

CRIMINAL CASE NO. 129/98

In the matter between

REX

VS

**MOSES MDLULI
JUNE MDLULI
ABRAHAM MDLULI**

Coram
For Crown
For Defence

S.B. Maphalala – J
Mr L. Ngarua
Mr. C. Smith

**JUDGEMENT
(06/10/98)**

You are all charged with the crime of murder. It is alleged by the crown that upon or about the 16th February 1998 at or near Zanana Nzima area in the District of Nhlanguano, you did acting with common purpose did intentionally and lawfully killed John Sithole. When the charged was put to you accused no. 1 pleaded not guilty to murder but guilty to assault. Accused no. 2 as well pleaded not guilty to murder but of assault. Accused no. 3 pleaded not guilty to murder but of culpable homicide.

Mr. Smith who represents all the accused confirmed the pleas by the accused persons. The crown accepted the pleas as given by the accused. The crown as represented by Mr. Ngarua the Director of Public Prosecution then read to the crown an agreed statement of facts, which related the sequence of events leading to the death of the deceased and your participation thereon. It is clear from the statement that Mr. Ngarua read to the court that accused no. 1 and 2 only had an intention to assault the deceased not to kill. Accused no. 3 when he was assaulted by the deceased with the bush knife was able over power the deceased and took the bush knife and struck the deceased until he died, which shows as Mr. Ngarua told the court that accused action in the circumstances was negligent.

In the circumstances of the case and in the view of the facts presented before me I find accused no. 1 and 2 guilty of assault and I find accused No. 3 guilty of culpable homicide.

SENTENCE

I have taken your personal circumstances into consideration in arriving at proper sentences in your case. I will start with accused no. 3. Mr. Smith has told the court that accused no. 3 is an immigrant worker working in the Republic of South Africa, and that he has got a wife and three children to support. Also that he is the first offender and that he had shown remorse in this case by going to a magistrate to confess his participation in this crime. During the altercation with the deceased accused no. 3 also sustained some injuries. The accused has been in custody for a period of eight months. However, I must say that the killing of another human being is always a serious matter. It is something that is going to be with you for the rest of your life and it will be punishment in itself. In my considered view that in your case a wholly suspended sentence would be appropriate, taking into consideration that you have been in custody for about eight months and I think in that eight months you might have learned something from that experience.

In the circumstances I sentence you to six years imprisonment, the whole sentence is suspended for a period of three years on condition that you are not convicted of an offence in which violence is an element committed during the period of suspension.

Now I come to accused no. 1 and 2, I am going to deal with them jointly. I was told that accused no. 2 during the time the crime was committed was a scholar doing Form 2. That he was also incarcerated on 17th February 1998 similarly accused no. 1 was also incarcerated that day and that accused no. 1 is a subsistence farmer with a wife and two children to support. I have also taken into consideration what your attorney has told me that you have shown great remorse in what you have done. This act that you have committed is going to be taint in your personalities. People in your community will always point at you as killers. I feel in your situation as well a wholly suspended sentence would be appropriate in view of the fact that already you have served eight months apiece. I will sentence each one of you to twelve months imprisonment wholly suspended for three (3) years on condition that you are convicted of an offence in which violence is an element committed during the period of suspension.

S.B. MAPHALALA
JUDGE