

**IN THE HIGH COURT OF SWAZILAND**

**HELD AT MBABANE**

**CRIMINAL TRIAL NO. 35/06**

In the matter between:

REX

VS

SIPHO GADLELA

CORAM: MONAGENG, J

FOR CROWN: MR. NDZINGEKO DLAMINJ

FOR ACCUSED: MR. BEN SIMELANE

ACCUSED: PRESENT

**JUDGMENT**

**22<sup>nd</sup> APRIL 2008**

[1] The accused person, with concurrence of his attorney Mr. Ben Simelane pleaded guilty to culpable homicide and also accepted the agreed facts. This was accepted by the representative of the Crown and he was duly convicted.

[2] In mitigation - Counsel Simelane said the following: "The accused is a first offender. He instructs me that he is 45 years old although he looks older because he has tuberculosis. He can hardly walk because of this. He has been in prison since 6<sup>th</sup> July 2007 and I ask the Court to backdate the sentence to this date. He does not have a child nor a wife. He instructs me that the deceased was his blood relative.

[3] They lived together in his homestead. For all his life, they had lived together peacefully until that particular day. This is a tragic end to a love triangle which was created by the wife to the deceased, who stained this relationship and revealed the deceased's inadequacy in bed and enticed the accused into this mess. Even on this night, it was her who went to the accused's hut and it looks like she was the driver.

[4] On this night, they had all been drinking and enjoying themselves until this slip that culminated in the deceased finding out about this affair. To a certain extent, the deceased contributed to his demise, in the sense that he should have tried

to restrain himself by convening a meeting to try and resolve the matter. Instead, he resorted to violence, attacked the accused and burnt his hut.

[5] The accused irrationally precipitated by alcohol, also burnt the deceased's hut. There was an error of judgment on both. They acted emotionally and ended up this way. Had the deceased acted rationally by convening a meeting and may be throwing his wife out of the homestead he could be alive today. Looking at the case, one is left with the feeling that, with better foresight, we would not be here. I ask the Court to exercise mercy and perhaps suspend a part of the sentence and backdate the sentence".

#### SENTENCE

[6] The accused was initially charged with murder but pleaded guilty to culpable homicide, a plea that was accepted by the Crown. This is a most tragic set of events, which has obviously torn a family apart. I agree that a proper evaluation of the circumstances reveals a bad story where each one of the men bears some responsibility. The accused is a first offender, who is 45 years old. He found himself in an untidy amorous situation which was also caused by the deceased's wife, but he also acted in a very criminal manner towards the deceased. I have been told that he is ill, and that considering the totality of the circumstances, I should temper justice with mercy. I have taken all his mitigation into account but also note with a very serious

of light that a human life was lost.

[7] The accused is sentenced as follows:

(i) 7 years imprisonment.

(iii) 3 years shall be suspended for a period of 3 years on condition that he is not convicted of any offence of which use of violence of any kind is an element.

(iii) The sentence shall be backdated to 6<sup>th</sup> July 2007 when he was first incarcerated.

(iv) The Prison Department is requested to give him all the medical help he needs.

(v) Right of appeal within 14 days against sentence only explained.

**S. M MONAGENG**  
**JUDGE**