

IN THE HIGH COURT OF SWAZILAND

CRIMINAL TRIAL NO.84/96

In the matter between:

REX

VS

BHEKOKWAKHE BUTHELEZI

ALMON FAKUDZE

CORAM : MATSEBULA J

FOR THE CROWN : MR. D. WACHIRA

FOR THE DEFENCE : MS. L. MATHSE

JUDGMENT

25/02/97

The accused were charged with the crime of murder. When the charge was put to them they pleaded guilty to the charge of culpable homicide. The Crown accepted the plea of guilty and Mrs. Matse informed the court that it was their instructions that they were guilty of a lesser crime. The Crown thereupon outlined the facts leading up to how the deceased met his death.

It appears from the defence that the deceased had arrived at a certain homestead and said he was looking for some goats which were missing. When confronted by the owner of the homestead he shone a torch in search for the missing goats according to him. When the light fell on some animals it

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was revealed that these were not goats but sheep. The deceased then disappeared leaving the sheep behind. The owner of the homestead then informed other people of the sheep and ultimately the owner of the sheep appeared and claimed the sheep as his. Somehow the word went around that the deceased had been stealing the animals and either giving them to accused no.1 or he had been given by accused no.1 and accused no.1 then took it upon himself to look for the deceased. This it would appear accused no.1 wanted to disassociate himself from the acts of stealing these animals from the Republic of South Africa. Then the two accused went about in search of the deceased and were told that the deceased was somewhere in the mountains. They were led by accused no.2's child and found the deceased sleeping at the mountains. When they surprised him, he got up and bolted and they gave chase and threw all sorts of missiles at him in endeavour to apprehend him. Ultimately he was subdued and apparently because of the injuries he sustained they then put him in a wheelbarrow and decided to take him to a relative of his. The deceased subsequently died as a result of these assaults.

Clearly from the agreed facts the court is satisfied that there was no intention on the part of the two accused and apparently other people who were also involved to kill the deceased.

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The accused having pleaded guilty to a lesser crime of homicide and the plea having been accepted by the Crown the court has no power to do anything but accept what the Crown has accepted because the Crown in this respect are the litus dominus - they are the master of the prosecutions and the court cannot interfere.

There are decided cases to the effect that even where the court from the agreed facts may be of the opinion that the accused ought to have been convicted of murder; the court cannot do that. Nor can the court take into account factors which have not been brought to its attention like factors which are in the summary of evidence. I'm satisfied, that the factors which have been agreed upon by the two counsel amount to evidence which should have led this court to convict the accused for a lesser crime of culpable homicide and he is accordingly convicted of such.

J. M. Matsebula

JUDGE