

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

IN THE MATTER BETWEEN: CRIM. CASE NO. 5/97

REX

VS

MANDLA KHUMALO & FIVE OTHERS

CORAM : MATSEBULA J

FOR THE CROWN : MISS S. NDERI

FOR THE ACCUSED : MIL N. J. DLAMINI/K. VILAKATI

JUDGEMENT

04/05/99

The Crown informed the court that it is having problems getting some of the witnesses who were supposed to give evidence. One witness who gave evidence before court has denied that he made the statement he is alleged to have made to the police and the other witnesses according to the Crown have either left Swaziland or are in the Republic of South Africa where some of them are employed in the mines. One woman who would have been also called as a witness either left her husband and got married else. She is also not available.

The Crown in its wisdom decided not to ask for a postponement. In my view, that is a very wise decision because it could mean the accused would still be kept in suspense with this case hanging over their heads after they had pleaded not guilty. Because as of now we do not know when the people employed in the mines in the Republic of South Africa will come back home. It is against the interest of justice to keep the accused waiting until the witnesses decide to come back one day.

The Crown has therefore, correctly in my view decided to abandon prosecution even before closing the case which basically means the Crown could not have closed its case with the evidence of Maziya only. The Sergeant who gave evidence did not take the matter any further in so far as the assault that resulted in the death of the deceased. Certain questions have been put to the witness Maziya and it was established that the person who ultimately caused the death of the deceased was the person who has since died. Infact the witness himself did say that it was Mandla Khumalo who finished the deceased so that he died. The Sergeant gave evidence to the fact that it was infact Mandla Khumalo who would have been a complainant against the deceased involving a case that the witness, Sergeant was investigating, a case of armed robbery.

There was also the evidence of Mr. Maziya who said accused no.6 Themba Simelane was in the process of using a branch which had thorns to assault the deceased with when he intervened and told him not to do that so. Accused no.6 did not assault the deceased any further.

I am pointing out this so that it must be on record what led the Crown to abandon the prosecution not necessarily wanting to give judgement because there can be no judgement without the prosecution leading evidence to prove their case. But for the present proceedings you have pleaded not guilty and the Crown has not been able to call on the

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witnesses to prove the case beyond reasonable ground as it was upon them to do so. The court has therefore no option but to return a verdict of not guilty on the count and accused are acquitted and discharged.

J. M. matsebula

JUDGE