

CRI/T//80/2011

IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

In the matter between:-

REX

VS

KOENYAMA KOENYAMA

CORAM : HON. T. MATOOANE, A. J

DATE OF HEARING: 7TH FEBRUARY 2022

JUDGMENT

Neutral Citation:- Rex vs Koenyama Koenyama (CRI/T/0088/2017) LSHC 26

This a case of murder against the **Koenyana Koenyama** for unlawfully and intentionally killing one **Masetotsa Pholo** at a village called Ha Ponoane in the district of Maseru on the 13th day of September 2010.

The first witness for the Crown was one **Phethane, Lepolesa** a co-villager of both the deceased and the accused.

PW1 testified that on the fateful day he was herding cattle in the fields near Ha Ponoane village. **PW1** alleges that in the same area he was with **PW6** one **Ntai Ratebesi** who was also herding his cattle.

PW1 testified that at around 1400hrs to 1500hrs the accused came to the fields to untether his horse which was grazing nearby. The accused then took it to the nearby stream to drink.

The accused came back and tethered his horse to graze and went away.

Prior to the arrival of the accused at the fields, **PW1** saw the deceased passing by heading towards the village of Ha Mothae, he was pushing a wheelbarrow.

He later saw the accused holding a “*lebetlela*” stick running towards the same direction that was taken by the deceased, which was towards the village of Ha Mothae.

Shortly, thereafter the accused came back running towards the direction of Ha Ponoane which is in the opposite direction to Ha Mothae. After the accused has disappeared from his vision, he heard an alarm raised by one '**Mathabang** who told him that **Masetotsa Pholo** was dead. He then went to the scene of crime in the company of one **Tseliso**.

At the scene, they found the body of the deceased which he says was "unidentifiable" because of the severity of the injuries on his face. He only recognized him by his clothes and the wheel-barrow. The deceased was holding a suckle his hand which was covered with blood.

PW2 Monyatsi Teba testified that on the day in question, the accused came to his shop to borrow a "*lebetlela*" stick. He was told by the accused that he needed the stick to attend the initiation school. He gave it to him, and the accused left the shop.

A while later, later he heard a report from the fields, that one **Masetotsa** was dead. He later identified the "*lebetlela*" stick at the Police Post.

The evidence of **PW3** No.9177 Police Constable **Maseela** was admitted by the defence. He testified that he attended the scene of crime, where he found the body of the deceased lying face down with multiple wounds on the head. The deceased was holding a knife and a sickle.

The Post-Mortem report was also admitted by the defence. The report indicated that death was caused by severe head injuries with multiple laceration and skull fracture caused by a blunt instrument.

At the time of his arrest the accused handed over a “*lebetlela*” stick to Detective Police Constable **Maseela** who then filled up the *LMPS 12* form and handed the exhibit to the Clerk of Court. However, the exhibited was not before this Court.

The last witness for the Crown was **Ntai Ratebisi PW6**. He testified that he was herding cattle in the sane area as **PW1**. The accused then approached him and wanted to borrow a “*lebetlela*” stick which he needed to fight one **Masetotsa** (the deceased) because he had insulted him. The witness said he didn’t have a “*lebetlela*” stick. He had a rattern stick which was not suitable for fighting. The accused then left him and went to the village and entered the shop of **PW2 Monyatsi Teba**.

When the accused came back from the shop, he was in possession of a “*lebetlela*” stick and he followed the same direction where the deceased had headed earlier which is the direction of Ha Mothae. He was able to see the accused until he reached deceased who was cutting grass some distance away.

The accused then attacked the deceased and a fight ensued. During the fight the deceased and the accused disappeared from his sight and he could not see the rest of the fight. Later he heard the alarm which was raised by one ‘**Mathabang** who

came from the direction of the fight. He then saw rushing **PW1** to the scene. **PW1** later reported to him that **Masetotsa** dead.

And the case of the Crown was closed.

The accused gave evidence on his behalf.

The accused testified that on the 13th September 2010 in the morning he was herding cattle near the village of Ha Mothae. There came a group of villagers who were going to cut wood from a nearby forest. The deceased was one of the group. The deceased then accosted him and insulted him and threatened to stab him with an unclaspd knife. The other villagers intervened and stopped the deceased. The cause of their quarrel was that the accused had been grazing his cattle in the fields of deceased relatives

Later in the afternoon he went to the fields area where he saw **PW1**'s cattle, but he did not see both **PW1** and **PW6**. He the untethered his horse and moved it to a different area to graze. He then went to the place where he had left his cattle. The cattle were grazing near the forest which was a short distance from Mothae village.

As he was sitting down near his cattle, the deceased came to him and attacked him. The deceased was holding a panga, a knife and a suckle. He struck the accused three times with the panga. He hit him on the back, on the head and lastly on his

hand. During the said attack the “*lebetlela*” stick he was carrying broke as he was warding and blocking blows from the deceased’s panga.

He then hit the deceased twice with the said “*lebetlela*” stick. The deceased staggered. He then ran away from the scene. He ran to the mountain area above the Ponoane village.

The accused confirmed that the weapon used was the stick that he borrowed from PW2 on the 12th September 2010. He was adamant that he borrowed it on the 13th.

The facts which are common cause between the two versions are the following. The accused did borrow a stick from **PW2** and the said stick was the weapon used to fight the deceased. The said stick was later handed to the police.

Secondly: The accused and the crown witness agree that there was a fight between the accused and the deceased on that day. Thirdly that the deceased died shortly after the fight. Fourthly that fight occurred between the villages of Ha Ponoane and Ha Mothae villages near the forest.

The difference between the two versions is whether the accused was the aggressor in the fight or vice versa. The other disagreement is whether the deceased was in possession a panga or not. And whether he used it to fight the accused.

The following factors are important namely:-

The accused failed to show why the crown witnesses who were his fellow villagers could deliberately tell lies about him.

The panga was not found at the scene. No other witness ever saw the panga except the accused himself.

The accused testified that he did not go to the doctor to get be examined or to get his wounds attended. He said he did not do so because he was tortured by the police while he was in custody. This explanation is not convincing.

It is obvious that these injuries were fabricated because the accused would not be admitted by the correction service personnel if he had obvious injuries.

Another surprising factor is the evidence of **PW6**, who testified that the accused wanted to borrow a stick which he needed to fight the deceased who had insulted him. In his testimony the accused confirmed the fact that he was indeed insulted by the deceased. One wonders how would **PW6** know about this fact unless he was told by the accused himself.

Lastly, the accused testified that he only struck two blows on the deceased head before the deceased staggered. However, this is contrary to the evidence of **PW1**, the Post-Mortem report and **PW3**, the police officer who attended the scene. It should be noted that the Post-Mortem report and the evidence of Police Constable **Maseela** were admitted by the defence. The evidence showed that there were multiple injuries on the deceased head and face.

Thus the Court comes to the inevitable conclusion that the accused story is highly improbable and lacking in truth. It is accordingly rejected.

The defence of self defence therefore fails and the accused is found guilty as charged

The Court then made an inquiry into the extenuating circumstances.

The following factors were considered:-

That the accused was only 19 years at the time he committed the crime.

- He is illiterate
- The accused was aggrieved by being insulted by the deceased.
- The accused is a first offender.

The Court finds that they are extenuating circumstances. Mitigation factors for purpose of sentence.

That the accused was a first offender.

He is married and has wife and two minor children. He is the sole breadwinner of his family. The accused is employed as a casual labourer in Republic of South Africa and he will definitely lose his job. The case has been hovering over his head for a period of nearly twelve years.

However, I have considered the fact that the accused attack on the deceased was callous vicious and brutal. It is obvious that he belabored the deceased mercilessly.

The accused is sentenced to 8 years imprisonment without an option of a fine

My assessors agree.

T MATOOANE

ACTING JUDGE

For Crown : Mr Thaba

For Defence : Mr K.D. Mabulu