



## SWAZILAND HIGH COURT

**REX**

*Vs*

**MATSEBULA** Vusumuzi  
*Respondent*

*Cri. Trial No. 93/2002*

Coram

SAPIRE, CJ

For Crown  
For Defence

Ms Lukhele  
Mr. B. Simelane

### **JUDGMENT** (31/07/2002)

It is common cause that the deceased died as a result of a stab wound inflicted by the accused. The question that has to be answered is whether by inflicting the fatal stab wound the accused committed an offence. The accused and the deceased were on good terms after they had some trouble some years previously with members of the accused family and the deceased. There had been violence and counter violence between the two families. On the day in question the parties were together at the homestead of the chief's runner. The deceased had been asked to assist the chief's runner's wife by repairing her takkies. (If there are any who reading this judgment are unfamiliar with the word, it refers to canvas shoes)

The accused came to the house and entered the cooking room where the deceased was. At the same time the Chief's runner left the cooking room and went to sit

outside. He was disturbed by a call from the cooking house that somebody was stabbing somebody else. He came to the room as fast as he could and found the accused and the deceased grabbing each other. The accused had a knife in his hand and the deceased was trying to fend the accused off as best he could. It is obvious that a fracas was taking place. He did not see any weapon in the possession of the deceased. No weapon was found anywhere in the vicinity and certainly not seen by Vilane while he was still in the hut and before the deceased left.

The deceased left the hut and did not go very far before he collapsed and died. The events which took place are shrouded with some mystery and it is not possible to see why these two individuals the accused and the deceased, should have engaged in what turned out to be a fatal fight on that particular day.

The crown's version is that this assault was unprovoked and was made by the accused on the deceased out of revenge for earlier attack by the deceased on the accused. The accused claims that his stabbing was a result of an armed attack and in self-defence from assault by the deceased. One has to take into account that the deceased was indeed a violent person who is said to have assaulted several others. Both parties had taken some liquor. That may account for inflamed tempers but be that as it may, it was the deceased who was unarmed and the accused was armed.

The version given by the accused tells of a fight in which the deceased was accidentally killed. Whatever the position may have been, on the established facts of the case, no lawful justification for the accused having inflicted a fatal wound on the deceased. On the other hand I cannot find beyond reasonable doubt that this was done with intent to murder. A fact pointed to by the crown suggests very strongly that the accused may well have been an aggressor and to have intended to attack the deceased with a knife regardless of what results. There is much to be said for the inference, which the crown has advanced. But to find the accused guilty of murder it must be the only inference beyond reasonable doubt. There is no eyewitness to what took place. Whatever suspicions there may be regarding the degree of the accused's guilt it would be unfair to find that the stabbing was done with intent to kill. The stabbing may or may not have been provoked by an assault or otherwise. But the facts are not consistent with a reasonable degree of self defence. The alleged weapon used by the deceased has not been found. As I have said it was not seen when the parties were still struggling in the room. In these circumstances the correct version is that the accused is criminally liable for the death of the deceased and has committed culpable homicide. He is found guilty as such.

### **SENTENCING**

I have considered that you are a first offender and I have heard different versions today as to how it came about that you killed the deceased. I am convinced that if you had used proper control of yourself your friend would be alive today. As it is you have killed him unlawfully and this is a serious matter. I also take into account that you have been in prison since the 24<sup>th</sup> July 2001, which is a year.

I find unfortunately that you used a knife and this is the most serious aspect of the case. If it had been possible to ascertain a clearer picture of the commission of the crime, it is possible that the outcome could have been much graver for you. In the circumstances I will sentence you to 4 years imprisonment of which 2 years will be suspended for two years on condition that you are not hereof found guilty of a crime-involving killing of a human being committed during the period of suspension. Prison sentence shall be deemed to have commenced being served from 26 July 201.

***SAPIRE, CJ***







