

**IN THE HIGH COURT OF SWAZILAND**

HELD AT MBABANE

CRIM. CASE NO. 202/2006

In the matter between:

**REX**

**v**

**LINDA MAGONGO  
THEMBA DLUDLU  
STEVEN MAMBA  
NATHI NDZIMANDZE**

**1ST ACCUSED  
2<sup>nd</sup> ACCUSED  
3<sup>rd</sup> ACCUSED  
4<sup>th</sup> ACCUSED**

CORAM : Q.M. MABUZA -J  
FOR THE CROWN : MR. S. FAKUDZE/MR. N. MASEKO  
DIRECTORATE OF PUBLIC  
PROSECUTIONS  
FOR THE 1<sup>st</sup> ACCUSED : MR. L. GAMA OF LEO GAMA &  
ASSOCIATES  
FOR THE 2<sup>nd</sup> ACCUSED : ADV. P. MNGOMEZULU

**JUDGMENT ON SENTENCE**

2/2/2010

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[1] Accused 1 and 2 were convicted by this Court for the murder of Abraham Apic Botha. They were further convicted of the crime of robbery of Thabsile Masuku and Phindile Nhleko. However, both the Crown Counsel and Defence Counsel agreed that there were extenuating circumstances herein in that accused persons intended to commit robbery and not murder. I therefore find accordingly. There are no previous convictions in respect of both accused.

[2] In mitigation Mr. Gama for Accused 1 stated that Accused 1 was 34 years old at the time of the offence. He was self-employed as a carpenter. He is married. His wife is unemployed. He has three minor children.

[3] In relation to count 6 and 7, it was stated that the complainants were not harmed. The value of the items taken by the accused was small. The accused persons did not set out to rob but that this robbery happened on the spur of the moment; hence there was no intention to commit the offence.

[4] It was conceded on behalf of Accused 1 that the deceased was entitled to defend his property by fighting back and that was how he got injured; there was no intention to injure him.

[5] It was further submitted on behalf of Accused 1 that he was a first offender and that because the offences were not far apart of each other the sentences should run concurrently and be backdated to their occurrence.

[6] Mr. Mngomezulu for Accused 2 submitted that his client was the victim of economic circumstances. He came from a poor family and as a result was not educated. Because of youth and lack of parental love Accused 2 diverted his energies to crime. That accused 2 was 38 years old. He is not married. He has three minor children whom he supports and educates. Accused 2 merely wanted money to provide for his

family; his intention was not to kill. He was remorseful and stated that he would never commit any crime in future. Mr. Mngomezulu who is also a Reverend believed that as the gospel was preached at the Correctional Services, Accused 2 would be completely rehabilitated and made effective in society. Accused 2 was a first offender.

[7] In passing sentence against the accused persons, I shall take into account all the above submissions.

[8] I have to also take into account the family of the deceased who lost a loved one in a most unexpected way. The girlfriend to the deceased broke down in court because she still felt the loss keenly. His friend was equally saddened by the loss of his friend. How could a day that had such promise end so tragically?

[9] I have to also take into account the interests of society. People would like to move safely around their communities without fearing that their lives would be threatened especially in broad daylight.

[10] The sentence is as follows:

Count 1

You are both sentenced to 15 years imprisonment without an option of a fine.

Count 6 and 7

You are both sentenced to 5 years imprisonment without an option of a fine.

The sentences are to run concurrently and are backdated to the 28 January 2006. The rights of review and appeal explained to the accused persons.

**Q.M. MABUZA-J**