

**IN THE HIGH COURT OF SWAZILAND**

**HELD AT MBABANE**

**CASE NO. 116/09**

In the matter between:

**THE KING**

**VS**

**WILLIAM MCELI SHONGWE**

**CORAM:**

**SEY, J**

**FOR THE CROWN**

**MR. MATHUNJWA**

**FOR THE ACCUSED**

**MR. NDZINISA**

**JUDGMENT ON SENTENCE**

**13<sup>th</sup> JUNE 2011**

**SEYJ.**

[1] On the 3<sup>rd</sup> day of June, 2011, this Court convicted the accused of murder with extenuating circumstances. Once a finding has been made that

extenuating circumstances exist, the Court is at large, without necessarily having to resort to its constitutional discretion under Section 15 (2) of the Constitution of Swaziland Act, 2005, to impose any sentence it finds appropriate, other than one of death.

[2] The protection of right to life is one of the fundamental rights and freedoms of the individual enshrined in the Constitution of the Kingdom of Swaziland Act, 2005. Section 15 (1) thereto provides that a person shall not be deprived of life intentionally save in the execution of the sentence of a court in respect of a criminal offence under the law of Swaziland of which that person has been convicted.

[3] As I have stated earlier on in the judgment, for the accused to have attacked the deceased with the knobkerrie the way he did cannot in any circumstances be justified. I am therefore of the view that the offence committed by the accused calls for a severe sentence to act as a deterrent for other persons who might be minded to commit the same offence. I am also

mindful of the oft-quoted dictum of **Holmes JA** in the case of **S v. Rabie 1975 (4) S.A. 855 (A)** where he stated that:

"Punishment should fit the criminal as well as the crime, be fair to society and be blended with a measure of mercy according to the circumstances."

[4] In **Ntokozi M. Dlamini and Another v The Crown Crim. App.**

**10/2001, Tebbutt JA** had this to say inter alia at page 8 of the Judgment:

"The seriousness of their crimes, their moral blameworthiness and their lack of remorse or regret justify lengthy sentences of imprisonment. Society would require of this Court that it marks its severe disapproval of this type of criminal behaviour by heavy sentences of incarceration. Its sentences must also serve as a deterrent not only to the appellants to abstain from similar behaviours in the future, but to others who may have like-minded schemes in contemplation....."

[5] William Mceli Shongwe, I have carefully considered all the mitigating factors put forward by your defence counsel and I have also taken into consideration the fact that you are 52 years old with a wife and children.

[6] However, the offence you have committed calls for a very severe sentence which would curb this type of senseless murder and deter others. It is now the opportune time for this Court to pronounce upon you what it considers to be a condign sentence, having due regard to all the relevant circumstances, called the triad, namely the interests of the society, the seriousness of the offence and lastly, your own interests and personal mitigating factors.

[7] In the result, it is my considered view that a sentence of 15 years will be appropriate. The period of detention of the accused prior to bail from 21 March 2009 to 21 April 2009 shall be taken into account in calculating the period of his imprisonment. It is hereby so ordered.

**M M SEY(MRS)**  
**JUDGE OF THE HIGH COURT**