

# IN THE HIGH COURT OF LESOTHO

Held at Maseru

CRI/T/0069/18

In the matter between:

REX

CROWN

And

MAKATJANE PHELI

ACCUSED No.1

MAKHOTSA TLOKOTSI

ACCUSED No.2

Neutral Citation: Rex vs Makajane Pheli & Makhotsa Tlokotsi [2022] LSHC 45  
CRI (03 March 2022)

**CORAM:** RANTARA- ACTING JUDGE

**HEARD:** 28/02/2022- 04/03/2022

**DELIVERED:** 04/03/2022 and 07/03/2022

## SUMMARY

**CRIMINAL LAW:** *Accused charged with murder- crown's case by way of admitted statements including a confession and a post-mortem- no oral evidence- application for discharge in terms of S.175 (3) of the Criminal Procedure and Evidence Act No.9 of 1989 at the end of*

*prosecution case dismissed- defence of provocation and self-defence- doctrine of common purpose- accused found guilty of murder with extenuating circumstances.*

### **ANNOTATIONS:**

### **CASES:**

R v Molapo (CRI/T\39\91) LSCA 64

Ramone v R 1967-70 LLR

Malefetsane Potlaki v R 1989 (1) LLR

Rex v Lefu Makhalabeng & Anor CRI/T/99/02

S v Matyityi 2011 SACR 40 (SCA)

S v Zinn 1969 (2) SA 537 (A)

S v Mkhize 1979 (1) SA 461 (A)

S v Mgedezi & others [1989] 2 ALL SA 13 (A)

### **STATUTES:**

Criminal Procedure and Evidence Act No.9 of 1981

Penal Code Act No.6 of 2010

### **BOOKS:**

Burchell and Milton-*Principles of Criminal Law 2<sup>nd</sup> Ed @ 393*

## JUDGMENT

[1] The accused appeared before court indicted of murder, it being alleged that upon or about the 25<sup>th</sup> day of January 2016, and at or near Ha Abia Shalabeng, in the district of Maseru, the said accused sharing a common purpose together, and in the pursuit of such purpose, did perform an unlawful act or omission with the intention of causing the death of Namolela Makompo, the said accused did commit the offence of murder of the deceased Namolela Makompo, such death resulting from their act or omission, the said accused did thereby contravene the provisions of the code as aforesaid.

[2] After both accused entered a plea of not guilty, The Crown by consent with Defence Counsel presented four (4) admitted statements, Accused No.1's confession, a postmortem report and an LMPS 12 in respect of the seized exhibits in terms of S.273 (1) of the Criminal Procedure and Evidence Act 1981. The said statements were read into the record and marked EXH A to EXH 'G'.

[3] The statement of No. 69517 Correctional Officer Phoka Mokhobatau (**EXH 'A'**) is to the effect that on 24<sup>th</sup> January 2016 midnight at around 0100hrs, he was at a bar at Shalabeng. He was sitting under a tree with one Morena Mokhants'o. They had just arrived from a wedding of one of their colleagues. They first popped at that bar to have few alcoholic drinks and cigarettes before heading home. While sitting there, he witnessed a fight between deceased (Leronti), Accused No.1

(Rabotala) and Accused No.2 (Koto). (The names are as they appear on the statements per Adv. Joala). He did not know the source of that fight. Accused No.2 had a battle stick and assaulted deceased with it two times. He and Mokhants'o got up and went to intervene. Accused No.1 had a baton, which he threw on the ground when they get closer and ran away. He (Phoka) took that baton and assaulted Accused No.2 with it as an intervention measure. Deceased also ran out of the yard. They, (Mokhobatau and Mokhants'o) assaulted Accused No.2 after Mokhants'o managed to take possession of Accused No.2's battle stick. While there, a girl (name unknown) came and said deceased has fallen out of the yard and they should run there to see deceased. He did find deceased bleeding. Later he heard an explanation that Accused No.1 stabbed deceased with a knife. He thought the stabbing took place after they ran out of the yard, deceased and both accused. He provided his car to transport deceased to the doctor while he and Mokhants'o stayed behind to put the situation under control. Later Pule, who went to hospital, told them Leronti has passed away. They took the baton and the battle stick to the chief to report. In the morning around 0800hrs, they went to the Police Station where he handed over the baton he took from the ground after Accused No.1 threw it.

[4] Statement of Tamane Mokhants'o (**EXH 'B'**) is to the effect that on 25/01/16 at around 0100hrs he was at Shalabeng ha Macho with Mokhobatau drinking. While sitting there under a tree drinking, they saw both accused assaulting deceased. He went there with Mokhobatau. He held and took possession of Accused No.2's battle stick, which he was assaulting deceased with it. They told Accused No.2 to get down and tell them why they are assaulting deceased since Accused No.1 had ran away then. Before Accused No.2 could say anything, a girl (name unknown) came and told them the person they are assisting has been

stabbed and there is a possibility that he is dead. Mokhobatau rushed there to where deceased was. He came back and told him deceased is in a bad condition and he has given his car to sheriff to take him to hospital. While they are discussing what happened, Accused No.2 got up and ran away. They went to the chief with deceased family to report and later to the Police where they handed the battle stick and a baton. By then he already knew that Leronti is late.

[5] Statement of No.9989 D/L/SGT Moeketse (**EXH 'C'**) is to the effect that he is an investigator in this case of murder of Leronti Makompo, which occurred at Ha Abia on 25/01/16. Following up the case, his investigations led him to Makatjane "Rabotala" Pheli and Makhotsa "Koto" Tlokotsi, both of ha Abia. He called them to his office. On 27/01/16, they appeared at his office. He identified himself to them, warned and cautioned them before giving them a charge of murder. They handed over to him a battle stick with green tapes by Accused No.2 and Accused No.1 handed over a baton. He then seized them as exhibits and filled LMPS12.

[6] The said LMPS12 (**EXH 'D'**) was presented as part of evidence proving that the baton and the battle stick were confiscated as exhibits.

[7] The identification statement of 'Mile Makompo (**EXH 'E'**) is to the effect that on 28/01/2016 he was at the mortuary at Berea Hospital to identify deceased Namolela Makompo before the doctor examined him. He did identify him as deceased is his younger brother.

[8] The postmortem report (**EXH 'F'**) by doctor Lubuma recorded that the cause of death is a penetrating stab wound on the right second space on the chest and on the left jaw, leading to excessive bleeding and hypovolemic shock.

[9] Lastly, the confession of Makatjane Pheli (**EXH 'G'**) who is Accused No.1 is to the effect that he refused to give tobacco and the person he had a fight with left.

That person came back and the person he was with warned him to be aware. When he looks back, that person hit him with a stone and ran away. He chased that person until he caught up with him. He then stabbed him with a knife. That person ran away and they parted. People who claimed to be police officers arrived and instructed them to lie down and be searched. He refused and they started assaulting him with a battle stick. He ran away and went home. He went to Lithoteng police to request a medical form and he got it. He went to the doctor and when he comes back, he got a message from his employer that he reports himself at Lithoteng Police Station. He went there on 27<sup>th</sup> and was told he is taken to court for stabbing a person with a knife and that person eventually died.

This is the Crown Case.

[10] At the close of Crown's case, the defence by Adv. Hoeane applied for discharge in terms of Section 175 (3) of the Criminal Procedure and Evidence Act 1981 and the application was not successful.

[11] Accused No.1 in his defence and the only defence witness (Makatjane Pheli) testified that he does not know the deceased and it was his first time to see him that fateful night. He was with his friend who is now his co-accused. They got inside the bar and bought two (2) quartz of beer and cigarettes. After that, they sat outside next to a car that was parked there. They were from work and Accused No.2 took him to that place. Before they arrived there, they did not consume any alcoholic drinks. Before this incident, they had just drunk one (1) quart. They had a fight with one person. Deceased was with other two (2) people and they came to them and asked for tobacco. Deceased is the one who specifically asked for tobacco and he refused. The three men left and went out of the yard. Deceased came back and Accused No.2 alerted him that deceased is about to hit him. When he looks back, Deceased hit him with a stone on the left front part of his head. The scar is still

visible though the wound is healed. He rose from where he was sitting, and he felt dizzy. When he got up, deceased was already engaged in a fight with Accused No.2. He also joined in the fight and realized that deceased had a knife in his hand. He had the opportunity to decide on how to react to the attack, that he need to defend himself. In joining the fight, he took possession of deceased's knife after tussling for it and deceased was weaker then. At the time he took the knife, it was in deceased hand and they were by the gate. He stabbed deceased with that knife once on the shoulder area. Accused No.2 was there when he stabbed deceased and had a battle stick that he assaulted deceased with it. Some men who introduced themselves as police officers arrived and told them to lie down but he ran away. Deceased ran away and he (DW1) threw that knife to the ground. Those police officers were there by the bar yard when this incident happened. He threw the knife in the yard and fled, leaving Accused No.2 there. He ran to his place of abode at the rented flats.

[12] The following day he went to the doctor at Lithoteng clinic next to the Police Station, as he was not feeling well. The doctor attended him and from there he proceeded to Lithoteng Police Station as the doctor told him to get a medical form. By then he did not know that his attacker is dead. Police did give him the medical form after he reported that he got into a fight at night with someone he did know. The police officer who was assisting him filled the other part of the medical form and told him to take it back to the clinic. He went to the clinic and the doctor filled the medical form. He then went to his place where he received a call from his employer whom he is driving his car that he has to report himself at the police station. He first went to get Accused No.2 and they both proceeded to the police station. At the Police Station, Police asked them about what happened the previous night and he told the police officer what he is telling the court. When this incident

happened, he did know the deceased and thus never had a fight with him before. He has never been convicted of any criminal offence by any court in Lesotho.

[13] He only knew about the death of the deceased when he gets to the Police Station with Accused No.2. After Police told him that he killed someone, they were taken to Matala Local Court. There police officers went in while he and accused No.2 remained in the vehicle. From there they were taken to Maseru Magistrate Court where he appeared before a lady-magistrate and made a confession, which he signed though he cannot recall if it was read to him before signing it. He confirmed his signature on the confession shown to him by Defence Counsel. The magistrate did not ask him where he got the knife and before court, he testified that it was from deceased. This incident happened six (6) years ago and it does not sit well with him, as it was not intentional. He asked the court to warn him that this should not happen again.

[14] In cross-examination, he said in his confession (**EXH 'G'**), he said deceased fled after hitting him with a stone. It is a mistake that he did not mention it before court. However, he agrees that what he told the magistrate is what happened. He chased deceased for about 5 meters before stabbing him. Where he was sitting, he was with Accused No.2 and Accused No.2 is the one who chased deceased and caught with him first to stop him from running. This does not appear in his confession, as the magistrate did not record some of the things he said. In his evidence-in-chief, he did not mention it by mistake, but he said Accused No.2 was hitting deceased with a battle stick and upon his arrival, he realized deceased had a knife. It is by mistake that he did not mention it in his evidence that after deceased hit him with a stone, he felt dizzy, he got up and found Accused No.2 already fighting deceased and he decided to join the fight. He disarmed deceased of the knife, stabbed him once, and deceased was weaponless. Though the post-mortem



recorded two (2) stab wounds, he insisted that he stabbed deceased once. He denied that based on the post-mortem report, he had an intention to kill deceased who was unarmed. When this altercation took place, they had just had one beer and he was not drunk. He realized that the battle stick blows weakened deceased when he took the knife from him.

[15] In re-examination, he said he estimates one (1) minute between hitting with a stone and the stabbing with a knife. This is the defence case.

### **CROWN CLOSING SUBMISSIONS:**

[16] In closing submissions, Adv. Joala for the crown submitted that as the crown, it is their duty to prove their case beyond reasonable doubt. Their case against accused is murder, a definition of which is intentional and unlawful killing of people.

[17] The Crown in agreement with Defence, presented evidence by way of statements marked **EXH 'A' to "G"**. **EXH 'A'** and **'B'** story basically is that Accused No.2 assaulted deceased with a stick. Both accused were assaulting deceased, not the other way round. Accused No.1 in his defence said deceased assaulted him with a stone, Accused No.2 assaulted deceased with a battle stick, and he stabbed deceased with a knife he took from him. **EXH 'G'** (confession) simply shows that Accused No.1 chased the deceased, caught up with him and stabbed him with a knife. There is **EXH 'F'**, a postmortem report showing that deceased sustained two (2) stab wounds, which led to excessive loss of blood. The ID statement, **EXH 'E'** shows that there was a dead body of Leronti identified by his brother before post-mortem was conducted. In trying to rebut the unlawfulness, defence raised self-defence. He submitted that their defence does not hold water based on Accused No.1's evidence that deceased ran away after hitting him with a

stone and he chased him. The Penal Code Act in S.20 (1) (a) (i) (II) provides the elements of self-defence. Among them is that there should be an unlawful attack. In this case, he submitted that there was no unlawful attack as deceased was running away when he was stabbed. Even if deceased hit Accused No.1 with a stone, in chasing deceased, he was launching an attack, which he had no right to when he was no more in danger. Further, on self-defense Snyman CR stated that the unlawful attack should not be complete when one defends himself. When it is complete, that is avenging.

[18] On confession, he submitted that S.240 of the Criminal Procedure and Evidence Act 1981 provides that a confession may be relied upon by a court in convicting a person as long as there is evidence that a crime is committed. Accused No.1 corroborated his confession in his evidence before court.

[19] On the issue of credibility, Accused No.1 is not a credible witness as he somersaulted in his defence. He said the magistrate did not ask him about the knife. Later when asked why he did not tell the magistrate about the knife himself, he said he told the magistrate, but the magistrate did not record it.

[20] Again, D.C during proceedings referred to provocation. The reality of the matter is that Accused No.1 did not mention this in his evidence. He testified that he made up his mind to react to the attack. He did not say he felt provoked or angry. In closing, Crown submitted that Accused No.1 killed deceased unlawfully and intentionally and Accused No.2 assaulted deceased after he was stabbed. His submission is that Accused No.2 was aware that Accused No.1 stabbed deceased and he still associated himself with the acts of Accused No.1.

#### **DEFENCE CLOSING SUBMISSIONS:**

[21] Defence Counsel in closing submissions submitted that the issue in this case is a result of a fight and in a fight, things happen suddenly. The defence raised provocation and self-defence. It is an issue of common cause that deceased hit Accused No.1 with a stone after he refused to give him cigarette. Deceased exited the bar and came back in possession of a stone. Accused No.2 warned Accused No.1 of deceased's intention but deceased managed to hit Accused No.1 with that stone. Accused No.1 in his defence did not have to say he was provoked by that attack. After that, Accused No.1 dispossessed deceased of a knife. The hitting and the stabbing happened within a minute and in a fight, there is no time for reflection. Accused No.1 said he got dizzy, which affected his thinking process. He submitted that the crown failed to prove beyond reasonable doubt that there was no provocation. He concurred that self-defence is engaged in repelling an unlawful attack. However, deceased's attack was not complete, as nobody knew what he could do after hitting with a stone. His submission is that deceased launched an unlawful attack and Accused reacted as a result of that provocation.

[22] On injuries per the postmortem, he submitted that though it says two (2) wounds were found and Accused No.1 said he stabbed deceased once, in the heat of the moment he would have stabbed deceased more than once.

[23] He submitted that Accused No.1 has been candid with this court and did not invent any fanciful story. He conceded that there could be discrepancies in his story but that does not mean he was lying. It was only natural that Accused No.2 would assist Accused No.1 and that is when he assaulted deceased with a battle stick. Accused No.1's evidence that to him deceased was weak after the Accused No.1 assaults is his perception or subjective observation. He further submitted that this is a peculiar case where they wanted to see justice done. Material witnesses could not be before court, even the Investigating Officer. The said knife was not

confiscated as an exhibit per LMPS 12. In spite of that, accused made admissions to clear their conscience, Accused No.1 is a remorseful man and did not hide behind technicalities. The statements were admitted with reservations.

[24] He confirmed that accused had a common purpose and it was natural for Accused No.2 to join when his companion was attacked. He submitted deceased started the fight and accused have been honest and credible, looking for court's leniency. Accused's reaction to the attack was proportional. He suggested a Restorative justice avenue of 'raising a head' if accused are found guilty. The case has been weighing heavily on accused' conscience for almost 6 years.

[25] The crown in re-submission said the defence of provocation is not a complete defence though the requirements of provocation and self-defence were not met. Further that there was no proportionality between deceased's attack and stabbing.

#### **EVALUATION AND ANALYSIS:**

[26] I now consider the mosaic of evidence as a whole by making a determination on the strengths, merits, de-merits and their probabilities<sup>1</sup>. It is an issue of common cause that on this fateful day, 25/01/16 at midnight, there was an altercation between both accused and deceased. Both accused were armed with dangerous weapons when the incident happened, viz, a battle stick, a baton and eventually a knife. Accused No.1's story is that he got the knife that he used to stab the deceased from deceased. However, in his evidence he did not say deceased was attacking him with that knife or using it to defend himself. His evidence is that deceased had a knife in his hand which he easily took, and he realized that deceased was weakened by the assault with a battle stick by accused No.2. In my view, Accused No.1 had an option to dispossess deceased of that knife and keep it

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<sup>1</sup> S v Chabalala 2003 (1) SACR 134 @para 15

or throw it away to avoid this consequence. Stabbing deceased with it was an act of revenge.

[27] Coming to accused No.2, the evidence is that he had a battle stick, which he used to assault deceased with it. He managed to hit deceased two times before Mokhobatau and Mokhants'o intervened and stopped him. He was disarmed of the said battle stick. He did not stop the assault because he wanted to, but due to that intervention. He assaulted deceased after Accused No.1 stabbed him. That in my view is indicative of an intention to commit a crime. He associated himself with Accused No.1's unlawful attack to deceased and thus satisfied the requirements of common purpose. It is not necessary for the crown to prove beyond reasonable doubt that the acts of Accused No.1 caused the death. The stabbing by Accused No.2, which caused deceased death, is imputed on him.

#### The doctrine of common purpose

**Burchell and Milton**<sup>2</sup> defined the doctrine of common purpose in the following terms:

*"Where two or more people agree to commit a crime or actively associate in a joint unlawful enterprise, each will be responsible for specific criminal conduct committed by one of their number which falls within their common design. Liability arises from their 'common purpose' to commit the crime."*

**CR Snyman**<sup>3</sup> states the essence of the doctrine of common purpose in the following terms:

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<sup>2</sup> Principles of Criminal Law 2<sup>nd</sup> Ed at 393

<sup>3</sup> Criminal Law 4<sup>th</sup> Ed at 261

*"... if two or more people, having a common purpose to commit a crime, act together in order to achieve that purpose, the conduct of each of them in the execution of that purpose is imputed to the others."*

The prerequisites in order to attract liability in a case based on the doctrine of common purpose are set out in **S v Mgedezi**<sup>4</sup> in the following terms:

- (i) The accused must have been present at the scene where violence was committed.
- (ii) He or she must have been aware of the crime committed.
- (iii) He or she must have manifested his sharing of a common purpose by himself performing some act of association with the conduct of the others.

In this case, Accused No.2 by assaulting deceased with a battle stick after Accused No.1 stabbed deceased, actively associated himself with the conduct of Accused No.2. The defence story is that Accused No.2 is the one who chased and stopped deceased first. In my view, he has met all these stated prerequisites of common purpose.

[28] Defence Counsel submitted that there is a possibility that Accused No.1 stabbed deceased more than once since this was a fight. However, this comes from him from the bar, not Accused No.1. Accused No.1 insisted under cross-examination that he stabbed deceased once around the shoulder area, when the post-mortem recorded two stab wounds, one around the left jaw and the other on the right space on the chest.

[29] Defence raised the issue of provocation though they did not pursue it fully. The defence story is that deceased hit Accused No.1 with a stone and then ran away and that provoked both accused.

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<sup>4</sup> 1989 (1) SA 687

**The Penal Code Act 2010** in Section 40 provides that;

42. (1) For the purposes of this section -

*“provocation” includes, any wrongful act or insult of such a nature as to be likely, when done or offered to an ordinary person or in the presence of an ordinary person to another person who is under his or her immediate care or to whom he or she stands in a conjugal, parental, filial or fraternal relations to deprive him or her of the power of self-control and to induce him or her to assault the person by whom the act or insult is done or offered.*

[30] The requirement here is that the act or insult to an accused person deprived him of the power of self-control. The reaction must be done at the heat of the moment where there was no time to think. However, accused in cross-examination said he had time to think and decided to join the fight. Above that, it is trite that provocation is not a complete defence but operates as a ground for mitigation of sentence where there are reasonable grounds for an accused’s anger (**C R Snyman**<sup>5</sup>) as submitted by the crown.

### Self-defence

[31] Accused also raised the issue of self-defence that they were defending Accused No.1 from deceased who hit Accused No.1 with a stone on the head. The Penal Code Act on self-defence provides that;

*20. (1) No person shall be criminally responsible for the use of force in repelling an unlawful attack -*

*(a) upon himself or herself or another person if -*

*(a) it was not reasonable to avail himself or herself of any means of retreat of which he or she was aware;*

<sup>5</sup> Criminal Law (2014) 6 ed @234

*and*

*(ii) the degree of force used in repelling the attack was no greater than that which was reasonably necessary in the circumstances;*

The breakdown of the requirements for such defence in my view, are to stand as follows;

- (i) There must be unlawful attack upon a person
- (ii) There were no reasonable means to retreat from the attack of which he was aware of.
- (iii) The degree of force used in repelling the attack was no greater than that which was reasonably necessary under the circumstances. That is, the force used to repel the attack must be proportional.

In the present case, there was no unlawful attack when deceased was assaulted as he was running away. Deceased attack by then was complete and there was no need for accused to use force to repel it. Accused No.1 was no more in imminent danger. The attack was no more imminently posing danger to his life or bodily integrity when he stabbed deceased. Accused No.1 said the unlawful attack was an assault on the head with a stone. However, in retaliation, Accused No.1 used a knife and Accused No.2 a battle stick. This in my view is not proportional as submitted by Defence Counsel.

### **VERDICT:**

[32] For all the foregoing reasons, I find that the crown has successfully discharged its onus of proving its case of murder against these accused beyond a reasonable



doubt. Now the last issue to decide is whether extenuating circumstances exist. It is settled law that the test is subjective of accused's state of mind<sup>6</sup> and the onus rest on the accused person<sup>7</sup>.

The court is also at liberty to consider all evidence before it in order to determine whether such factors exist. Vessels JA<sup>8</sup> in summarizing this said;

*“The court is entitled and bound to have regard to the evidence as a whole in order to determine whether or not an accused has discharged the onus resting upon him on the issue of extenuating circumstances.”*

I have considered Defence Counsel's submissions on this issue, which the Crown did not contest. I have also considered Accused No.1's evidence that this incident happened six (6) years ago and it does not auger well with him, as it was not intentional. He asked the court to warn him that this should not happen again. He denied that despite what is recorded on postmortem report, he had no intention to kill the deceased. The court accepts that the proper finding is that extenuating circumstances exist herein, namely that there is no evidence that accused premeditated this murder.

My assessors agree.

#### **SENTENCE:**

[33] The court now comes to the stage of passing an appropriate and just sentence. The purpose, for which the sentence is intended to serve, whether retributive, deterrent, preventative or rehabilitative, must be informed by proper consideration of equally important factors, viz, the seriousness of the crime, the interests of the community and the interests of the accused person. **(S v Zinn 1969 (2) SA 537**

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<sup>6</sup> Ramone v R 1967-70 LLR 31 @37 (CA)

<sup>7</sup> Rex v Malefetsane Potlaki 1980 (1) LLR

<sup>8</sup> S v Mkhize 1979 (1) SA 461 (A) @ 463

(A)). At this stage, the court is enjoined to strike a proper balance between the triad of factors, viz the nature of the offence, the interests of the accused and the interests of society.

In the light of the above, I have taken into consideration that accused are both first offenders with no record of previous convictions and are breadwinners in their families. I have taken into account the defence submission that the fact that accused have been cooperative since, by presenting themselves to Police when requested to do so. Accused No.1 also voluntarily made a confession before a magistrate as a sign of remorse. Accused admitted the statements without hiding behind technicalities. In **S v Matyityi**<sup>9</sup>, the court stated that

*“In order for remorse to be a valid consideration, the pertinence must be sincere, and the accused must take the court fully to his confidence. It is to the surrounding actions of the accused rather than what he says in court that one should rather look”.*

I have taken into account the defence submission that they concede that accused had a common purpose and it was natural for Accused No.2 to assist when his companion was attacked. Accused No.2's acts did not lead to loss of life. Accused are before court to clear their conscience and hoping for court's leniency. This incident has been hanging on accused's conscience for almost six (6) years and that is through no fault on their part that it was not heard and disposed of on time. He suggested a restorative justice route of 'raising a head'.

I have also considered that deceased in this case met his death as a result of excessive loss of blood due to two stab wounds. The stabbing that was uncalled for as the evidence proved that deceased was stabbed when he was running away, and he was unarmed. The society's interest is that the perpetrators of this serious crime

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<sup>9</sup> 2011 SACR 40 (SCA)

must get commensurate punishment for it, given the wanton nature that lives are taken in this country. Therefore, deterrence and retribution take up significance over rehabilitation of the offender in this regard. The Crown submitted that deceased was a married man with two (2) children. He was the only breadwinner and now his children are suffering, and he is no more due to a killing that could have been avoided.

I concede that all these factors have to be properly considered and balanced with the interest of community that perpetrators must receive commensurate punishment. On restorative justice route, the court is of the view that accused had ample time to offer it since the incident took place, not at the last stage of proceedings.

In the circumstances, accused are sentenced as follows:

Accused No.1, Makatjane Pheli is sentenced to 10 years imprisonment

Accused No.2 Makhotsa Tlokotsi is sentenced to 8 years imprisonment.

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**RANTARA P.  
ACTING JUDGE**

**FOR THE CROWN:   ADV P.K JOALA ASSISTED  
                                  BY ADV. MAKAMANE**

**FOR ACCUSED:       ADV. T. HOEANE**

