

IN THE HIGH COURT OF SOUTH AFRICA
(ORANGE FREE STATE PROVINCIAL DIVISION)

Case No.: A189/2003

In the appeal between:

BEN MOLIFI TLADI

Appellant

and

THE STATE

Respondent

CORAM:

CILLIé, J *et* EBRAHIM, J

JUDGMENT:

EBRAHIM, J

HEARD ON:

14 AUGUST 2006

DELIVERED ON:

24 AUGUST 2006

[1] The appellant was convicted of murder in the Regional

Court sitting at Welkom on the 1st of October 1999 and sentenced to 15 years imprisonment. He appeals against his conviction and sentence.

[2] The charge against the appellant arose out of an incident at

a tavern at which he, the deceased, and the single State witness, Robert Mohoaladli were present. The appellant at some stage attempted to share in the liquor being consumed by Robert and the deceased but his attempt to do so were resisted. He then left the deceased but later followed him as he was leaving the tavern. The State witness saw him make a movement with his hand towards the deceased's chest after which the deceased was seen holding on to his chest with both his hands. His chest was bleeding. It is not clear on the evidence precisely when the deceased died. A post-mortem examination conducted on his body established that he had died as a result of a stab wound to the heart.

- [3] It was common cause during the trial that the appellant had stabbed the deceased but he said he had done so in self-defence. The learned magistrate, in my view, correctly rejected this version as being not reasonably possibly true on the totality of the evidence and Mr. Pretorius who argued the appeal on the appellant's behalf, wisely did not

press the point of an improper conviction.

[4] I am unable to fault the learned magistrate's approach to the assessment of the single State witness's evidence and that of the appellant and his preference for the State witness's evidence to that of the appellant where it conflicted therewith. The appeal against the conviction must accordingly fail.

[5] Mr. Pretorius was far more convincing in his quest for a lighter sentence to be imposed on the appellant. The main thrust of his submissions in this regard were that this was a "bar brawl" over liquor, there was an absence of premeditation on the part of the appellant and the deceased was stabbed only once. Accordingly he argues a sentence of 15 years imprisonment was excessive and unnecessarily harsh. His plea might have struck a responsive cord had it not been for the "impressive" list of previous convictions owned by the appellant. Whilst it is true that these offences of which the appellant was

previously convicted fell in a different category and was unrelated to the crime of murder, they nevertheless were numerous enough to have caused the appellant to receive a warning that he was in danger of being declared a habitual criminal. This warning was clearly ignored by the appellant when he committed an even more serious offence by taking the deceased's life. In light of this it cannot be said that the sentence of 15 years imprisonment is glaringly inappropriate.

[6] I would accordingly dismiss the appeal and confirm the conviction and sentence.

S EBRAHIM, J

I concur.

C.B. CILLIé, J

On behalf of appellant:	Attorney K. Pretorius Instructed by: Legal Aid Board BLOEMFONTEIN
On behalf of respondent:	Adv. E. van Rensburg Instructed by: Director Public Prosecutions BLOEMFONTEIN

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