

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CRIMINAL TRIAL NO. 79/08

In the matter between:

REX

VS

MDUDUZI BABILI NKAMBULE

CORAM: MONAGENG, J

FOR CROWN: MR. SKHUMBUZO FAKUDZE

FOR ACCUSED: MR. BEN SIMELANE

ACCUSED: PRESENT

JUDGMENT

2nd APRIL 2008

[1] The accused plea bargained with the Crown on the initial charge of murder and pleaded guilty to culpable homicide, which plea was accepted by the Crown. In mitigation on his behalf, his attorney, Mr. Ben J. Simelane

made the following statement:

[2] I urge the Court to consider the accused's personal circumstances. According to my instructions: He is 21 years old. He lives at Ebuhleni at Efontontje under Chief Jubiphathi Magagula in the Hhohho region. He is not married. He lives with his father and siblings. He has one child who is aged 4 years and he is responsible for the livelihood of the child, which livelihood is dependent on him getting piece jobs in the construction industry. He makes R25 a day out of this. He holds a Form 2 certificate, but due to the circumstance of this case, he was unable to continue with his education since the brother who was paying for him did not know his fate. He has neither movable nor immovable assets. He was released on bail on 7 May 2007. He does not have any previous convictions nor pending matters against him. He pleaded guilty and so did not waste the Court's time by delaying the case.

[3] He is very remorseful and accepts that his action was unlawful and that due to his negligence he caused the death of the deceased. He believes that he has learnt a very valuable lesson against carrying a knife and involving himself in confrontations with other people. He feels that he has punished himself more than the Court can, as he looks into the future. He would like to apologise to the family of the deceased and hopes that they may one day

find it in their hearts to forgive him.

[4] He asks the Honourable Court, in passing sentence, to consider the period he served before being released on bail on the 7th September 2007. He also asks the Court to consider his personal circumstances and that he is aware of the seriousness of the offence. He asks the Court to consider that the deceased was the aggressor, but this does not mean that the accused's behaviour shall be condoned. He is aware that the community looks up to the Court to protect it against behaviour that has been displayed by him.

[5] It is further submitted that the society also recognizes that not everyone is in fact a criminal but that people should be tolerant and live with each other peacefully. In passing sentence, the Court should consider rehabilitation as opposed to retribution and should therefore consider an appropriate sentence. We request the Court to impose 5 years and suspend 2 years.

[6] STATE COUNSEL - I can only amplify on rehabilitation. The Crown submits that rehabilitation goes hand in hand with retribution. As has been ably stated by the accused, it appears to the Crown that the accused accepts that he committed a transgression against society. It follows, therefore, that the accused should own up for his

transgressions. The Court should not give in to self pity. There are 3 conflicting interests.

[7] The accused is aware that this is a very serious offence, and therefore it being a serious offence, the society is keenly awaiting the outcome of the sentence for this serious offence. The accused apologizes to the family of the deceased, and we submit that in that apology, may the family of the deceased find solace in the sentence that is going to be passed by this Court.

[8] After only 3 months and 9 days the accused was admitted to bail and it is the Crown's submission that the community where the offence took place, and members of the deceased's family, did not take the law into their hands. The accused was in their midst. The Court will recall that my lady's very first case was of a similar nature and the Court was informed that in Swaziland young men go to drinking spots, instead of concentrating in their studies and also carry knives. They should drink freely, responsibly and not carry knives.

[9] SENTENCE

The accused was charged with murder but subsequently pleaded guilty to culpable homicide. He is a first offender, was only 20 years old when he committed this offence and was quite clearly harassed and overpowered by the

deceased. He has expressed remorse for this very serious offence. He has a young child who depends on him solely. He was a scholar at the time of this offence.

[10] This Court takes cognisance of the fact that due to his age, youthful exuberances could also have played a part in the commission of this offence. Against this background however, looms the frightening reality of use of the knife by youngsters in Swaziland. It appears the youth have decided to follow a very dangerous path of "drink, fight and stab". It is very unfortunate that this seems to be the trend and this is something that should be nabbed in the bud through appropriate sentences, where justified. I have considered all his mitigation, including the need for rehabilitation of people like him who are the future of the country.

[11] In appreciation of his personal antecedents, which I have weighed against the expectations of society, he is sentenced as follows:

1. He is sentenced to 5 years imprisonment.
2. Two (2) years shall be suspended for a period of three (3) years, on condition he is not convicted of any offence of which violence of any kind whatsoever in an element.

3. The prison authorities shall take into account the period he has already served that is 29th July 2006 to 7th September 2007 and reduce the number of years he is to serve by this period.

4. He has a right to appeal to the Supreme Court within 14 days against the sentence only.

S.M. MONAGENG

JUDGE