

THE HIGH COURT OF SWAZILAND

REX

Vs

LOMZAMO MAMBA SIBONISO DLAMINI

Criminal Case No. 87/2004
Coram S.B. MAPHALALA – J
For the Crown MR. A. MAKHANYA
For the Defence MR. T.A. DLAMINI

RULING

(08/11/2004)

This is a very tragic case where accused no. 1 killed her brother and accused no. 2 killed his own uncle. These people were residing in the same homestead when this tragic event took place. There is evidence that there was a dispute between accused no. 1 and the deceased. It appears that the deceased provoked the fight which led to his death. Accused no. 2 came to the assistance of his mother. Accused no. 2 also landed a blow on the deceased. It is tragic that the deceased refused to be admitted at the Piggs Peak Hospital all against doctor's advise. This has opened room for speculation that if he had agreed to be treated we will not be trying this case. It is

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further tragic that accused no. 1 gave birth to her baby in custody, whilst waiting trial in this matter. The child only knows the prison walls as its home. It is further tragic that accused no. 1 is HIV positive and that she does not breast feed her baby. It is further tragic that the baby's status also hangs in the balance in view of the mother's HIV positive status.

In as much as I appreciate that a life has been lost in this case, my view is that this is a case where the sentence ought to be tempered with a measure of mercy. It would not be to anybody's benefit to impose long custodial sentences in this case. The one (1) year in custody by both the accused in my view has served that purpose.

Both accused in this case will always be haunted by the death of the deceased and their relatives and members of the community will look at them as "killers" and that stigma will be with them for a long time to come.

In the special circumstances of the case, I sentence each accused seven (7) years imprisonment, five (5) years of which is suspended for a period of three (3) years on condition that the accused persons are not convicted of an offence in which violence is an element committed during the period of suspension.

Accused no. 1's sentence is backdated to the 16th August 2003. Accused no. 2's sentence is backdated to the 18th August 2003.

JUDGE