

**IN THE HIGH COURT OF SWAZILAND**

**REX**

**Vs**

**BERNARD GFNATHI DI AMINI**

*Criminal Case No. 225/06*

**Coram**

**For the Crown For the**

**Accused**

**S.B. MAPHALALA - J**

**MR. FAKUDZE MR. B.**

**SIMELANE**

**REASONS FOR SENTENCE**

**13<sup>th</sup> February, 2007**

[1] The accused person pleaded guilty to the crime of culpable homicide after being arraigned for the offence of murder of one Lucky Luthuli. In the said indictment it is alleged by the Crown that upon or about the 25<sup>th</sup> October, 2005 and at or near Sidvokodvo Area in the District of Manzini the accused did unlawfully and intentionally kill the said Lucky Luthuli. The Crown further entered into the record a statement of agreed facts that was subsequently confirmed by *Mr Simelane* for the accused person. In view of this the accused was convicted of the said crime. The court further heard submissions in mitigation of sentence by defence counsel.

[2]The statement of agreed facts reads as follows :

"1. Upon or about the 29<sup>th</sup> October, 2005 at or near Sidvokodvo area, Manzini Region, the said accused person did unlawfully and negligently kill **LUCKY LUTHULI**.

2. Accused person accepts that the deceased died due to the direct consequence of his action and that there was no intervening cause of deceased death between the stabbing and the subsequent death.

3. The deceased died due to "haemorrhage as result of penetrating injuries to the left lung" inflicted upon him by the accused with a knife.

4. The report on the post mortem examination on the body of the deceased handed in by consent to form part of the evidence.

5. On the fateful day, the accused and the deceased were amongst other patrons in attendance at a popular bar at Sidvokodvoko. The two were not going together though. They were both enjoying drinks with two sets of groups.

6. Amongst deceased' group was a woman who was suddenly verbally attacked by another women who was in accused' company. The two women then engaged in a verbal but non physical confrontation. The bone of contention was a missing cell phone. The accused then joined in the confrontation and sided with his companion, together with another two of his friends.

7. Seeing that his lady friend was now out numbered, the deceased approached the group and stood up for his lady friend. The accused and his friends were infuriated and claimed that the deceased and his friend had actually colluded in stealing the missing cell phone and a fight ensued. The deceased was then assaulted on the head with a beer bottle by someone amongst accused' companions. The deceased fled.

8. The accused led his two friends in hot pursuit of the deceased who disappeared into the dark. The accused caught up with the deceased and stabbed him thrice with the knife he was armed with. The deceased continued running after the stabbing and the accused turned away.

9. Deceased was then discovered dead by a passer by that same night and the police were called.

10. The accused subsequently learnt of deceased' death but became a fugitive from justice until the 2<sup>nd</sup> November 2005 when he was

apprehended by the Police. The accused has been in custody ever since the **2nd** November **2005**.

11. Accused pleads guilty to Culpable Homicide.

12. Accused is remorseful for his actions."

In mitigation of sentence it was contended on behalf of the accused person that he is 26 years old and has two minor children who live with their mother. Secondly, that at the time of the accident the accused was a labourer at a farm. Fourthly, that the accused has been in custody since the 2<sup>nd</sup> November, 2005. Lastly, that the deceased played a major role in this incident. The court was urged to back date whatever sentence it imposes.

The trite principles relating to the imposition of sentence were clearly stated in the judgment of **JONES J** in the case of **S v QAMATA 1997 (1) S.A. 479 AT 480** where the learned Judge in that case made these trenchant remarks:

"It is now necessary for me to pass sentence. 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 offender. It is also necessary to impose a sentence, which has a dispassionate regard for the nature of the offence, the interests of the offender, and the interests of the society. In weighing these considerations should bear in mind the need:

13. 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;

14. to demonstrate the outrage of society at the commission of serious crimes by imposing an appropriate and if necessary, a severe sentence; and

15. to pass a sentence, which is balanced, sensible, and motivated by sound reasons and which 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."

I have considered very carefully the factors in mitigation of sentence as outlined at paragraph [3] of this judgment. Too many

lives have been lost in Swaziland through the use of knives. I can do no better than quote from the excerpts by **DUNNN J** (as he then was) in the case of **THE KING vs DUMISA TITO SIMELANE AND ANOTHER - CRIMINAL CASE NO. 122/1996 (UNREPORTED) .**

The learned Judge stated the following and I quote:

"There are far too many cases of innocent lives being taken in this country with the use of knives. Time and again one finds people readily resorting to the use of knives at least provocation or for the most trivial of reasons. Invariably the person who is convicted cuts a very sorrowful and pitiful figure at it dawns on him in the course of the trial that indeed the reason for having used the knife was a senseless and most trivial one. This factor alone makes the task of the court in determining an appropriate sentence most difficult. The court is at that stage faced with the immediate pleas and concerns of the particular accused appearing before it. There is of course the other side of the coin and that is the feelings of the relatives of the person whose life was taken. Those feelings are rarely ever placed before the court unless of course those relatives or some of them were witnesses to the incident and were called to give evidence in court. In that way the court can get some measure of their feelings."

Carrying a knife for no reason when attending a social gathering is totally out of order. The sentence I intend to impose in your case is one that will in my view serve individual and general deterrent. I will take into account the seriousness of the crime, the interest of society and be flavoured with mercy.

The Accused is sentenced to 9 years imprisonment, three years of which 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. The sentence is backdated to 2<sup>nd</sup> November, 2005.

  
**S.B. MAPHALALA**  
**JUDGE**