



THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CRIMINAL TRIAL 161/05

In the matter between

REX

VS

SIBUSISO TOM MAVUSO DUMISANI BENSON

1st Accused 2nd Accused

MAGWAZA

Coram

Banda, CJ

For the Crown For the Defendants

Mr. Dlamini Mr. Mngomezulu

JUDGMENT

[1] The two accused persons were charged with murder it being alleged that on or about the 29th April, 2002 at or near Dalriach, in Mbabane, in the Hhohho Region, the

said accused each or both of them acting jointly and in furtherance of a common purpose, did unlawfully and intentionally kill one John L. Peberdy.

[2] The accused persons pleaded not guilty to the charge of murder but offered to plead guilty to the lesser offence of culpable homicide. Mr. Dlamini, who appeared for the crown, accepted the two pleas to culpable homicide. Mr. Mngomezulu, who appeared for the accused, confirmed the pleas as being in accordance with the instructions he had received from the two accused persons. The accused persons were found guilty each on the offence of culpable homicide, and were convicted accordingly.

[3] In mitigation Mr. Mngomezulu informed the court that the accused are first offenders and are young. He submitted that by pleading guilty the accused have shown remorse and that they have promised not to commit similar offences in future; that they have not wasted the court's time; that the first accused has a minor child aged nine years. Both accused have been in custody since their arrest on 30th April 2002 and Mr. Mngomezulu has submitted that if a custodial sentence is found to be necessary, part of it should be suspended. I have considered these points in mitigation but the offence which the accused committed is a very serious

offence indeed. They must consider themselves fortunate that the crown accepted their pleas of guilty to culpable homicide. The deceased was an old man of seventy-six years (76) of age and the amount of force which they used, to kill him, is inexcusable. As Mr. Dlamini, for the Crown, rightly pointed out there must have been other ways of exacting payment from the deceased, if indeed this was the motive. I am satisfied that a proper sentence would be a custodial one and none of it can be suspended. Accordingly I sentence each accused person to a term of imprisonment of ten (10) years to take effect from the 30th April 2002 when they were taken into custody.

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CHIEF JUSTICE

R.A. BANDA

Pronounced in open court at Mbabane on this 8th day of August, 2007.