

**IN THE HIGH COURT OF SWAZILAND**

**REX**

**Vs**

**SIKUTWANA SICELIMPHILO MAGAGULA Criminal**

**Case 166/2006**

**Coram**

**S.B. MAPHALALA - J**

**For the Crown**

**MR. P. DLAMINI**

**For the Defence**

**MR. B. SIMELANE**

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**REASONS FOR SENTENCE 22<sup>nd</sup>**

**May 2007**

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[1] The accused person has been convicted of a lesser offence of culpable homicide after he has been indicted of the crime of murder where the Crown alleges that upon or about the 18<sup>th</sup> October 2005, an at or near Mpofu area in the region of Hhohho the accused did unlawfully and intentionally kill Sikhumbo Ndwandwe.

[2] The Crown read into the record a statement of agreed facts which was also confirmed by his attorney Mr. *B. Simelane* as follows:

1. The accused accepts that he is responsible for the death of the deceased and that there is no intervening cause;
2. The accused accepts that deceased died from the stab injury in the abdomen and that he is the one who stabbed him;
3. The accused accepts that contents of the postmortem report and that it may be handed in by consent.
4. On the fateful day accused and the group that included deceased were drinking and while doing so they would move from one homestead to another;
5. Whilst moving about, the members of the group were alternating in carrying the container with the brew. When it was accused turn to carry the container, he refused. To this, the others and the deceased voiced out their dissatisfaction with his conduct and the deceased, who was most vocal, told the accused that he will no longer drink the brew since he was refusing to carry the container. The accused took offence to this utterance by the deceased and he pounced on him. A fight ensued between the two, resulting in the accused stabbing the deceased. The deceased was subsequently conveyed to hospital by the police where he died whilst receiving treatment for the stabbing.
6. Accused is remorseful of his actions and has been in custody from 17<sup>th</sup> October 2005.

[3] In mitigating of sentence it was contended for the accused person as follows: (i) that at the time of the commission of the offence the accused person was 30 years old and now he is 32 years old; (ii) that the accused person is married with 3 minor children; (iii) that he was arrested on the 17<sup>th</sup> October 2005, and that the sentence by the court should be backdated to that date; (iv) that when the offence was committed they were all drinking and they were all friends after they have enjoyed a drinking binge when the fight

ensured when a dispute arose as who should carry a container of the liquor they were drinking. The deceased is the one who picked the fight which led to the fatal consequences.

[4] The principles to be applied in these proceedings were aptly stated in the South African case of *S vs Zinn 1969 (2) S.A. 537* where the court in that case propounded the **triad** consisting the interests of the accused, the interest of the society and the gravity of the offence.

[5] Having considered the facts of the present case and the principles of law as enunciated in the case of *S vs Zinn (supra)* it is my considered view that the deceased in the present case was the cause of the fight which later led to his death. I have also considered what *Mr. Dlamini* for the Crown has stated that the fact that accused was carrying a knife in that social setting should count against him. I have considered however, that the accused has been in custody for about 2 years and I am of the considered view that fact is punishment in itself.

[6] In the result, for the afore-going reasons the accused person is sentenced to a period of imprisonment of 7 years of which 5 years is suspended for a period of 3 years on condition that accused is not convicted of an offence in which violence is an element committed during the period of suspension and the sentence is backdated to the 18<sup>th</sup> October 2005.



S.B. MAPHALALA