

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CRIMINAL TRIAL NO. 111/07

In the matter between:

REX

VS

FIKILE NYAWO

CORAM

MONAGENG, J

FOR CROWN

MR. NDZINGEKO DLAMINI

ACCUSED

PRESENT - IN PERSON

JUDGMENT
10th APRIL 2008

[1] The accused person pleaded guilty to the offence of culpable homicide for killing her own 10 year old child Welile Nyawo.

[2] In mitigation the accused had this to say: I did commit the offence, but it was not my intention to kill my own child who I had raised until that age. I intended scaring her when I

threw the bush knife at her. I thought it would land next to her and scare her, but unfortunately it landed on her leg. I plead for leniency as I did not intend killing the child.

[3] When I left my home this morning I had to arrange with neighbours to look after my other children. I do not even know what they have eaten today. The children's father does not stay at home having left to look for work. I have young children who need to be assisted, even to take a bath. If I am incarcerated, I do not know how they will cope. I ask for leniency. What I did was not intentional. I have four other children aged 9 years, 6 years, 4 years and 2 years."

[4] STATE COUNSEL:

What I can say is that where she comes from, the maize is given by the Disaster Task Force in the country as poverty alleviation, so it is very valuable. The area transport is very difficult to find. For her to take the child to the health centre they had to travel about 10 kilometers and the Hlathikhulu Hospital is also another distance away. I am not saying that these are an intervening causes but merely asking the Court to take these into consideration. The deceased was her daughter, she is still going to live with the pain of losing her. There was no other violence.

[5] SENTENCE

This is one of the most painful deaths one can imagine. This

is a young mother, who confirms that she did not have the intention of killing her 10 year old daughter when she threw a bush knife at her, after she neglected her instruction to ensure that the family meal was not eaten by chickens, but instead did just that. One can imagine the pain that this mother has gone through and will continue going through for the rest of her life.

[6] She has four other children whose ages range from 9 to 2 years. Their father does not live at home because he is trying to fend for them or for the family. In balancing the expectations of the society to see Courts mete out appropriate sentences to its members, and the suffering that its own young members (the accused's children) will go through if their mother were to be taken away from them, I think mercy weighs in her favour.

[7] The accused is a young mother aged only 31 years, she has pleaded guilty and she is obviously remorseful. Her conscience will live with her for the rest of her life, over this incident. It is my view that considering the totality of this case, it is a proper case for me to temper justice with mercy, but with a very strong warning for the accused to desist from such behaviour in future.

[8] She should appreciate that the decision I am about to take is influenced more by the further harm that this Court

might cause on the innocent remaining young children. I am also mindful of the fact that she served 6 months in gaol before being released on bail and to that extent, she can safely be said to have paid for her actions.

[9] She is sentenced to a period of 3 years. The 3 years shall be wholly suspended for a period of 3 years, on condition that she is not convicted of any offence of which violence, particularly accompanied by use of lethal instruments, is an element.

S.M. MONAGENG

JUDGE