe received another “sms” on his cellphone. Refiloe says the message was to the effect that he should go and fetch his brother’s books from KHEKHENENE BUS STOP. This is a bus stop in Koalabata Village not far from Refiloe’s home. Refiloe told the Court that he did not proceed as advised by the “sms” message but went to a neighbour’s flat (Mateboho Qhanasana) in a block of flats in the same site where his home was situated. The reason for this decision of Refiloe was that from Mrs. Qhanasana’s window he could see if there was any vehicle arriving or moving away from the bus stop which was very close by. He noticed no taxi arriving or departing from the bus stop. While Refiloe was still with Mrs. ‘Mateboho a strange caller called him on his cellphone to say that he had delayed to go and pick up Kamohelo’s books from the bus stop and the taxi has left with the books so he must no longer bother. Refiloe told the Court that he knew no taxi arrived or departed from the bus-stop since receiving the strange sms. Refiloe told the Court that the caller had not identified himself and he too had not asked him who he was.

Refiloe concluded events of this day by telling the Court that he had left ‘Mateboho’s flat and returned to his own home to sleep.

15.6 On the morning of 12<sup>th</sup> July 2012 he left for school at Cenez High School. When he returned from school in the afternoon he found two gentlemen waiting for him at home. They asked him when he had last seen his brother Kamohelo. He told them that he had last seen Kamohelo on 10<sup>th</sup> July 2012. Refiloe told the Court that at that time he did not know or recognise the 2 gentlemen. But subsequently he established that they were policemen when they started asking him about “sms” that he had

received on his cellphone from Kamohelo's cellphone. They asked for his cellphone which they took with them to their vehicle parked a few metres away. Refiloe told the Court that his cellphone still had the "sms" messages it had received from Kamohelo's cellphone. When the policemen returned from their vehicle with his phone Refiloe told the Court that the policemen asked him for a senior family member he could phone. Refiloe said he phoned his paternal uncle Mr. Matooane Mohata. Mr. Matooane Mohata came over immediately to Refiloe's house. The two policemen spoke with uncle Matooane away from Refiloe for a while after which uncle Matooane went to his house to fetch his own vehicle. When Matooane came back the group drove away to Refiloe's grandparents' (PW3) house at Ha Tšosane. Refiloe did not go back to his own home but spent nights with his grandparents during which time they obviously broke to him the news, on 13<sup>th</sup> July 2012 of Kamohelo's death. Then later on 13<sup>th</sup> July 2012 Refiloe's own father arrived from South Africa.

- 15.7 On 31 July 2012 he and his elders went to Mabote Police Station whereat he was shown a number of items including, a black Nokia Cellphone N72 (Exhibit 1), clothes; maroon takkies with white sole, a blue Levis Jeans trousers, navy blue Cenez High School Jersey, a black sleeved jersey, a black Identity top with grey and green colours, a black and red KFC cap, a brown Relay belt.

Refiloe testified to the Court that he identified all these items to the police as property belonging to his brother Kamohelo. The Nokia N72 still had the sms messages he had earlier testified about, Refiloe told the court. Refiloe concluded his evidence by telling the Court that the Accused 1 before court is the "Lehlohonolo" who had been coming to his home on

10<sup>th</sup> July 2012 inquiring about the whereabouts of Kamohelo and also alleging that he had lent Kamohelo a “hard drive.”

15.8 Cross-examination of PW4 was very brief and confined to confirmation that at the time of identifying Kamohelo’s property at Mabote Police Station, Accused 1 was not present when the Kamohelo’s property was being identified. PW4 confirmed this. At the end of that testimony and cross-examination its central theme remained intact and not challenged in any meaningful material respects.

[16] **PW5 NO.10495 DET. SGT. SEEKO**

Det./Sgt. Seeko testified that he had been in the service of Lesotho Mounted Police Service for 16 years as at commencement of the trial of this matter in 2016. He had received extensive training in taking photos of crime scenes. He had been doing scene of crime photography for 13 years following his training. In the matter before Court Sgt. Seeko testified that he had taken photos of 3 scenes of crime. Those were:

- (a) *Koalabata home where Accused 1 and 2 both lived*
- (b) *The donga at Sekhutlong in Koalabata*
- (c) *Koalabata Primary School toilets*

He also had taken photographs of human body parts at LFS as well.

Sgt. Seeko compiled and produced before Court, 2 blue albums of the photographs of crime scenes which he took and marked them 01/16 and 02/16. Blue Album 01/16 bears the title MOHOLOBELA SEETSA deceased in Count 1. The second Blue Album 02/16 is titled

KAMOHELO MOHATA, deceased in Count 2. The photographs were taken by him personally.

The photographs he took at LFS were also taken by him personally on the 18<sup>th</sup> January 2012.

16.2 Sgt. Seeko took the Court through **Blue Album 02/16 [Exhibit B]** first and explained it as follows in his testimony. This album depicts the house of Accused 1 and Accused 2 together with its toilet as well as a Corsa van parked outside that house. It also shows the inside of that house where the two Accused persons lived. Sgt. Seeko then took the Court through the photographs in the vehicle as follows explaining each photo in detail.

16.3 **PHOTO 2:** Depicts the general view of the crime scene at Accused 2's house

**PHOTO 3:** Depicts the green Corsa van parked in front of Accused 2's house.

**PHOTOS 4, 5 AND 6:** These photos depict the inside of the Corsa van.

**PHOTO 4:** depicts yellow Shoprite Plastic bag in front of passenger seat.

**PHOTO 5:** Shows the inside of that vehicle behind the driver's seat.

**PHOTO 6:** Shows inside the load bay area of the van. Photo shows yellow plastic gloves, green tracksuit, blue T. shirt, black/white Puma socks and black/white Adidas socks.

**PHOTOS 7 AND 8:** Show the load area of the Corsa van.

**PHOTO 7:** Shows two (2) human arms without hands.

**PHOTO 8:** Shows human legs without feet

[17] **PHOTOS TAKEN AT FAMILY TOILET OF ACCUSED 2's HOUSE**

**PHOTO 9:** Shows a family toilet of Accused persons located within the site of the premises where they lived.

**PHOTO 10:** Shows the inside of that toilet referred to in Photo 9.

**PHOTO 11:** Shows inside of the toilet pit when the seat cover is opened; toilet pit covered in newspapers.

**PHOTO 12:** Shows everything else that was inside the pit including faeces inside there when the newspapers shown in Photo 11 were removed.

Sgt. Seeko explained that when he uplifted those newspapers he took photographs of what was revealed. There was a Shoprite plastic bag (yellowish). In addition there were bloodstains on the floor. The Shoprite plastic bag had a lot of blood indicating that it contained a lot of blood.

Inside the pit there was also a Pick n Pay plastic bag. This is revealed in **PHOTO 13.** Sgt. Seeko testified that he opened the plastic bag and inspected the contents. It contained blood.

He then took the 2 plastic bags as exhibits. He took them to their police laboratory to be examined. There they were left with Lab. Technician Lesupi to be examined.

[18] **PHOTOS TAKEN INSIDE ACCUSED HOME AT KOALABATA:**

**PHOTOGRAPH 14:** Shows the inside of Accused 2's house at Koalabata. The photo was taken on 12<sup>th</sup> July 2012. It is a room which Sgt. Seeko said it appeared to be used as a storeroom. Sgt. Seeko explained that this photo depicts the inside of one of the rooms of the

house depicted in photo 2. Photo 14 also depicts a brown Defy used cardboard box spread on the floor. Seeko noticed that it was stained with blood. The photo also shows 2 “hacksaws,” one with a yellow handle and another with a red handle. Sgt. Seeko testified that he took the hacksaw with red handle and the blood stained Defy cardboard to Mr. Lesupi at the Police laboratory.

**PHOTO 15:** Sgt. Seeko explained that this photo depicts the floor of the room which is depicted in PHOTO 14. It is the floor of that room after the Defy blood stained used cardboard was removed. The floor showed that there was blood stain on the floor which had been covered by the Defy cardboard. He explained that on top of the Defy cardboard was placed the steel bath in the picture.

[19] **PHOTOS TAKEN AT SEKHUTLONG DONGA – DISCOVERY OF KAMOHELO’S BODY PARTS**

**PHOTO 16:** This photo depicts the general view in the inside of a donga where the torso of Kamohelo Mohata was discovered. The donga is at Sekhutlong – Koalabata and it about 3 to 5 km away from Accused’s home depicted in photo 2.

**PHOTO 17:** This photo depicts the small hole (*lelumela*) covered with soil inside of the Sekhutlong Donga. The spot which shows that something was buried there.

**PHOTO 18:** This photo depicts a wrapped black plastic bag. It depicts what police investigating team discovered as they removed the soil covering the hole in **PHOTO 17**. In this photo the black object is a plastic bag which police discovered contained the torso of Kamohelo mentioned earlier. The torso found in black plastic bag is depicted in **PHOTO 18**.

In regard to the body parts Sgt. Seeko said he took them to Lesotho Funeral Services Mortuary for safe keeping. The body parts were placed in a cold-room where dead human bodies are kept at LFS. This was on 12<sup>th</sup> July 2012.

**PHOTO 20:** This photo depicts a small hole (*lelumela*) covered with soil inside the donga.

[20] **KOALABATA PRIMARY SCHOOL TOILETS ON 13<sup>th</sup> JULY 2012**

**PHOTO 21:** This photo depicts a collection of human body parts

**PHOTO 22:** Depicts the general view of Koalabata Primary School toilets. Sgt. Seeko explained to the Court that the photo also shows in the distance partial view of Accused 2's house.

**PHOTO 23:** This photo depicts two pits of the toilet.

**PHOTO 24:** This photo shows what Sgt. Seeko said he saw when he looked inside the pit toilet which appears in **PHOTO 23**. He told the Court that he saw a yellow Shoprite plastic bag near which he saw a leg of a person.

**PHOTO 25:** This depicts the back of the toilet in **PHOTO 22**. Sgt. Seeko said when he opened the back of it he discovered lungs covered with tree branches. He couldn't tell to what creature the lungs belonged – human or animal?

**PHOTO 26:** This picture shows the inside of the toilet in **PHOTO 22**. It shows also the yellow Shoprite plastic bag and intestines and lungs after the tree branches were removed. All of these were inside the toilet pit. The liver was partly cut at its lobe. The liver lobe itself is depicted to the left of the yellow plastic bag.

**PHOTO 27:** Depicts a heart which had been cut at its lobe. On the left of the photo are intestines. Also, on the right of the picture a human leg with no foot.

**PHOTO 28:** Shows a piece of a throat.

**PHOTO 29:** Shows the inside of the pit of the toilet. Inside the yellow Shoprite plastic bag and black plastic bag beneath the photo shown in 30 and 31.

**PHOTO 30:** it shows hands. This **PHOTO 30** is related to **PHOTO 32**.

**PHOTO 31:** it shows feet. The yellow plastic bag contained two feet as depicted in photo 30. Photo 29 is related to **PHOTO 31**. **PHOTO 31** is related to **PHOTO 32**.

**PHOTO 32:** Shows black plastic bag containing two hands

**PHOTO 33:** This photo depicts the “Head of a Human Being”. It has been cut off from the rest of the body at its neck. It is the head after retrieval from the pitlatrine. The picture shows this human head before it was washed. It is the “head of Kamohelo” when he was later identified – deceased in Count 2. This “head of Kamohelo” was found inside the pit of the Koalabata Primary School toilet.

**PHOTO 34:** Depicts the human head with face in **PHOTO 33** after it was washed.

**PHOTO 35:** This picture is related to **PHOTO 27** (heart and intestines). All of these body parts were discovered and retrieved from inside the Koalabata Primary School toilet pit.

**PHOTO 36:** Shows the yellow plastic bag and black plastic bag. Both these 2 bags appear in photo 29.

**PHOTO 21:** Shows a collection of Exhibits found, at the home of Accused’s 2 house Koalabata village, the dongas at Sekhutlong (Koalabata), and, those that police recovered and retrieved from Koalabata Primary School. Sgt. Seeko told the Court that all these body

parts found at the school toilet pit were taken by him to Lesotho Funeral Services Mortuary and placed in the mortuary cold room.

**PHOTO 37:** This picture depicts a table knife with brown handle recovered inside a steel bath at the home of Accused 2. Accused 1 is holding a table knife in his hand. The picture was taken inside Accused's house by PW 5 himself on the afternoon of the 12<sup>th</sup> July 2012.

**PHOTO 27 – 36:** These photos were all taken at the Koalabata Primary School toilets on 13<sup>th</sup> July 2012.

[21] **POST-MORTEMS DONE**

Sgt. Seeko attended both post-mortems. The one on Moholobela Seetsa (Deceased in Count 1) was done on 18<sup>th</sup> January 2012. The other post-mortem examination was done on 18 July 2012. Both were undertaken by Dr. Moorosi. Sgt. Seeko confirmed that he attended on them both on their respective dates. On each of those occasions the body parts were identified by respective relatives on each of those deceased persons before Dr. Moorosi commenced his post-mortem examination.

21.2 **FIRST POST-MORTEM – ON MOHOLOBELA SEETSA**

As indicated earlier this post-mortem was carried out on 18 January 2012 by Dr. Moorosi. When Dr. Moorosi had completed his post-mortem examination, the body parts were then collected by Sub-Inspector Matamane to Lesotho Funeral Service.

21.3 **SECOND POST-MORTEM – KAMOHELO MOHATA**

Kamohelo Mohata is deceased in respect of Count 2 as we have seen. Sgt. Seeko was present when Dr. Moorosi undertook his post-mortem examination on this body following its identification to the Dr. by relatives of deceased. Sgt. Seeko told the Court that he played no specific

role at the examination. He was only there to observe events as a policeman. He confirmed to the Court that these body parts on Dr. Moorosi's operating table were the same ones he had delivered to Lesotho Funeral Service on 13<sup>th</sup> July 2012.

21.4 The witness testified that Dr. Moorosi extracted some body tissues from these body parts and handed them to him for laboratory tests. The rest of the body was then handed to Mohata family following Dr. Moorosi's work on them

21.5 Blood samples were extracted from both Accused. Sub-Inspector Matsoso gave the samples to PW5 to take to Police Laboratories for analysis. PW5 told the Court that he handed all these tissue and blood samples on the same day to Lab Technician Lesupi. PW5 also told the Court that apart from the Exhibits he had already spoken about above other than the "Red Hacksaw", he handed also a 'Grey Jockey underpants' given to him by Sub-Inspector Lesholu to Lesupi of Police Laboratories.

[22] The initial cross-examination of **PW5** by Mr. Hoeane was brief and consisted of two questions. The First question to **PW5** was whether all photos in the Albums had been taken by the witness. The answer to this inquiry was "Yes". The second question to the witness was for him to confirm that the Albums had not been formally handed in as Exhibits at the end of his evidence-in-chief to which the witness confirmed that it was so. Mr. Hoeane then ended his examination and sat down.

22.2 Mr. Leppan for the Crown applied to the Court for leave to allow the witness to formally hand the Album as Exhibits as part of his evidence.

Mr. Leppan explained that he had inadvertently forgotten to do so to conclude **PW5**'s evidence on the Albums. Mr. Hoeane objected to this application arguing that the Albums had not been handed in formally by **PW5** at the end of his evidence-in-chief and therefore was not entitled to be granted leave to do so post that point. I asked Mr. Hoeane what prejudice Accused would suffer if the Court allowed **PW5** to formally hand the Albums which he had taken the Court through a few minutes earlier. Mr. Hoeane was not able to convince me that there was any prejudice the Accused would suffer if the Court exercised its discretion in the interests of justice to permit **PW5** to do the formal handing in of the Albums. Mr. Hoeane spent the better part of the day explaining to the Court especially in the light of my assurance to him that I intended to permit him to cross-examine **PW5** on the whole of his evidence including that concerning the photos in the Albums. In the end I ruled in favour of allowing **PW5** to formally hand in Albums 01/16 and 02/16 as exhibits to be part of his evidence. In my ruling I explained that my function as a trial Judge in a criminal matter is to see to it that the trial is conducted before me in a fair and just manner. I am not like an uninterested umpire in a tennis match. I explained in my ruling that my responsibility in a trial is much greater than a tennis match umpire. I have a duty to ensure fairness and justice in a trial before me.

22.3 **PW5** then formally handed in the two Albums. Mr. Hoeane was then given leave by me to cross-examine **PW5** on the whole of his evidence including on the Albums and what they depicted.

[23] Cross-examination of **PW5** concerned three things primarily. Firstly, that the Corsa car is not the subject of theft charge against any of the Accused persons. **PW5** replied it was so. Secondly, that **PW5** did not seek and

obtain permission of Accused persons to take photos of their house. **PW5** confirmed that it was so. Thirdly, **PW5** was challenged that in none of the pictures taken Accused persons are not shown pointing at anything. **PW5** replied that it was so. He was then asked about Photo 14 as to the person who is partially depicted there by the photo. **PW5** answered that it was the partial body of Senior Inspector Khatleli. The witness was then referred to **PHOTO 37** and asked whose hand is shown holding a knife in that picture. **PW5** replied that it was Accused 1 holding that knife.

In essence therefore the evidence of **PW5** remained intact as to the Albums (**Exhibits A and B**) and what the photos taken by **PW5** represented.

[24] **PW6 NO. 10116 SUB-INSPECTOR LEHABANE MATAMANE**

**PW6** testified that on 15 January 2012 he received a call at about 10 a.m. from one of the residents of Koalabata village reporting a suspicious grave inside one of the dongas at Koalabata. **PW6** proceeded there immediately accompanied by P/C Shale and found a group of villagers gathered at the donga. **PW5** joined them shortly thereafter. He was shown what looked like a grave. He dug the place and removed the soil. The remains of a person were revealed when the soil was removed. The human remains did not have a head. Its two arms were cut off. The two legs were also cut. It was only left with the thighs. It was hidden there with two arms which had no hands. It was hidden with two legs without feet.

24.2 **PW6** then explained in detail **PHOTOS 16, 17, 18, 19 and 20** taken by **PW5** and what they represented.

In these photos he said he recognised it as the pictures that captured what he had just described above. He added that the body did not have private parts (i.e. sex organs). The corpse had been opened from the middle. In continuing to examine it (**PHOTO 19**) the witness testified that he observed that the corpse did not have a heart. He observed that the grave into which these items had been buried was about 140 cm in length and 96 cm in width. PW6 told the Court that he took those human body parts and lodged them for safe keeping at LFS Mortuary cold storeroom for corpses.

24.3 PW6 further told the Court that he enquired from the villagers gathered there whether they might know to whom those body parts belonged. Nobody knew. After placing the body parts at LFS PW6 went back to his work station at Mabote C.I.D. Police Station.

[25] Later the same day (i.e. 15<sup>th</sup> January 2012) at about 4 pm PW6 told the Court that he received another phone call asking him to rush to the same donga at Koalabata. He did as requested with his investigation teammates. He found a group of villagers gathered there. About 60 paces from where he had found human body parts buried earlier he found more body parts amongst which was a human head, two hands and two feet. Near them were three shopping plastic bags (one was a Pick and Pay, another was a Shoprite and a third one was blue in colour).

25.2 PW6 told the Court that one of the villagers told him that they had found these latter human body parts buried in a pit in the donga which they dug up to remove them. The witness told the Court that he removed the body parts to LFS and requested the villagers gathered there to ask Mr. Bereng

Seetsa to come to him (PW6). There PW1 was shown the body parts recovered from the dongas and by looking at the recovered human head on a second visit to the donga. PW1 identified them as his son's (Moholobela Seetsa's) remains. PW6 told the Court that Moholobela Seetsa (deceased person in Count 1) had been reported to police as missing on 11<sup>th</sup> January 2012. The recovered body parts were kept at Lesotho Funeral Service Mortuary cold store room to await post-mortem to be done on them.

25.3 Cross-examination of PW6 did not destroy the value and relevance of PW6 evidence. All that the cross-examination sought to establish was that as at that time (i.e. 15<sup>th</sup> January 2012) PW6 did not link the crime alleged in **Count 1** with Accused persons. PW6 confirmed that at that stage they did not link Accused persons with that crime but that later police investigations did. I pause to observe that Moholobela Seetsa had been reported to police to be missing on 11<sup>th</sup> January 2012. Discovery of Moholobela's body parts was made by villagers and PW6 on 15<sup>th</sup> January 2012. It is clear to me that it was very early indeed in police investigations at that date to establish who the perpetrator was.

[26] **PW7 CHIEFTAINNESS 'MAKHOMO MAKOANYANE**

She is Chieftainess of Koalabata village. She knew Moholobela Seetsa in his lifetime as a child of PW1 and PW2 in the village. She also knows both Accused persons very well as her subjects. She knew Kamohelo Mohata (deceased in Count 2) in his lifetime as well as his parents who are also her subjects in the village.

26.2 She testified further that on the morning of 12 July 2012 she was proceeding from her home to the village fields below the village to attend to disputes there over residential sites when she noticed police at the home of Accused persons. She was in the company of her Councillor Mr. Sennane. Her route to the fields in fact was going to take her past Accused's home. Police called her to them. Police asked her to abandon her original mission and ask someone else to attend at the fields. They explained that a police messenger had been dispatched to her home ask her to join but that she may have missed them. She requested Mr. Sennane to attend on disputes at the fields and remained to attend on police. Police informed her that they suspected that a crime had been committed at the house of Accused 2 where they were standing awaiting arrival of Accused 2. At the time Accused 2 was not at home. Shortly thereafter Accused 2 arrived in a police vehicle accompanied by policemen. Shortly after accused 2's arrival there arrived another set of policemen with Accused 1. Police called her to come closer to where police were standing with both Accused. Police spoke to them in her presence. Chieftainess testified that police cautioned both Accused before asking them questions. The caution was to the effect that police suspected that a crime had been committed in Accused 2 house before them; that Accused had a right to seek a lawyer or apply for bail in relation to the crimes they (police) were investigating. They asked the two Accused before Court to identify which property belonged to which accused person. There was a house and a vehicle in front of them at that time. The vehicle was parked outside the house. Accused 2 identified the house as hers. Accused 1 identified vehicle parked outside the house as his vehicle. Police then asked them whether they would allow them to search the house and vehicle. Both Accused agreed. Police then cordoned off the properties with a yellow police tape including the toilet

on site. Police explained that this was being done to cordon off the properties from the crowds which had been gathering there in numbers since police arrival on the site.

- 26.3 Police then proceeded to search the properties of Accused commencing with the vehicle in **PHOTO 2 of Exhibit B**. She testified that **PHOTO 2** depicted a house of Accused 2 together with its toilet. Also in this picture PW7 identified a vehicle of Accused 1 parked in front of Accused 2's house. She testified that it was a green Corsa vehicle belonging to Accused 1. Chieftainess explained that before that date she had seen the vehicle driven around the village by Accused 1 loading young village boys at its back.

[27] **SEARCH AT CORSA VEHICLE**

When police began to search the vehicle it was not locked. Police opened the driver's door. Apart from herself observing what was happening PW7 was with her two chief's Councillors, Mr. Khotso Tšasanyane and Sethunya Sethunya. Both are Councillors at the Chief's Court. As the police began their search both Accused persons were standing next to the vehicle. Police then raised the driver's seat. Police asked her to come closer with Messrs Tšasanyane and Sethunya to look. Police asked them to look in the vehicle. Chieftainess and her Councillors did. She testified that they observed on the floor at the driver's feet a black and green tracksuit top with a lot of fresh blood on it. Behind the driver's seat the Chieftainess saw a man's private parts. In **PHOTO 5 in Exhibit B** Chieftainess confirmed that it depicts the man's private parts and she saw when she looked behind the driver's seat of the vehicle. In **PHOTO 6** Chieftainess confirmed to the Court that the socks and green trousers are the ones she saw in that Corsa vehicle.

27.2 PW7 testified that police then opened the tonneau cover of the Corsa van and asked her to come closer to look and observe what was there. She approached as requested together with Tšasanyane and Sethunya. She and the Councillors saw a large plastic bag. She observed that it had a lot of blood. Inside the plastic bag she observed two human arms with no hands, and, a leg with no feet. When shown **PHOTOS 7 AND 8** Chieftainess was able to confirm that **PHOTO 7** depicts the human leg and two human arms that she saw and that the white thing next to the human pieces just described by her was a plastic bag she had also just told Court about.

In **PHOTO 8** Chieftainess told the Court that it depicted a human leg without its foot. All of the above things she confirmed were the human pieces she had just described as having been found at the load bay of the Corsa van when the tonneau cover was opened.

[28] **SEARCH AT ACCUSED 2 TOILET**

The Chieftainess' testimony then took the Court to what happened next. She said from the search of the Corsa vehicle police then entered Accused 2's house with both Accused. She asked Messers Tsatsanyane and Sethunya to accompany police inside the house. She remained outside and waited. Later police emerged from the house carrying bloody plastic bags. She saw police pour fresh blood from the plastic bags into bottles.

28.2 From the house police proceeded to the toilet. She confirmed to the Court that **PHOTOS 9 and 10** depict the toilet she was now referring to. She told the Court that **PHOTO 9** depicted the outside of the toilet at Accused 2 homestead. **PHOTO 10** depicted the inside of the toilet.

28.3 The Chieftainess then took the Court to what transpired at the toilet as follows. Inside the toilet she observed blood stains leading up to the toilet seat. She observed police open the toilet seat and look inside the pit. Police remarked that it was too dark inside there for them to see properly. The toilet was built of corrugated iron sheets only as opposed to brick/stone/mortar. She then observed and heard police ask Accused 1 and 2 for a permission to uplift the toilet. Both gave their consent. Police then uplifted the toilet and asked Chieftainess to go closer again to observe what is revealed. Chieftainess told the Court that she, Accused 1 and Accused 2, Tsatsanyane and Sethunya moved closer and observed what was inside. She observed a number of bloody plastic bags. She observed them to be sitting on top of what looked to her like newspapers. They were sitting at the bottom in the latrine pit. She then took us through her comparison of what she saw and what is depicted in **PHOTOS 11, 12 and 13 of Exhibit B** Album. She told the Court that **PHOTO 11** depicts newspapers as she saw them in the toilet pit. **PHOTO 13** depicts plastic bag that came from the toilet pit.

28.4 Chieftainess then wrapped up her evidence-in-chief to the Court in relation to events of 12<sup>th</sup> July 2012 telling the Court that following their discovery of the plastic bags from inside the toilet, bottles of blood collected earlier and referred to in her earlier testimony, Accused 1's green Corsa van, the human body parts recovered from Accused 1's vehicle, the bloody green/white tracksuit and the bloody socks mentioned earlier all these items were removed by police from the scene together with Accused 1 and Accused 2. Throughout Chieftainess observed that Accused 1 and 2 were acting freely and voluntarily. She observed no threats of any kind to them by police at any stage.

[29] **EVENTS OF THE 13<sup>TH</sup> JULY 2012**

As to events observed by Chieftainess on the 13<sup>th</sup> of July 2012 the Chieftainess' testimony in Court was to the following effect.

29.2 At about 10 a.m. on the morning of 13<sup>th</sup> July 2012 she received a telephone call from Mabote Police requesting her to go down to the local primary school below the village. She explained to the Court that the school is situated about from witness box to Kingsway below Queen II Hospital (400 metres estimated by both Counsel) from the Accused's home. She proceeded there as requested. Chieftainess was the first one to arrive at the school. She waited for about five minutes and the Police arrived with **Accused 1**. Chieftainess told Court that she called Bothata Leche to join her. Bothata is one of her Councillors and lives near the school. Police asked **Accused 1** if he knew her. **Accused 1** replied that he knew her and that she was Chieftainess 'Makhomo Makoanyane, her Chieftainess in the village. Police asked **Accused 1** to tell her as to what they had come to the school to do there. In response to this request from the police, the Chieftainess continued her testimony, **Accused 1** told her that he was going to show her part of the human body parts that she had seen at his home the previous day. Chieftainess said she then asked **Accused 1** where he was going to show her those parts. **Accused 1** pointed at the school toilet nearby in response to her inquiry. Police then asked **Accused 1** if we all could go there where he said he was going to show Chieftainess. **Accused 1** agreed. Police asked **Accused 1** to lead the way and he did. The party then proceeded to the school toilets.

29.3 She observed that the toilet had two working pits. She told the Court that **Accused 1** showed them the second pit. Chieftainess explained that

**PHOTO 22 in Exhibit B Album** depicts accurately the school toilet at the school to which **Accused 1** took them. It is built of cement block.

**PHOTO 23** the Chieftainess identified as depicting two openings of this toilet pit. These were the 2 working pits she referred to earlier in her observations. She, police, Bothata Leche approached the second pit which **Accused 1** pointed to them all. Police looked inside into the toilet pit. They also invited her and Bothata Leche to look into the toilet pit. She said she saw tree branches. When she was shown **PHOTO 25** Chieftainess identified it as depicting accurately the tree branches she was referring to. Police asked **Accused 1** for permission to remove those branches. He did give it. Police officers removed the branches. When the branches were removed there were revealed two plastic bags, one black and the other yellow Shoprite plastic bag. She identified in **PHOTO 26** the two plastic bags she was referring to as the ones depicted there. Police then asked **Accused 1** for permission to remove and take those plastic bags. **Accused 1** consented. Chieftainess testified that she observed and concluded that the purpose of those branches had been to hide the plastic bags from the school children when they would return from school winter vacation on which they were at that time.

Chieftainess identified **PHOTOS 26, 29 AND 36** in Exhibit B as depicting the two plastic bags that they saw. Police emptied the contents of the two plastic bags onto a refuse bag which police took out of their vehicle. The refuse bag had been laid down and spread on the ground.

[30] **BLACK PLASTIC BAG**

From the black plastic bag emerged, the Chieftainess observed, intestines, liver, lung and heart. In **PHOTO 27** Chieftainess recognised and

identified it as depicting the black plastic bag sheet laid on the ground. In **PHOTO 35**, she confirmed that this photo accurately depicts the organs (intestines, liver heart and lungs) just emptied from the black plastic bag received from the toilet pit. On a close look at the contents she told the Court that she noticed that the liver had a piece cut away. She also noticed that the lobe of the heart was cut away. **PHOTO 29** depicts the liver she referred to with its lobe cut away.

[31] **YELLOW SHOPRITE PLASTIC BAG**

Police fetched another black refuse bag and spread it on the ground and emptied onto it contents of the yellow Shoprite plastic bag retrieved from the school toilet pit. The Chieftainess told the Court that from this Shoprite plastic's contents she saw emerge two human hands and two human feet.

She testified that **PHOTO 30** depicts the two human hands she just spoke about as having emerged from the Shoprite plastic bag when emptied. **PHOTO 31** depicts the two human feet she just spoken of as having emerged from the yellow Shoprite plastic bag. They were the two hands and the two feet she had been referring to earlier she said.

31.2 Continuing with her evidence, the Chieftainess testified that while the events she had described earlier were unfolding **Accused 1** was present helping police where necessary and watching as various human organs were being discovered and recovered. When the human body parts had been retrieved from this toilet pit, police asked **Accused 1** if they were the lot. **Accused 1** replied that there were other body parts not retrieved yet but did not say/mention what they were. He was referring to retrieval at the school toilet. An effort was then made by police to look further

into the toilet pit but they found it to be dark. Police then went behind the toilet and requested Mr. Leche to help them to remove two concrete slab plates covering the back of the toilet pit. Police assisted by Mr. Leche managed to remove the two concrete slabs. After removing them there appeared the human head and a human leg. The human head gave police trouble to take out and asked **Accused 1** whether he would be willing to help them. **Accused 1** agreed to help to take it out. Police then gave **Accused 1** surgical gloves to do so. **Accused 1** then knelt down and managed to take it out. As the head was lying directly on top of faeces inside the pit it came out covered in part with human faeces. Police assisted by Mr. Leche worked together to clean that head.

31.3 After the head was cleaned police asked Chieftainess if it was the head of someone she knew. The Chieftainess confirmed that it was the head of **Kamohelo MOHATA** whose home was next to Cenez High School. Kamohelo Mohata is deceased in Count 2. In **Exhibit B PHOTO 33** depicts the head of Kamohelo Mohata as she saw it at the time before it was washed, the Chieftainess testified. In **PHOTO 34** the Chieftainess confirmed that it depicted the head of Kamohelo Mohata as she saw it after it was washed.

31.4 All of the above body parts were retrieved from the Koalabata Primary School toilets in her presence and in the presence of **Accused 1** with his cooperation and assistance, she said. After all these items were retrieved, **Accused 1** confirmed to the police and her that all body parts had then been retrieved from the school toilets.

31.5 Police then took all the retrieved human body parts and left with them and Accused 1. Chieftainess said she also left for home. She estimated

that it probably took 1½ hours at the school toilets to retrieve all the body parts found there.

31.6 In conclusion the Chieftainess confirmed to the Court that **Accused 1** did all he did at the school toilets freely and voluntarily without any compulsion. She concluded her testimony-in-chief by telling the Court that throughout her time there with **Accused 1** and the police **Accused 1** was not assaulted or under threat by police or anyone.

[32] Cross-examination by Mr. Hoeane sought to challenge PW7 on what was said by Accused and police on the scene of crime on the 12<sup>th</sup> July 2012. But PW7 was firm and clear that both Accused were cautioned by police before being interviewed by them at the scene as to whose property the house and car belonged to. She was adamant throughout her cross-examination on this aspect that Accused 1 said the Corsa belonged to him and that **Accused 2** said the house belonged to her. She concluded this exchange with Counsel by telling the Court that as Chieftainess of Koalabata she knows for a fact that the house belonged to **Accused 2**. As regards the Corsa she was equally adamant that Accused 1 told police when asked by them about it that it was his. In any case she had seen the vehicle several times being driven in the village by **Accused 1** prior to this date. I pause to mention here that in the allocation of sites in a village in Lesotho the local chief is intimately involved.

32.2 Then the cross-examination took an interesting turn when Mr. Hoeane for Accused put it to Chieftainess that Accused's case is that she is not known to them and is not their Chieftainess at Koalabata. PW7 stood very firm that she was Accused's chief in Koalabata.

I pause here to observe that Accused 1's version concerning 'm'e 'Makhomo was now a soft paddle of his initial version which was that Mofumahali was an impostor and not Chieftainess of Koalabata.

32.3 The cross-examination of the Chieftainess sought to challenge the Chieftainess when she said earlier that Accused persons acted freely and voluntarily in responding to police inquiries and/or pointing at anything. In fact Mr. Hoeane said Accused were under threat and visibly frightened by police attitude and actions in dealing with them on the 12<sup>th</sup> July 2012. She flatly denied that any of the Accused persons were threatened by police or showed any signs that they were frightened or were acting in any such suggested manner. PW7 was very firm and clear that Accused's instructions to Mr. Hoeane were untrue.

32.4 In regard to events of 13 July 2012 described by Chieftainess to the Court Mr. Hoeane sought to discredit the witness's evidence on the basis that she and the police had entered the school premises without the authority and permission of the school proprietor or Principal or anyone with authority to allow their entry. Quite how this matters is not clear to me. But as it turned out any way the school is property of Walter Matita Church and its local pastor, Pastor Eddie Ntlama was there at the scene when police conducted their investigations. PW7 told the Court, in response to Mr. Hoeane's claim that police required permission of school proprietor, that police did not need.

32.5 In response to questions by the Court the Chieftainess testified as follows. She had seen the Corsa vehicle in **PHOTO 3 Exhibit B** many times in the possession of Accused 1 for at least two months prior to 12<sup>th</sup> July 2012. Accused 2 home is approximately 900 metres from the Chief's

place where she lives. The distance from Seetsa's home (PW1) to Accused's 2 home is approximately 400 metres away. She estimated the distance from Accused's home to late Kamohelo Mohata's home as approximately 600 metres away.

32.6 Chieftainess told the Court that she as chief of the area play a role in the allocation of sites in her village. She is quite certain that the site/house in **PHOTO 2 in Exhibit B** is a site of Accused 2. It was allocated to Accused 2 during the life time of her late husband Chief Joel Makoanyane who she succeeded after his death. She was quite sure that both accused persons know her very well and were her subjects in the Koalabata village where she is Chieftainess.

[33] I found this witness to be unbiased, straightforward in her testimony both in chief and under cross-examination. I have no hesitation whatsoever in accepting her testimony as truthful and credible.

[34] **PW8 SEKHONYANA PAUL NTLHABO**

Testimony of this witness concerned events of 14<sup>th</sup> July 2013 relating to the crime scene at the dongas.

He testified that he was a Maths Lecturer at the Lesotho College of Education for 8 years now. Previously he had been a Lecturer at the Limkokwing University in Maseru in 2008 and 2009. He is a resident of Koalabata village where both Accused are also villagers and resident. He knows both Accused persons very well. During the time when he (PW8) worked at Limkokwing Accused 1 worked at its Registry.

34.2 On the morning of 14 July 2012 he got alerted by a neighbour that the Scott's family had arrived accompanied by police at Accused 2's house. He hurried there and found about four men there and he became the 5<sup>th</sup> man. It were gentlemen of the village. There were a few women he found there as well. Police said to them that they needed help from four gentlemen of the village. He happened to be one of the gentlemen to come forward. Police asked them to observe and witness what went on as they carried out their duties. Police told them that **Accused 1** was going to show them some items belonging to Moholobela Seetsa and Kamohelo Mohata. They said **Accused 1** had volunteered to do so out of his own free will. **Accused 1** was present during this conversation. Police asked him if he would confirm what they had said and **Accused 1** did confirm it to be so. This conversation took place outside on the grounds of **Accused 2** house on her site there. Both accused persons know him very well. To his observation there was absolutely no appearance of fear or anxiety on either of the accused persons. There was no appearance of shock or fright from any of the accused persons. Both accused appeared normal. PW8 emphasised that he had known both accused persons for several years prior to the 14<sup>th</sup> July 2012 and if therefore there was any unusual disposition in their manners he would have seen it.

[35] **STORE-ROOM**

PW8 told the court that he, together with a few village men entered Accused's home. As they entered the house there was a room to the right into which Accused 1 led the party. It appeared like a store room. It didn't look particularly clean. It didn't appear like a room being used for sleeping purposes. One of the first things PW8 noticed in there was a cardboard sheet which had blood stains. This cardboard (**EXHIBIT 11**) is depicted in **PHOTO 14** of **Exhibit B**.

35.2 PW8 told the Court that then **Accused 1** showed police a knife (**EXHIBIT 14**). He observed that it was a knife with a brown handle and that at the point where the brown handle met the blade it had blood stains. Accused 1 then proceeded to show them two clothing items. One was a blue school jersey (**EXHIBIT 14**) with a school badge logo of Cenez High School. **Accused 1** who showed them another jersey whose colour the witness couldn't remember. PW8 told the Court that Accused 1 told them that these jerseys belonged to Kamohelo Mohata. **Accused 1** then showed them a long thin wire and a sellotape (**EXHIBIT 22 & 23** respectively). **Accused 2** was present also throughout in the room as Accused 1 was pointing out the various items. The party then left the store room and were led by Accused 1 to a room next door which Accused 1 described as his bedroom.

[36] **ACCUSED 1'S BEDROOM**

**SECOND ROOM:** In this second room **Accused 1** produced a pair of blue jeans with blood stains on the knees and on the thighs. PW8 recognised a pair of jeans in Court (**EXHIBIT 18**) as the one Accused 1 pointed out and produced to them. **Accused 1** said the jeans belonged to Kamohelo Mohata. Next, Accused showed them an underwear with Jockey label on it. PW8 identified it in Court (**EXHIBIT 20**) and said **Accused 1** described it as belonging to Moholobela Seetsa.

36.2 Thereafter, **Accused 1** showed the party a black belt (**EXHIBIT 19**). This PW8 recognised in Court. He told the Court that Accused 1 told them that the belt too belonged to Moholobela Seetsa. PW8 told the Court that while Accused 1 was pointing out all these items he was in his sober senses and did so freely and voluntarily. He produced all these

items on his own accord. He was not being shown where to produce them by anyone.

[37] **ACCUSED AND POLICE AT TOILET**

Both Accused and the party then moved out of the house and were led to the toilet outside the house by Accused 1. By this time there were lots of people gathered outside. PW8 told the Court that he no longer remembered what they went there to do.

[38] **ACCUSED 1 TAKES POLICE TO DONGAS**

Subsequently, the party which had been shown items in the house boarded vehicles and headed to the dongas. Accused 1 said he was taking police to a donga where he had buried the body parts of Moholobela Seetsa. There Accused 1 pointed to a spot in the donga where he said he had buried the body parts of Moholobela Seetsa. On that day, however, the search party did not find the body parts. However, PW8 told the Court that it was a spot where a few months earlier the villagers including himself had found body parts which were then recovered by police and taken away. So on the 14 July 2012 Accused 1 was pointing at the same spot where he said he had buried the body parts of Moholobela previously.

[39] PW8 told the Court that according to his observation Accused 1 was not coerced in any manner by anybody. At this donga on this day Accused 2 was also present and he saw that she was there observing what was going on.

[40] Cross-examination of this witness was aimed at showing him as a biased witness hostile to **Accused 1**. **Accused 1** alleged that he had been the

one who caused the witness' grief in that **Accused 1** participated in an enquiry into leaking of examination questions to students while Accused 1 worked in the Registry at Limkokwing University. PW8 flatly denied this as total falsehood by **Accused 1**. PW8 told the Court in demonstration of his point that he was never charged administratively or otherwise by Limkokwing for disciplinary breach concerning alleged leaking of examination papers. PW8 explained to the Court that the only dispute he had with Limkokwing was him as a trade union leader where members of his union had a dispute with the University regarding non-renewal of teachers' employment contracts. Such dispute PW8 told the Court the union took to the Directorate of Dispute Resolution Tribunal (DDPR) where they succeeded against the University. This response stood unchallenged and remains uncontroverted by all **Accused 1** and evidence in this trial. PW8 told the Court that he had absolutely no reason to falsely implicate **Accused 1**. When PW8 was asked if he noticed any signs of obvious burns on **Accused 1** on 14 July 2012 he replied "Absolutely not." That then concluded the evidence of PW8. It remained unshaken and untainted by any cross-examination.

40.2 Accordingly I conclude that there is no substance in the claim by Accused 1 that the evidence PW8 is to be disbelieved because it is actuated by bias and hatred of PW8 against Accused 1. I am satisfied beyond reasonable doubt that PW8 testimony is truthful and honest.

[41] **PW9 NYAKALLANG PHUROE**

Mr. Phuroe is a resident of Koalabata village. He is a Quantity Surveyor by profession. Accused 1 and 2 before Court are his neighbours. In July 2012 he already knew them. He also knew Moholobela Seetsa in his lifetime. He did not know deceased Kamohelo Mohata in his lifetime.

41.2 On the morning of 12<sup>th</sup> July 2012 while at his own home he saw a police vehicle arrive at Accused's home. He says he went there to see what was happening. He found police busy cordoning off Accused 2 home with yellow police tape. PW9 was shown Photo 2 in Exhibit B. He identified it as depicting the home of Accused 2 as well as the yellow police tape cordoning off the site. At first he stood outside the cordoned area. It was about 9 a.m. He saw Accused 1 and 2 in the company of the police. He saw Accused 1 and 2 together with police and some people go into the house and later come out. Police then left with Accused 1 and 2 in their police vehicles. PW9 testified that he then returned to his own home.

41.3 Later the same day at about 3 p.m. police returned to the house with Accused 1 and 2. PW9 told the Court that he went back to Accused house to watch police do their work. PW9 told the Court that police this time asked him and another gentleman who he could no longer remember to get into police vehicles and accompany them to the dongas. PW9 told the Court that he and that other gentleman did as requested. The vehicles proceeded to the dongas. Accused 1 and 2 also came down to the dongas with police. At the dongas police asked Accused 1 to explain to those present to why they were there. Accused 1 then explained to them there that he had come to point out the location where he had buried the human body parts. PW9 told the Court that as far as he could see Accused 1 was speaking freely. He did not appear to be in shock. Neither did Accused 1 complain about having been assaulted by police or threatened in any manner. Accused 1 did not ask for assistance from any one. Accused 1 saw him present there. Accused 1 pointed out to a spot. He dug out that spot and as he did so there appeared or emerged a black plastic bag. As police opened the black plastic bag there emerged a human chest. PW9

then identified **PHOTO 16** in **Exhibit B** – as a photo depicting the donga where they were at when Accused 1 pointed a spot in the donga where the black plastic bag emerged. PW9 further identified **PHOTO'S 17** and **18**. He identified them as depicting the donga. Photo 18 in particular he said depicted the black plastic bag that he told the Court earlier emerged out of the hole on the floor of the donga when Accused 1 dug up the spot he had pointed out to the police earlier. **PHOTO 19** in **Exhibit B** PW9 identified it as depicting a human chest which emerged when the black plastic bag was opened.

41.4 PW9 continued his testimony of events at the donga as follows. He said Accused 1 thereafter pointed another spot in the same donga. At this spot there emerged a human body part from the waist to the knees. PW9 then identified **PHOTO 21** in **Exhibit B** as photo depicting the human body parts (the torso) retrieved from the second spot pointed out to the police by **Accused 1** inside the donga. PW9 further explained to the Court that the torso emerged from the soil and not from the plastic bag. He told the Court that **PHOTO 20** he identified as depicting the donga at the second spot where the torso was found. These body parts were dug up by **Accused 1** himself.

41.5 PW9 identified **PHOTO 20** in **Exhibit B** before Court as a depiction of a donga where the body parts were pointed by Accused 1 out to the people to have been hidden by him. The black plastic bag was not visible before **Accused 1** dug out the spot. The chest body parts were also not visible before **Accused 1** dug them out at the spot.

41.6 The two body parts just dug out were taken to the police vehicle above the donga. Police vehicle went back to town with both Accused persons

while the rest of the villagers dispersed to the village. Before they were pointed out by **Accused 1** PW9 told the Court that he did not know that there were human body parts – torso and chest – hidden there in the donga. PW9 testified that he heard **Accused 1** tell the police that they were body parts of Kamohelo Mohata when police asked him whose body parts those were. PW9 identified **PHOTO 2** and **3** as photos depicting the house of **Accused 2** and a vehicle. He said he had seen this particular vehicle parked in front of **Accused 2's** house many times before the 12<sup>th</sup> July over a long period. PW9 testified that his own house is about 700 metres from **Accused 2's** house shown on the photo. He told the Court that a road passes near **Accused 2** house and that he passes there routinely when he leaves his home to go anywhere. PW9's testimony in this regard was never disputed or discredited at any time during the trial. I accordingly accept it as such.

41.7 Cross-examination of PW9 by Mr. Hoeane first sought to discredit PW9 and portray him as a liar. I am satisfied that PW9 answered Mr. Hoeane straightforwardly and truthfully refuting all suggestions that he was lying to the Court. The Court closely monitored and observed the demeanour of this witness and it is satisfied beyond any reasonable doubt that PW9 gave the Court a truthful and honest account of events of that day. The Court is fully satisfied beyond all reasonable doubt that no reasonable criticism could be levelled at these witnesses including PW9. There simply is no basis for this Court to believe that PW9 is biased and intent on settling some score or other against **Accused 1**. No such bias or score for settlement by PW9 against **Accused** persons has been demonstrated to the Court at all either in the cross-examination of the witness or in the testimony of **Accused 1** when he had opportunity to testify in his own behalf.

**PW10: NO. 9979 DET./SUB-INSPECTOR MATSOSO**

[42] **ARREST OF ACCUSED PERSONS:**

PW10 testified that on 12<sup>th</sup> July he proceeded from his office at Pitso Ground C.I.D. offices to Limkokwing University in search of Accused 2. He found her there. He introduced himself to her and told her that he was the investigator in a case in which she was a suspect for murder. He told her that she had the right to remain silent or to talk to him. Further, he told her she has the right to seek a lawyer of her own choice. He told Accused 2 that any information she chose to give to him may be used in evidence against her in a Court of law. He also told her she had the right to apply for bail before court. Det./Sub-Inspector Matsoso testified that he thereafter asked Accused 2 for an explanation. She gave him an explanation which he told the Court he found to be unsatisfactory and arrested her.

42.2 Det./Sub-Inspector Matsoso testified that he thereafter asked Accused 2 the whereabouts of Accused 1. She told him Accused 1 was on his way to their home in Koalabata village. He said he then took Accused 2 with him in his vehicle and proceeded to Koalabata. As he approached Koalabata taxi terminus he saw Accused 1 alight from a taxi. He approached Accused 1 and identified himself to Accused 1. He cautioned him similarly to how he had cautioned Accused 2 earlier and ultimately gave him a charge as well. Matsoso searched Accused 1. He found 2 black cell phones on him. They were:

- *a Nokia N72 cellphone - Exhibit 1*
- *a Vodafone cellphone – Exhibit 2*

42.3 Mr. Matsoso then identified the two cellphones (Vodafone and Nokia N72) before Court as the cellphones which he had seized from Accused 1 on 12<sup>th</sup> July 2012. The **Nokia N72** and **Vodafone** cellphones were handed into Court by Mr. Matsoso. Court admitted them into evidence as **Exhibit 1** and **2** respectively. Subsequently **Exhibit 1** was identified as property of late Kamohelo Mohata by his brother Refiloe (PW4) Mr. Matsoso testified that he was present when PW4 identified **Exhibit 1** as property of Kamohelo Mohata (deceased in Count 2).

42.4 From the Koalabata taxi stop, and after arresting **Accused 1** PW10 proceeded with both Accused 1 and 2 to their home in the village where they resided. There Mr. Matsoso, testified, he found **Senior Inspector Khatleli (PW11)**, **Chieftainess 'Makhomo Makoanyane of Koalabata (PW7)**, her Councillors and other police officers. He handed over the two Accused persons to Senior/Inspector Khatleli who took over the balance of investigations from there that day.

42.5 Mr. Matsoso testified that in his presence, Senior Inspector Khatleli introduced himself to Accused 1 and 2 and explained the purpose of the police visit to their home, that it was to do with a suspected crime committed by them there. PW10 told the Court that Mr. Khatleli (PW11) went on to caution both Accused persons in similar terms to those PW10 had used when he cautioned Accused 2 earlier when he first met her at Limkokwing University. Furthermore, PW10 told the Court that Mr. Khatleli (PW11) thereafter requested permission of Accused to search both the vehicle and the house. PW10 identified **PHOTO 3** as depicting accurately the house and vehicle of Accused persons he was referring to above.

## **ACCUSED PERSONS ADVISED OF RIGHTS**

[43] On the afternoon of 12<sup>th</sup> July 2012 at the donga, and on the 13<sup>th</sup> July 2012 at the toilets of Koalabata Primary School as well as on the 14<sup>th</sup> July 2012 back at Accused's house, Mr. Matsoso told the Court that on each of those occasions he was present at those locations and that he witnessed Accused 1 and 2 being advised of their legal rights by Senior Inspector Khatleli in the same manner he had already described to the Court earlier, on each of those occasions and at each of those locations including each time they had left Mabote Police Station. He testified to the Court that contrary to what Mr. Hoeane had put to previous witnesses before him, in fact from the beginning of police investigations at every step of the process Accused persons were cautioned and advised of their legal rights including at the scenes. Accused 1 was advised of his rights and cautioned starting with himself when he first met him near Koalabata Taxi stop near his home on 12<sup>th</sup> July 2012. Khatleli did likewise in his own (PW10) presence when he took over the leading of the crime investigations when he (PW10) handed both Accused persons to him on the 12<sup>th</sup> July. Asked to comment of the suggestion by questions put to witnesses by defence counsel that Accused 1 was never told of his right to remain silent or that if he pointed out at anything such could be used against him at his subsequent trial concerning the case under police investigation, PW10, emphatically denied such a claim by Accused 1. PW10 told the Court that when those rights and cautions were explained to Accused 1 he did not opt to exercise those rights there and then though he had an opportunity to do so.

43.2 On all those occasions on 12, 13 and 14 July Accused persons acted freely and voluntarily without any pressure or threat from anyone. To his observations of the Accused persons, PW10, told the Court that both

Accused persons were sober and acted freely without any form of pressure or compulsion. He denied that Accused persons had at any stage been threatened or intimidated or assaulted. When asked specifically about the claim by **Accused 1** that he had been put in a hot steel dust bin at Mabote Police Station under which police had a burning fire PW10 flatly denied that any such thing had happened there as alleged by **Accused 1**. PW10 testified that at no stage in the course of their police investigations and interactions with **Accused 1** did he see any burn wounds or other injuries on **Accused 1**. **Accused 1** never complained to him that he had been assaulted by anyone at any time during police investigations. He (PW10) certainly did not see any indication on either of the Accused persons that he/she was in a “a state of shock” or “petrified as they had suggested in this Court.

43.3 PW10 testified that he was present on the morning of 12<sup>th</sup> July 2012 at Accused 2 house when the car and house were searched. He observed events unfolding there.

43.4 PW10 testified that he was present again on 13<sup>th</sup> July 2012 at the Koalabata Primary school toilets when **Accused 1** took police there. He confirms that in his presence there and in the presence of many other persons **Accused 1** pointed out at objects at those toilets.

43.5 On the 14<sup>th</sup> July 2012 PW10 told the Court that again he was present at the home of **Accused 2** when **Accused 1** pointed at objects there. He was again present and observed when **Accused 1** pointed out and or/retrieved objects from locations in the dongas there at Koalabata village.

43.6 PW10 testified that throughout these operations at these various locations, **Accused 1** acted freely and voluntarily in his sober senses on all those dates at the various scenes of crime. At no point was there any undue influence on him or any kind of pressure exerted on him.

43.7 When I asked PW10 whether there was at any time that he observed any unusual gait in the movement of **Accused 1** on any of these occasions and locations, PW10 told the Court **Accused 1**'s gait/movement and speech were normal throughout. PW10 was specifically asked whether it was true that on 12<sup>th</sup> July 2012 he had taken **Accused 1** and **Accused 2** to Mabote Police Station and injected them with a substance unknown to **Accused 1** as was alleged by him in the cross-examination of previous witnesses who testified in this Court. PW10 emphatically denied that there was any truth in such claim.

PW10 explained that the only time that a syringe came into play in this matter involving both Accused persons was on 19<sup>th</sup> July 2012 at Mejametalana Domiciliary Clinic when he had taken both Accused persons there for the purposes of requesting the nurses to draw blood samples from them for DNA analysis at the Laboratory. On that date blood was drawn from both Accused persons by the clinic nurses and given to him. He took those samples and gave them Sgt. Seeko (PW5) to take to the Laboratory for examination.

43.8 PW10 told the Court that before the nurses took those blood samples he had requested permission from both Accused persons and such permission had been granted by them. PW10 concluded his evidence-in-chief by emphasising that on that occasion (i.e. 19/7/2012) it was a case of drawing blood by nurses at the clinic and not one of injecting anything

into the body of **Accused 1**. In relation to the work done by the police investigation team and the various discoveries pointed out by Accused and recovered by police, Accused1 was working cooperatively throughout with the police, Mr. Matsoso concluded his testimony in chief.

43.9 Cross-examination of PW10 was directed at the length of time that both Accused persons were in police custody the answer to which was that they had been in police custody for 7 days helping police investigations. Mr. Matsoso pointed out that police had obtained an extension of a warrant of detention in police custody from the Magistrate. That issue then was left at that by the cross-examination. The balance of that cross-examination traversed territory already covered by this witness in chief as to whether or not Accused persons were advised of their rights and cautioned before pointing out various things at different locations especially **Accused 1**. Other than those major two topics the cross-examination again traversed the topic of whether or not the Accused persons acted freely and voluntarily in allegedly pointing out objects to police team on 12, 13 and 14 July. The answers given by this witness were again an emphatic confirmation that **Accused 1** in particular did so freely and voluntarily and was in his sober senses, under no threat or compulsion of any nature to point various items to police investigation team.

43.10 I pause to mention here that at all these locations on the different dates there were present, apart from police, civilian authorities like the local Chieftainess and/or her village Councillors or neighbours who were co-opted into independent observers of police activities. All of these people refuted emphatically that Accused persons (especially Accused 1)

exhibited any signs of stress, shock, fright, unhappiness or of having been tortured or assaulted prior to attending at various locations to point out objects that they did point out to the police.

Nothing new of material value emerged from this cross-examination to give any doubt at all in my mind that Accused 1 and 2 acted in any manner other than freely and voluntarily cooperating with police investigations.

### **ON THE 14<sup>TH</sup> OF NOVEMBER 2016**

[44] Following the conclusion of the evidence of PW10, I decided that it was best to order a trial-within-trial regarding whether the alleged pointing out of facts/exhibits by Accused 1 was voluntarily made or not. I did this in order to afford the Accused persons the fullest opportunity to ventilate this issue in this trial to the fullest extent. For this purpose the Crown recalled PW5 Sgt. Seeko. Concentrating on the issue of voluntariness or otherwise of the pointing out of items/objects at various alleged crime scenes. The witnesses gave their testimony as follows below.

PW5 Sgt. Seeko testified in this phase and confirmed that he had earlier given evidence related to his activities as a senior crime scene officer principally as to the taking of the photographs at various crime scenes. He confirmed that during the course of his earlier testimony he had spoken about various photos which he took at four areas, namely, the Accused's house, the Sekhutlong dongas below the Koalabata village, the Koalabata Primary School, and at the Lesotho Funeral Service Mortuary. PW5 confirmed that he had thereafter compiled 2 photo albums which have been admitted into evidence as **Exhibits A** and **B**. He confirmed that earlier evidence and asked that it be incorporated into all of his

evidence in the trial. PW5 then proceeded to testify in detail regarding activities on each day and at each scene of crime as follows below:

**MORNING OF 12 JULY 2012 – PHOTOS 2 – 15**

[45] Sgt. Seeko testified that on 12 July 2012 at about mid-morning he was part of the investigation team at Accused's house at Koalabata village when both Accused were brought there by team members and handed over to Senior/Inspector Khatleli (PW11), the investigation team leader. Sgt. Seeko testified that when both Accused were delivered to Senior Inspector Khatleli they were both told that it was their right to remain silent and that if they elected to speak whatever they would say could be used in evidence later against them in a Court of law. At each scene of crime Sgt. Seeko testified that he was present. At each scene of crime Khatleli explained these rights to Accused persons. Accused persons understood the cautions being administered to them at each scene on each day it was done.

Similarly, Sgt. Seeko testified that, he was present at the Mabote Charge Office when both Accused persons were explained their rights by Khatleli before they and the investigating team left the Mabote Polcie Station for Koalabata village. The cautions were made in Sesotho, he said. Sgt. Seeko told the Court that by his observation the Accused persons understood the explanation of their rights given by Senior Inspector Khatleli on each occasion. Sgt. Seeko testified that neither of the Accused persons opted to remain silent or obtain services of an attorney beforehand. Accused persons said police could continue with their work.

Sgt. Seeko took the Court through the events of the morning of 12<sup>th</sup> July 2012 as follows. He identified photo 2 in Exhibit B as the house of

Accused 2. Photo 3 is a Corsa van, Photo 4, 5, 6, 7 and 8 reflect the inside of the Corsa van and its contents. Nobody pointed out things in the vehicle. But the vehicle was searched by Senior Inspector Khatleli after he sought and obtained the permission of Accused 1.

**AFTERNOON OF 12 JULY 2012: SEKHUTLONG/KOALABATA DONGAS: PHOTOS 16 – 20**

[46] On the afternoon of 12<sup>th</sup> July 2012 he was called back to Mabote Police Station from his Pitso Ground Police Station where he was based. On arrival he was informed the team is about to depart again back to Accused's home. Before they left Senior Inspector Khatleli, in his presence, again explained to Accused persons their rights and cautioned them that they were not obliged to make any statements nor point out things to investigating team but that if they did make such statements or pointed out objects such would constitute evidence which might be used against them in future trial proceedings against them. Accused's response was that police should proceed with their work. Sgt. Seeko testified that to his observation both Accused understood the caution being administered by Senior Inspector Khatleli. They thus left for Accused's home at Koalabata that afternoon. At the house Senior Inspector Khatleli sought Accused 2's permission to enter the house and she gave it. They entered the house. In the house, in a room that appeared to be a store room Accused 1 pointed at two items namely, a disused **Defy box cardboard (Exhibit 11)** and an **orange/red handsaw (Exhibit 12)**. Sgt. Seeko identified to the Court photo 14 in Exhibit B as the bloody cardboard (**Exhibit 11**).

46.2 From the house Sgt. Seeko testified that they together with Accused persons proceeded to the dongas at Sekhutlong, Koalabata in vehicles.

Sgt. Seeko testified that at the dongas the vehicles were left above the donga while Accused persons together with police descended into the dongas. At the floor of the dongas before anything happened Senior Inspector Khatleli again explained to the Accused their rights and told them that they were not obliged to make statements nor to point out at anything thereat. Like the warning administered to Accused before they were done in Sesotho and Accused to his observation, understood the caution. Sgt. Seeko told the Court that Accused 1 was happy to help with police investigation and did so in his sober senses without compulsion of any type at all.

46.3 Sgt. Seeko testified that he observed no injuries of any sort on both Accused persons. Neither did he observe any sense of fear or fright in their disposition on that day at all. Both exhibited normal behaviour. Neither complained of any maltreatment at any stage to him or to any of the chief's representatives or any member of the public who had been in attendance at the house or at the dongas that day.

46.4 Sgt. Seeko proceeded to testify that at the dongas that afternoon he proceeded to take photographs 16 – 20 when Accused 1 pointed out these locations to Senior Inspector Khatleli and the investigation team. Sgt. Seeko testified that at the dongas he was standing no more than one metre away from Accused 1 when the caution was administered by Senior Inspector Khatleli and when Accused 1 proceeded to point out the location depicted in photos 16, 17 and 18. Sgt. Seeko told the Court that he took photographs 16, 17 and 18 at the same time that they were being pointed out by Accused 1. Sgt. Seeko testified specifically that Accused 1 was in his sober senses and made these pointing outs freely and voluntarily. Sgt. Seeko told the Court that the body parts recovered from

the spots pointed out by Accused 1, Accused 1 himself told Senior Inspector Khatleli and the team that they were linked to the body parts recovered by the investigation team in the Corsa van. This explanation by Accused 1, Sgt. Seeko told the Court, was proffered by Accused 1 without prompting by anyone and that Accused 1 did so of his own free will without any compulsion or threat from any quarter.

After the pointing out at the dongas on the afternoon 12<sup>th</sup> July 2012, both Accused persons were returned to Mabote Police Station and put back in their respective cells. At no time were Accused persons assaulted or threatened by anyone.

[47] **EVENTS OF 13<sup>th</sup> JULY 2012: KOALABATA PRIMARY SCHOOL PHOTOS 23 – 36:**

Sgt. Seeko testified that on 13<sup>th</sup> July 2012 he was present again at Mabote Police Station before Accused and the investigation team proceeded to Koalabata Primary School at Koalabata village. Both Accused looked normal and exhibited no injuries or signs of fear or anxiety. Both Accused were explained their rights and cautioned by Senior Inspector Khatleli. Both Accused never complained to him or anyone about having been assaulted or maltreated by anyone. Both had no visible signs of injuries. Accused 1 in particular was in a cooperative mood before the team and then left for Koalabata Primary School. Accused 1 said he was going to show the investigating team where he had hidden some body parts relating to the ones he had shown police team the previous day i.e. 12 July 2012. He said these body parts he was going to point out all belonged to the same person. Sgt. Seeko told the Court that it was Accused 1 who took the police investigation team to the Koalabata Primary School toilets.

- 47.2 On arrival at Koalabata Primary School Accused 1 pointed out the school toilets and the spots where the human body parts were hidden. When Accused 1 did so he did so freely and voluntarily. He was sober and in his sound senses. He had not been assaulted or threatened in any manner whatsoever. Accused 1's mood before departing from Mabote Police Station was normal and showed no stress or fear.
- 47.3 On arrival at Koalabata Primary School Accused were explained their rights and cautioned by Khatleli once more that they were not obliged to say anything or to point out anything but that if they did such statements they may make or point out may be used against them at a full-scale criminal trial. It was again done in Sesotho and Accused understood the caution. Both Accused persons had no queries. Accused never at any stage complained of any assaults or ill-treatment or other maltreatment at the hands of the police. At all times Accused persons were no more than a metre away from himself and Sgt. Seeko said he was able to observe them at close range and to hear clearly what their conversation with Khatleli was.
- 47.4 The retrieval of human body parts took about 4/5 hours at the school toilets Sgt. Seeko estimated. **Accused 1** first pointed the inside of one of the apertures of the school toilet. Sgt. Seeko said he took **PHOTO 23** of that. **Accused 1** pointed to Khatleli the inside of one of those pits as a place where he had hidden human body parts of deceased in **Count 2 (Kamohelo Mohata)**. Inside there were recovered human body parts of Kamohelo as depicted in **PHOTOS 24** (legs), **PHOTO 25** (lungs), (intestines and liver part cut). These body parts were retrieved from the toilet and taken away by police investigating team.

47.5 When all the body parts had been retrieved from the school toilets both Accused persons were taken back to their respective cells at Mabote Police Station. Both Accused persons were free of any injuries. Neither did any of the Accused persons complain of any ill treatment to anybody.

[48] **MORNING OF 14 JULY 2012: POINTING OUT AT ACCUSED 2 HOUSE**

Sgt. Seeko testified that on the morning of 14<sup>th</sup> July 2012 he was again at Mabote Police Station where he met both Accused persons that morning. Both Accused had no complaints to make to him or to any person in authority. Both exhibited no injuries. They looked normal. The team and both Accused were briefed by the investigation team leader Senior Inspector Khatleli that they were returning to Accused 2's house at Koalabata that morning as Accused 1 had expressed a desire to go and handover items of clothing belonging to deceased persons (Moholobela and Kamohelo). Thereafter Senior Inspector Khatleli proceeded to explain in Sesotho to both Accused persons their legal rights and to caution them that they were not obliged to make any statements or to point out anything to the investigating team but that if they did such statements as they might make or such pointing out as they might do could be used against them in a trial against them to follow. Both Accused persons according to his observation understood the explanation of rights and caution made to them by Khatleli. None of the Accused persons expressed any query or anxiety or fear about what Khatleli had just said.

Thereafter the team and both Accused boarded vehicles at Mabote Police Station and went to Accused's home at Koalabata village.

48.2 On arrival at Accused 2's home at Koalabata village the investigation team found the Chief's Councillors. Sgt. Seeko could not remember their names or whether the Chieftainess herself was also there. On this day according to Sgt. Seeko's recollection the team was led by Inspector Lesholu of C.I.D. Police.

In the house of Accused 2, Accused 1 pointed out certain items to Inspector Lesholu. The items were:

- a knife with brown wooden handle (Exhibit 14)
- a Cenez High School jersey (Exhibit 15)
- a wire and sellotape (Exhibit 22 and 23 respectively)
- a pair of jeans (Exhibit 18)
- a grey Jockey underpants – (Exhibit 20)
- a black belt with holes (Exhibit 198)
- a black cap with red KFC logo (Exhibit 16)
- a pair of burgundy trainers shoes (Exhibit 13)
- a dark grey short-sleeveless jersey (Exhibit 17)
- a black track-suit top with grey/green stripes (Exhibit 3)
- green track-suit trousers (Exhibit 5)
- black long formal trousers (Exhibit 21)
- green and blue boxer Jockey underpants (Exhibit 10)

Sgt. Seeko testified that when Accused 1 was pointing out these items to Inspector Lesholu on 14<sup>th</sup> July 2012, he did so freely and voluntarily in his sound and sober senses. Accused 1 was in cooperative mood with the police. Sgt. Seeko told the Court that Accused 1 was explaining which items of clothing /property belonged to which deceased person.

[49] **VISIT TO THE DONGAS AT SEKHUTLONG ON 14 JULY 2012**

After the pointing of deceased items of clothing/property at Accused 2's house, Accused 1 invited the investigation team to go down to the donga at Sekhutlong where he wished to show them the spot where he had buried the body parts of Seetsa (deceased in Count 1)

Before proceeding there, Sgt. Seeko told the Court, Inspector Lesholu explained Accused's rights to them and cautioned Accused 1 that they were not obliged to make any statements or any pointing out of anything to the investigating team but if they did so it must be with their own free will and such statements/pointing out could be used later in evidence against them in a trial in a court of law. Sgt. Seeko testified that the explanations to Accused throughout were being done by Lesholu in Sesotho. In his observation both Accused persons fully understood the explanation of their rights and the caution administered to them by Inspector Lesholu.

49.2 The dongas to which Accused 1 took the investigation team was the same one where Sgt. Seeko had in January 2012 taken **PHOTOS (1 – 9 in Exhibit A)** when body parts of Seetsa had been recovered following discovery of suspicious spots in the donga by village passers-by. The body parts had been taken by him to Lesotho Funeral Service Mortuary in January 2012 and he had taken **PHOTOS 1 – 9 in Exhibit B**. There at the donga Accused 1 pointed out about 2 particular spots where he said he had hidden Seetsa's body parts. In doing so Accused 1 acted freely and voluntarily with no compulsion or threats having been made to him by anyone. While it is true that Accused 1 was still secured with foot-

cuffs but he was acting freely in every other respect when he volunteered to take the investigating team to the dongas and when he pointed out the 2 spots where he said he had buried Seetsa's body parts. The foot-cuffs were purely used by police as a precaution against escape and were meant purely to slow down Accused 1's movement in the event of an attempted escape, Mr. Seeko told us.

Accused 2 was not secured at all – neither on her feet or hands, Sgt. Seeko testified.

49.3 Sgt. Seeko pointedly told the Court that the alleged claim by Accused at the trial that he did the pointing out under duress following assaults by police is totally untrue. No assaults or threats of any type had been made on him by police. He certainly did not see on Accused any sign that he might have been assaulted or harassed in any way. **Accused 1's** mood was jovial and cooperative throughout his dealings with police on 12<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> July 2012. At no time had **Accused 1** been injected with any substance. At no time throughout the period that he was in police custody or at various scenes of crime did **Accused 1** appear anything but normal. **Accused 1's** walking gait and speech remained normal at all times. Sgt. Seeko told the court that he never had any difficulty understanding what **Accused 1** was saying to him or to any team member. Sgt. Seeko told the Court that he had had several conversations with **Accused 1** including jokes, and he had never noticed anything untoward with **Accused 1**.

At the end of pointing out at Accused's house and at the donga the team and Accused persons returned to Mabote Police Station. Accused 1 in particular had no injuries of any type. Sgt. Seeko rejected as totally false

the story of Accused 1 made through his Counsel that Accused 1 had been burned in a dustbin container.

Cross-examination of Sgt. Seeko by Mr. Hoeane was directed at the fact that there were many police officers at the various scenes on 12, 13 and 14 July 2012 and that Accused 1 did the pointing out whilst in police custody and secured with either hand-cuffs and/or foot-clamps. The suggestion by Mr. Hoeane was that under those circumstances the actions of Accused 1 could never have been freely made. To the suggestion that there were many police around Sgt. Seeko explained police numbers were about 8 and that some officers were there to provide support to investigation team to secure crime scenes and to manage crowd control as villagers had gathered in large numbers to watch what was going on.

As to the suggestion by Mr. Hoeane to Sgt. Seeko that Accused were petrified and in great shock and acting under duress and threats of police during the alleged pointing out, Sgt. Seeko flatly denied as untrue that Accused were frightened and petrified as suggested. Sgt. Seeko in fact reported that the mood of Accused 1 was relaxed and cooperative. Sgt. Seeko repeated during his evidence both in-chief and under cross-examination that Accused 1 never complained to him as a team member or to Officer Commanding Mabote Police that he was being assaulted/maltreated by any policeman during his sojourn in police custody at Mabote Police Station.

49.4 During the course of cross-examination of Sgt. Seeko it was put to him that Accused were both arrested on 12<sup>th</sup> July and that they were kept in police custody beyond 48 hours permitted by law. Sgt. Seeko confirmed that both Accused persons were in police custody beyond 48 hours. Sgt.

Seeko denied that they were kept in detention unlawfully beyond 48 hours. Sgt. Seeko testified that before the expiry of the 48 hours Accused persons were taken before the Magistrate to apply for extension of detention to enable police to complete their investigation as the case involving these Accused was intricate and had many aspects that police could not complete within the 48 hours' period. The extension was applied for and granted by the Magistrate. So the continued detention of Accused persons beyond initial 48 hours was lawful as the extension was sought from the court and granted.

It is common cause that during police detention at Mabote Police Station both Accused persons there received visitors including close relatives. I note in passing that none has laid complaints with the authorities of police brutality on behalf of Accused persons herein up to now.

49.5 It was put to sgt. Seeko by Mr. Hoeane that police sought further detention of Accused persons from Magistrate in order to perpetuate the further torture of Accused persons. Sgt. Seeko denied this allegation emphatically. It was put to Sgt. Seeko that the black striped trousers (**Exhibit 21**) was property of **Accused 1** and that in fact on 12 July when he was arrested Accused 1 was wearing it and had wetted it from police beatings earlier. Sgt. Seeko seemed quite surprised and amused by this suggestion which from his look found it quite bizarre. He denied it emphatically. It was put to Sgt. Seeko that police in fact took it from **Accused 1** while wearing it Sgt. Seeko denied this story as a complete untruth and retorted that there is no way a pair of trousers could be stripped off a person in handcuffs and leg-irons as suggested by Mr. Hoeane. Mr. Hoeane then changed tune to say in fact Accused 1 was unchained from leg-irons and then helped to remove the trousers he was

wearing being (**Exhibit 21**). Sgt. Seeko replied that nothing of the sort ever happened and that in fact Accused 1 did not leave home back to Mabote Police Station naked. Mr. Hoeane then put it to Sgt. Seeko that in fact Khatleli ordered Accused 1 to secure another pair of trousers to substitute **Exhibit 21** which police had decided to take. Sgt. Seeko replied that if Accused was to advance such a story to the Court it would be a complete untruth. Such a thing did not happen. Towards the end of Mr. Hoeane cross-examination of Sgt. Seeko the following question by Mr. Hoeane was posed to Sgt. Seeko.

*“Accused 1 will say all your testimony regarding the pointing out from the house, the dongas, and school latrines is false. It is calculated to falsely incriminate him.”*

ANS: He will not be telling truth. *“I have no reason whatsoever to come and lie about him to this Court.”*

This defence question prompted me to enquire from Mr. Hoeane in the following terms:

*“COURT: I need clarity here Mr. Hoeane; what is Accused 1’s version regarding the alleged pointing out of various items and places?”*

*MR. HOEANE: Accused 1’s version is that he never pointed out at anything. It is all lies by the police.”*

That then was the end of cross-examination of Sgt. Seeko (PW5) in relation to trial-within-a-trial regarding the voluntaries or otherwise of Accused persons relating to alleged pointing out. Sgt. Seeko gave his testimony straight forwardly and clearly. He answered all question put to him fully and honestly in my view. In my assessment of Sgt. Seeko’s testimony, his demeanour and how he answered questions, I am satisfied beyond any doubt that he gave truthful testimony concerning this case especially regarding whether Accused persons pointed out various

exhibits or locations and/or gave certain answers freely and voluntarily to police during investigation of the deaths of Moholobela Seetsa and Kamohelo Mohata. I have no hesitation in accepting his testimony accordingly.

**NO. 8738 SNR. INSP. MPHELEHETSE KHATLELI**

[50] The second witness to be called by Crown in relation to trial within a trial was No. 8738 Senior Inspector Mphelehetse Khatleli (PW11). He was the team leader of the investigating team in these cases. It is useful to start with a broad perspective of his testimony. There were three primary scenes of investigation, namely, Accused 2's house, the dongas and Sekhutlong below Koalabata village, and, at the Koalabata Primary School toilets. There were, also, three main primary dates of investigations, namely 12<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> July 2012. Of course there were other dates on which police investigations were taking place but the above three dates were dates of intensive investigations during which lead after lead led to various discoveries relevant to police investigations concerning the death of Moholobela Seetsa and Kamohelo Mohata. An example of such dates was 15 January 2012 when body parts of Moholobela were discovered by villagers at Sekhutlong dongas, in Koalabata.

50.2 Inspector Khatleli testified that he proceeded to Accused 2's house on the morning of 12<sup>th</sup> July 2012 following a complaint received by police. On arrival at Accused's 2 house he found children playing there. It were all boys. He asked the children the whereabouts of people living there in that house. One of the children who gave his name as Khotso told him

that his mother is Nthabiseng Scott and that she had gone to work. The boy further told them that his brother Lehlohonolo had gone to town. PW11 told the Court that he enquired from Khotso where his mother worked and Khotso told him that she worked at Limkokwing University. Khatleli told the Court that he then phone called C.I.D. office in Maseru and spoke to Superintendent Selimo and requested him to assist by arranging a team to bring Nthabiseng Scott (Accused 2) from Limkokwing University to her house as they (PW11 and his assistants) were already waiting for her at the house. Khatleli told the Court that he also asked Sup. Selimo to ask police team fetching Accused 2 to ask her for Accused 1 number when they had found her so that they may also inform him that he was required at the house too.

50.3 While awaiting arrival of both Accused the Chief of Koalabata, (PW7) was passing there with some men. PW11 said he requested her to join them and explained to her what they were there for. She agreed and waited with them for arrival of Accused 1 and 2. After some time Sgt. Matsoso and his team arrived with Accused 1 and Accused 2. Sgt. Matsoso then handed Accused 1 and 2 over to him. He was waiting for them outside Accused 2's house. PW11 testified that he introduced himself to them by telling them his name, where he worked and his rank that he was a police Inspector. PW11 told the Court that he asked them as to whose house and car in front of them belonged. PW11 told the court that Accused 2 said the house was hers. Accused 1 said the vehicle was his. He then cautioned them and said the premises were suspected in connection with the commission of a crime and that police would like to conduct a search on the house, vehicle, toilet and the whole precinct. He explained their rights to them and told them that they had a right to remain silent and a right to find themselves a lawyer if they so wished.

Further, he told them that they were not obliged to make any statement but if they made a statement such statement might in future be used against them in a court of law and that whatever they would find in their police search of the premises and its surroundings would be used against them in a court of law. PW11 told the court that after making those explanations of rights/caution to both Accused he asked them if they understood him. PW11 testified that both Accused persons did not make any comment. Neither did they elect to exercise any of the rights he had explained to them.

- 50.4 The first person to respond to his request for permission to search the house, vehicle toilet and surrounds of the premises was Accused 2. She responded that PW11 could go ahead and search. Accused 1 was quite for a while as to his request concerning permission to search the vehicle but eventually he did say his vehicle could be searched too.

By the time that police commenced with their work to conduct a search of the precinct, a lot of people had gathered at the premises of Accused 2. He had caused the search area to be cordoned off with a yellow police tape to secure the area. Inspector Khatleli testified that he asked Chieftainess (PW7) to appoint two village men to join her and him and his team in the search of the vehicle and the house. PW7 appointed Mr. Khotso Tsasanyane and Mr. Sethunya. PW11 told the Court that he asked the Chief and her two Councillors to observe carefully everything that police investigation would be doing or that they would discover during police search as they might be called upon in the future to testify as witnesses about what they saw or observed during the search.

50.5 PW11 testified that he then told the designated group that he wished to start with the search of the vehicle (**PHOTO 3 – Exhibit B**) in front of the house. The search started at the Corsa van. PW11 testified that Accused 1 volunteered to open it for them and he did so from the passenger door. PW11 searched the passenger cabin of the Corsa van. PW11 testified that he found the following items from inside the passenger cabin of the van:

- a black track suit top (Exhibit 3). Found behind the driver's seat. It had blood stains on it. Beneath it still behind the driver's seat PW11 found male private parts – **PHOTO 5 (Exhibit B)**. **Photos 5 Exhibit A and B** were all taken by Sgt. Seeko (PW5). PW11 testified that at the time of discovery of Exhibit 3 he did not know its owner. But PW11 told the Court that he subsequently came to know that it belonged to deceased in Count 2 when it was identified by deceased relatives later at Mabote Police Station in the presence of PW11 and Accused 1 and 2.

The following items were found by PW11 and team from the load bay of the Corsa van hidden under the van's tonneau cover:

- A yellow surgical glove (Exhibit 4)
- bloody green track suit pant (Exhibit 5)
- A blue short sleeved T-shirt (Exhibit 6)
- A black Puma sock (Exhibit 7)
- A black and white Adidas sock – (Exhibit 8)
- A white and red Mr. Price Plastic shopping bag with blood stains (Exhibit 9)

Exhibits 5, 6, 7, and 8 were all identified by Kamohelo Mohata's relatives as clothing belonging to Kamohelo Mohata (deceased in Count 2) at Mabote Police Station in the presence of Accused 1 and 2, PW11 testified.

PW11 continuing with his testimony testified that after searching the van, he asked Accused 2 to open the house for them and she did. PW11, PW5, Accused 1, Accused 2, PW7, her Councillors (Khotso Tsatsanyane and Sethunya Sethunya) and members of investigating team entered the house. The house consisted of 5 rooms (sitting room, 3 bedrooms, one of which seemed to be used as a storeroom) and a kitchen with a door leading to the back of the house).

[51] **CORRUGATED IRON TOILET**

From the house the party went out and proceeded to a corrugated iron toilet (**PHOTO 9 and 10**) depicted in photo album **Exhibit B**. PW11 testified that he and his team opened the toilet. He found that the toilet seat was closed as reflected in **PHOTO 10 of Exhibit B**. After opening the toilet seat cover PW11 said he noticed that the pit inside was covered with a lot of newspapers. **PHOTO 11 in Exhibit B** depicts what he and the team saw. He noticed that some of the newspapers in the pit aforesaid had some blood stains. PW11 told the Court that he and his team removed the newspapers and put them outside the toilet. Then they looked inside the pit after having removed the newspapers as explained above. He and his team members observed a lot of blood in that toilet pit. He also observed fresh faeces which let him and his party to conclude that the toilet had recently been used and was in fact in current use. They also observed two plastic shopping bags in the pit (one yellow and the

other white). PW11 testified that he and his team took out the two plastic bags they saw in the pit. PW11 and his party then established that they were a yellow Shoprite plastic bag (Photo 12) and a white Pick and Pay plastic bag (**PHOTO 13**). The **PHOTOS 12 and 13** were taken by PW5. They also discovered that the two plastic bags contained a lot of blood. Khatleli told the Court that they emptied the blood they found in both plastic bags into separate sample bottles. These sample bottles they took to Forensic Laboratory for analysis. After emptying the blood from the two plastic bags into sample bottles Khatleli and team proceeded to search for balance of the premises on that site of Accused 2.

At the back of the house of Accused 2 aforesaid about 10 paces from the kitchen entrance, Khatleli and his team discovered “Boxer short underpants with green stripes.” This underpants had a lot of blood. They took possession of it to be used as an exhibit in future trial. Khatleli handed this Boxer short underwear into evidence in Court and it was marked Exhibit 10.

To conclude the events of the morning of 12<sup>th</sup> July 2012, Khatleli told the Court that he and his team then removed the exhibits they had taken from Accused 2’s premises that morning back with them to Mabote Police Station together with **Accused 1 and Accused 2**. The house key was still in PW11 possession. PW11 told the Court that back at Mabote Police Station he again cautioned **Accused 1 and 2** in the same terms as he had cautioned and explained their legal rights earlier in the day. PW11 testified that he then asked for an explanation from them in regard to the items he and his team had found at their place. PW11 testified that **Accused 2** told him she knew nothing about those items recovered at her home. **Accused 1** gave an explanation to him adding that they should

return back to Accused 2's home at Koalabata dongas next to farm of one Matsoso.

### **AS TO AFTERNOON OF 12<sup>th</sup> JULY 2012**

[52] On the afternoon of 12<sup>th</sup> July 2012, PW11, Accused 1, Accused 2, PW5 and other team members returned to Koalabata village starting at Accused 2's house. At Accused 2's house large crowd soon gathered when they alighted from their vehicles together with Accused 1 and Accused 2. Among the crowd he asked for 3 men who were in the crowd to volunteer to join the investigating team as observers on behalf of the Chief. Three men came forward, namely, Nyakallang Phuroe (PW9), Lisema Shakhane and Nkome Moreboli. PW11 told the Court that he explained to three gentlemen the purpose and reason why he had asked them to join them. PW11 told the Court that after noting the names of these observers he then addressed himself to Accused 1 and 2 in the presence of the three chief's observers.

He explained Accused's rights and gave them their caution in the same terms as he had done to them earlier. They understood his caution and explanations.

52.2 PW11 opened the house and Accused 1 entered into it. The rest of the team, Accused 2 and chief's observers followed him in to the house. The entry into the house was part of the request of Accused 1 to go back to the house at Koalabata made by him while at the Mabote Police Station. Accused 1 then led the party into one of the rooms. They followed him there. It was an untidy room that looked to PW11 like it was being used as a store-room. There was a metal bath containing many things. Accused 1 proceeded to remove the metal bath and pushed it aside.

Below where the metal bath stood appeared a cardboard with a lot of blood stains on it. Photo 14 in Exhibit B depicts the metal bath and the cardboard which emerged beneath it when the metal bath was removed. The partial body of a person wearing a blue bogard trouser and a black jacket is that of himself (PW11). This photo like all photos in Albums Exhibit A and B were all taken by Sgt. Seeko (PW5).

### **AS TO ALLEGED INJECTION AND TORTURE AT MABOTE POLICE STATION**

[53] Crown Counsel directed PW11 to some questions emanating from Defence Counsel in cross-examination of some earlier witnesses suggesting that **Accused 1** was tortured and burned in a metal drum at Mabote Police Station prior to him being taken back to **Accused 2's** house on 12<sup>th</sup> July 2012. PW11's response to such suggestions from Accused was that nothing of the sort ever happened. He told the Court that he never instructed Matsoso to inject **Accused 1** or anyone with any substance. PW11 was emphatic that police do not have injection contraptions for use on people. As regards suggestion by Accused Counsel that Accused will testify that he was assaulted, threatened or tortured again he described such allegation as a naked lie, it never happened. He never participated in such alleged behaviour. PW11 concluded on this aspect of **Accused 1's** alleged injection/assault/torture/or threats allegedly made by him and/or investigation team members that it was total untruth that never happened. In fact **Accused 1** was very cooperative with police throughout the investigation especially on 12<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> July 2012. He denied that **Accused 1** was ever placed in a steel dust bin and burned. He described such an allegation by Accused as a lie. He added that he had been stationed at Mabote Police Station for 12 years and he has not known the

station to use steel dust bins. Mabote Police Station uses plastic dust bins.

**ON EXPLANATION OF RIGHTS TO ACCUSED AND CAUTION ADMINISTERED**

[54] Throughout the investigation of the case before proceeding from Mabote Police Station to each scene, and, at every scene both Accused were explained their legal rights and cautioned that they were under no obligation to make any statements or to point out anything but that if they chose to such statements that they might make and such pointing out they might do might be used against them later in proceedings before a Court of law. PW11 was emphatic that this procedure was followed by him dutifully in relation to this case. Indeed it was standard procedure followed by police investigation teams.

**ON VOLUNTARINESS OF ACTIONS BY ACCUSED PERSONS**

[55] PW11 was emphatic throughout his evidence that whatever Accused 1 and 2 did on 12<sup>th</sup> and 13<sup>th</sup> and 14<sup>th</sup> they did freely and voluntarily. Accused 1 was to PW11's observation in sober and sound senses. There was no under hand influence exerted against him whatsoever. Accused 1's mood remained cooperative throughout. There was no time that Accused 1 gave the impression that he had lost his mind, PW11 told the Court. He had no difficulty talking. There was no time that he found it difficult to understand **Accused 1** talking in their conversation over the period. Apart from the leg chains that secured his feet **Accused 1** walked steadily and normally. At no time did PW11 see injuries on **Accused 1** throughout their dealing with him, PW11 testified.

### **POINTING OUT OF VARIOUS ITEMS**

[56] PW11 reverting to the photo Album – Exhibit B told the Court that on the afternoon of 12<sup>th</sup> July 2012 **Accused 1** pointed to them the **Defy Cardboard (Exhibit 11)** which emerged from underneath the steel bath when he removed the steel bath. The steel bath had been sitting on top of the cardboard. **PHOTO 14 on Exhibit B** – Album depicts the steel bath and Defy cardboard. While it had done so no blood was visible. The cardboard was stuck on the floor and wet blood. **PHOTO 15 on Exhibit B Album** depicts the blood stains on the floor when cardboard had been uplifted, PW11 told the Court. When the cardboard was removed it became clear that it was sitting to hide a pool of blood underneath it. When investigating team members tried to uplift the cardboard a part of it separated and remained on the floor because of the wet blood on the floor underneath it. PW11 told the Court. PW11 handed in the bloody Defy cardboard into evidence and it was marked **Exhibit 11**.

### [57] **ORANGE/RED HANDLE HAND-SAW – EXHIBIT 12**

PW11 testified that from pointing out **Exhibit 11** underneath the steel bath **Accused 1** then proceeded to point out a handsaw with an orange/red handle in the room. This handsaw was handed by PW11 into evidence in Court. It was marked **Exhibit 12**.

### [58] **MAROON/REDDISH TAKKIES WITH CLOTH UPPERS – EXHIBIT 13**

PW11 testified further that **Accused 1** then proceeded to point out a pair of maroon/reddish Takkies shoes with cloth uppers – **Exhibit 13 (ID 11)**. PW11 tendered the pair of Takkies aforesaid into evidence in Court. They were marked **Exhibit 13**. PW11 told the Court that after this pointing out of **Exhibit 11 (ID1)** and **Exhibit 14 (ID2)** and **Exhibit 13** by

**Accused 1** he took possession of those items. He then went out with Accused persons, the three chiefs councillors and his team. He locked the house. When concluding his testimony on **Exhibit 11, Exhibit 12, Exhibit 13**, PW11 told the Court that **Exhibit 13** was identified by relatives of Kamohelo Mohata (deceased in Court 2), in his presence and in the presence of both Accused 1 and 2 at Mabote Police Station as property of the late Kamohelo Mohata.

### **DONGAS ON AFTERNOON OF 12TH JULY 2012**

[59] Continuing with his testimony PW11 testified that after locking **Accused 2** house that afternoon, **Accused 1**, asked them to go to the dongas where he was going to show them locations where he had hidden more things. PW11 told Court they proceeded there in police vehicles. PW11 told the Court that he had asked **Accused 1** to tell them where to stop when the vehicles reached the spot which he thought was correct spot where he wished to take them to. Accused indeed did tell them to stop the vehicles when the vehicles reached an appropriate spot according to him. By this time there were many villagers who had come to watch what was unfolding. They had followed on foot to the donga. PW11 told the Court that he asked the villages to stay clear of the area Accused 1 had indicated they were going to.

PW11 testified that after they alighted from the vehicles he called both Accused aside and again explained their legal rights and cautioned them as in similar terms to those indicated earlier. Khatleli testified that from there **Accused 1** led him and the party walking ahead of them descending into the donga. **Accused 2** remained on top of the donga and watched the party from there. She did not descend into the donga. **PHOTO 16 in Exhibit B** is the donga **Accused 1** led them. When they reached the

bottom of the donga **Accused 1** pointed out a crevice on the side of the donga at its base. Khatleli told the Court that he observed that the soil looked loose at the spot pointed by **Accused 1** and there appeared to be buried under it something. When the loose soil was removed at the pointed spot there appeared a black plastic bag which seemed to contain something in it PW11 testified that **Accused 1** had pointed at this particular spot where the black plastic bag emerged when the soil was removed. **PHOTO 17 and 18 in Exhibit B** depict accurately what the spot looked like when Accused 1 pointed it first (**PHOTO 17**) and when the soil was removed from the crevice spot (**PHOTO 18**).

59.2 PW11 testified that he was assisted by the investigating team as the black plastic bag was weighty. They put it aside near that spot in the donga. He, assisted by his team members, unwrapped the plastic bag. Inside the black plastic bag emerged a human corpse. The head had been cut off at the neck; its two arms were also not there having apparently been severed from the body at the shoulders. Also the body was severed from the neck to the torso as depicted in **PHOTO 19** in photo Album of Sgt. Seeko in **Exhibit B**. This body part did not have intestines inside including the inside of the thoracic cavity e.g. lungs and heart. Above the left shoulder there was an open wound. Khatleli assisted by his investigating team members took this corpse body parts and returned into the black plastic bag and placed it inside their vehicle above the donga.

59.3 **Accused 1** then took him and the team to another spot about two metres from the first spot he had pointed to him. The second spot is depicted in **PHOTO 20 of Exhibit B** of Seeko's Albums. This second spot was on a slope. On this second spot there were signs that the ground had been disturbed. On that spot, so Khatleli continued to testify, nearby there was

a hand-imprint on the ground. He told the Court that though someone may have left his/her hand imprint on that ground as he/she tried to support himself/herself. On this spot also it was a crevice on the donga wall towards its base.

Khatleli and his assistants removed that loose soil at the second spot Accused 1 had pointed out to him. Another part of human corpse again emerged out of this second spot. The human body part did not have human genitals on it. **PHOTO 21 in Exhibit B** of Sgt. Seeko's photo album depicts this accurately. All of these body parts recovered on that afternoon at the donga were recovered by PW11 and his team members in the presence of the three chief's councillors and both Accused to the police vehicles above the donga. Khatleli told the Court that he later took all of these body parts depicted in **PHOTOS 19 and 21 of Exhibit B** to Lesotho Funeral Services Mortuary for safe keeping.

From the donga that afternoon the investigating team under Khatleli returned to Mabote Police Station with both Accused persons.

On arrival at Mabote Police Station Khatleli and the team found visitors at the Police Station who had come to visit both Accused. Amongst them was Rethabile Scott, a son of Accused 2 and older brother to Accused 1. PW11 testified that he allowed Rethabile and his wife to see both Accused persons. Accused 2 requested that Khatleli give the house keys to Rethabile (DW4) as there was another child of Accused 2 who lived with Accused at Koalabata and the key would allow Rethabile to access the house and the younger brother would be able to access his clothing while he went to live with Rethabile following Accused's arrest. Khatleli told the Court he readily agreed and gave the house key to Rethabile as

requested by Accused 2. Rethabile and his wife left after seeing Accused. While Rethabile was visiting Accused he enquired from Khatleli if he could find them a lawyer. PW11 replied that by all means he could get them a lawyer. Besides Rethabile and his wife there was another large group of persons who claimed to be fellow church goers with Accused persons. This group, Khatleli told the Court was somewhat rowdy uttering words like they wished to see these persons (Accused) who had tarnished the image of their village. Khatleli told the Court that he determined that this group was hostile and may have hostile intentions towards the Accused persons. He refused troublemakers access to both Accused persons. He asked the rowdy group to go away and they eventually dispersed.

**[60] EVENTS OF FRIDAY 13<sup>th</sup> JULY 2012**

PW11 testified as to the events of 13<sup>th</sup> July 2012 as follows. On that morning he arrived at work and found both Accused persons with other police detainees in the square being fed. He proceeded to his office. A little later he received a message from the Station Reception police officer to the effect someone by the name of Rethabile wished to see him. He send for him. On meeting Rethabile, PW11 told the Court that Rethabile told him that he was no longer going to procure a lawyer for Accused following what he had learned yesterday. PW11 told the Court that he enquired from Rethabile who the lawyer was and Rethabile replied that it was Advocate Phafane (KC).

60.2 Around midday while sitting with both Accused in his office with some officers, Accused 1 told him that he wished to take the investigating team to Koalabata Primary School. PW11 told the Court that he did not know the school but one of his officers phoned Chieftainess 'Makhomo (PW7)

to meet his contingent at the school with 3 councillors. He also asked PW7 to request the school principal to be available at the school.

60.3 Before leaving Mabote Police Station for Koalabata Primary School PW11 told the Court that he cautioned Accused in similar terms to what he had done before. He enquired from Accused 1 if he had understood the caution Accused said he did. They left for Koalabata Primary School as requested by Accused 1.

**AT KOALABATA PRIMARY SCHOOL TOILETS ON 13<sup>th</sup> JULY 2012**

[61] On arrival at the school PW11, his investigation team, and Accused 1 found PW7 together with her councillors – Khotso Tsatsanyane, Bothata Leche. They also met Eddie Ntlama who described himself to be local pastor of the local church and was proprietor of Koalabata Primary School.

61.2 After joining PW7, Tsatsanyane, Leche and Ntlama PW11 said he again cautioned Accused 1 in similar terms to what he had earlier done. He enquired from Accused 1 if he understood the caution he had just given him and Accused 1 replied that he understood the caution. PW11 told the Court that he explained to PW7, the two councillors and Ntlama that he needed their help by observing what was about to happen as Accused 1 had requested him to come to Koalabata Primary School to show them where he had hidden further body parts. PW11 told the Court that he asked them to carefully observe what happens as they might be asked at a later date to become witnesses of what they had seen and observed in a future trial.

61.3 **Accused 1** then pointed out a toilet building which was built of cement and concrete block bricks. The party proceeded to it (Accused 1, PW7, Leche, Tsatsanyane, Ntlama, PW11 and investigation team including PW5). PW11 identified to the Court **PHOTO 22 in Exhibit B** as the school toilet block Accused 1 pointed to him and led them to. Accused 1 then led the party into the inside of the toilet block. There Accused 1 pointed at one of the two toilet pit holes (seats). **PHOTO 23 in Exhibit B** depicts the inside of the two toilet pit holes. PW11 testified that he and his team members looked into the pit hole pointed by Accused 1. He could see a human leg cut from the knee top to the ankle, lungs, stomach and intestines. There was also a black plastic bag containing something and also a yellow Shoprite plastic bag he observed they took out all those items.

Inside the black plastic bag they found a liver. The liver was cut off from its windpipe "*phapooane*". There was also a piece of throat. There was a heart whose lobe had been cut off. Inside the Shoprite plastic bag PW11 told the Court that he found two human feet which were cut at their ankles. All these human body pieces were recovered from the one latrine pit hole Accused 1 had pointed him to.

**PHOTO 24 in Exhibit B** depicts the yellow plastic bag as they saw it inside the toilet pit hole.

**PHOTO 26 in Exhibit B** is the same bottom of the toilet pit. At the bottom there on the picture are intestines, yellow Shoprite plastic bag, black plastic bag and a part of liver (red piece of flesh lying next to yellow Shoprite plastic bag).

**PHOTO 27 – Exhibit B** depicts the heart with its lobe cut off. The heart is in the middle of the photo. On the left of the photo picture is a portion of the lungs. On the right of the picture are intestines. The picture which partially sits on top of the heart is a piece of a stick.

**PHOTO 28 – Exhibit B** depicts a piece of throat/wind pipe “*phapooane*” that he referred to earlier.

**PHOTO 29 – Exhibit B** is the same picture as is photo 24 but this one was taken by Sgt. Seeko from further away.

**PHOTO 30 – Exhibit B** is a picture of two human hands found in the second hole.

**PHOTO 31 – Exhibit B** is a picture of two human feet found in the first toilet pit hole. These were recovered from inside the yellow Shoprite plastic bag.

**PHOTO 32 – Exhibit B** – depicts a black plastic bag. Out of this black plastic bag PW11 said he found two human hands depicted in Photo 30

**PHOTO 33 – Exhibit B** – depicts a black plastic bag which was found in the second pit hole of the toilet. PW11 told the Court that when they pulled the plastic bag from the toilet pit a human head fell down.

**PHOTO 34 – Exhibit B** – depicts a human head with a face. The head in Photo 33 and the head in Photo 34 are the same. In Photo 33 the picture shows the head covered in human faeces for it fell on human faeces in the pit as police pulled up the black plastic bag from the toilet.

In Photo 34 it is the same head after the head in Photo 33 had been washed after it was pulled by Accused 1 out of the faeces onto which it had fallen. This head in Photo 34 was identified as that of Kamohelo Mohata (deceased in Count 2) by chief's headman and Councillor Bothata Leche after PW11 and his team had washed it of the human faeces. It was also confirmed to be that of Kamohelo Mohata by Accused 1, PW7, chief's Councillor Tsatsanyane and Rev. Eddie Ntlama.

61.4 After the head was washed and identified as mentioned above PW11 told the Court that he took all the human body parts pointed out to them by Accused 1 at the Koalabata Primary School toilets to Lesotho Funeral Services Mortuary (LFS) for safe keeping. At the LFS Mortuary on 13<sup>th</sup> July 2012 a further identification of the head of Kamohelo Mohata was made by PW3 and Motlatsi Mohata, PW11 told the Court. They identified it positively as that of their child Kamohelo Mohata.

Accused 1 and Accused 2 were locked up in police cells at Mabote Police Station at the end of the long day at the Koalabata Primary School with Accused 1. Throughout that day Accused 1 never complained of ill treatment by police at any stage of investigations. Indeed throughout police investigations at Koalabata Primary School Accused 1 was cooperative and on occasion actually helping the investigation team with retrieval of human body parts from the school toilet pits as the process unfolded as explained in detail above.

#### **SATURDAY 14<sup>th</sup> JULY 2012 – FURTHER EXHIBITS POINTED OUT**

[62] PW11 continued his testimony as follows in relation to events of Saturday 14<sup>th</sup> 2012.

62.2 On the morning of Saturday 14<sup>th</sup> July 2012 he and his team-mates were busy at their offices at Mabote Police Station when Rethabile (DW4) brother of Accused 1 after seeing them came into his office (PW11) and requested to speak to PW11. At the time, PW11 told the Court, that he was with some of his colleagues in his office and he enquired from Rethabile (DW4) if what he wished to speak to him about was a secret or not. Rethabile replied that it was not and he (PW11) asked him to speak in the presence of those with him (Khatleli). Rethabile requested PW11 to give him an opportunity to speak to Accused 1 alone in privacy explaining that Accused 1 is a lot more open with him as his older brother. PW11 told the Court that he consented to Rethabile's request and lent them a nearby office to speak in private with Accused 1. However PW11 said he directed P/C Kubutu to stand watch outside the door while giving them privacy in case of an emergency. Rethabile and Accused 1 spoke in privacy behind a closed door. After about 20 – 30 minutes Rethabile came back and reported that Accused 1 wished to go home to the house and to the donga and point out other items at Koalabata. PW11 told the Court that he then called for Accused 1 and Accused 2 into his office where he was with Rethabile. Khatleli told the Court that he commenced by cautioning both Accused persons in the same terms as he had done on previous occasions indicating to them that they were under no obligation to make any statements to them or to point out anything but that if they on their own free will chose to do so such statements and/or pointing out as they might be make would be used by police against them at any future trial against them. Again he enquired from them if they had understood the explanations and the caution he had made to them to which enquiry **Accused 1** and **Accused 2** confirmed that they had understood. PW11 told the Court that he then relayed to

**Accused 1 and 2** in the presence of Rethabile what Rethabile had just told them (him and his colleagues) about Accused 1's request to return to the house and the dongas at Koalabata to point out further items in the house and at the dongas. Both Accused persons did not express any disagreement with what Khatleli had relayed to them as coming from Rethabile nor did Accused 1 challenge his brother at all.

62.3 As Rethabile had been given the house key by Khatleli on their last visit to the house, Khatleli asked him for the key to enable them to access the house. Rethabile said he had left the key at his quarters for he lived in another part of the city and not at Koalabata with the two Accused persons. He was asked to fetch it and told to meet the rest of the party at the house in Koalabata. In the meantime PW11 phoned PW7 and requested her presence at the house. She couldn't make it but provided her two Councillors (PW8 and Koetsi Moloi). PW11 testified that he, both Accused, and his team members got into their vehicles and drove to Accused 2's house at Koalabata.

#### **AT ACCUSED 2's HOUSE ON 14<sup>th</sup> JULY 2012**

[63] On arrival at Accused 2's house at Koalabata they found that many villagers had gathered in large numbers. After about 5 minutes Rethabile also arrived with the house keys.

63.2 Khatleli told the Court that he then spoke to the crowd and asked them to move backward and not come too close to the house. He asked for two representatives of the Chief to come forward. It was PW8 and one Koetsi Moloi who came forward to join the investigation team and both Accused. Khatleli told the Court that he explained to them the purpose of police visit to Accused 2's premises and requested them to carefully

observe what would unfold there as they might in the future be requested to give their observations to court in future trial. Accused 1 and 2 were present when PW11 spoke to PW8 and Moloï thus. Again in the presence of the two Chief's Councillors PW11 said he explained both Accused's rights to them and gave them a caution in similar terms to what he had done before. PW11 told the Court that he enquired from them if they had understood his explanations and caution to them. Both Accused confirmed that they had understood him.

63.3 PW11 told the Court that he had then asked Rethabile (DW4) to open the door for them. He did. PW11, investigating team, PW8, Moloï and Rethabile all entered the house. Accused 1 was in front of the group. Accused 1 led the group to the room that seemed like it was used as a storeroom. Accused 1 then took out things from inside the steel bath- **PHOTO 14 in Exhibit B**. He took out a knife (ID 2) with a wooden handle from the steel bath, (Photo 37 – Exhibit B). PW11 tendered brown knife with wooden handle (ID 2) in evidence as part of his testimony. It became Exhibit 14. He took the knife and noticed that it had blood stains where metal part of the knife met the wooden handle.

63.4 In this room there was also a wardrobe. Accused 1 opened the wardrobe. He took out a blue jersey with a "CENEZ HIGH SCHOOL" logo on it. PW11 identified it in Court as ID 3 and asked to be permitted to tender it into Court as part of his evidence. It was marked Exhibit 15. PW11 further told the Court that this particular jersey was subsequently identified in his presence by relatives of Kamohelo Mohata in the presence of Accused 1 and 2 as well at Mabote Police Station.

63.5 **Accused 1** also produced a black cap with a KFC logo on its forehead. PW11 identified the KFC cap in Court [ID 10] and asked for it to be admitted into Court as part of his evidence. This KFC cap was also subsequently identified by relatives of Kamohelo Mohata at Mabote Police Station in the presence of PW11, Accused 1 and Accused 2 and members of investigating team.

63.6 **Accused 1** then drew out a Black sleeved jersey from the wardrobe. PW11 identified it in Court (ID12) and asked for it to be admitted into Court as part of his evidence. This jersey (ID 12) was later identified by relatives of Kamoehelo Mohatla as property of their late son in the presence of **Accused 1**, **Accused 2**, PW11 and investigation team members.

63.7 As **Accused 1** pulled out these specific items from the wardrobe he was selecting them from among a number of clothing items in the wardrobe. These items just handed to the team by **Accused 1** were taken over by PW11.

63.8 Then **Accused 1** led the group to another room in the same house. The group followed him there. In a wardrobe in that other room, Accused 1 produced from there a long pants blue bogard trousers. It had blood stains on its knees area. It was admitted into evidence as **Exhibit 18**. PW11 identified the blue bogard jeans trousers in Court (ID 6) and tendered in to Court to form part of his evidence. PW11 told the Court that he took possession of these blue bogard jeans given to him by Accused 1.

The pair of blue bogard trouser (**Exhibit 18**) was later identified at Mabote Police Station in the presence of PW11, **Accused 1** and **Accused 2** by relatives (PW3 and PW4) of Kamohelo Mohata (deceased in Count 2) as property belonging to Kamohelo Mohata.

63.9 **Accused 1** then produced a Black Belt with many holes. PW11 identified it in Court (ID 8). PW11 tendered this item in evidence as **Exhibit 19**. This belt was identified by PW1 and PW2 later as property of their late son Moholobela Seetsa in the presence of PW11, **Accused 1** and **Accused 2** at Mabote Police Station.

63.10 **Accused 1** then produced a grey jockey underwear. PW11 testified was later identified it to the court. He asked to formally tender it into evidence in Court as part of his evidence in this trial. It was marked **Exhibit 20**.

The grey jockey underwear (**Exhibit 20**) PW11 testified was later identified by PW1 and PW2 at Mabote Police Station as property of their late son Moholobela Seetsa (deceased in Count 1).

63.11 Then **Accused 1** picked up a black pair of trousers which was on the floor near the wardrobe and gave it to PW11. PW11 identified it in Court and asked the Court's leave to formally hand it in as part of his evidence in this trial. It became **Exhibit 21**. PW11 was referred by Mr. Leppan to a claim made on behalf of **Accused 1** that he will say the pair of trousers aforesaid was personal property of **Accused 1** which he was wearing on the very day he was arrested and that he was undressed that trousers by police. PW11 was emphatic that such claim by **Accused 1** would be untrue. PW11 continued his evidence concerning possession of these

trousers and said on its examination they noticed that it had blood stains on its thigh area down to its knees area. He then later gave it to PW5 to take to Forensic Laboratory for further investigations.

63.12 The grey jockey underwear was also taken by PW5 to Forensic Lab for further investigations. The trousers did not have any red paint on it which is now being alleged by Accused 1.

63.13 The room in which these items (**Exhibit 15, Exhibit 16, Exhibit 17, Exhibit 18, Exhibit 19 and Exhibit 21**) were all handed by Accused 1 to PW11 in the second room appeared to PW11 to be a boy's bedroom. All these items were later taken by PW5 from PW11 to Forensic Laboratory for further investigations.

63.14 PW11 testified that when the knife with brown handle was produced by **Accused 1** in the first room where they were taken by Accused 1 (the storeroom) **Accused 2** made a remark: "*Lehlohonolo thipa ee ha se eo esaleng ke ntse ke e batla?*" Roughly translated the remark is "*Lehlohonolo, is this not the knife I have been looking for?*" PW11 told the Court that when **Accused 2** made this remark to **Accused 1**, **Accused 1** did not respond.

63.15 **Accused 1** then took the party and led them into the sitting room. Here there was a sideboard. Accused 1 opened the drawer of the sideboard and produced a piece of wire and gave it to PW11. PW11 identified the piece of wire aforesaid in Court before me as the wire (ID 5) which Accused 1 produced to him from the sideboard drawer. PW11 requested the Court to permit him to tender it into evidence in this trial as part of his evidence. The piece of wire became **Exhibit 22**. **Accused 1** also handed in to

PW11 a piece of transparent roll of sellotape which he also retrieved from the sideboard drawer referred to earlier. PW11 then identified the roll of sellotape (ID 4) in Court and asked for leave of the Court to formally tender it into Court as part of his evidence in this trial. It was admitted at **Exhibit 23**.

### **MISSING SHORT PANT WITH SIDE POCKETS**

[64] PW11 further testified that while still in the sitting room Accused 1 asked him to wait for a while as he searches for a short pant with side pockets which he said he was not seeing. Accused 1 was given time as requested. He searched for it assisted by Accused 2 in the presence of the investigating team. **Accused 1** searched all over the rooms including the room which seemed to be Accused 2's bedroom. This particular room **Accused 1** and investigating team had not been to at all before. PW11 testified that as Accused searched for this particular pair of pants they were following him. The search yielded nothing. Eventually, PW11 told the Court, he said **Accused 1** should leave the search for the time being adding that the pants will be found later if it emerges again.

64.2 PW11 testified that from the description of the missing pants that **Accused 1** was describing, in his opinion it seemed to match the description that the parents of Moholobela Seetsa (deceased in Count 1) had described as the pants the late Moholobela was wearing when last seen. The party then left the house with Accused 1.

### **VISIT TO THE DONGAS ON 14<sup>th</sup> JULY 2012**

[65] **Accused 1** asked the team (the whole party) to go down to the dongas. The party (including PW8 and Moloj) then boarded vehicles with **Accused 1** and **2**.

- 65.2 PW11 testified that they left Rethabile at the house when they went down to the dongas. The villagers followed the party. Villagers were a large crowd. They alighted their vehicles at the same spot above the donga where they had alighted vehicles previously.
- 65.3 PW11 told the Court that by this stage the crowd had moved too close to the vehicles for his comfort. He then addressed the crowd and asked them to stand well clear to the Accused persons and the investigation team and the vehicles. They did. While he remained with both Accused, PW8 Moloï and investigating team, he explained to Accused persons their legal rights and cautioned them in similar terms how he had done it before. Both Accused persons confirmed to him that they had understood the explanation of rights and the caution administered by PW11 to them.
- 65.4 **Accused 1** then led PW11 and the party down to the donga. **Accused 2** remained behind at the vehicles with some police officers.
- 65.5 **Accused 1** pointed to PW11 and the investigating team the spot where Moholobela's body parts had been found by passer-by villagers had been removed by Police in January 2012.
- 65.6 At the time of **Accused 1's** pointing out of this spot on 14<sup>th</sup> July 2012 obviously, the body parts of Moholobela were no longer there. **Accused 1** was saying those were the two spots where he had buried the body parts of the late Molobela Seetsa.

From these locations, PW11 testified, he and the two Accused persons returned to Mabote Police Station in their vehicles.

[66] In concluding his testimony concerning the pointing out of various items/objects at various locations on the 12<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> July 2012 he (PW11) did not know that these things were there until they were pointed out to him at the various places on the various dates as already mentioned earlier.

[67] On the 13<sup>th</sup> July 2012 PW11 told the Court that he did not even know that Kamohelo Mohata (deceased in Count 2) was missing. When the body parts of Kamohelo Mohata were found in the van by the investigating team on the 12<sup>th</sup> July 2012 they didn't know that Kamohelo Mohata was missing nor that those body parts were Kamohelo's. It was only on the 13<sup>th</sup> July 2012 when the second batch of human body parts were found at the school toilets that they (PW11 and investigating team) then knew that Kamohelo Mohata was missing when his head was recovered and identified by PW7, Bothata Leche, Eddie Ntlama and Khotso Tsatsanyane.

**STRIKING SIMILARITIES OF HOW BODY PARTS OF DECEASED WERE DISMEMBERED**

[68] PW11 who told the Court in relation to these body parts that Accused 1 pointed out to them and that he and his investigating team then recovered, these bore striking similarities in the pattern in which they were cut. PW11 testified as follows in relation to these body parts:

- **Sexual parts** – Photo 5 Exhibit B and Photo 2 and 9 Exhibit A. In both recovered body parts of deceased in Count 1 and deceased in Count 2 the sexual parts had been removed. The manner in which

sexual parts in both bodies had been removed was strikingly similar.

- **The heads in both deceased persons:** The manner in which the heads of deceased persons had been cut was the same.
- **The Thoracic Cavity in both deceased persons – Photo 21 Exhibit B and Photo 3 Exhibit A:** The manner in which the thoracic cavity had been cut in both bodies of Moholobela and Kamohelo's body was the same. They had been cut from below the throat and opened up on the front right down to the waist area.
- **The Arms in both deceased persons – Photo 5 Exhibit A and Photo 7 Exhibit B:** The pattern and the manner in which the arms were cut in both bodies was very similar. Photo 5 in Exhibit A and Photo 7 in Exhibit B bear this out.
- **The hands in both deceased persons – Photo 5 Exhibit A Photo 30 Exhibit B:** The pattern in which both hands had been severed from the rest of the body in both Moholobela and Kamohelo is the same.
- **The feet in both deceased persons – Photo 8 Exhibit A and Photo 31 Exhibit B:** The pattern and manner in which the feet in both deceased persons were severed from the bodies of both deceased persons is the same.

Other string similarities in these two cases are the following:

- **Dates of disappearance of both victims:** Both deceased persons disappeared in the morning hours. In the case of Moholobela it was morning hours of 12<sup>th</sup> January 2012. He was never found alive by his parents. In the case of Kamohelo, he left home in the morning hours of the 11<sup>th</sup> July 2012 and he never returned home alive.
- **Location where part of the body parts of deceased persons were found was same locality** (Sekhutlong dongas Koalabata). Part of the body parts of deceased in Count 1 (Seetsa) and part of the body parts of deceased in Count 2 (Kamohelo) were found in the same locality, namely Sekhutlong donga, Koalabata area.

These sets of body parts were found in the same donga at Koalabata, PW11 pointed out.

The Court also noticed of its own accord that the bodies of deceased in both Count 1 and Count 2 had both their torso neatly cut from the rest of the body in both instances. See Photo 19 and 21 in Exhibit B and Photo 2 and 9 in Exhibit A.

[69] PW11 in conclusion of his evidence emphasised once again that at no time during his interactions with Accused 1 and 2 did he or any member of his investigating team assault and or torture or threaten Accused 1 or his mother (Accused 2).

[70] Early in the cross-examination of PW11 Mr. Hoeane holding a document in his hand put it to him that in a confession Accused 1 made to Magistrate Mapetja on 13<sup>th</sup> July 2012 he made reference of being injected by (PW10) on instruction of Khatleli. I then asked Mr. Hoeane whether he wished PW11 to comment on a factual allegation contained in a “confession”. Counsel said it was a confession statement of Accused 1 to a magistrate. Mr. Hoeane’s response was an emphatic “yes”. Then Mr. Hoeane referred PW11 to line 6 from the bottom of the document (statement) he was holding. I then intervened to say I shall not allow reference to that document (confession of Accused 1’s statement before the magistrate) unless it was properly introduced into Court like all other items before it. Mr. Hoeane then said at first that he was only interested in one sentence in that document where upon I told Mr. Hoeane the entire document must be availed to the Court so that the context in which the sentence appears is properly understood and appreciated by all. Mr. Hoeane told the Court that he was going to call the magistrate as a Defence Witness and therefore begged leave of the Court to introduce the Accused Statement to the magistrate as ID 17. But I took a decision not to receive or read ID 17 until it had been formally introduced into evidence by Magistrate Mapetja as Mr. Hoeane had undertaken to call him as his witness.

[71] I then called upon PW11 to respond to what was put to him that he (PW11) had instructed PW10 (Sub-Inspector Matsoso) to inject Accused 1 with a substance. PW11 answered that Accused 1’s allegation was a complete lie. He had never given such instruction to PW10 and no one in his investigation had injected Accused 1 with any substance.

[72] Cross-examination of PW11 from here on never yielded anything of material assistance to Accused. It touched on Accused 1's allegation that he was tortured and put in a burning drum; that he was assaulted so severely by PW11 and men under his command that open wounds were caused on Accused 1. In essence the defence of Accused 1 seemed to have evolved from being beaten up by robbers at his house causing him injuries on 12<sup>th</sup> July 2012 to being beaten up so severely by PW11 and his team-mates at Mabote Police that he pointed out items/objects on 12<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> July in order to save himself from the brutality of PW11 and his colleagues. This defence then evolved further to Accused 1 having been injected with a substance into his body by PW10 on the instructions of PW11 that the substance rendered his mind to be unaware of what he was pointing out to PW11, the police and the chief's representatives at various locations.

[73] All of the above defences sometimes so improbable, sometimes incomprehensible, were all thrown at the witnesses especially at PW5, PW7, PW10 and now at PW11 as well. PW11 like all other witnesses who at different times were given these varying versions of Accused 1 denied them and described them as wholly untrue.

73.2 The cross-examination sought to deny the evidence of PW11 that all the Exhibits identified by PW11 in court and tendered by him into evidence against Accused were a fabrication of PW11 and that those Exhibits had nothing to do with them. Again the response of PW11 and all other witnesses before him was emphatically that these exhibits had very much to do with Accused 1 in particular. PW11, like PW10, PW9, PW8, PW7, PW6, PW5, PW4, PW3, PW2 and PW1 their individual testimonies taken

together directly linked these exhibits to Accused 1 in particular and to a lesser degree Accused 2.

As I said earlier the cross-examination of PW11 by Mr. Hoeane never yielded anything of material assistance to Accused 1 in particular.

73.3 At the end of PW11 (Senior Inspector Khatleli) testimony the Crown closed its case in relation to the trial-within-trial issues relating to whether or not any items or locations pointed out by Accused 1 were made by him freely and voluntarily following proper explanation of their rights and following their being properly cautioned that any statements and/or pointing out they might make could be used against them in their future possession.

### **DEFENCE CASE**

[74] Mr. Hoeane then led DW1 (Lehlohonolo Scott) as the main defence witness. DW1 testified as follows below:

### **EVENTS OF 12<sup>th</sup> JULY 2012**

74.2 DW1 testified that on the mid-morning of 12<sup>th</sup> July 2012 he returned from town by public transport where he had been to purchase electrical goods for his neighbour Marelebohile. On his departure to town that morning there had been no Corsa vehicle parked outside his home. DW1 told the Court that he had never owned a vehicle.

74.3 At about 11:30 he received a telephone call from Accused 2 advising him that police were looking for him. Her voice displayed no stress. He was in fact about to board a taxi back home when this communication

happened. On the way home his taxi broke down and he was delayed while it was being attended to. He phoned Accused 2 about 5 times and her phone was not being answered but on the last time, Accused 1 told the Court that the phone on being answered heard someone say he could clap Accused 2. The vehicle got repaired and it proceeded home. He alighted the taxi at Khotso's shop taxi stop.

74.4 While walking with his electrical goods he saw two gentlemen come running to him. One of these gentlemen held a machine gun while the other held a pistol in his hand. They came to him running and shouting for him to stop. He took them to be robbers. DW1 told the Court that he stopped as he feared their guns. On arrival to him they assaulted him and insulted him with terrible insults. He was ordered to lie down while being insulted with terrible obscenities. They threatened to assault him further and drove him on foot towards his home. They kept beating him and demanding of him that he must cause them no trouble. When they got to his home with him, PW10 searched him and took his Samsung E250 cellphone from him. Matsoso (PW10) also robbed him of M400.00. DW1 told the Court that he was crying in pain. At the same time DW1 told the Court, that he was pleading for his life and telling this duo of robbers that he will do anything they wanted him to do. DW1 told the Court that everything he did on that day he did not do of his own free will. As he told me this DW1 was making dramatic gestures to me and to the gallery. He seemed to enjoy telling me and the gallery his story.

74.5 DW1 tracked back in the narration of his story a bit and told the Court that when he got to Accused 2's homestead in the family yard he saw two ladies seated on his family's chairs near the washline. Next to them was a gentleman standing next to them. The first lady, DW1 told the Court he

recognised as Chieftainess ‘Mamolapo Majara, Principal Chief of Maqhaka. The second lady was PW7, Chief of Koalabata. The gentleman standing next to the ladies, DW1 told the Court that he was “a man I know. He was our Member of Parliament for Berea No. 29 Constituency and his name is Mr. Matela Khojane.”

Almost in the same breath, DW1 told the Court that he had not known PW7 before until he saw her in Court here when she described herself as Chief of Koalabata.

74.6 In his effort to enhance his claim that PW7 was an impostor and not Chieftainess of Koalabata, DW1 told the Court that he had lived in Koalabata village for the nine years (i.e. from 2003 up to 2012) and he had not known PW7 to be Chief of Koalabata his home village. DW1 to emphasize his point told the Court that he had never seen PW7 address pitso’s or speak (offered condolences to bereaved families of Koalabata) at funerals as chief. I then asked DW1 pointedly, whether I should understand his testimony to be that PW7 was telling me lies when she told the Court that she was Chieftainess of Koalabata Ha Makoanyane. DW1, perhaps sensing how seriously I took this issue of whether or not PW7 was Chieftainess of Koalabata, backtracked and tempered his answer to say so categorically but instead answered me and said he did not know for sure. By this time DW1 had forgotten that he had a few seconds earlier told the Court that PW7 had never address “pitsos” as Chief of Koalabata or offered condolences to bereaved families of Koalabata as Chieftainess at funerals in Koalabata.

74.7 DW1 told the Court that he and Accused 2 were taken by PW10 to PW11 who was seated in a Corolla car parked in their yard. On arrival to

PW11, DW1 told the Court that PW11 addressed himself to them in the following terms: “Mother and brother we are here to conduct a search of these premises. Do you know of any unlawful act that has been committed on these premises?” DW1 told the Court that he answered that did not know of anything unlawful that had been committed at their premises. Accused 2 also answered in similar fashion that she was not aware of any unlawful act that had been committed at her premises. In response to their answer DW1 told the Court that PW11 then told them that since they did not know of any unlawful thing having been committed on those premises they (both Accused) should not interfere with their (police) work. PW11 ordered that they (Accused) should be taken away. Neither PW11 or PW10 or any of the people he found there accompanying PW11 ever identified themselves to him and his mother nor gave them any warning or caution about pointing out or making incriminating statement.

74.8 DW1 then told the Court that PW11 then ordered PW14 and others to give orders that the entire precinct of Accused 2’s home should be cordoned off with a yellow tape written “police”.

DW1 told the Court that PW11 and his colleagues never introduced themselves as police at any stage. They did not ask for Accused 2’s permission or his to do what they were intending to do on the premises.

On this aspect of introductions (or lack of introductions up to the cordoning off of their premises with yellow “police” tape) DW1 told the Court he still believed that PW11 and his police contingent were robbers.

74.9 The above statement of DW1 prompted me to enquire from him whether he did not consider it opportune to appeal to the trio of his Principal Chieftainess, his Area Chief (PW7) and his area Constituency Member of Parliament to intervene and help him and his mother. DW1, paused for a while I think realising the bizarre nature of the testimony he had just given to the Court. He then replied to my enquiry and told me that “I just kept quiet as Matsoso (PW10) had earlier threatened to smash my head. He said PW10 had been saying that several times. “I kept quiet due to the threats made to me by those police officers.” Underlining mine

74.10 DW1 then took us through the activities of PW11 and his colleagues on their own without reference to them (Accused) starting with their opening of the Corsa vehicle. Up to this point DW1 told the Court that he still believed PW11 and his team were robbers. DW1 told the Court that PW11 was lying when he told the Court that he (DW1) had identified the Corsa van to him as his property. He saw PW11 pointing out things to others including PW7, PW10, Tsatsanyane and PW5 and asking them to peep and see inside the van. DW1 told me he thought the Corsa van was their vehicle. Throughout there was nothing being said to them (Accused persons). He saw them peep inside the Corsa and in its load bay.

When PW11 opened the door of the house, DW1 told the Court that he and Accused 2 were still left about 7 metres away near the drying line for their family washing.

74.11 DW1 told the Court that PW11 and his colleagues just ransacked the whole house throwing their property around and sometimes destroying some of it including a photo of their late founder of their church St. Johns Apostolic Faith Church. At this juncture of DW1’s testimony I made a

mental note that DW1 had now forgotten that he had just told me, PW11 and his party had left him and his mother outside. They did so without saying what they were looking for. After this, PW11 told them to go out of the house. The entire group that had been in the house then proceeded to the family toilet and turned it upside down. As they did so DW1 told the Court that they had been standing on their house veranda and watching what PW11 and his colleagues were doing from a distance. No one took photographs at the toilet. During the course of all these events the Corsa van was towed away from Accused 2's house. They too were taken to Mabote Police Station him still hand-cuffed secured and in leg-irons while Accused 2 was in hand-cuffs only.

#### **AT MABOTE POLICE STATION**

[75] Mabote Police Station DW1 told the Court he was extensively interrogated, assaulted at the same time being subjected to threats and insults. DW1 told the Court he was crying all along as these things were being done to him.

75.2 At one point as he continued to deny killing Kamohelo (deceased in Count 2), PW10 injected him on the buttocks with a white substance on the instructions of PW11. DW1 told the Court that one needle even broke into his buttock. I pause here to remind ourselves that although DW1 makes reference to Kamohelo at this early time (i.e. 12<sup>th</sup> July 2012) in fact nobody knew then that the body parts recovered in the Corsa van belonged to Kamohelo Mohata. By all accounts the body parts were linked to Kamohelo Mohata only on the 13<sup>th</sup> July after recovery of Kamohelo's head inside one of the pits at Koalabata Primary School toilets.

75.3 DW1 told the Court, that after a little while Matsoso again injected this white liquid substance into his buttock the second time. On the third occasion, PW10 again injected him at the groove of the neck with the white substance. Each time he was injected with this substance PW10 was using a syringe. Since the injection DW1 told me his “body was no longer” his. Yet surprisingly the alleged injection into his body by Matsoso DW1 gave a detailed description of what he saw during his hallucinations when “my body was no longer mine.” Examples of these included seeing his late brother alive, seeing the walls of his room like falling on him etc. etc. Some were no hallucinations e.g. seeing Matsoso beat him with a stick on the buttocks and on the ribs near his armpits more than a hundred times; feeling like he was dead and not on earth where people live; feeling a lot of pain; being kicked by police (Matsoso and others) with their booted feet DW1 told the Court that when he came to his senses he found that he was already at the back of a moving van (presumably police van). He “saw the van like it was flying.” Saw it like it stopped at Accused 2’s house but was not sure; saw it take off; saw large crowds of people crowding there; saw some people loaded in the same van as it went off; saw like that he, his mother and drivers of these vehicles – none of them entered the house; he saw themselves together with all these people at the veld; saw Koalabata Mountain but he didn’t know where they were; remembered Khatleli telling them to alight from the back of the van where they were loaded. He didn’t alight neither did his mother alight, he saw people who were there as trees and sometimes they looked like people. He saw PW11 and others scatter to where he did not know and did not know what they were doing there. Finally, he did not know when the vehicle left that place (presumably the veld where he recognised Koalabata Mountain). He did not know when Khatleli returned to Mabote Police Station. All the above story were told to the

Court to support DW1's hallucinations theory. On the night of 12<sup>th</sup> July he was put in a burning steel drum. This was a way of PW11 to persuade him to confess to magistrate next day.

75.4 The above then were the details of events given by DW1 of what happened after PW10 injected him with a white substance twice at the buttocks and once at his neck. Anything he said or pointed out that afternoon he did under influence of that injection. He was to admit to body parts found at the dongas that afternoon as well as go and point out others at the toilets of Koalabata Primary School next day. DW1 gave me this story with its detail as precursor to persuade me to believe his story of having been injected with a white liquid substance in a syringe that rendered his mind to be not like his but to be a mind subject to manipulation of PW11 and his police team to point out things he knew nothing about on the afternoon of 12<sup>th</sup> July 2012. This Court is not fooled.

[76] **EVENTS OF 13<sup>th</sup> JULY 2012**

On 13<sup>th</sup> July he was taken to a magistrate to go and confess to the crimes of killing people he had not killed. He met the magistrate and made the confession to him. He told him about being injected with a substance unknown to him with a syringe. The Magistrate nevertheless took his confession.

[77] **KOALABATA PRIMARY SCHOOL TOILETS**

So, according to DW1, whatever he pointed out at the Koalabata Primary School toilets he did on the prior instructions of PW11. It was PW11 who had placed the body parts of Moholobela (deceased in Count 1) in

there. DW1 defence therefore was that that pointing out was a result of assaults by PW11 and his investigation team. This defence metamorphosed into pointing out body parts at the school toilets as a result of the effect of the white substance injected into his body by PW10. At one point DW1 told Court he had never been taken to Koalabata Primary School toilets. He had never been shown things retrieved from the school toilets. I took it that this claim by DW1 was in support of the theory of having been injected with a substance by PW10 and its effect on him on his actions. DW1 told Court he asked to consult with his lawyer Advocate Lepeli Molapo who he was paying monthly but PW11 refused him that opportunity.

[78] **EVENTS OF 14<sup>th</sup> JULY 2012**

DW1 told the Court that on this day he was told by PW11 that they were going to take him to the house of Accused 2 and the purpose of that trip was for him to point out things. He had earlier been told by PW11 that he was told not to give trouble but must do as he had been instructed by PW11. In turn DW1 said he had told Khatleli (PW11) and his team that he would cooperate with them and do whatever (PW11) wanted him to do in the places they were to visit. Thus on this basis, DW1 told me, whatever he did on this day he did on the instructions of PW11 following very brutal assault/abuse at police's hands. So, DW1 denied that he had anything to do with Exhibits which PW11 produced to the Court earlier and which he had told the Court that they had been pointed out by him (DW1).

According to DW1 from the house of Accused 2, PW11 ordered them (Accused) and his team to get into five vehicles which then drove to the

Koalabata dongas. DW1 told the Court PW11 never explained the purpose of going to the Koalabata dongas. On arrival at the dongas PW11 disappeared from DW1's view carrying a tape-measure which he passed on to PW6 (Sub-Inspector Matamane), DW1 told the Court that later on Matsoso (PW10) came up from the donga to fetch him to join them in the donga to point out the spot where the body parts of Moholobela were found but he (DW1) refused to comply. DW1 told me he and Accused 2 were to join PW11 and his team in the donga.

From the dongas they left the area and drove back to Mabote Police Station via Sekamaneng. He was then locked up in the police cell on arrival at Mabote Police Station.

[79] **SUNDAY 15<sup>th</sup> JULY 2012**

On Sunday 15<sup>th</sup> DW1 told the Court that he received visitors. His brother Rethabile (DW4) brought him food. He also received Mr. Masopha from Joy FM Radio Station. Other visitors he received on this day were three priests from Fill-the-Gap Church, Pontšo, Loliboy, four fellow Congregants who attended St. John's Apostolic Church with him, namely Violet, Sebolelo, Mosiuoa Masupha and Moleboheng. They too had brought him food. When these visitors left he was returned to the cells. Interestingly **Accused 1** never mentioned to anyone of these visitors of the assaults he was being subjected to by PW11 and his colleagues at Mabote Police Station.

[80] **MONDAY 16<sup>th</sup> JULY 2012**

On Monday 16<sup>th</sup> July 2012 he and his mother were taken by a team of police to Magistrate Motebele where a detention form was issued by

Magistrate Motebele and given back to police officers that had accompanied them to her. All that Magistrate Motebele asked of him was whether he was well. DW1 told the Court that he replied to Magistrate Motebele inquiry that “yes” he was fine. DW1 told the Court that Magistrate Manapo Motebele was a person she knew very well. DW1 further told the Court that another person present in the magistrate office was Ms. Baasi who she also knew very well too. Interestingly he did not inform Motebele and Baasi that he was being subjected to brutal assaults at Mabote Police Station by PW11 and his team.

[81] **TUESDAY 17<sup>th</sup> JANUARY 2012**

On this day DW1 received visitors as well. In the morning he received his elder brother Rethabile (DW4) who had brought him food. Later that morning he received Moleboheng who he described as his girlfriend and fellow congregant at St. John’s Apostolic. Later that evening DW1 received DW4 who had brought them food.

[82] **WEDNESDAY 18<sup>th</sup> JULY 2012**

On the morning of Wednesday 18<sup>th</sup> July DW1 told the Court that he received his brother DW4 who had brought them food. They talked and had their meal together with Accused 2. When Rethabile left they were returned to the police cells.

[83] **REMAND INTO PRISON BY CHIEF MAGISTRATE**

Later that morning around 10 a.m. DW1 told the Court that he and his mother (Accused 2) were taken before Chief Magistrate at Magistrates Court and read a charge by her. When she was done she explained to them that they were being remanded into custody at His Majesty’s gaol.

[84] **ON ARRIVAL AT MASERU CENTRAL PRISON**

DW1 testified that on arrival at Maseru Central Prison he was asked about his state of health before being admitted into that facility.

[85] **HOUSE IN PHOTO**

For the first time in this trial Accused 1 referred to the house in Photo 2 of Exhibit B as his property on the 3<sup>rd</sup> November 2017. I made a note of this.

[86] **CROSS-EXAMINATION OF ACCUSED 1**

Cross-examination of DW1 by Mr. Leppan produced some startling results.

DW1 told the Court that some versions of his cross-examination of Crown witnesses were his while others were Mr. Hoeane's, his defence counsel. When asked whether he heard some things (versions of his case) put to Crown witnesses by Mr. Hoeane were inconsistent with his version/instructions, that DW1's version changed through the progress of the case in Court DW1 replied that he did not know. As an example Mr. Leppan put it to DW1 that what was put to Crown witnesses in the beginning was that DW1 pointed out things to investigation team but that it was under duress – DW1 was asked by Mr. Leppan to confirm. DW1 did not answer Mr. Leppan's question. He was then asked by Mr. Leppan to confirm defence version changed during the course of the trial. DW1 said he did not know. DW1 was then asked if he ever pointed out anything to PW11 and his team. His reply was that he did not point out at

anything. This answer prompted Mr. Leppan to ask DW1 whether he was forced to point out anything involuntarily. DW1 answered that even though he was forced he refused. This answer prompted another pointed inquiry from Mr. Leppan:

*Q: So you did not point out at anything?*

*A: That's correct*

[87] I got very clear and distinct impression that Accused 1 was desperately trying to be evasive and avoid straightforward answers to even the simplest and straightforward questions from Mr. Leppan concerning the version of his case to the court. Accused 1 caused himself more problems doing this. I pick below a few examples of his exchanges with Mr. Leppan concerning his version concerning the pointing out of various exhibits produced before Court in the presence of PW5, 6, 7, 8, 9, 10 and 11

87.1 *“Q: So you did not point out anything*

*A: That's correct*

87.2 *Q: In the cross-examination by your counsel you never said even though you were forced to point out things you refused to do so.*

- It was stated clearly by my counsel that I never pointed out anything.*

87.3 *Q. In relation to evidence of PW7, onwards (8, 9, 10) until PW10 you said you never pointed out anything*

*To PW7 – it was suggested that because you were assaulted and later drugged as a result of injection administered to*

*you, you did do things that you did not know what you were doing?*

- *I don't recall*

87.4 *Q. In relation to the evidence of PW7 in the morning session on 21/10/2017 where PW7 is cross-examined by your Counsel on your behalf, it was put to her that you were shocked, threatened and assaulted?*

*A. I never pointed out at anything on that day*

87.5 *Q. Do you know why it was put to PW7 that you could not even recall what you said or did on 12/07/2012?*

*A. I don't recall my lawyer putting that question to PW7.*

87.6 *Q. In relation to PW10 on 16/11/2016, it was put to PW10 by your counsel, that: Accused 1 will say all your testimony at his home, at the donga and the school toilets is false without any doubt. Do you remember that?*

*A. I remember that*

87.7 *Q. The court asked your counsel, following that assertion on your behalf whether Accused 1 will deny pointing out at anything*

*A. I recall that.*

87.8 *Q. But you started by saying you did not recall why is that?*

*A. I deny that I ever said I don't recall."*

[88] It was the same in respect of every version of DW1 put to crown witnesses. When cross-examined about his first meeting with two policemen near Koalabata taxi rank he had denied that the police introduced themselves as policemen to him. When asked why they would

do that. The answer of DW1 was that so that they would mislead the court and get a conviction at any cost. In these exchanges with Crown Counsel DW1 introduced the “Conspiracy Theory” against him by PW1, PW2, PW3, PW4, Area Chief, neighbours even magistrates. When told that this conspiracy theory of his was never put to any of the Crown witnesses he acknowledged that it was so. When asked if he had instructed his counsel on this conspiracy theory of his DW1 replied that he couldn’t remember.

[89] As the cross-examination progressed DW1’s answers became more and more irrational and bordered on being bizzare with each treatment of the topic that had emerged from the version of his case in court. I give an example below. On the topic that he introduced right at the beginning of his defence – Robbery

*“Court: In your evidence in chief you said as you reached your home with two “robbers” that had waylaid you at the bus stop you found seated on your family chairs in front of the house Mr. Khojane ((M. P. Berea Constituency), Principal Chieftainess ‘Mamolapo Majara, of Maqhaka Ward and PW7 (Chieftainess ‘Makhomo Makoanyane). Why didn’t you appeal to them for help? Did you regard these trio as robbers as well?”*

*Ans: That is so. At the time I did not know their identities. I only came to know them later.”*

[90] Regarding the story of being injected with a syringe on 12<sup>th</sup> July 2012, none of the people police and civilians including the chief’s councillors observed any injuries on DW1. Neither did they observe any fright on his face or that of his mother. Nor did they see any abnormality in the speech of DW1 to place on 12<sup>th</sup> or 13<sup>th</sup> or 14<sup>th</sup>. On 13<sup>th</sup> July 2012 he was visited by a number of people including his brother and others. He met with the magistrate. None of these people raised any alarm concerning the terrible condition of DW1 described he had in the hands of police. On the 14<sup>th</sup> he

was again visited by a variety of people including his relative, girlfriend, fellow church congregants, other friends including ministers of religion [FILL-THE GAP CHURCH]. None of these people observed any injuries on DW1. No complaint of any type has been lodged with authorities in Government or non-governmental watch dogs bodies on human rights abuses – not even with their local Constituency M.P. Mr. Khojane or even chief ‘Makhomo Makoanyane or Principal Chieftainess ‘Mamolapo Majara.

To narrate all of the DW1 evidence emerging from him being cross-examined by Mr. Leppan is a waste of time. Suffice to say that that cross-examination tore the versions of DW1 regarding pointing out of things on 12<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> into shreds exposing DW1’s testimony as lies throughout. DW1’s story is not capable of being coherent and believable.

By the end of Mr. Leppan’s cross-examination of DW1, the case of DW1 was in such tartars that it is not worth the effort of repeating that evidence here in full.

[91] **DW2 – ABEL NYATSAVE**

DW2 was Abel Nyatsave. Nyatsave was an inmate at Maseru Central Prison in the Maximum Security Block. He was serving a 15 year prison term. He had served 9 years already at the time of arrival of **Accused 1** on 18<sup>th</sup> July 2012. He was one of a number of convicted mercenaries that had invaded Lesotho earlier to topple the Government of Lesotho. He was a Mozambican national. He testified that he first met **Accused 1** the day following **Accused 1**’s admission to Maseru Central Prison. He told the Court that he was occupant of cell but one next to **Accused 1**. He noticed that **Accused 1** was so severely injured that he was unable to do

basic things for himself like walk freely or pick up food when food was served to them. He told the Court that **Accused 1** was unable to wash himself and that he had to be assisted by him. He said **Accused 1** had visible injuries on his face and hands. He told the court that the face of Accused 1 was bleeding and described it as “bad”. He told the court that **Accused 1** face looked like he had been beaten. Scott’s body was shaking like someone *who was freezing with cold*. He was not able to go to the toilet by himself. He used to fall when he tried to walk.

[92] When Mr. Leppan began to cross-examine DW2 on the alleged wounds and condition the first time he met him, the story of DW2 began to collapse around him. For example when asked about the alleged bleeding face of Accused he first confirmed that indeed it was bleeding. A few probing questions from Mr. Leppan on this topic of a bleeding face, Nyatsave then changed tune and said in fact Accused 1’s face was not bleeding but that he saw dry blood on Accused 1’s face above the eye. When asked to confirm that his evidence now was that Scott’s face was not bleeding he replied that indeed Scott’s face was not bleeding. When the same question was asked again he immediately changed again and said Scott was “bleeding but not much.” When Counsel pointed out to him that he was now giving a third version of Scott’s face Nyatsave simply kept quiet and did not answer Mr. Leppan.

[93] The above exchanges between DW2 and Mr. Leppan concerning the condition of the face of **Accused 1** prompted me to enquire from DW2 whether he knew the difference between someone with a bleeding face and someone with a dry blood on his face. He replied that he knew the difference. From there on DW2 responses were avoidance of straight

answers to counsel's questions all the way to the end. At the end of it I concluded that there was, no value to be derived from Nyatsave's evidence. DW2 from there onwards dug and dived avoiding to answer questions put to him. It simply was hopeless. Its purpose had been clearly to support problematic version of **Accused 1** that he had been severely beaten up by police while in police custody. It is to be remembered that Accused 1's version was that he had been beaten, and injured on the night of the 12<sup>th</sup> July 2012. He was forced to make a confession to Magistrate Mapetja on 13<sup>th</sup> July. He was again beaten up that night and injected with strange substance again and ordered by PW11 to produce items of clothing at Accused 2's house next day and point out human body parts at Koalabata Primary School toilets on 13<sup>th</sup> July. Also, it has to be recalled that Accused himself told the Court that every morning detainees got out of cells clean themselves and eat their first meal of the day. How is it that this blood, of 12<sup>th</sup> July Nyatsave saw on the face of Accused 1 on the morning of 19<sup>th</sup> July beats rationality? It simply is a lie. In any case from 13<sup>th</sup> – 18<sup>th</sup> July Accused 1 had been seen by a number of people including his family, girlfriend (Moleboheng), fellow congregants of St. Johns Church, Ministers of other religions (Fill-the Gap Church) his friends from Joy FM Radio Station where **Accused 1** previously worked, Magistrate Mapetja, Chief Magistrate of Maseru who remanded him into custody on 18<sup>th</sup> and Maseru Central Prison authorities on 18<sup>th</sup> when he was admitted into custody. None of these authorities had observed these injuries that Accused, Rethabile and Nyatsave claim they were visible on Accused 1's face on 19<sup>th</sup>. None of the above persons had received a complaint from **Accused 1** that he had injuries inflicted by police and was in need of medical attention. Indeed the first time that **Accused 1** consulted a Doctor after admission to prison was on 18<sup>th</sup> September 2012 (some two months later) and the diagnosis of the Doctor

who attended him was that **Accused 1** was suffering from “psycho-social problem.” It was a long time after **Accused 1** was admitted to Maseru Central Prison.

### **DW3 MALEHLOHONOLO SCOTT**

[94] DW3 was **Accused 2** in this trial. She testified that she was arrested on 12<sup>th</sup> July 2012. She was arrested at Limkokwing University. She was then taken back to her home which she now described as property of **Accused 1**. When she arrived back home in Koalabata she found lots of people gathered in her garden. She realised it were police. There were also two women sitting on chairs. She claimed that she did not know the two women. She claimed she had never seen them before. The two women were seated in the forecourt of her house. She said she did not know them and had never seen them before.

94.2 At the house neither PW10 nor PW11 ever explained to them what they were looking for. None of the police officers explained any legal rights or gave them any caution about what they were about to do. She saw them search the Corsa van in front of her house. She did not see them retrieve anything from it.

94.3 From searching the van outside PW11 opened her house and started to search her sitting room. They found nothing. From her store-room they went to search **Accused 1**'s bedroom. Even there they found nothing. Police then proceeded outside. According to DW3 police were leading them all along from forecourt to van, to inside the house, from room to room until they came out. Interestingly, she said nothing about being left 7 metres outside the house near the Washing Dry line. According to her then she and **Accused 1** were with police at the van into the house.

94.4 Police then led them from the house to her toilet. All the time she and **Accused 1** were following. Nothing was being said to them by PW11 and his colleagues according to DW3. They found nothing at her toilet.

They were ordered back into vehicle and driven off to Mabote Police Station at about lunch hour.

[95] After lunch on the afternoon of 12<sup>th</sup> July she said they were driven back to the house at Koalabata but did not enter the house instead the vehicles drove off to Koalabata dongas. She and Accused 1 remained in the vehicles while PW11 and his team went down into the donga. She did not know what PW11 and his friends were doing in the donga. Accused 1 refused to alight from the van to go down to the donga with them. DW3 says she noticed an injury on Accused 1 above his forehead. Accused 1 clung to him until PW10 left him alone. According to DW3 Khatleli and his team did not emerge from the donga with anything. They simply came back from there and joined them at the vehicles and drove off back to Mabote Police Station.

95.2 The essence of DW3's evidence and purpose was to support **Accused 1** in his original claim that he was never explained his rights or cautioned by PW11 on 12<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> July, 2012. Secondly, she was to support **Accused 1**, that he had been assaulted on 12<sup>th</sup> July 2012. Thirdly she was to support **Accused 1** that **Accused 1** never pointed out any of the Exhibits produced in Court by PW11.

95.3 Cross-examination of this witness adequately showed that she was unreliable and determined not to tell the Court the truth but to try her level best to protect Accused 1. During cross-examination her attention was fixed to Accused 1. I had to remind her that she should be speaking to me and concentrating on me rather than on Accused 1 or anybody else in the Courtroom. I found her evidence unhelpful and unreliable. I don't believe DW3 evidence is truthful. It is lies.

[96] **DW4 – RETHABILE SCOTT**

The fourth witness for Defence was Rethabile Scott, an elder brother of Accused 1 and a son of Accused 2. This witness like his mother (DW3) before him sought to pop up Accused 1's version of events but as often happens in such situations, soon glaring differences emerged in relation to detail in their respective stories especially under cross-examination. It happened also in this instance. DW4 testified that he saw injuries on Accused 1 on 12<sup>th</sup> July 2012 at Mabote Police Station. They were on his forehead. Accused 1 hand wrist was cuffed with police handcuffs and a piece of wire. He confirmed that on the morning of 12<sup>th</sup> he met PW11 at Mabote Police Station but according to him he did not get to speak to Accused 1. He discussed the issue of a lawyer for Accused 1 with PW11. In one breath DW4 told the Court that he told PW11 that his lawyer was Advocate Phafane. In another breath he denied that he told PW11 that his lawyer was Phafane. Surprisingly when asked by Mr. Leppan how PW11 knew that Advocate Phafane was his lawyer, DW4 replied that it was because he (DW4) had told PW11 that his lawyer was Mr. Phafane. When asked by Mr. Leppan why he did not call or engage Mr. Phafane, DW4 replied that he was told by PW11 that he should wait until PW11 would tell him it was ripe to do so. When told that PW11's testimony was that he (DW4) had said there was no need to call a lawyer after he

had had opportunity to speak to both Accused persons in private, his response was that it is not true what PW11 told the Court because what PW11 told the Court was unlawful. Well if he knew he did not need PW11's consent to obtain a lawyer for Accused persons why did he not in fact go ahead and call a lawyer to come and assist them, DW4 then turned around and gave a different answer to the effect that he was advised by a lawyer friend of his not to do so but to wait.

[97] These answers of DW4 do not make sense to me and sound to me highly removed from truth. I am satisfied and I accept that indeed he did in fact see both Accused in private at Mabote Police Station on 12<sup>th</sup> July as he had requested PW11 to afford him that opportunity and that he had come back from that consultation to tell PW11 that he felt there was no need for a lawyer to be engaged to assist Accused. It has to be remembered that at no point at all did DW4 secure a lawyer for both Accused.

97.2 Secondly, the evidence of PW11 was not challenged that DW4 requested him an opportunity to speak in private to both Accused and that such request was granted and after that private consultation he (DW4) had come back to say there was no need for a lawyer. Equally, the version of PW11 that when DW4 emerged from that private consultation with Accused, DW4 then informed PW11 that **Accused 1** desired to take investigating team back to the house and the dongas to point out things that was not challenged at all when PW11 gave his evidence. On the above glaring unchallenged version of events narrated to the Court by PW11, DW4 offered no explanation why that version was not challenged or behalf of Accused.

[98] **CLOSURE OF ACCUSED 1 AND 2 EVIDENCE ON COUNTS 1 AND 2 OF THE CHARGE**

At the end of DW4's testimony, Mr. Hoeane for Accused persons informed the Court that it was the end of both Accused's defence case in respect of Counts of 1 and 2. I then enquired from Mr. Hoeane if by this he meant Accused persons had abandoned their intention to call Magistrate Mapetja in support of Accused 1 contention that he had been injected with a white unknown chemical which had rendered his mind to say and do things that were not under his normal mental control. Mr. Hoeane was quite clear their decision was to abandon calling Magistrate Mapetja. He said he wished only to confine Accused 1's case on a portion in the Accused 1's confession that referred to his mention that he had been injected with an unknown substance by police before seeing the magistrate. I told Mr. Hoeane that if "ID17" was not going to be introduced into evidence of Accused 1 through Magistrate Mapetja as I had been originally told then I was going to disregard "ID17" altogether which I did not take or read anyway. For purposes of this trial I have therefore not taken "ID 17" into account as it did not form part of evidence in this trial.

[99] **EVALUATION OF EVIDENCE ON POINTING OUT**

Accused's version on pointing out underwent material and significant developmental changes during the trial. It evolved from participating in the pointing out because of assaults and threats by the police; to then being injected with some unknown substance and not thereafter knowing whether he in fact pointed out anything or not; to finally, an outright and emphatic denial that he pointed out anything to anyone at any stage. But under cross-examination and in an attempt to explain the testimony that implicated him **Accused 1** opted for yet another option, "*the conspiracy*

*theory*”, which according to him, was formed by all Crown witnesses, civilian and police alike. He was however unable to come up with a single factor, common to all witnesses which have united them in a conspiracy against him. See **Bata Phalatsi & others vs Rex 1971 LLR** where it was held that:

*"In order to establish a conspiracy there must be an agreement between the accused. [In this case parties to such conspiracy] involving concurrence of minds."*

Per **Maisels JA**. Here there is neither explicit or tacit conduct conspiracy shown by evidence or reasonably suggested by Accused 1. In fact the evidence does not even remotely suggested such "conspiracy" by the witnesses.

[100] I am not persuaded that DW1's evidence is truthful in its attempt to support the unsupportable four versions of how he came to point out various locations where incriminating evidence was found between 12<sup>th</sup> – 14<sup>th</sup> July 2012. I did not find DW2, DW3 and DW4 to be truthful witnesses at all. On the evidence led in this trial the Court is satisfied beyond all reasonable doubt following all the evidence led in respect of Counts 1 and 2 relating to pointing out of locations and things (Exhibits) therein found that the pointing out was in fact made by Accused 1 freely and voluntarily by him. I accepted the overwhelming evidence of crown witnesses relating to pointing out of things and locations that it had indeed been freely and voluntarily done by **Accused 1** without any compulsion or inducement.

He did so without any assaults, threats or being under influence of injection. I reject as lies that he was at any time during his sojourn at Mabote Police injected with anything.

[101] **EVALUATION OF EVIDENCE AS A WHOLE**

**On Count 1 and Count 2**

The thrust of the evidence implicating Accused No.1 in the commission of the offences in the indictment, is contained in the evidence heard during the trial-within-a-trial as to the voluntariness of the pointing out. I have already determined that the pointing out by Accused 1 took place freely and voluntarily.

[102] The compelling similarities in how the bodies of Moholobela and Kamohelo were dismembered also points resolutely to the assertion that the same person was responsible for the dismemberment of both bodies. As PW11 testified the similarities were startling:

102.1 that the head in both bodies was removed;

102.2 that both arms in both bodies were removed in exactly same manner

102.3 that both hands in both bodies were removed

102.4 that both legs in both bodies were cut at the knees from both bodies in exactly the same manner;

102.5 that both feet in the two bodies were removed from the legs in exactly the same manner;

102.6 that the manner in which the chest cavity had been cut, from the throat to the lower rib area was exactly the same in both bodies.

102.7 that the genitals in both bodies had been removed from both bodies in exactly the same manner.

102.8 that both sets of body parts were recovered from the same donga at Sekhutlong, below Koalabata village where both Accused persons were villagers.

[103] The photographs in Exhibits “A” and “B” bear mute testimony to the same exact precision in which these two bodies had been dismembered. The macabre precision and attention to detail bear the hallmarks of a single perpetrator. This coupled with all the other evidence, including the pointing out, the recovery of the various exhibits as described above, the proximity of the Corsa motor vehicle to the house, creates in my view the inescapable, and irrefutable inference (and only reasonable one) to be drawn to the exclusion of all others, that Accused 1 was the perpetrator in the commission of the offences described in Counts 1 and 2. I am accordingly satisfied beyond all reasonable doubt that I can safely conclude that Accused 1 is guilty of the offences of **Contravening Section 40(1) of the Penal Code 2010** read with **Section 40(2) of that Code** for the murders of deceased persons in Count 1 and Count 2. See **Makamole and 2 others vs Rex 1980/1984 LAC 29; Rex vs Tšosane 1995/99 LAC 639.**

[104] I now proceed to evaluate the totality of proved facts of that evidence together with the balance of the evidence led thereafter and determine whether of that evidence in respect of Counts 1 and 2 the totality of the Crown’s evidence prove the commission of those Counts by **Accused 1** beyond all reasonable doubt. In order to do so I am enjoined to examine what evidence established and thereafter in the absence of any further incriminating evidence whether such evidence permits the drawing of the necessary inference against Accused. See **Rex vs Blom 1939 A.D 188** particularly the judgment of **Watermeyer JA** at pages 202 – 203. The learned stated the principles of law as follows:

*“In reasoning by inference there are two cardinal rules of logic which cannot be ignored:*

- The inference sought to be drawn must be consistent with all proved facts. If it is not, the inference cannot be drawn.*
- The proved facts should be such that they exclude every reasonable inference from them save the one sought to be drawn. If they do not exclude other reasonable inferences, then there must be a doubt whether the inference sought to be drawn is correct.”*

104.2 I have accepted without any doubt that the overwhelming evidence of proved facts established that **Accused 1** freely and voluntarily pointed out body parts and burial sites relating to the deceased (Seetsa) in Count 1 and to the deceased (Kamohelo) in Count 2. Coupled with that evidence it has been established convincingly that Accused 1 resided in a home together with Accused 2 where various incriminating exhibits were found in and outside of which was parked a motor vehicle which contained further incriminating materials. The clear evidence of PW7 and PW9 which I accept without any doubt that for a number of months prior to Accused 1’s arrest this vehicle was seen in the possession of Accused 1 driven about in the village by him. The unchallenged evidence of PW9 (Mr. Phuroe) was that he was a neighbour of both Accused persons and that his house is 700 metres from their house and that he passes it every time he leaves his home for any destination. PW9’s evidence was that for a considerable time he had seen the Corsa van in the possession of **Accused 1** being driven by him. He had seen this van over this period parked outside Accused’s home.

104.3 As regards the identity of the deceased in Counts 1 and 2, that evidence led from the relatives, together with that of the police officers established the identification of the deceased persons beyond any reasonable doubt. In fact the issue became totally settled when Accused admitted the

identity of the deceased in both Counts as set out in Exhibit “C” and their post-mortem reports in Exhibits “D” and “E” respectively.

104.4 The evidence established beyond doubt that various incriminating exhibits were found in the house of Accused which items were subsequently identified as belonging to both deceased. It is significant that at the time of the evidence being led it was not challenged that such incriminating exhibits were found pointed out by Accused 1 in the house. It is only much later in the trial-within-a-trial during his during his testimony in defence that Accused 1 rather lamely suggested that they had been planted there by police. I reject as false and vain this belated attempt by Accused 1 to extricate himself from a question he could not answer when pressed to explain presence of those incriminating exhibits which he pointed out in his bedroom. I am satisfied beyond reasonable doubt that police did not even know of the existence or significance of the clothing exhibits until they were pointed out to them by Accused 1. Also in the house were other incriminating objects such as blood-stained knife (Exhibit 14) and saw (Exhibit 12) and blood-soaked piece of Defy cardboard (Exhibit 11) and a host of other incriminating items in his bedroom which he was unable to explain when pressed about them. He does not deny that the blood was of human origin as evidenced in Exhibit “F”. The overwhelming evidence led established that various incriminating exhibits were found in the house occupied by Accused 1 and Accused 2 and were subsequently identified as belonging to both deceased persons in Count 1 and Count 2. At the time of the evidence being led, this was not challenged in cross-examination of Crown witnesses to them. But during testimony of **Accused 1** in his own defence on the exhibits on being pressed to explain the presence of those Exhibits **Accused 1** for the first time then suggested that such Exhibits

had been planted there by the police. I have no hesitation rejecting this explanation by **Accused 1** as false and a vain and belated attempt by **Accused 1** to extricate himself from a question he could not answer. On the police evidence, unchallenged at the time it was given, they did not even know of the existence or significance of the clothing exhibits, until they were pointed out by **Accused 1**. In the house, among items pointed out by **Accused 1** were incriminating blood stained objects, such as Exhibits 11, 12 and 14 which **Accused 1** has now admitted that the blood found on them on examination is that of human origin. See Exhibit "F". The fact that it is human blood is entirely consistent with the Crown's assertion that **Accused 1** killed the two deceased persons alleged in Count 1 and 2, cut them up and thereafter buried the body parts, which in respect of Kamohelo Mohata (the deceased in Count 2) he later pointed out his body parts to the police and in respect of Moholobela Seetsa (the deceased in Count 1 he pointed out the exact place where the dismembered body parts of Moholobela had been recovered by Police in January 2012.

Significant quantities of human blood were found in the toilet of Accused persons which evidence was unchallenged. In the absence of any explanation from Accused 1, coupled with the fact that it was indeed human blood, this too is, I find without doubt to be consistent with the Crown's assertions.

104.5 The possession of a cellphone (Exhibit 1) identified as belonging to Kamohelo Mohata (deceased in Count 2) as testified to by PW10, was also a matter that Accused failed to explain. It, like clothing pointed out to police by Accused 1 in his bedroom serve to establish without doubt that Accused 1 killed deceased in Count 2.

104.6 The pointing out of the various body parts at various scenes in respect of deceased in Count 2 (Kamohelo), taken together with the pointing out of the exact spot where the body parts of Moholobela (deceased in Count 1) had been recovered by PW6 with the help of villagers creates an inescapable inference that **Accused 1** was indeed responsible for their demise. See these are consistent with the Crown's overwhelming evidence against **Accused 1** that indeed **Accused 1** was responsible for their demise. It has to be remembered also that police did not know of the disappearance of Kamohelo or even his murder until police attention was drawn to Accused 1 vehicle by local children playing in the vicinity and ultimately the pointing by **Accused 1** himself that police became aware of the disappearance and murder of Kamohelo. All of these factors are consistent with the Crown's case that **Accused 1** was involved in the demise of these young men.

[105] **ACCUSED 2 - COUNTS 1 AND 2**

The evidence led disclosed that a large number of exhibits were recovered by police from the house of Accused 2 occupied by her with Accused 1. This ranged from a wide variety of clothing that obviously did not belong to her sons, to blood stained knife (Exhibit 14) and handsaw (Exhibit 2) a blood soaked piece of Defy cardboard (Exhibit 11) whose true nature had been previously hidden by the steel bath resting on it, to body parts in a van parked outside her front door which had already attracted the attention of neighbours, to a large quantity of blood in the only toilet servicing her home, it is highly improbable that Accused No.2 remained in complete ignorance. As a permanent resident of this house, would Accused 2 not have seen the additional clothing that did not belong

to her children? Especially given that working Basotho mothers traditionally undertake/supervise extensive cleaning of their households over weekends. Would she not have noticed or smelt the blood in the toilet if not in the house? Would she not have noticed the activity around the car parked outside her front door or noticed interest of flies around the car? The evidence described above creates the irresistible and *prima facie* inference that she must have had knowledge relevant to the commission of the offences in Count 1 and Count 2.

Accused 2 in the face of these strong *prima facie* irresistible inference against her, elected not to testify and at least explain her ignorance. If all these factors are relevant, as indeed I consider them to be, and can be held against Accused 2 in her silence, the question that arises is what inference may permissibly be drawn against her? I am mindful of the Rule relating to convicting on circumstantial evidence that it is the cumulative effect of proven facts which must be considered and those facts in isolation. See **Rex vs Tšosane LAC (1995/1999) 639** where **Van Den Heever JA** of our own Court of Appeal in assessing circumstantial evidence followed the formulation of **Watermeyer JA** in **Rex vs Blom** and held:

*“In considering circumstantial evidence in criminal cases, the inference sought to be drawn must be consistent with all the proven facts, and the facts must exclude all other reasonable inferences except the one sought to be drawn.”*

Such circumstantial evidence must be the irresistible and only conclusion to be drawn from such facts. See **Masupha Sole vs Rex** where the full court of our Appeal Court dealt extensively with the principles to be applied where the Crown relies on circumstantial evidence for the conviction of an accused person such as one in the position of Accused 2 who elected not to give evidence in her defence. The Court said:

*“Where facts proved before Court are such as to call for explanation by the Accused person, and she/he fails to give such explanation, the trial Court may discard as not reasonably possible any hypothesis consistent with her innocence. And in considering whether proved facts exclude every reasonable inference save the one to be drawn, regard may be had to the Accused’s failure to testify. This does not mean that such failure gives rise to an inference of guilt in itself: It is merely one of the circumstances to be taken into account in determining whether the Accused’s guilt has been proved beyond a reasonable doubt.”*

I come to irresistible and only conclusion that Accused 2 must have become aware of these various factors, even if only after the commission of the offences had taken place. In these circumstances the inescapable inference I come to is that Accused 2 must at least have been accessory after the fact in particular in Count 2. On the evidence before Court I am satisfied beyond reasonable doubt that Accused 2 did have a common purpose with Accused 1 by making herself accessory after the fact to Accused 1’s crime at least in Count 2. I accordingly find Accused 2 guilty of being an accessory after the fact to commission of crime committed by **Accused 1** in Count 2 pursuant to **Section 182 (2) of the C P & E Act, 1981**.

[106] **COUNT 3 – ESCAPING FROM LAWFUL CUSTODY**

Count 3 alleges that Accused 1 is guilty of **Contravening Section 89 of the Penal Code 2010**. The Section reads as follows:

*“A person who escapes from lawful custody or who assists another to escape from lawful custody commits an offence.”*

In relation to this charge Crown witnesses were PW5 (Sgt. Seeko), PW12 No. 38662 Chief Prison Officer Vincent Hlalele Mabathoana, PW13 No. 47143 Correctional Officer Mothepu Lesaoana, PW14 No. 55445 Correctional Officer Tšepo Cheche, PW11 No. 8738 Det./Snr. Inspector

Mphelehetse Khatleli, PW15 No. 0479180 Colonel Frank Boycy Sauders, PW16 Matšepo Moholisa.

The essence of testimony of PW5, PW12, PW13 and PW14 is that Accused 1 was lawfully remanded into gaol at Maseru Central Prison on 18<sup>th</sup> July 2012. He was kept in maximum security block in New Block. He was given Prison No. 628/12. He was locked in his cell in usual manner on the evening of 13<sup>th</sup> October 2012. However on the morning of 14<sup>th</sup> October 2012, it was found that Accused 1 was no longer in his cell but had escaped from lawful custody.

[107] **PW15 – COLONEL SAUNDERS**

PW15 testimony was that he was a policeman in South Africa. Following a request of Lesotho through Interpol he traced Accused 1 to a church sect precinct in Durban North. After some initial attempts to arrest him were aborted by the elders of that church sect, he did eventually arrest Accused 1 in Amanzimtoti on 6<sup>th</sup> April 2014.

PW11 testimony in relation to this Count was to the effect he attended several Court hearings in Durban North relating to extradition proceedings of Accused 1. He positively identified Accused 1 as the person who had escaped from Central Prison on 13<sup>th</sup> October 2012. PW11 and members of his investigation team received Accused 1 from South African Police on 21 October 2015. He brought Accused 1 to this Court on that date to be remanded into custody.

PW15 testified that throughout his interactions with **Accused 1** in Kwazulu Natal after arresting him, **Accused 1** never mentioned to him

that he had been forcibly removed from lawful custody in prison in Lesotho. He told the Court that **Accused 1** never mentioned to him that 3 men in black tracksuits with hooded faces had taken him out of prison in Lesotho. At no time did **Accused 1** mention to him that he (Accused) had been injected with a substance which rendered him unconscious.

Accused 1's defence version was bare denial of PW15's testimony including that he had evaded arrest by PW15 previously. He claimed PW15 arrested him without warrant of arrest. In my view Accused's version of how he got to Natal and how he was arrested is a pack of lies. I reject it. PW15 gave his testimony truthfully and answered questions put to him honestly and straight forwardly.

[108] **PW16 MATŠEPO MOHOLISA**

PW16 (Matšepo Moholisa) testified that she and fellow congregants of St. Johns church met with Accused 1 at Frasers Memorial Hall, at Seapoint Maseru on the night of 13<sup>th</sup>/14<sup>th</sup> October 2012. When she and fellow congregants first met with **Accused 1** they found him seated behind a door at Frasers Memorial Hall. It was about midnight. When **Accused 1** saw them he took off the hat he was wearing and said: "*Bana beso, ke sitetsoe Kereke le Leholimo le Lefatše.*" Roughly translated: "*My brothers and sisters I have sinned against the Church, the Heavens and the Earth.*" PW16 explained to the Court that it is the tradition of members of this church congregation to which **Accused 1**, PW16 and others belonged when they meet each other that they pray together there and then. On this occasion too they did as was their custom. The group consisted of **Accused 1**, PW16, Mofihli, Teboho, 'Mantja and Ntšepeng. PW16 told the Court that they then asked Accused 1 how he had left

prison as they had heard that he had been arrested. She told the Court Accused 1 had told them that he had left prison miraculously. But he knew that the group would be at Frasers Memorial Hall that night for a concert. That is why he came there. PW16 told the Court that when Accused 1 left them he was taken halfway up to the gate by 'Mantja. Accused 1 walked normally and freely. PW16 testified that when Accused 1 met them at Frasers Hall he did not say anything about men dressed in black nor about such men drugging him before taking him out of his cell. He told the group how he had walked down from the prison through the forest, walked down to Mohokare River followed up the Mohokare River along the forest below Lerotholi Polytechnic up the stream to Frasers Memorial Hall. Accused 1's speech was clear. Accused 1 was not drugged. PW16 told the Court that throughout all this conversation they had with Accused 1 that night he exhibited no impediment of speech whatsoever as he spoke to them. He left them there in normal health telling them he was going to their church at Lekokoaneng.

Accused 1's version was a bald denial of the testimony of PW16. All he could tell the Court was that PW16 was a liar. But he offered no reason why PW16 would come to Court to lie against him. I found PW16 a truthful witness who gave her evidence honestly and answered all questions put to her in full and honestly. I accept her evidence. I reject Accused's false evidence to project PW16 as a liar for no justifiable reason.

[109] **ACCUSED 1 DEFENCE TO ESCAPING CHARGE**

**Accused 1**'s defence to this charge was simply that he had been removed from lawful custody of prison authorities at Maseru Central by three hooded men dressed in black against his will after they had drugged him. In this sense he lacked the intention to escape from lawful custody.

109.2 **Accused 1**'s version of his departure from Maseru Central Prison on 13<sup>th</sup> October 2012 that he was taken away by "Ninja" style rescuers is so bizarre and ridiculous that I consider that **Accused 1** does not credit this Court with any intelligence at all. Of all the prisoners in Maximum section why would the "Ninjas" pick on him only to dump him in Durban, South Africa and disappear? Why does **Accused 1** thereafter take so much trouble to evade coming back to Lesotho as he did if his departure was this innocent in the first place? **Accused 1** version belongs to the world of fiction and fairy tales. As P/C Lesaoana said during his testimony on this Count, **Accused 1** must have been assisted to escape from lawful custody at Maseru Central Prison. I agree entirely with P/C Mothepu Lesaoana (PW13). It is the only rational and credible explanation of how **Accused 1** escaped from lawful custody at Maseru Central Prison. Mr. Hoeane made a mole heap out of the failure of an investigation to establish who facilitated **Accused 1**'s escape. Of course the inquiry failed to do so. But that does not mean the inquiry established that **Accused 1** was taken out of his Prison Cell by "Ninjas". Suffice it to say that I reject **Accused 1**'s version as beyond any doubt false. It is so contrived and so obviously false that indeed it is an insult to present it to this Court.

109.3 Clearly **Accused 1** does not take this Court seriously. The story of "3 Ninja – like men" floated to this Court by **Accused 1** is a fantasy. I reject it as such. It is clear to me that, as PW13 said in his evidence, **Accused 1**

escaped from his cell at Maseru Central with assistance of others. I accept P/C Lesaoana's testimony and observation in that regard.

**Accused 1** is guilty of **Contravening of Section 89 of the Penal Code 2010** read with **Section 26 and Section 109** thereof in that between 13 and 14 October 2012 he escaped from lawful custody and/or was assisted to escape from lawful custody as charged in Count 3.

[110] **CONCLUSION**

The thrust of the evidence implicating **Accused 1** in the Commission of the offences in Count 1 and 2 is contained in the evidence of the crown led during the trial-within-a-trial to determine the voluntariness of the pointing out of locations and objects at those locations. **Accused 1** freely and voluntarily pointed out those body parts and burial sites in Count 1 and Count 2.

At the conclusion of that procedure this Court made a determination that the said pointing by Accused 1 were made freely and voluntarily. That body of evidence establishing the freedom and voluntariness of those pointing coupled with the admissions made by defence in terms of **Section 273 of C P & E Act 1980**, prove the commission of Counts 1 and 2 by Accused beyond a reasonable doubt in my opinion. The evidence is compelling.

I accordingly, find Accused 1 guilty of contravening **Section 40(1) of the Penal Code Act 2010** by murdering Moholobela Seetsa and Kamohelo Mohata as alleged in Count 1 and Count 2.

## **SENTENCE**

- [111] Accused 1 has been found guilty on all charges levelled against him in that he intentionally killed Moholobela Seetsa and Kamohelo Mohata and thereby contravened the provision of **Section 40 (1) of the Penal Code Act No.6 of 2010**. Accused 1 has also been found guilty of contravening **Section 89 of Penal Code Act, 2010** in that on 13/14 October 2012 he escaped from law custody of Maseru Central Prison.
- [112] Accused 2 has been found guilty of being an accessory to the murder of Kamohelo Mohata in that having known of the murder of Kamohelo Mohata by Accused 1, Accused 2 knowingly helped Accused 1 to conceal the murder crime of Kamohelo Mohata and thereby became accessory to the fact of the murder of Kamohelo by Accused 1.
- [113] The prescribed sentence for a contravention of **Section 40 (1) of the Code** is the death penalty unless the provisions of **Section 40 (3) of the Code** apply namely that the Court finds that there are extenuating circumstances in that contravention of **Section 40 (1)**.
- [114] Mr. Leppan submits that in *casu* none of the circumstances envisaged by **Section 40 (3)** exist. He submits that the only factor that may fall for determination is that described in **Section 40 (3)(c) of the Code**. Considering the circumstances under which these offences as set out in Counts 1 and 2, and examining the standards of behaviour expected of the Accused's community, it cannot be said that these offences were committed in the presence of extenuating circumstances. I agree. These

offences were committed in the presence of the most heinous and evil circumstances. I can only conclude that the actions of Accused were driven by the most demonic of motives.

[115] Generally speaking upon approaching the question of sentence, a Court will consider a triad of factors, namely, (1) the offence (2) the interests of society, (3) the victim/family of victim and (4) the Accused person. In **S vs Zinn 1969 (2) SA 537 (A)** where **Rumpff JA** had this to say after reviewing old and modern authorities:

*“As regards the duties of a Judge in imposing punishment we have been referred to Voet: Vol. 1 page 57 where in a note (Gane’s Translation Vol.2 page 72)*

*“It is true as Cicero says in his work on Duties, Book I Chapter 25 that anger should be especially kept down in punishing, because he who comes to punishment in wrath will never hold the middle course which lies between the too much and the too little. It is also true that it would be desirable that they who hold the office of Judges should be like the laws, which approach punishment not in a spirit of anger but one of equity.”*

In the same note also, it is stated that:

*“among the faults of Judges which are most harmful are hastiness, the striving after severity and misplaced pity.”*

The same author, at XLVIII, 19, 4...., comments on the duty of a Judge as follows:

*“he must be watchful to see that no step is taken either more indulgently than is called for by the case.”*

And

*In trivial cases indeed Judges ought to be more inclined to mildness, but in more serious cases to follow the severity of the laws with certain moderation of generosity.” (Ganes Translation Vol.7 page 504).*

[116] Naturally, it is my duty as a trial Judge in this matter to apply the salutary principles mentioned in Paragraph 115 above to the specific facts of this case particularly as they pertain to Accused. The murders of Moholobela Seetsa and Kamohelo Mohata the trial facts establish beyond any doubt that must have been obviously premeditated by Accused 1 and committed in a brazen manner. The macabre process of dehumanising the two bodies by meticulously cutting them up, bizarrely in almost identical fashion, and thereafter disposing of the body parts, underscores the inherent evilness of Accused 1's mind. The act of cutting up his victim's bodies in the manner reflected in the photos in Exhibit B demonstrates that Accused must have enjoyed the process. Some parts of the deceased's body (e.g. lobe of the hearts and livers) were clearly cut off. Accused has not disclosed to the Court where these body parts were taken to by him and for what purpose that was done. What we do know is that such of the body parts as were eventually recovered have been handed to the families of Seetsa and Mohata for burial minus these body parts thus making it even more difficult for these families to find closure in the death of their loved ones. I cannot find fault with the submission of the Crown that the nature of the commission of these offences can only be described as wicked and evil. Quite how Moholobela (aged 11) and Kamohelo (aged 19) met their deaths, the pain, suffering and fear involved must have overwhelmed these victims. I can only imagine that Accused 1 came into their presence forcefully and unsuspectingly for it is to be recalled that these victims were Accused 1 neighbours who must have looked upon Accused 1 as an older brother.

The body parts of the victims were hidden inside remote dongas of Koalabata, inside toilet pits and inside a vehicle clearly the intention of

Accused 1 was that his victims should disappear without trace which thought in itself is evil.

[117] The Accused's steadfast denial of any involvement or wrongdoing and his constant invention of absurd and fictitious stories to explain his deeds renders the prospects of meaningful rehabilitation bleak.

[118] The loss Seetsa and Mohata families for their children is obvious and the pain of it all was clear for to see when they testified. It is true that they bore their pain during the trial with great dignity. I commend them for it.

Society is entitled to the protection of the law from needless killings and justifiable so, society expect that the law will remove from their communities by way of appropriate punishment, perpetrators of evil deeds such Accused 1 committed by killing their children. In **S. vs Holder 1979 (2) SA 70 (A)** it was held that:

*“In the application of the principle that imprisonment ought to be avoided the penal element must, in serious offences, of whatever nature, come to the fore and be properly considered, if punishment still has my meaning in the criminal law.”*

The element of deterrence in sentencing must be given its proper weight. In **R vs Karg 1961 (1) SA 231 (A) @ 236 Schreiner JA** had the following important remarks to make in relation to the element of retribution in sentencing:

*“While the deterrent effect of punishment has remained as important as ever, it is, I think, correct to say that the retributive aspect has tended to yield to the aspects of prevention and correction. That is no doubt a good thing. But the element of retribution, historically important, is by no means absent from the modern approach. It is not wrong that the natural indignation of interested persons and of the community at large should receive some recognition in the sentences that courts impose, and*

*it is not irrelevant to bear in mind that if sentences for serious crimes are too lenient, the administration of justice may fall into disrepute and injured persons may incline to take the law into their own hands. Naturally, righteous anger should not becloud judgment.”*

In this case that element of deterrence is fully justified in my opinion. See **S vs Mafu 1992 (2) SACR 494 (A)**.

### **PERSONAL CIRCUMSTANCES OF ACCUSED 1**

[119] Personal circumstances of an accused person is an important factor in sentencing him. With this in mind Accused were advised by the Court of their right to testify in their own behalf in mitigation of sentence. They declined the offer. I have taken all the personal circumstances of Accused 1 in this case, namely, that he is a young man in his thirties; that he has no previous convictions; that he has been in prison for a long period. But he is partly to blame for that in that he escaped from lawful custody in October 2012 and it took several years to bring him back to Lesotho to stand his trial. I have noted with grave concern in this court that Accused displayed no remorse whatsoever for the death of the two boys whose murders he has caused. Instead Accused 1 went out of his way to deceive and mislead the Court by contriving a series of time-wasting versions of his defences to the charges all of which were clearly lies. During these contrived versions of his time was lost unnecessarily. Accused 1 escape from lawful custody at Maseru Central Prison did not help matters in his cause for he wasted time delaying commencement of his trial and its outcome.

[120] It follows that in these circumstances the court can only conclude that there being no extenuating circumstances Accused 1 has to face the ultimate penalty of death. However, Adv. Leppan for the Crown has

drawn my attention to a Ministerial Assurance of the Government of Lesotho to the Government of South Africa dated 22<sup>nd</sup> April 2014 in the extradition proceedings of Accused 1 that:

*“while it is within the discretion of the High Court of Lesotho to impose the death penalty on the suspect should he be convicted, inter alia of the offences of the murders of deceased persons referred to in the request for extradition of the suspect mentioned hereinabove, such sentences will not be carried out. The assurance will irrevocably bind the Government of the Kingdom of Lesotho.”*

The undertaking is signed by Minister Haae Phoofolo, Minister of Law Constitutional Affairs and Human Rights of the Kingdom of Lesotho at the time.

On the basis of this assurance by Minister Phoofolo, the Crown felt constrained to ask this Court to pass the ultimate penalty of death on Accused 1 as it would otherwise be enjoined to do in terms of **Section 40 (2)**. **Section 40 (2)** which reads:

*“(2) The punishment on conviction for murder shall be a sentence of death.”*

[121] In his submission to me Mr. Leppan recognises that the undertaking by Mr. Phoofolo does not bind me. Indeed Mr. Phoofolo himself recognised that when he gave that undertaking that his political act does not bind me. That is why the undertaking was formulated in the manner it was done. The undertaking was made within the constraints of South African legislative requirements not allowing extradition of a fugitive to a foreign requesting country if that country may impose a death penalty for the offence for which the fugitive is to be extradited. The undertaking envisages what the Executive will do in terms of other powers it might have under other laws which are not our concern here. Nevertheless, I

take into account that the Government of Lesotho has made an undertaking to a foreign power in order to secure the return of Accused 1 to Lesotho to stand his trial for his criminal deeds in Lesotho. That course has enabled this Court to discharge its responsibility to try Accused 1 as has now happened. In my mind it is an important factor and, in my consideration, whether to accommodate that undertaking in the exercise of a discretion on sentence vesting in me. In this regard I bear in mind that South Africa is our only immediate neighbour and that it is important for Lesotho to honour its undertakings in order to facilitate smooth extradition mechanisms between the two countries. Mr. Leppan for the Crown urges on me that I should impose a life sentence on Accused 1 in respect of Counts 1 and 2. I consider Mr. Leppan's submission in this regard to be sound. I accordingly sentence Accused 1 to Life Imprisonment without illegibility to parole each on Counts 1 and 2. For the avoidance of any doubt about what the Court means by life imprisonment I want it to be understood to mean literally what life imprisonment means, namely that Accused 1 is sentenced to spend the balance of his life in prison.

[122] As regards Count 3, the Crown submitted that Accused deserves the maximum penalty of five (5) years. He submitted that the following factors should be taken into account by the court in prescribing such a penalty namely:

122.1 That very careful planning was involved in executing this escape and undoubtedly with the assistance of other persons external to Accused 1's Cell Room; people who had intimate knowledge of security arrangements at Maseru Central Prison. Accused 1 must

have had access to highly placed and resourced persons to execute that successful escape.

122.2 That Accused fled Lesotho to South Africa and made his recovery difficult for South African authorities as was explained to the Court by Colonel Saunders (PW15).

122.3 That it took full three (3) years from 13<sup>th</sup> or 14<sup>th</sup> October 2012 to 21<sup>st</sup> October 2015 to finally bring him back to Lesotho.

## **ACCUSED 2**

[123] Accused 2 is presently frail and apparently very sickly. I have been told earlier that she appears to have acute TB and Arthritis. This condition has persisted with her so much that some days during trial we had to excuse her from attendance due to illness. This morning when she came into Court, she had to be carried like a baby on the arms of his elder son DW5. She has shrunk in body size to an extent that she had to be carried into Accused dock. Such was the state of her frailty.

It has been urged on me that the Court's find on her role in the commission of the crimes against her mentioned in Count 1 and Count 2 was that she was an accessory after the fact. This is correct. But an accessory is just as guilty as the principal perpetrator.

I align myself and adopt the well-established principle that punishment should also be tempered with mercy in appropriate circumstances. Accused 2's current illness justifies me in tempering the possible punishment of Life Sentence on her with mercy and choosing another punishment for her which will equally send a strong deterrent message to

others of like mind. It has not been easy for me to do so considering the gravity of the crime with which she has been found guilty as well as the circumstances of its commission. I think a sentence of 10 years imprisonment suspended for three years on condition that Accused 2 is not found guilty of a crime involving violence against the person of another will meet the justice of her crime.

[124] **SUMMARY OF SENTENCES**

**ACCUSED 1 – COUNT 1:** Life imprisonment (Indeterminate) without eligibility for parole.

**COUNT 2:** Life imprisonment (Indeterminate) without eligibility for parole.

**COUNT 3:** 5 years imprisonment.

**ACCUSED 2 COUNT 2:** 10 years imprisonment suspended for 3 years on condition that Accused is not found guilty of a crime involving violence against the person of another.

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

**FOR CROWN: ADV. G. J. LEPPAN (Assisted by  
ADV. T. MOKUKU)**

**FOR ACCUSED 1 AND ACCUSED 2: ADV. T. HOEANE**