

**IN THE HIGH COURT OF SWAZILAND**

**HELD AT MBABANE**

**CASE NO: 1468/2009**

**In the matter between:**

**REX**

**VERSUS**

**THABO SIBEKO**

**Date of hearing: 13 August, 2009**

**Date of judgment: 13 August,  
2009**

**Mr. Attorney Thabiso Masina for the  
Crown Mr. Attorney B.J. Simelane**

***EX TEMPORE JUDGMENT***

**MASUKU J.**

[1] The accused, one Thabo Sibeko, stands before me, charged with a single count of culpable homicide. The indictment alleges that on or about 17 May, 2008 and at or near Lisenamuva bar in the Manzini district, the

accused person assaulted Thulani Mkhonta and inflicted upon him certain injuries, which caused the death of the said Thulani Mkhonta on 26 May, 2008. The said Thabo Sibeko, it is further alleged, did thereby negligently kill the said Thulani Mkhonta and committed the crime of culpable homicide.

[2] When the indictment was read out to the accused, he indicated that he understood the same and when called upon to plead, he pleaded guilty to the offence of culpable homicide. His plea was subsequently confirmed by Counsel Mr. Simelane as being in accordance with his instructions.

[3] Thereafter, the defence made certain admissions in terms of the provisions of section 272 of Criminal Procedure & Evidence Act, 1938. In particular, all the constituent ingredients of the offence of culpable homicide were admitted by the defence and the accused further confirmed therein that he was in full possession of his mental faculties at the time that the offence was committed.

[4] The memorandum containing the admissions will be made part of the record. As a result of the formal admissions made by the accused, which include factual admissions as well, the Court will dispense with the preparation of an agreement statement of facts as these are adequately catered for.

[5] Having regard to the accused plea of guilty to the offence and its acceptance by the Crown; the contents of the formal admissions made by the accused, including the constituent ingredients of the offence of culpable homicide as admitted specifically by the accused and having regard to the autopsy report which was also admitted by the defence, I am of the considered opinion that the Crown has indubitably proved the crime of culpable homicide against the accused.

[5] I accordingly, find you Thabo Sibeko guilty of the crime of culpable homicide of which you were indicted and to which you pleaded guilty.

### **JUDGMENT ON SENTENCE**

[6] The above-named accused person has, upon his own plea of guilty, been found guilty of the offence of culpable

homicide. The time is now ripe for this Court to impose upon him what it considers to be an condign sentence, having regard to the seriousness of the offence, the interests of the society and the accused own personal circumstances and interests. This is by no means an easy feat, as correctly realized by Hogarth, in his article entitled, "Sentencing as A Human Process". There, the learned author said that sentencing is 'a lonely and onerous task'.

[7] I will consider the mitigatory circumstances brought to the Court's attention by Mr. Simelane, in his erudite oral submissions. Following below are they:

That you are a first offender, who has previously had no recorded brush with the law; You pleaded guilty to this serious offence, hence redeeming the Court's time and the public's expenses and inconvenience to witnesses' schedules. In this regard, I will note that by your plea, you have also saved the witnesses the ordeal and stresses of appearing in Court and particularly them having to re-live the harrowing experience of having to narrate the events of the fateful day. I am also satisfied that your plea is motivated by penitence;

I shall consider in your favour that on the fateful day you were provoked by the accusations of theft leveled by the deceased, which were accompanied by threats of violence against your person; I shall also consider that you had imbibed some alcohol on the night in question and which may have resulted in reason and sober judgment leaving their respective seats;

- Also considered in your favour is that at the time of commission of the offence, you were a relatively young man;
- The Court has also been told about your personal circumstances, including your family situation i.e. that you are an orphan and lived with your grandmother and niece. Some lack of parental guidance may have played a part in the events that unfolded on that fateful day.
- Lastly, I will consider that the weapon you used to inflict the injury is not one that you carried on your person for a nefarious purpose. You must have chanced upon it at the bar.

[8] Having said the above, I must, however, record the notorious fact that this is a serious offence which it is common cause, has resulted in the loss of a life. The Courts are, in the circumstances, called upon to uphold the sanctity of life by meting out appropriately stiff sentences so that the message can be sent home that life

is sacred and must be protected. What is particularly disturbing is the fact that this Court is too frequently confronted with homicide cases in which the twins of violence and alcohol show their ugly heads. This is one of those cases.

[9] I do consider that the fact that you took away the life of your drinking partner may of its own, serve as some kind of sentence upon you and that you have had time to reflect on your conduct that fateful evening. The best you can do for yourself, is to learn from your mistakes and not to run from them.

[10] In the Botswana case of *Mosiiwa v The State* [2006] 1 B.L.R. 214 (C.A.) at 219 B-C, Moore J.A. made the following lapidary remarks regarding the imposition of an appropriate sentence:


"It is also in the public interest, particularly in the case of serious or prevalent offences, that the sentencer's message should be crystal clear so that the full effect of deterrent sentences may be realized, and that the public may be satisfied that the court has taken adequate measures within the law to protect them of serious offenders. By the same token, a sentence should not be of such severity as to be out of all proportion to the offence, or to be manifestly excessive, or to break the offender, or to produce in the minds of the public the feeling that he has been unfairly and harshly treated."

In the circumstances, I am of the view that the following sentence would meet the justice of this case as propounded by the learned Judge of Appeal said:

You are hereby sentenced to five (5) years' imprisonment, two (2) of which are hereby suspended for a period of three years on the condition that you are not, within the period of suspension found guilty of an offence in which violence to the person of another, is an element.

The sentence imposed shall be reckoned to run from 20  
May, 2008.

**DELIVERED IN OPEN COURT IN MBABANE ON THIS  
THE 13<sup>th</sup> DAY OF AUGUST, 2009.**

  
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**T. S. MASUKU  
JUDGE**

**Directorate of Public Prosecutions for the  
Crown Messrs. B.J. Simelane for the Accused**