

HIGH COURT OF SWAZILAND

CRIMINAL CASE NO.75/2003

In the matter between:

REX

VS

SIBONISO MAXWELL MAVIMBELA

CORAM: MATSEBULA J

FOR CROWN: MRS. WAMALA

FOR DEFENCE: MR. MAMBA

JUDGMENT

3<sup>rd</sup> MAY 2005

The accused stands charged with count one of murder. The allegation being that on the 22<sup>nd</sup> March 2003 at or near Efosini area at the Shiselweni region, the said accused did unlawfully and intentionally kill Mduduzi Mavimbela and thereby committed the crime of murder. There is also a second count where the accused is charged with the crime of attempted murder. The allegation being that on the same date that is the 27<sup>th</sup> March 2003 and at or near Efosini area in the Shiselweni region, the said accused did unlawfully and with intent to murder inflict injuries upon the body of Phili Macu and thereby committed the crime of attempted murder.

When the matter was called on, Mrs. Wamala who represent the Crown inform the court that they were now proceeding against the accused on a reduced crime of culpable homicide and no longer murder as originally stated. She further informed the court that the second crime which was that of attempted murder was being withdrawn. The Crown then invited Mr. Mamba who represent the accused and he confirmed what was being said by Mrs. Wamala.

The Crown then proceeded to put the charges as framed and the accused admitted that the accused died accidentally in his hands. As second charge had been withdrawn, it was not necessary to put it to the accused. That, according to Mr. Mamba amounted to pleading guilty to culpable homicide and the court agrees with him.

The Crown proceeded to read into the microphone statement of agreed facts. The court does not propose to read this into the microphone because they already form part of the proceedings. It is common cause that deceased died as a result of a stab wound on the chest and a certain report on post-mortem examination was handed in as exhibit "A" which sets out where the wound was. It was a stab wound of 2 x 3 quarter centimetres with a sharp margin. In the middle of the front chest in the upper portion which is 30 cm from the umbilicus cord.

In terms of exhibit "A" which is a post-mortem report, the deceased died as a result of this stab wound and accused submitted that he inflicted that stab wound. The accused stated that he did not have the requisite intention of bringing about the death of the deceased. The report to the agreed facts, state that the quarrel was between siblings and they were putting up in the same hut. The court has not been informed whether the accused was old or younger than the other but the court will rely on the agreed facts. They have been advanced by two senior counsel in this court. For this, court it suffices to say that the court is satisfied that the accused did commit the crime of culpable homicide not murder. In other words, he did not have the intention of bringing about the deceased's death and he is accordingly found guilty of culpable homicide.

## JUDGMENT ON MITIGATION

I have listened to Mr. Mamba who has advanced certain mitigating factors in your favour. It is common cause that you were aged over 13 years when you committed this crime and that your brother whom you killed was nine years older than you and that the cause of the commotion was caused by the brother. You must understand that in a civilised society, we cannot justify and condone such acts even by a child as young as you were because if there is any prohibition against killing a human being need also prohibits the younger persons who would know what they are doing is wrong when they use lethal weapon to stab another human being.

Mr. Mamba has told the court that you pleaded guilty and therefore you are showing remorse and that the act of having killed your brother will haunt you for the rest of your life. That, in itself is punishment so argues Mr. Mamba and I agree with him. And that you have been school going when you were arrested and apparently you still are and under the care of your mother who is present in court. Sometimes these things happen and place the court in a very difficult position on how do you deal with a person who is so young that the cause of justice may be defeated by the very fact of sending him to prison. But a suspended sentence also defeats the very purpose of it being a way of telling you not to do it again because of your age you may not realise it but feel lucky that you were not punished. It is a pity that through practice the corporal punishment was suitable in such cases but has not been put into place for sometime and there are certain organisations that are against corporal punishment. I suppose it is no longer possible to punish young offenders but there is nothing that can stop this court from doing it.

In view of the special circumstances of this case, the court feels it is not a custodial sentence that is appropriate. Considering all the circumstances in this case, the court sentences you to an imprisonment for three years but this sentence will be wholly suspended for a period of three years on condition that you do not commit a crime of which violence is an element committed during the period of suspension, for which you will be sentenced to imprisonment without an option of a fine.

J. M. MATSEBULA

JUDGE