

# **IN THE HIGH COURT OF SWAZILAND**

CRIMINAL CASE NO. 85/04

In the matter between:

**REX**

**VS**

**KHUZWAKO DUMISANI KHUMALO**

CORAM: Q.M. MABUZA -AJ  
FOR THE CROWN: MR. P. DLAMINI  
FOR THE ACCUSED: MR. S. SIMELANE

## **SENTENCE 21/6/06**

[1] The accused was arrested on the 4<sup>th</sup> December 2003 and has been in custody since that time.

[2] He was initially indicted with the crime of murder and appeared before the late Judge Nkambule. He pleaded not guilty to the crime of murder of one Nyawozakhe Dumisa Mamba. The case for the Crown was closed on the 2<sup>nd</sup> March 2005 and the matter was thereupon adjourned and referred to the

Registrar for re-setting. It was during the adjournment that the late judge passed away. The case first came before me on the 6/2/06 and had to be adjourned because the tapes of the previous proceedings had to be transcribed. It eventually was set down for the 15/6/06 on which date the accused changed his plea and pleaded guilty to the crime of culpable homicide. This plea was accepted by Crown and the accused was found guilty of the crime of culpable homicide.

- [3] I have listened to the submissions made by Mr. Simelane who is appearing on your behalf in mitigation of sentence.
- [4] Mr. Simelane has submitted that you are 35 years of age and that you have two children who are of school going age. He also asked me to take into account the fact that at the beginning of the trial you had pleaded guilty to the lesser crime of culpable homicide but that the Crown refused to accept this plea. He has also asked me to consider the fact that your health has deteriorated while in custody. He has also urged me to consider backdating your sentence as well as suspending a portion thereof.
- [5] Mr. P. Dlamini for the Crown agrees with your attorney that you are visibly not in good health. He too does not object to my suspending a portion of your sentence in view of the circumstances of the case.

[6] However, I also have to impose a sentence which would be appropriate in the circumstances. I have to impose a sentence that meets the expectations of society. The attack on the deceased was unprovoked. There is no motive advanced why the deceased was attacked so viciously. The medical report indicates that seven ribs of the deceased were fractured. Your Counsel has asked me to consider the fact that the weapon used is not usually a dangerous one. True but you turned it into one otherwise how else could the deceased have fractured seven ribs.

[7] I can only surmise that you had a smoldering resentment and jealousy towards the deceased who was your mother's companion which resentment built

itself up into uncontrollable rage of such magnitude that you ultimately caused harm to the deceased who was totally defenseless.

[8] In the circumstances I sentence you to 7 years imprisonment, 2 years of which are suspended for a period of 2 years on condition that you are not convicted of an offence in which violence is an element committed during the period of suspension.

[9] The sentence is backdated to the 4/12/06.

**Q.M. MABUZA -AJ**