IN THE COURT OF APPEAL OF LESOTHO

HELD AT MASERU

C OF A (CRI) No. 2/2015

CRI/T/49/2010

In the matter between:-

TLHALEFO SARELE **APPELLANT**

and

REX **RESPONDENT**

CORAM: CHINHENGO AJA
PEETE AJA
MOKHESI AJA

HEARD: 30 November 2018
DELIVERED: 7 November 2018

SUMMARY

Appeal against conviction and sentence for murder - Record of proceedings incomplete- court's approach discussed;

Main challenge against conviction that the accused/appellant's story reasonably possibly true – on evidence court a quo's determination and conviction confirmed;

Sentence - whether court considered existence of extenuating circumstances – scope discussed; whether court considered all relevant mitigating factors – sentence reduced on finding relevant mitigating factors not adequately taken into account

JUDGMENT

CHINHENGO AJA:-

Introduction

1. The appellant, Tlhalefo Sarele was charged in the High Court with murder in that on 1 December 2007 at or near Mosalemane, Tabola Village in the District of Berea he unlawfully and intentionally killed Matela Letsielo (" the deceased"). He pleaded not guilty to the charge but was convicted and sentenced to 25 years imprisonment. He appealed to this Court against both conviction and sentence.

2. There are a number of things that are seriously disconcerting in this appeal. The record of proceedings before us was prepared by a private individual whose identity was not disclosed to the Court but who was paid by counsel for the defence out of his own pocket. The record

is incomplete. There is no record at all of the proceedings on sentence and on an inspection *in loco* conducted by the court.

3. The Court of Appeal Rules, 2006 (Legal Notice No. 182 of 2006) contain elaborate rules on preparation of records. See also Practice Note No 9 of 2000 (LAC 2000-2004) 221. Rule 5 requires, *inter alia*, that a record of proceedings shall be lodged within three months after a notice of appeal has been filed. Rule 7(1) provides that -

> *The appellant or his attorney in civil matters and the Director of Public Prosecutions' office in criminal matters shall be responsible for the preparation of court records and shall be liable to an adverse order of costs, including an order de bonis propriis, in the event of dereliction of this duty.*

4. It is disheartening for this Court to have to observe for the umpteenth time that the DPP's office is in dereliction of duty. In *Seate v R*[1] RAMODIBEDI JA (as he then was) said –

> *Regrettably the problem of sloppy records is one that has engaged the attention of this court for a long time, but seemingly to no avail. Thus for example in Motlatsi v Director of Public Prosecutions LAC (1995-99) 652; 1999-2000 LLR-LB 23 (CA) my Brother Gauntlett had occasion to sound a strong warning against presentation of shabby and/or incomplete records to this court. He duly drew the attention of practitioners to the above mentioned Court Notice No. 5 of 1998 and warned that, if it is not complied with, "adverse consequences (including personal costs orders against practitioners) must inevitably*

[1] LAC (2000-2004) 215 at C-E

> *follow in appropriate instances. I respectfully agree. The same warning was echoed by my colleague L. van den Heever in R v Tsosane LAC (1995-99) 635; 1999-2000 LLB-LB 78 (CA).*
>
> *The need for complete and proper records cannot be too strongly emphasised as the fate of litigation may very often turn on the quality of the record alone, which is obviously a far cry from true justice. I go further and warn that presentation of shabby and incomplete records does not only reflect badly on the parties concerned but is an insult to the court itself.*

5. When this appeal was called on the scheduled day of hearing on 19 November 2018, the parties were not ready to proceed: the record was not complete and the respondent's heads of argument were yet to be filed. When we asked the DPP's representative as to why the record was not prepared in terms of the Rules of Court, he gave a detailed explanation which not only outlines the role of the DPP's office but confirms that the procedures for recording evidence and transcribing it set out in Rule 60 as read with Rule 41(17) to (20) of the High Court Rules are, regrettably, not observed at all. This Court can do no more than again call upon the DPP and the Registrar's offices to live up to their obligations and ensure that records in criminal matters are prepared strictly in accordance with Rule 5 of the Court of Appeal Rules. The President of this Court made this call at the opening of the Session of the Court on 19 November 2018 and warned that the Court will in future take measures, including the drastic ones and, where appropriate, even acquit accused persons who have noted appeals but cannot prosecute them for the simple reason

that the Registrar and the DPP's offices have not prepared the record of proceedings. To RAMODIBEDI JA's words above, I may add that the presentation of incomplete records not only reflects badly on the parties concerned and constitutes an insult to the court but it also reflects extremely badly on the administration of justice in this country. I also echo the statement in *Machaba & Another v S*[2] that –

> *On appeal the record of the proceedings in the trial court is of cardinal importance. After all, that record forms the whole basis of the hearing by the Court of appeal. If the record is inadequate for a proper consideration of the appeal, it will, as a rule, lead to the conviction and sentence being set aside. However the requirement is that the record must be adequate for proper consideration of the appeal; not that it must be a perfect recorded of everything that was said at the trial.*

6. If it may help, I venture to suggest that the President of the Court of Appeal, the Chief Justice and the Registrar should now take a very direct interest in ensuring that the High Court and its staff, to whom all litigants must look for the due fulfilment of this very important task, perform their work diligently in this regard. To leave the task in the hands of the parties or to allow or countenance the preparation of court records by third parties as happened in this case is, in my view, undesirable for reasons which are fairly obvious.

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[2] [2015]2 ALL SA 552 (SCA)

7. We read the record of proceedings of the trial court, albeit prepared by an unknown third party, and after hearing detailed submissions in regard thereto, we are satisfied that, with the incomplete record of the trial and the judgment of the court *a quo*, we are in a reasonably good position to do justice in the circumstances presented to us.

Grounds of appeal

8. The appellant approached this Court on eight grounds of appeal, one of which was abandoned at the hearing. Only two of the grounds, 1 and 7, are against conviction:

> *The learned judge a quo erred and misdirected herself –*
>
> *1. …by repeatedly and unjustifiably descending into the arena as an active participant for far too often during the course of the trial thus rendering appellant's trial unfair which resulted in a mistrial/miscarriage of justice.*
>
> *7. The court a quo erred and misdirected itself by not finding that the appellant's explanation was reasonably possibly true in the peculiar circumstances of the case.*

9. The grounds of appeal against sentence are that the court *a quo* erred and misdirected itself-

> *2. … by failing to take into account a period of two years seven months and eight days that the appellant spent in prison as an awaiting trial prisoner when sentencing the appellant.*
>
> *3. … by concluding that appellant had assaulted and committed several crimes against everybody who was present*

at the feast which conclusion had a bearing on a sentence of 25 years, whilst in actual fact appellant had not been charged with assault.

5. … by failing to hold whether or not extenuating circumstances were present despite evidence having been brought in support of same.

6. … when sentencing appellant to 25 years which is too harsh and grossly excessive especially when no exceptional circumstances were said to exist warranting such a sentence.

8. … when sentencing the appellant by considering irrelevant considerations and disregarding relevant ones.

Facts proved by evidence

10. The proved facts of this case are that the deceased and his brother and friends attended a feast of Mathuela, (to which I shall refer simply as "the feast") on the night of 1 December 2007 at the residence of one, Malineo. Around 11:00 pm, the appellant arrived at Malineo's residence and immediately started to sing a song known as *lengae.* It is commonly accepted that it is unbecoming for anyone to sing such a song at such feast. The deceased, by way of a reprimand, protested at the singing of the song. The appellant was not amused and manhandled the deceased. He held the deceased's apparel by the neck and produced a knife, unclasped, and threatened to stab the deceased. Those in the company of the deceased where upset with the appellant's conduct, in particular the deceased's brother, Kaiser, who gave evidence as PW2. He asked the appellant why he was manhandling the deceased whereupon the

appellant challenged him to a fight. Kaiser walked away from the scene to look for a weapon with which to meet the appellant's challenge. The appellant then left the scene and apparently returned to his father's residence, where he lived.

11. The evidence shows that the appellant was at the feast for hardly 10 minutes. The crown witnesses put it at about 5 minutes. The appellant said the altercation "lasted about 3 to 4 minutes." This for a man who had come all the way from his home, late in the night, to join the festivities! The appellant said that the reason he left for his home was that he felt tired and wanted to sleep. That cannot be true. The reason he left was the altercation that he had had with the other patrons soon after his arrival at Malineo's place.

12. The appellant returned to Malineo's place on horseback. The Crown witness said that he returned within about an hour and one half or less. PW1 said he returned after an hour and found them "at the same place where he left us"[3], i.e. with Kaiser and the deceased. The appellant said it was much longer, two to three hours or so. Under cross-examination when it was put to PW1 that the appellant returned at around 2: am he said that he ultimately returned after 3: am.[4] PW 2 said that the

[3] see p. 26 of the record
[4] p. 39 of record

appellant "took quite some time but not very long" before he returned – "20 to 30 minutes".[5] The judge determined that the appellant returned after "an hour or so".

13. The persons here were at a joyous occasion. None of them would have kept the time when events happen. After the first altercation followed by the appellant's disappearance, again none would have kept the exact time when the appellant returned. The finding by the judge that the appellant was away for an hour or so is, on all the evidence correct.

14. It was the evidence of Kaiser (PW2) that upon his return the appellant, who was on horseback, saw the deceased, looked at him in the face, pointed the gun at him and shot him at point blank range. The deceased staggered, fell to the ground inside the tent and died shortly thereafter. The medical report as to the cause of death, admitted into evidence by consent, attributes the death to a gunshot wound, with massive bleeding in the chest. This is consistent with PW1's evidence that he saw one injury on the deceased's chest.[6] The fourth ground of appeal, abandoned by the appellant's counsel at the hearing, was some lame attempt to criticise the medical report on the grounds that while it stated that the deceased

[5] p 58 of record
[6] p. 29 of record

died of “gunshot injury to the chest with massive haemothorax in the right”, the evidence of the witnesses was that he died of “gunshot wounds”, as if to say there is a distinction between the two. Counsel was wise to abandon that ground of appeal.

15. The appellant admitted that the deceased died from gunshot injury. His evidence however was that when he he went back home to sleep after the first scuffle with the deceased at Malineo’s place, his father woke him up between 1:00 and 2:00 am and sent him on an errand to Sebetia. He thus woke up and decided to ride on a horse to Sebetia. He armed himself with his father’s gun, a 7.65 Pedro Barreta Pistol. The route to Sebetia took him past Malineo’s place. He was “ambushed” or “waylaid” by the deceased who then accosted him whilst he was on horseback. During the course of that encounter the deceased grabbed the pistol by its barrel and they struggled for possession of the gun. It was in the holster and held by a clip to the belt on his waist. It was during the struggle for the gun that it accidentally went off fatally injuring the deceased. Immediately upon this happening he run off on his horse because, as he said, he was scared and intended to tell his father about what had happened. His evidence as recorded goes like this:

I rode to Sebetia and on my way the only road thereto passes next to where a feast of Mathuoela was held.
…

And I didn't even think that there were still people at the feast it be Mathuoela or any other people.
…

I left and as I was just about to go past that place and when I was next to that place, I met with Mzilikazi and Matela (the deceased).
…

As I met them the deceased tried to pull me down, fell me from the horse. …

They (Rantsatsi and Kaiser) were some distance backwards away from the homestead. (Estimated to be 6 to 12 paces away.)
…

When he (deceased) held me we had not had a conversation at all even when he had already caught hold of me that is as I was passing. …

As he so held me he held me together with the firearm that was on my waist.
…

And I also tried to hold it fast against my waist clutching on the top part of it so that he should not disarm me of that firearm.
…

And we struggled over the firearm until it went off.
…

And it shot once and I immediately returned there and then, no more going to Sebetia where I had been sent after it had fired to report to my father as to what had happened.[7]

[7] See record at pp 103-104

16. The gaps in the above quotation can be filled in with the word “Yes”, which the judge uttered after every sentence by the appellant.

17. The picture painted by the appellant is that the road to Sebetia passed by Malineo’s place. That was contradicted by that of PW1 who said that the road to Sebetia “is some distance away from the place where we were.” PW2 also said that the road “is at a distance from Malineo’s place” and that the appellant actually ‘went off that road” to get to Malineo’s place. This point is settled by the observations during the inspection in loco. In her judgment at p 190 of the record the judge stated:

> “At the inspection in loco and according to the evidence of the witnesses, the way or the road to Sebetia passes at some distance from Mrs Malineo’s homestead. Matela was shot at Mrs Mallineo’s premises not on the public road to Sebetia that passes near that homestead. According to the eye witnesses PW1 and 2, Matela was shot a little distance from the tent and fell by the entrance where his brother was leaning against the tent.”

18. The evidence clearly established that, even assuming that the appellant was on an errand to Sebetia, which is

not conclusively proved by the evidence, he in fact diverted from his route and returned to Malineo's place. The reason for doing so is, in all probability, to confront the deceased for the second time, now that he was armed with a pistol. The learned judge described very well what happened leading to the shooting of the deceased:

> *On arrival at Mrs Malineo's place the accused went straight to where he had left Matela, and as fate would have it he was still there almost at the same spot where he left him. He found him right there. The facts prove that the accused had not been away long enough to find the scene changed. To ensure and ascertain that he is the correct target he looked into the face of Matela and ascertained that it was him, he shot him twice or three times using a gun shows that the accused intended to kill Matela …. He galloped away by or on a horseback.*[8]

19. I find that these findings of fact are well supported by the evidence. The learned judge cannot be faulted for that finding. In her judgment she kept on returning to the first altercation and trying to connect it to the fatal shooting incident but did not clearly express herself that the first altercation and the fatal incident were one transaction. The evidence properly analysed establishes that when the appellant was involved in the first altercation with the deceased, and the deceased's brother seemingly accepted his challenge to a fight, the appellant returned to his home, armed himself with a gun and returned to finish off the earlier encounter. He returned on horseback and shot the

[8] at p 196 of record

deceased in cold blood. The judge was, in my view, entitled, on the evidence before her to reject the circumlocution of the appellant in regard to the fatal incident.

Appeal against conviction

20. Counsel for the appellant did not seriously pursue the first ground of appeal against conviction although he addressed it at some length in the written submissions. Advocate *Ranthithi* correctly submitted that although the judge interjected or interfered "here and there" (I would say she interrupted fairly frequently and questioned the appellant at some great length), she did not do so unfairly. Counsel for the appellant did not at any stage during the trial protest, however mildly, that the judge was inappropriately interjecting or interfering with the flow of the evidence. Her approach was the same whether it was Crown witnesses or defence witnesses. In my view there is no substance to the accusation that the judge unwarrantedly descended into the arena to the prejudice of the appellant during the trial. Counsel referred to *S v May*[9], and I agree with the judge's observation in that case, that:

> *Judicial officers are not umpires. Their role is to ensure that the parties' cases are presented fully and fairly, and that the truth is established. They are not required to be passive observers of*

[9] 2005 (2) SACR 331(SCA)

> *a trial; they are required to ensure fairness and justice, and if that requires intervention then it is fully justified.*

21. In a criminal trial setting this is an even more apposite observation. This disposes of the first ground of appeal.

22. The second ground of appeal against conviction requires closer consideration. It was contended for the appellant that the court erred in not finding that the appellant's explanation was reasonably possibly true. The principles of law on this are well known and established. RAMODIBEDI J (as he then was) set out the law in *Lepogo Seoehla Molapo v Director of Public Prosecutions*[10]:

> *Now the law as I have always perceived it to be is not whether the accused's explanation is true but whether it may possibly reasonably be true. That is the real test. Conversely the test is not whether the Court subjectively disbelieves the accused. Indeed the Court does not even have to reject the case for the crown in order to acquit the accused. That remains so even where the case for the Crown is overwhelming against the accused. The Court must still determine whether the defence case is so demonstrably false or inherently so improbable as to be rejected as false. It is also important to bear in mind that in embarking upon this exercise it is a wrong approach to reject the accused's explanation merely because the Court is satisfied as to the reliability of the witnesses for the Crown. It is only after the merits and demerits of the two sides have been analysed and weighed together with the probabilities of the case that a court would be justified in reaching a conclusion one way or the other regarding the question whether the Crown has proved its case beyond a reasonable doubt.*

[10] (1997-1998) LLR 197 at 237

23. The learned judge then referred with approval to a many cases, among them the well-known case of *R v Difford*[11]. The difficulty in cases of this kind is not the law as I have said but it is always the application of the law to the evidence and the facts established thereby.

24. Counsel's submissions are that the appellant's version is reasonably possibly true. The appellant said that his father woke him up to convey a message and to proceed to the cattle post and hence he went on horseback and took his father's firearm. He met the deceased and Mzilikazi on his way to Sebetia. The deceased waylaid him. That is how the struggle for the firearm ensued resulting in the accidental and fatal shooting of the deceased. He finds fault with the fact that Mzilikazi, who, on the evidence, was with the deceased, was not called to testify. The reliance on the evidence of PW1, who was not with the deceased at the very spot where the shooting happened, was misplaced. In addition PW1's evidence was contradicted by that of PW2 who said that the deceased and PW1 had left the tent and were a short distance away. Counsel urged upon us the conclusion that the appellant's version that he and the deceased struggled for possession of the gun and in the melee the gun went off accidentally and killed the deceased, should be accepted not as true but as reasonably

[11] 1937 AD 370 at 373

possibly true, in the circumstances. I am not at all persuaded by this submission.

25. The evidence before the court *a quo* is not in sync with this submission. The appellant did not place evidence to backup his statement that his father sent him to Sebetia, nor did he give any information as to the nature of the message he was to convey or the purpose of going to the cattle post, considering that the errand was undertaken in the early hours of the morning. Had he enlightened the Court on these issues his general credibility would have been enhanced.

26. The appellant said that he took his father's firearm. The ballistic evidence to the effect that the spent cartridge recovered from the scene did not match the gun that was produced in court, does not support this. The court does not seem to have taken this discrepancy as important yet in goes to show that the appellant must have hidden the actual gun that he used.

27. The distance from the tent to the spot where the shooting took place was no more that 12 paces away. There was moonlight, the court was told, and every one could see everyone else at that distance. The judge was correct that the shooting occurred at the same place that the appellant

had left the deceased and his friends when he went home after the first altercation. Appellant's counsel submitted that the evidence that the deceased had left the tent and was some 12 paces away from it when the appellant arrived, supports the appellant's version and so "it is therefore reasonably possibly true that the deceased may have attacked the appellant while on horseback given the encounter they had had at the said feast." The evidence shows to the contrary: the attack did not occur by the roadside but some distance away from it, at Molineo's place.

28. The calling of PW1 and the failure to call Mzilikazi was not critical at all. PW1 testified to what he personally witnessed and other evidence and the probabilities support that testimony.

29. The evidence of the inspection in loco contradicts the appellant's evidence that the deceased waylaid him. The judge made it very clear that there it is some considerable distance from the road to Sebetia and to Molineo's place. The story that the deceased went to the road and waited for the appellant to arrive and then assaulted or otherwise confronted him cannot stand scrutiny. It would have taken the deceased to know that the appellant would return to do that. There is no evidence to that effect.

30. The critical event was the actual shooting. The evidence accepted by the court was that the appellant shot the deceased without any provocation. It totally rejected the appellant's evidence that there was any struggle between the two. I am satisfied that the evidence proved beyond a reasonable doubt that the appellant returned to Molineo's place with a fixed intention to kill the deceased and that he accomplished his purpose. There is no basis for thinking that there is a reasonable possibility that the appellant's story may be "substantially true", to borrow the words from *R v M*[12]. The second ground of appeal against conviction therefore fails.

Appeal against

31. In the matter of sentence this court is hamstrung by the absence of a record as to what happened at this stage of the proceedings. We at least have the judgment of the court and a little information as to what the judge said immediately after the verdict was pronounced.

32. The contention that the judge did not consider extenuating circumstances is misconceived. One only has to ask the question: How did the judge not impose the death sentence if she did not consider the existence or

[12] 1946 AD 1023 at 1027

otherwise of extenuating circumstances? Extenuating circumstances are those circumstances that serve to reduce the moral blameworthiness of the offender. If extenuating circumstances are found to exist, then the death sentence will not be imposed. In *Mphasa v R*[13] the court said:

> *In most modern, enlightened societies the death sentence is no longer countenanced as an acceptable form of punishment. In Lesotho, it still exists as a competent punishment, compulsory in the case of murder without extenuating circumstances and discretionary in instances of murder with extenuating circumstances.*

33. In *R v Moorosi*[14] this Court substituted a verdict of murder where the court below had convicted the accused of culpable homicide. Having done so the court said:

> *"This means that the question of extenuating circumstances must be considered. This does not call for detailed discussion because the Crown conceded such circumstances did exist."*

34. Section 296(1) of the Criminal Procedure and Evidence Act 1981, provides for the death sentence for murder but in terms of the proviso thereto -

> *"where a Court on convicting a person of murder is of the opinion that there are extenuating circumstances, the Court may impose any sentence other than the death sentence."*

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[13] LAC (2000-2004) 788 at 794 B-C
[14] LAC (2000-2004) 817 at 820 H

35. I have referred to the two cases and the Act to show that on a conviction for murder the judge can impose any other sentence other than death upon a finding that extenuating circumstances exist. This is the only explanation there is for the judge in the court *a quo* for having imposed the sentence of 25 years imprisonment. Without a finding that extenuating circumstances existed, she would have been constrained to impose the capital punishment. That she had in mind the consideration of extenuating circumstances appears in the record of proceedings at p. 197 where she asked counsel if they were "ready to address the court in extenuation….". On the face of the incomplete record and the position of the law, I am satisfied that the judge considered and held that extenuating circumstances existed, hence the sentence other than that of death.

36. The determination of an appropriate sentence is a matter in the discretion of the trial court provided that discretion is exercised judicially. An appellate court will not interfere with the exercise of that discretion unless there is a misdirection or a startling disparity resulting in a miscarriage of justice – *Tau Lefu v Rex*[15]. Appellant's counsel makes the allegation that whilst it is accepted that evidence on mitigation is missing from the record, the

[15] C of A (CRI) No. 6 of 2011

judge ignored evidence placed before her in that regard. The complaint is also made that the judge did not take into account the relative youth and immaturity of the appellant at the time of the commission of the offence. In addition the court failed to take into account a period of two years seven months and eight days that the appellant spent in custody awaiting judgment and sentence.

37. In the absence of the record of proceedings and in light of the fact that this Court cannot establish exactly what transpired at the sentencing stage, I consider that this Court is at large to reconsider the matter of sentence and should be inclined to lean in favour of the appellant who has undoubtedly been prejudiced by the absence of a complete record.

38. There are a number of factors that we consider are appropriate to take into account in assessing an appropriate sentence. The judge said, at least twice in her judgment that the appellant had committed an assault upon "those who also felt an infliction of fear in their minds that they were likely or they would indirectly suffer infliction of violence at the scene", in reference to the appellant's conduct during the first altercation. She emphasised the point several times that the appellant had committed "two different and separate offences." The

appellant was not charged with assault and the assault on the deceased during the first encounter is, in my view, a part of one conduct or transaction, which ultimately resulted in the fatal shooting. It seems to me that the judge's treatment of the first altercation as an offence of assault against many people at the feast influenced her approach on sentence.

39. The appellant was 18 years old when he committed the offence in 2007. At trial he was 26 years old. It does not appear to me that sufficient account was taken of this factor. At age eighteen the appellant was not only a young person but also one liable to become agitated where a more mature person may not. His provocation of a scene immediately upon arrival at the feast and his otherwise unnecessary the subsequent return to Malineo's place, point in the direction that the appellant did not behave in a mature way. This is a factor that can legitimately be taken into account in the matter of sentence.

40. Finally we were informed that the appellant absconded just before the verdict was handed down and was apprehended and then had to await sentence whilst in custody for from March 2013 until November 2015 when he was sentenced, a period of 2 years and 6 months. Crown counsel submitted that the appellant should not be allowed

to benefit from his own unlawful conduct of jumping bail. I am not persuaded. After his arrest the Crown should have immediately brought him to court for sentence. Section 326 (2) of the Criminal Procedure and Evidence Act provides that-

> *"Where a person has been detained as an un-convicted person, the time during which he has been detained shall be included or excluded from the term for which he is ultimately sentenced as the Court of Appeal may determine."*

41. The judgment was pronounced in the absence of the appellant. He was arrested and had to await sentence for an inordinately long period. The Act could not have contemplated that a person may, after conviction remain, in custody for a long time before sentence was passed upon him. It could not have contemplated the unavailability of the trial judge, as happened in this case. The spirit behind s 326(2) is that in sentencing an accused person account should be taken of the period that he spends in custody in order to be dealt with according to law.

42. The factors I have outlined above, in my view show that the sentence of 25 years is, in the circumstances, so sever as to induce a sense of shock and that this Court must interfere with it. The apparent failure by the judge to take into account those factors was a misdirection.

43. In the result –

1. The conviction is confirmed.

2. The sentence is set aside and substituted with the following-

"The accused is sentenced to fifteen years imprisonment, from which shall be deducted a period of 2 years 6 months being the time that he spent in custody awaiting sentence."

_____

CHINHENGO AJA

ACTING JUSTICE OF APPEAL

I agree:

_____

PEETE JA

ACTING JUSTICE OF APPEAL

I agree:

_____

MOKHESI AJA

ACTING JUSTICE OF APPEAL

For Appellant	**:**	Adv M. T. Tlapana
For Respondent	**:**	Adv Ranthithi