

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CRIM. CASE NO. 376/08

In the matter between:

**REX VS
MUSA BHONDI NKAMBULE**

**CORAM
FOR THE CROWN
FOR THE ACCUSED**

**MAMBAJ
Q. ZWANE
IN PERSON**

JUDGEMENT ON
SENTENCE 17th JUNE,
2009

[1] You are a young man of only 20 years old and so around November last year you must have been about 19 years old. You have pleaded guilty to the charge and this I shall take into account in your favour. By saying so I'm indicating to you that your age at the time of the commission of the offence is also a mitigating factor. I believe a much older person than you were, would not have acted in the rash manner that you did. I also take into account your personal circumstances that you are a first offender and that you were at the

time of the commission of this offence taking care of your girlfriend, your child and two of your siblings. However, you killed someone in a very negligent way and I must say you were lucky that the crown did not pursue the charge of murder against you. In fact you were lucky that from the inception you were charged with culpable homicide not murder.

[2] It is one of the unfortunate state or condition of our justice system that some people believe that if, for example, one is stabbed with a knife just once, or someone knocks another down with a motor vehicle, this is not a crime of murder but something less than that. Well, that is not the law and it is wrong. In an appropriate case, the requisite intention to kill in either situation may be there. In your case you ganged-up with the bus conductor, dragged the deceased out of the bus and started assaulting him. Whether he had a genuine complaint or not, he did not deserve to be treated in that way. One would expect that he had a right under normal circumstances to complain about a dirty seat in the bus - a public convenience or amenity.

[3] I accept that he may have overstated his rights by demanding that he uses your pair of trousers to clean that seat instead of the dirty cloth that you offered him. But at the end of the day he did not deserve to be dragged out of the motor vehicle and assaulted by you and your companion whilst he was outside. I also accept that the deceased was the first to hit out at either yourself or the bus conductor.

[4] The other anomaly of course in this case, other than that you were charged with culpable homicide, is that the bus conductor was not charged or at least he is not here charged with you. He may have been charged with some other offence in some other court but he was on the facts before me, someone who was involved in the assault on the deceased. The fact that he did not stab the deceased is inconsequential. He clearly shared a common purpose with you in assaulting the deceased. However, that is a matter for the crown, and it cannot assist you as to why you should be the only one punished for this when you acted in concert with your companion, the conductor.

[5] You have told the court that the knife that you used was attached to the keys to the motor vehicle but clearly you must have removed those keys from the ignition switch when you went on the attack on the deceased. You stabbed the deceased with the knife still attached to the keys. You have not told the court whether the deceased was armed. You have only said he attacked you and it was in response to this attack that you stabbed him. Even if I were to accept for the moment that you acted in self-defence, you clearly exceeded your bounds of self-defence by stabbing him under those circumstances-when you had the active assistance of your companion, the mini-bus conductor. You stabbed him in the region of the neck and I think even at your age of about 19 years, you must have realized that what you were doing was over the limit of what you were entitled to do in the circumstances.

[6] I sympathise with you that at prison you are unable to learn anything that is going to improve your welfare but I believe maybe this is the case because you are still an awaiting trial prisoner. Hopefully, after being a convict, you will be exposed to what the Prison Department does these days, as they are now called Correctional Services; the correction or rehabilitation of offenders. I'm hoping they will live up to that name and correct whatever you have done; but the final decision rests with you to correct yourself.

[7] Offences such as the one for which you have been convicted are many in this country. This court deals with them on, regrettably, regular basis. After stabbing the deceased, he fell down bleeding from the wound and you left him there and drove your bus away in complete disregard of his situation. Whilst you have not said you are sorry for what you did, I shall nonetheless assume you are. I also consider that the very fact of this conviction and your own inner conscience or knowledge that you negligently caused the death of the deceased, shall forever haunt you and act as a punishment on its own; in addition to the sentence I am about to impose on you.

[8] You are sentenced to a term of 9 years of imprisonment

A handwritten signature in black ink, appearing to be 'M. J.', located at the bottom left of the page.

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[8] You are sentenced to a term of 9 years of imprisonment with effect from the 17th November 2008. You have a right to appeal against the conviction and sentence, if you are not happy with either of these. You will forward your complaint in writing to the Registrar of the High Court, stating your grounds for your discontent or your grounds of appeal within 14 days from today's date.