

CRIM. CASE NO. 71/98

IN THE MATTER BETWEEN

REX

VS

MANGEDLA ALMON MAMBA

**CORAM
FOR CROWN
FOR DEFENCE**

**S.B. MAPHALALA – J
MRS DLAMINI
MR MAGAGULA**

JUDGEMENT
15/09/98

The accused is charged with the murder of one Mbhambadane Methula. It is alleged by the crown that upon or about the 17th august, 1997 at or near Mgidzangcunu compound, Vuvulane in the Lubombo District the accused did wrongfully, unlawfully and intentionally kill the said Mbhambadane Methula.

The accused pleaded not guilty to the offence and he is represented by Mr. Magagula and the crown is represented by Mrs. Dlamini.

The post-mortem report compiled by Dr. C. Rammohan was entered by consent as exhibit "A". The report state the cause of death as due to "shock and haemorrhage consequent to multiple stab injuries". Page 2 of report graphically described the wounds on the person of the deceased in the following terms:

1. Face: Incised wound 4cm x 1cm obliquely placed in the horizontal plane over the right cheek. Lower inner angle was 3cm away from the angle of the mouth. Upper outer angle showed tailing. The wound was directed from the left to right and below upwards.

2. Right Upper Limb: Incised wound 3cm x 0.5cm, obliquely placed in horizontal plane, over the back of the right forearm in its middle third. Lower outer margin was bevelled. The wound was directed from below upwards (defence wound).

3. Chest: Incised penetrating wound 2cm x 1cm. Obliquely placed in vertical plane over the right side of the front of the chest, 136cm above the undersurface of the right heel 2cm above and to the right of the right nipple in 10 o'clock position. The angles of the wound were clean cut. The upper inner angle is 10cm away from the midline. The lower outer angle is 11cm away from the midline. The margins are clean cut and the upper outer margin is bevelled. The chest wall was penetrating through the 3rd inter costal space. Underneath the upper lobe of the right lung was penetrated through and through. Right side chest cavity contained about 1700cc of blood. Right lung emphysematous and collapsed. The direction of the track of the wound was from front to back, above downwards and from right to left.

4. Incised penetrating wound 6cm x 2.5cm, obliquely placed in vertical plane, over the front of the left side of the chest 133cm above the under surface of the left heel, and 3cm below and inner to the nipple in between 7 o'clock and 9 o'clock positions. The angles of the wound are clean cut. The upper outer angle is 8cm away from the midline and lower inner angle is 5cm away from the midline. The margins are clean cut, and the upper inner margin is bevelled. The chest wall was penetrating through the fourth intercostal space. Underneath the upper lobe of the left lung was penetrated through and through. Pericardium and wall of the left ventricle were cut. The nick on the wall of the left ventricle measured 4cm x 1cm, obliquely placed in vertical plane. Pericardial cavity contained about 200cc of blood. Left side chest cavity contained about 1800cc of blood. Left lung was emphysematous and collapsed. The direction of the track of the wound was from front to back, right to left and above downwards.

5. Neck: Incised wound 2cm x 0.5cm x 1cm obliquely placed in the vertical plane over the left side of the nape of the neck in its lower third. 150cm above the under-surface of the left heel. The upper inner angle is 3cm away from the midline. The lower outer angle is 5cm away from the midline showing tailing. The margins were cut, and the upper outer margin was bevelled. The direction of the wound was above downwards and from right to left.

6. Back: Incised wound 3cm x 0.5cm x 1cm vertically placed over the left side of the back, 147cm above the undersurface of the left heel and 7cm away from the midline.

7. Incised wound 1.5cm x 0.5cm x 1cm vertically placed over the right side of the back 142cm above the undersurface of the right heel and 8cm away from the midline.

8. Incised wound 1.5cm x 0.5cm x 1cm obliquely placed in horizontal plane, over the right side of the back, 150cm above the undersurface of the right heel and 13 cm away

from the midline.

9. Incised penetrating wound 2cm x 1cm obliquely placed in the horizontal plane over the right side of the back of the body, 146cm above the undersurface to the right heel. The angles of the wound are clean cut. The upper outer angle is 12cm away from the midline and the lower inner angle is 5cm away from the midline. The margins of the wound are clean cut, and the upper inner margin is bevelled. The chest wall was penetrated through the 2nd intercoastal space. Underneath the upper lobe of the right lung was penetrated through and through. The direction of the track of the wound was from back to front. Left to right, and from above downwards.

The crown called five witnesses to prove its case. The first crown witness called was PW1 Lomazulu Shabangu who is deceased lover. The accused was once her lover too but at the time of the death of the deceased she had severed her love relationship with the accused. She however, remained in good terms with the accused. On the 17th August 1997, she was sent by the deceased to call the accused to share traditional beer with him (deceased). She obliged and accused came and joined the deceased in drinking the traditional beer. She then left the two men and went to another drinking spot where she also enjoyed home brew. She left the two men at about 4.00pm and they were chatting, drinking and smoking together. She came back from this other spot and she found the deceased sitting in the same position she had left him. She asked him to come and join him to the house and he agreed. The time then was 6.00pm. The deceased did not join her and she did not notice at that stage if the deceased was injured or not. She received information on the next day that deceased had died.

The crown then called PW2 Homu James Nkambule who told the court that on the 17th August 1997 at about 6.00pm he was at Mgidzangcunu compound when he saw the deceased who was injured. On inquiry, the deceased told this witness that he has been stabbed by the accused. This witness then reported the matter to the compound security personnel. He went back with the security officer and found the accused stabbing the deceased. They asked the accused why he was killing the deceased. He said he was killing him because deceased was troubling his wife. The accused then ran away to where he was staying. PW2 then went to the Chief Security Officer to call the police. The police came and they loaded the deceased on the van. The accused emerged there and told the police not to worry, as he is the one who killed the deceased. The witness further told the court that when he saw the accused stabbing the deceased the accused was saying something to the effect that the reason he was stabbing the deceased was because the deceased was troubling his wife (PW1). The deceased was powerless, as he had lost all his strength. He also told the court that after the accused had stabbed the deceased he ran away with the knife. The knife was later found in another place where the accused was drinking.

The crown then called its third witness PW3 Elmon Khoza who told the court that he is a

Security Officer at Mgidzangcunu. He knows both the accused and the deceased. He told the court that PW2 came to him on the day in question with a report that the accused had stabbed the deceased. They then both proceeded to the scene and when they were about to reach the scene the accused came to where the deceased was and stabbed the deceased. He saw the accused stabbing the deceased with a knife. The accused then went back to his own home. The police were then called to the scene. The accused came again when the police were loading the body of the deceased into the police van, the accused told the police that he was the one who killed the deceased.

The crown then called its fourth witness 2277 Detective Sergeant Aaron Methula who told the court that on the 17th August 1997 he received a report that a person had been stabbed to death at Mgidzangcunu in Vuvulane. He together with 3187 Detective Constable M. Dlamini and Constable D. Magagula proceeded to the scene of the crime. He found the deceased lying on the ground covered in a blanket. From there he observed that the deceased was dead. He was lying facing upwards and on the left side of the chest he had a big open wound. Three fresh wounds on the head. Six wounds on the back and one on the chin. 3187 Detective Constable who was a scene of crime officer took photographs of the scene. Whilst at the scene they got information as to who committed the offence. As they were loading the body on to the police van a man emerged and shouted at them. He said "it is me who killed this dog". When this man came to where they were he cautioned him in terms of the Judges Rules. From there they took the suspect who is the accused before court and the body of the deceased. On the 18th August 1997 he proceeded with the accused to the scene of crime where they met Jameson Masango. Masango handed to him as red "okapi" knife which had some bloodstains. He then took the knife as an exhibit in this case. He then charged the accused with the crime of murder. He cautioned the accused for the second time in terms of the Judges Rules and he wrote down what he said in R.S.P. 218. The said statement was entered as exhibit "B" to form part of the crown's evidence. The red "okapi" knife was entered by consent as exhibit "1".

The crown then called its fifth and last witness PW5 3197 Constable Mfanasibili Dlamini who told the court that he was the scene of crime officer that day and he took photographs of the scene. The photographs were entered as exhibit C1, 2, 3, 4, 5, 6, 7, 8, 9 and 10. Whilst at the scene he saw and heard the accused saying "police, police it is me who killed this person take me".

The crown at this stage closed its case. The accused took the witness stand and gave evidence under oath being led by his attorney Mr. Magagula. The accused gave a lengthy account on the sequence of events leading to him stabbing the deceased to death. His evidence is similar to that of PW1 up to the time PW1 left the two men and went to another drinking spot. He told the court when the deceased first invited him for a drink he was reluctant at first the reason being that prior to that day PW1 came to him crying and she said she was assaulted by the deceased. He did not concern himself with this incident as he had severed his relationship with PW1. He told the court that he was afraid to go and drink with the deceased as the deceased had a reputation in the area of stabbing people. However, he later joined the deceased and they drank until it was dark.

The deceased then asked him what he did to his wife whilst he was at work. He asked the deceased if he had called him for that issue whereupon the deceased produced a knife and stabbed him whilst they were seated. However, the deceased did not stab him he got hold of the knife and they fought over the possession of the knife and they fell down until he got the knife and then stabbed the deceased. He does not recall how many times he stabbed him but it was more than once. Deceased then tried to overpower him and again they fought for possession of the knife. The deceased then left him alone and he (accused) dropped down the knife and went to hide in a bushy place. Whilst there he got scared because he thought he had injured him and he went back to him to assist him. He went back and found that he had risen up and was again in possession of the knife. He then asked him why he (deceased) wanted to kill him. The deceased advanced towards him and accused kicked him and he fell down and accused again took possession of the knife and stabbed the deceased again. He stated that he does not know how many times he stabbed the deceased this time. He then dropped down the knife and then went to report himself to the police. He told the police that he was the one who had injured the deceased. He told the court that it was not true what Methula told the court that he shouted and said he was the one who killed the dog because Methula was deceased brother. The accused was cross-examined at great length by the crown and in my view he was not shaken at all and stuck to his story which he gave in-chief.

The court then heard arguments from both the crown and the defence. I have listened to the helpful submission by both counsel and also considered very carefully the evidence adduced before this court in its totality. It is common ground that the accused and the deceased were together on the day in question. It is further common cause that the two were drinking together prior to the stabbing. It is also common cause that the accused stabbed the deceased and went away. It is also not in dispute that the accused came for the second time and stabbed the deceased. Furthermore it is not in dispute that the accused surrendered himself to the police and that the deceased died as a result of the stabbing by the accused. The deceased received multiple injuries as graphically described by the doctor who conducted the post-mortem examination and compiled his findings in exhibit "A" outlined at the opening pages of this judgement.

The crown as represented by Mrs. Dlamini contended that what is in dispute is the circumstances which led to the death of the deceased. The accused has given his side of the story and he is the only person who was there when the stabbing first started. Therefore the court has to listen to his story. Mrs. Dlamini argued that the court will have to have one question; has the accused story been consistent with the proven facts? The crown directed the court to the evidence of PW1 to untangle this mystery who stated before court that when she left the two men they were chatting, drinking and smoking together and their relationship was good between them. Accused when he was cross-examined on how the deceased produced the knife was contradictory. Mrs. Dlamini submitted that she would not have any qualms as to how the fight started but what is troubling her is the accused subsequent action. Having stabbed the deceased several times he left the deceased seated down and came back to the scene. The evidence of PW3 is to the effect that he saw the accused advancing towards the deceased and stabbed him. It was not as if the accused had gone there to check on deceased's condition. Mrs. Dlamini

submitted that PW3's evidence was not challenged and thus remains uncontroverted. PW2 even asked the accused why he was killing the deceased whereupon the accused replied that it was because the deceased was ill-treating his wife (PW1). Mrs. Dlamini submitted further that PW2, PW3 and PW5 all gave similar evidence that accused killed the deceased because he was ill-treating PW1. The accused told the court that the relationship between him, PW2, PW3 and PW5 was a good one. There was no reason for PW2, PW3 and PW5 to lie against the accused.

Mr. Magagula contended that the evidence of PW1 and the accused showed that the deceased was the author of his own death. He drinks with the accused for two hours and later asked the accused a provocative question, which was what was the accused doing with PW1. When accused asked him whether that was the reason he had invited him for a drink the deceased produced a knife and tried to stab the accused. The deceased had a plan to kill the accused. The knife belonged to the deceased and that is not in dispute. The court should also take into consideration the statement which was made by the accused after he was charged for this offence. Mr. Magagula argued that this is a clear case of self-defence.

The evidence of PW2 and PW3 is contradictory. Their evidence should be rejected. The accused himself as a witness was a highly convincing witness. He displayed a high standard of consistency in his testimony.

On review of all these submissions and facts proved it is my considered view that the evidence of the accused has a grain of truth in it. That it was the deceased who initiated the fight. However, it is my view that the accused in the circumstances exceeded the limits of self-defence in that he has caused more harm or injury to the deceased than was justified by the attack and thus acted unlawfully. He then became an attacker himself (see *State vs Hope 1917 N.P.D. 145, 146-147*). The injuries sustained by the deceased are of a gruesome nature as reflected in the medical report. Accused story is that the two parties were fighting for dear life to possess the knife. The deceased was stabbed nine times and the accused emerged unscathed. In this case I am unable to rule that the accused acted with dolus (intention accompanied by awareness of unlawfulness) and would be found guilty of murder. I however find that accused is guilty of culpable homicide, as he ought reasonably to have foreseen that he might exceed the bounds of private defence and that he might kill the aggressor. He was then negligent in respect of the death. (see *State vs Ngomane 1979 (3) S.A. 859 (A) 863-864*). It is without question that the knife which was used by the accused to kill the deceased belonged to the deceased. It cannot by any stretch of the imagination be imputed that the accused pre-planned the killing of the deceased. He was invited by the deceased to come and drink with him. At first he was reluctant to do so knowing the deceased reputation in that area.

In the circumstances of this case I find that the accused is guilty of a lesser offence of culpable homicide.

S. B. MAPHALALA

JUDGE