

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CRIMINAL TRIAL NO. 186/07

In the matter between:

REX

VS

JAMES BOND MNGOMEZULU

CORAM: MONAGENG, J

FOR CROWN: MR. SKHUMBUZO FAKUDZE

FOR ACCUSED: MR. BEN SIMELANE

ACCUSED: PRESENT

JUDGMENT

8ND APRIL 2008

[1] The accused was initially charged with murder but subsequently pleaded guilty to culpable homicide. He is alleged to have killed one Jabulani Magumbe Sikhondze. The Crown accepted his plea of guilty.

[2] In mitigation, his attorney Mr. Sihle Hlanze stated as follows: The accused instructs me that he has been in custody since 24th January 2006 and we urge the Court to backdate the sentence to this date. He instructs me that he is married to one wife and has ten children, 8 of whom are minors. He has no formal education whatsoever, and has been earning his keep by doing odd jobs. He is 48 years old. On the particular day of 23rd January 2006, he had been drinking and enjoying himself in the company of his wife and others, when the deceased provoked him once again about his being one eyed.

[3] This form of provocation had been going on for a while and this broke the camel's neck. The other aspect of this is in the form of the law enforcement agency - the police who failed to resolve this matter despite many reports. We submit that when a

person goes to the police to report a matter they should resolve it.

[4] The accused felt boxed in and frustrated. The deceased had shot his son but nothing was done. The accused reported the violence twice to the police but they did nothing. The vernacular meaning of "*indlobho*" that is one eyed, attaches insult of the highest order in Swaziland. This was done in public and in the presence of his wife. When a Swazi man is belittled in the presence of his wife, this is very serious. He was also belittled while he was drunk. Given the circumstances of this case we ask for a partly suspended sentence.

[5] STATE COUNSEL - In passing sentence, the Court should look at the three conflicting interests in the triumvirate. The Court should not only look at the interests of the accused as presented. It should also look at the seriousness of the offence. The Crown submits that this is a very serious offence in that human life was lost. No number of years to which the accused will be sent to imprisonment will make the deceased to ever rise. It has been stated on behalf of the accused that he was taunted in the presence of his wife. It is also a fact that the deceased's wife has been permanently deprived of her husband who was killed. The deceased's children and extended family have lost a father.

[6] It is our humble submission that the Court should not over

weigh the issue of the taunting, in that confrontations, some minor and some serious are an inherent nature of mankind. It is not acceptable that, people on the basis of taunts and mockery, should behave outrageously. His behaviour was outrageous. People get taunted for all sorts of reasons like *Pot Belly* but that cannot be reason enough to teach others a lesson.

[7] SENTENCE

In passing sentence, I have considered the mitigation that has been proffered on the accused's behalf by his Counsel. The facts of this case are particularly peculiar and very unfortunate. I do appreciate the frustration the accused person must have gone through at the hands of the deceased, his disappointment when the police did nothing about the violence meted out on him and his son by the deceased, and these cannot be ignored for purposes of mitigation.

[8] The flip side though is that it is becoming very clear to me that members of the public seem to be on the rampage, regarding taking of other people's lives, and it is incumbent upon Courts to show society's abhorrence of this behaviour. What makes this particular case even more reprehensible is that, the accused person planned this attack, although he says it was only to teach the deceased a lesson. He is an adult who should have foreseen the probable result of his attack on the deceased. However, I will give him the benefit of some doubt by suspending

part of the custodial sentence that I will give him.

[9] He is sentenced to 10 years imprisonment; 4 years shall be suspended for a period of 3 years, on condition that he is not convicted of any offence of which violence of any nature is an element. The sentence shall take effect from 24th November 2006, the day he was incarcerated. He has a right of appeal within fourteen (14) days against sentence only.

**SM MONAGENG
JUDGE**