



HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION, OSHAKATI

JUDGMENT

Case no: CC13/2010

In the matter between:

**THE STATE**

and

**ALBIUS MOTTO LISELI**

**ACCUSED**

**Neutral citation:** *S v Liseli* (CC13/2010) [2017] NAHCNLD 33 (18 April 2017)

**Coram:** TOMMASI J

**Heard:** 28 February 2017

**Delivered:** 18 April 2017

**Flynote:** Sentence – High Treason – Serious offence which threatens the security, peace and stability of Namibia – Court has to consider the accused; the nature of the offence and the role he played – The court considered the interest of society and its legitimate expectation – Drew from the approach adopted in the “main trial.”

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ORDER

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1. The accused is sentenced to 20 years' imprisonment of which 10 years' imprisonment is suspended for a period of 5 years on condition that the accused is not convicted of the offence of High Treason committed during the period of suspension.

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JUDGEMENT

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TOMMASI J

[1] The accused was convicted of high treason and it is this court's duty to sentence the accused.

[2] The details of the facts which underpin the conviction are contained in the judgment and what follows is a brief synopsis thereof. The accused joined a group of persons at Sachona, Caprivi Region, whose intention was to separate the Caprivi Region which is an integral part of Namibia from the rest of Namibia by violent means. At Sachona and Libulibu the accused was taught to drill and use fire-arms. The court concluded that the State did not prove that the accused performed a leadership role. He fled with other 91 persons to Botswana with the arms and ammunition. In Botswana he spent almost 2 years in Dukwe, a refugee camp.

[3] During 1999 and whilst the accused was still at Dukwe, a group escaped and an attack was launched on strategic places in the district of Katima Mulilo and a number of people were killed in the said attack. No political activity was encouraged at the refugee

camp and there was no evidence adduced that the accused participated in the planning of this attack.

[4] During 2001 the accused returned to Namibia and he joined a group whose aim it was to continue with the secession of the Caprivi Region from the rest of Namibia. This group did not do anything as they were constrained due to a lack of weapons, clothes and food. The accused returned to his village and when called upon to join others to continue with the fight for cession, fled to Zambia where he lived until his arrest in January 2009. The accused voluntarily surrendered himself to the Namibian Authorities.

[5] This court in *State v Malumo*<sup>1</sup> referred to as the “main trial” states the law applicable to sentencing and given the close connection to this case, I shall draw much from the approach adopted by that court. I am however acutely aware of the fact that the accused’s case has its own unique facts and circumstances.

[6] There is no doubt that the offence of High Treason is a very serious offence. Mr Shileka, counsel for the State, called for a harsh deterrent sentence i.e. to send out a clear message that high treason will not be tolerated. He submitted, correctly so, that the accused owed his allegiance to the Republic of Namibia and his conduct together with others compromised the safety, security and stability of the Namibian State and its inhabitants. He submitted further that the accused played an active role in that he had handled arms and ammunition and fled with these arms to Botswana after the members of this group had killed one of their members. He invited the court to emphasize retribution and deterrence. Mr Hengari, counsel for the appellant, argued that the involvement of the accused should be classified amongst those who in *S v Malumo, supra* are described as “tight-lipped”. I disagree. The role which the accused played was more than just being “tight lipped.”

[7] The accused’s involvement at the beginning was more that of a soldier. His passion for the course however slackened toward the end when he chose to flee to Zambia rather than continue his involvement with the aims and objectives of the group who remained. This factor weighs in favour of the accused. This means that the

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<sup>1</sup> An unreported judgment; neutral citation - (CC 32/2001) [2016] NAHCMD 43 (8 December 2015)

accused had a change of heart and this lessens his blameworthiness in the eyes of society. It also sets him apart from others who continued with the aims and objective to violently secede Caprivi from the rest of Namibia. I am mindful though of the fact that the accused knew that there were plans underfoot to continue with the unlawful fight to secede Caprivi from the rest of Namibia, yet he failed to report this to the authorities i;e his tight-lipped approach.

[8] The accused is currently 60 years old. He is the father of four children, 16, 12; 10 and 8 years respectively. Due to his lengthy incarceration none of his children are attending school. He himself attended school up to grade 7 and lived a crime free life. He worked in South Africa in a mine in Natal and was a labourer in the Forestry department in the then SWA Administration. He also worked as a labourer in the Road's Construction Company. Counsel on his behalf informed the court that he deeply regrets the events which led to the crime he has been convicted of. He is now a lay preacher in prison where he has been detained since his arrest on 6 January 2009. He has therefore been in custody for 8 years and 3 months.

[9] Namibia is a multi-party democracy which enjoys high political, economic and social stability. Offences of this nature threaten the every aspect of the security, peace and stability which has been attained. Society has a right to protection against such crimes. It is for this reason that it was agreed that a custodial sentence is the only appropriate sentence.

[10] In determining the appropriate length I am guided by the accepted principals applicable to sentencing. I have taken into consideration the nature of the offence the accused has been convicted of and the role he played in the commission of the offence. I have furthermore considered the accused as an individual, his clean record to date, his personal circumstances, particularly his advanced age; and the length of his incarceration awaiting finalization of the trial. In this regard I agree with the approach adopted by Hoff J, as he then was, in *S v Malumo, supra*. I agree that it is a factor which this court should consider along with all the factors' and furthermore that it is a factor which generally leads to a reduction in the sentence. I have also considered the interest of society and what it may legitimately expect this court to do to protect it from harm. I

furthermore considered the purpose of punishment and the overarching important consideration of mercy.<sup>2</sup> This court is of the considered view that, given the change of heart and the fact that he has led a crime free life, that the accused is capable of reform and should be afforded opportunity to return to society with the proverbial sword of suspension hanging over his head as a personal deterrent. I have already referred to the need to impose a sentence which would serve as a general deterrent.

[11] Having considered and weighed the mitigating factors and the aggravating factors herein I have arrived at the following sentence:

1. The accused is sentenced to 20 years' imprisonment of which 10 years' imprisonment is suspended for a period of 5 years on condition that the accused is not convicted of the offence of High Treason committed during the period of suspension.

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MA Tommasi  
Judge

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<sup>2</sup> *S v Malumo*, paragraph 9 page 11

APPEARANCE

For The State:

Mr R Shileka

Prosecutor General

Office -Oshakati

For The Accused:

Mr U Hengari

Instructed

By Legal Aid