

IN THE HIGH COURT OF SWAZILAND

CRIM. CASE NO. 132/98

In the matter between:

REX

VS

ABRAHAM MAJIKANE

JOHANNES MNCINA

MANDLA LUKHULENI

CORAM : MATSEBUJA J

FOR THE DEFENCE : MR. J. MAVUSO

FOR THE CROWN : MISS S. NDERI

SENTENCE 18/05/99

You have been convicted of a very serious crime. You have deprived certain dependants of their father. Whatever the age of the deceased was, I do not believe, according to the post mortem report he was 34 that it could have been impossible for both accused to apprehend him and take him to the police station. Or at the worsts use the rope, which they ultimately used to tie him and take him to the police station, or leave him there and tell the police that they are unable to bring him to the station. Or report him to the "indvuna" or the chief of the area that there have been given instructions by the police and

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the deceased is refusing to go along with them. I am not saying this to adopt an armchair critic, a person who is wise after the event but I am saying so because a life has been lost. I am now duty bound to pass sentence and take into account the factors that Mr. Mavuso has brought to my attention. Also, I have to take into account the factors which have not been brought to my attention but are there, that is the deceased had certain responsibilities as a human being. I have taken into account that accused no.1 is plus minus 36 years old and that at the time of his arrest he was in gainful employment. And that he showed remorse by immediately reporting to the police station once he learnt that the deceased had died. And that he contacted his father and asked him to make some contribution, according to him, two beasts were sent to the family of the deceased. Those are the factors that I have to take into account in his favour.

I will also have to take into account that he is not a stranger to the world of criminals. He was in 1980 convicted and sentenced for assaulting another person using fists and in 1988 he was also convicted of assault with intent to do grievous bodily harm using his hands. In 1989 he was convicted of housebreaking with intent to steal and theft, two counts. In 1992 he was convicted of contempt of court and in 1993 he was convicted of contravening the provisions of the ARMS AND AMMUNITION ACT and in 1993 he was convicted of theft. I have to take all this into account. I cannot ignore this.

In the case of accused no. 2, I have taken into account that he is a young man of 20 years and that in his absence, and there is a very strong suspicion his homestead or parental homestead was gutted down by fire and one can safely infer that it was because the members of the deceased family are not happy about what happened. I will also take into account that he too made some contributions towards the funeral expenses for the deceased. But a factor that weighs heavily in their favour is the fact that if the police had taken proper appropriate measures this crime would not have been committed but that does not mean if one is sent by police to arrest somebody they can do what they did to the deceased which resulted in the death of the deceased. The court will take all these factors

into account.

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Considering all these factors, the court feels the following sentence will be an appropriate one. Accused no.1 will be sentenced to an imprisonment for seven years. Four of which will be suspended for a period of three years on condition that the accused is not convicted of any crime of which violence is an element and for which he is sentenced to an imprisonment without an option of a fine committed during the period of suspension.

He must understand that if within the three years after he has been discharged from prison, he commits another offence using violence then he will have to serve the four years, which have been suspended.

With accused no.2, I agree with Mr. Mavuso that the court has to differentiate between their sentences. In his case the court will sentence him to an imprisonment for five years, three of which will be suspended for a period of three years on condition that he is not convicted of any crime of which violence is an element and for which he is sentenced to an imprisonment without an option of a fine committed during the period of suspension.

The sentences of both accused will be backdated to the 25th January 1998.

J. M matsebula

JUDGE

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