

THE HIGH COURT OF SWAZILAND

Crim. Case # 40B/2003

In the matter better:

VUSIE MACIBANE DLAMINI

And

REX

CORAM : MASUKUJ.

For the Crown : Mr Phumlani Dlanuiu

For the Accused : Mr J.W. Maseko

JUDGEMENT ON SENTENCE
5th April 2004

You have pleaded guilty to and have been found guilty of having committed the crime of culpable homicide. This is, by every indication a very serious offence for it involves the taking of the life of another human being. So serious does our Parliament regard it such that jurisdiction in such matters was specifically reserved for this Court, to the exclusion of all the classes of Magistrates' Courts.

In assessing what an appropriate sentence is in your case, I will, as I have done in many previous occasions, have regard to the case of S VS **QAMATA 1997 SACR 479 at 480**, where Jones J.A. stated the following:-

"It is now necessary for me to pass sentence. In doing so, it is proper to bear in mind the chief objectives of criminal punishment, namely retribution the

prevention of crime, the deterrence of criminals, and the reformation of the offender. It is also necessary to impose a sentence which has a dispassionate regard for the nature of the offence, the interest of the offender, and the interests of the society. In weighing these considerations I should bear in mind the need;

- (1) to show an understanding of and compassion for the weaknesses of human beings and the reasons why they commit serious crimes, by avoiding an overly harsh sentence;
- (2) to demonstrate the outrage of society at the commission of serious crimes by imposing an appropriate, and, if necessary, a severe sentence; and
- (3) to pass a sentence which is balanced sensible, and motivated by sound reasons and which will therefore meet with the approval of the majority of law abiding citizens. If I do not, the administration of justice will not enjoy the confidence and respect of society. "

There are a few matters of note in this case. Firstly, you engaged yourself in a fight in respect of which you were neither provoked nor insulted personally from the contents of the agreed statement of facts. You do not appear to even have enquired what the source of the fracas was. As such, you do not even appear to know who the aggressors were.

The autopsy report, which was admitted by consent, shows that of the three wounds sustained by the deceased, two of which were relatively minor, there was one blow to the head which resulted in the fracturing of the frontal bone and detaching it from the parietal bones. It also fractured the left temporal bone.

This indicates that some degree of force was exerted by you. Old as you are, you should have appreciated that using the road peg to assault people caught in a fracas could have fatal consequences, especially when sensitive areas like the head are caught in the blow. You should realise in retrospect that you could even have killed your own friends.

Your attorney has informed the Court of your personal circumstances, which the Court was implored to consider in fashioning a condign sentence. I note that you are a 28 year old bachelor and have a minor child who is looked after by its mother. I also consider that you lost your employment as result of your incarceration. These are factors that you normally have to consider before embroiling yourself in quarrels of the nature under scrutiny.

Having said the above, I consider in your favour that you are a first offender and that you have pleaded guilty, thereby redeeming one of the Court's needed resources-time. I also consider the fact that you must have, during your sojourn in the remand centre, learnt your lesson through the hardships you suffered. I also consider that you have had time to reflect upon your actions and I am confident that you have resolved never to be caught up in such a euphoria again.

For your own peace of mind, I would urge you to offer an apology to the family of the deceased, if you or your family, on your behalf, have not already done so. This will not resurrect the deceased but it will allow you to live peaceably in your community and would be a sign of your remorse. The fact that a human being died at your hands is a fact that will haunt you for life.

I am however unable to avoid a custodial sentence in this case. Society must know that taking the life of another away, even if unintentionally is no light matter. This Court must reflect its commitment to the sanctity of the life by meting, what it considers an appropriate sentence, part of which must of necessity, in this case be custodial.

I consider the following sentence to fit you, the offence and to take into account the interests of society;- You are hereby sentenced to seven (7) years imprisonment, three of which are hereby suspended for a period of three years, on condition that you are not, during the period of suspension, found guilty of a crime in which violence to the person of another is an element.

The effective portion of the sentence is hereby ordered to take into account the period of 15 months spent by the accused in custody prior to being admitted to bail.

As one man says

"Don't look at the past, there is no future in it. If destiny beckons you.

"** yoUrSelf UP ^ where you fell,

T.S. ALASWU
JUDGE^