

LESOTHO / JUDGMENT

Rex V Molahlehi Mahlalela (CRI/T/0062/2024) [2025] LSHC 16 (6 February 2025) [2025] LSHC 16

COURT

High Court

CASE / FILE NUMBER

CRI/T/0062/2024

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IN THE HIGH COURT OF LESOTHO Held in Maseru In the matter between REX AND CRI/T/0062/2024 CROWN MOLAHLEHI MAHLALELA ACCUSED Neutral Citation: Rex vs. Molahlehi Mahlalela [2025] LSHC 16 CRIM (06th February 2025) CORAM HEARD : : T. J. MOKOKO J 06TH FEBRUARY 2025 DELIVERED : 06TH FEBRUARY 2025 SUMMARY Murder – Accused pleaded guilty to culpable homicide- Crown accepted accused's plea – Application of section 240 (1) (a) of the Criminal Procedure and Evidence Act, 1981-Accused convicted of culpable homicide- Sentence in terms of section 314 (2) of the Criminal Procedure and Evidence Act, 1981. ANNOTATIONS Statutes

1. Criminal Procedure and Evidence Act of 1981
2. Penal Code Act, 2010

JUDGMENT

Introduction

- [1] The accused was charged with contravention of section 40 (1) of the Penal Code Act, 2010 read with section 40 (2) of the Penal Code Act, 2010 (Act). In that upon or about the 7th day of January 2018, and at or near Mosalemane Ha Matsoso in the district of Berea, unlawfully and intentionally killed Lerata Phahla Maepho.
- [2] The accused pleaded guilty to culpable homicide. The crown accepted the accused's plea. The crown applied the provisions of section 240 (1) (a) of the Act. It provides that if a person charged with any offence before any court pleads guilty to that offence or to an offence of which he might be found guilty on that charge, and the prosecutor accepts that plea the court may- if it is the High Court, and the person has pleaded guilty to any to any offence other than murder, bring in a verdict without hearing any evidence. The court then instructed the crown to make a brief outline of facts. Outline of Facts

- [3] The Crown's evidence will demonstrate that on 7th January 2018, the accused visited the residence of an individual named Matsoso, where a traditional feast was taking place. The deceased was among the guests at the feast. Upon entering the house, the deceased began to hurl insults and loudly swore that he would kill someone. Despite his outbursts, no one responded to the deceased's insults or motives.
- [4] One Molato Phahla stated that he knew the deceased's insults were directed at the accused because they were not on good terms due to a shared girlfriend.
- [5] The accused went outside to retrieve the stick he had left there and returned to the house. The deceased was witnessed hitting the ground several times and challenged the accused to a fight. He referred to the accused as "motasallana" The phrase translates literally to mean "emaciated man". The accused approached the deceased and stabbed him twice in the chest, and the deceased fell. Police were called to the scene to collect the deceased. The accused surrendered to the police and handed over the knife. He was charged with murder and detained.
- [6] The post-mortem report shows that the cause of death was hemopneumothorax secondary to assault. The post-mortem report was tendered in marked exhibit A. The knife was tendered in and marked exhibit 1. The defence admitted the outline of facts by the Crown.
- [7] The facts outlined revealed the commission of the offence to which the accused pleaded guilty. Consequently, the Court delivered a verdict of guilty for culpable homicide. The Crown indicated that the accused has no prior convictions. Sentencing [8] In mitigating the sentence, Advocate Ketsi, the defence counsel, argued that the accused pleaded guilty to culpable homicide, effectively saving the court's time. He stated that the accused voluntarily surrendered to the police following the incident, indicating his remorse. Additionally, the accused has compensated the deceased's family by providing M7,000.00 and two head of cattle.
- [9] Advocate Ketsi also pointed out that the accused was provoked by the deceased's constant insults and noted that the accused had been consuming alcoholic beverages at the time of the incident. He mentioned that the accused is a married man with an eight-year-old child. Both the accused and his wife are currently unemployed, and he is illiterate, working as a herd man.
- [10] Adv. Moflikoane, the Crown Counsel, confirmed that the accused did indeed raise the head of the deceased in the evidence presented before the court. Adv. Moflikoane requested that the court impose a sentence as outlined in section 314(2) of the Criminal Procedure and Evidence Act of
1981. She noted that the accused showed remorse by compensating the deceased's wife.
- [11] Culpable homicide is a serious offence because a life has been lost. However, the sentence for culpable homicide should be less severe than the sentence for murder. In passing sentence in casu, I have considered that the accused pleaded guilty to a lesser crime of

culpable homicide. This is a sign that the accused is remorseful of his actions. I have further considered that the accused saved the court's valuable time and scarce resources in pleading guilty. On a fateful day, both the accused and the deceased had been drinking alcohol as they had attended a traditional feast. Consequently, both the accused and the deceased were not in their sober minds. I have considered that the accused voluntarily surrendered to the police after committing this offence, which indicates that he feels remorse for his actions.

[12] The Court also considered that the accused raised the head of the deceased, further reflecting his remorse. The accused is a married man with an eight- year-old child. He is a herd man and is illiterate. In determining an appropriate sentence, the Court acknowledges that the accused was provoked by the deceased's persistent insults directed at him.

[13] Furthermore, the Court has evaluated the totality of the circumstances surrounding the commission of this offence, which occurred in 2018. This matter has loomed over the accused for the past seven years, serving as a punishment. The ongoing nature of this case has affected the accused emotionally and psychologically during this time. I have considered all these personal circumstances when determining the appropriate sentence.

[14] This court has considered that the appropriate sentence in this matter is provided in section 314 (2) of the Criminal Procedure and Evidence Act,

1981. It provides that: "Whenever a person is convicted before the High Court or any subordinate court of any offence other than an offence specified in Schedule III, the court may pass sentence, but order that the operation of the whole or any part thereof be suspended for a period not exceeding 3 years, which period of suspension, in the absence of any order to the contrary, shall be computed in accordance with sub-sections (3) and

(4) respectively, and the order shall be subject to such conditions (whether as to compensation to be made by that person for damage or pecuniary loss good conduct or otherwise) as the court may specify therein. [15] SCHEDULE III provides that offence on conviction whereof the offender cannot be dealt with under section three hundred and fourteen. i. ii. Murder. Robbery. iii. Any conspiracy, incitement or attempt to commit any of the abovementioned offences.

[16] Notably, culpable homicide is not one of the offences listed under SCHEDULE III.

[17] The most appropriate sentence that will serve the interests of justice in this matter is the following. Order

1. The accused is sentenced to eight (8) years imprisonment, suspended for three (3) years on the condition that the accused is not involved in an offence involving violence. My Assessors Agree.

T. J. MOKOKO JUDGE FOR CROWN : ADV. L. MOFILIKOANE FOR ACCUSED : ADV. L. KETSI 7

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