

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CRIMINAL TRIAL NO. 275/10

In the matter between:

REX

VS

MELUSIMUZI MAHLABA

CORAM:

SEYJ.

FOR THE CROWN

MR. M.D. NXUMALO

FOR THE ACCUSED

IN PERSON

J U D G M E N T

30th JUNE 2011

SEYJ.

[1] **Melusi Mahlaba** (hereinafter referred to as the accused) stands charged with the offence of Culpable Homicide.

[2] The Crown has alleged that upon or about the 22nd day of November, 2009 and at or near Hlathikhulu area in the Shiselweni Region, the said accused person did unlawfully and negligently kill one Nhlonipho Mavuso and did thereby commit the crime of Culpable Homicide.

[3] When the accused was arraigned before this Court he was reminded of his rights to be represented by counsel but he opted to defend himself. He has pleaded guilty to the charge, which plea the Crown accepts.

[4] The Crown thereafter intimated to the Court that they had come to an agreement with the accused and that they had filed a Statement of Agreed Facts which was duly signed by counsel for the Crown and the accused person.

[5] The Crown then read out the said Statement of Agreed Facts as well as the post-mortem report and both documents were handed into Court by

consent. A statement made by the accused before a Judicial Officer was also produced and tendered by the Crown.

[6] The Court thereafter enquired from the accused whether he understood the contents of all the documents and whether he had any objection to them being admitted into Court as evidence.

[7] The accused said that he was fully aware of the contents of the documents and that he had no objection to them being admitted into Court as evidence. In the circumstances the said documents were duly admitted into Court as evidence and marked as Exhibits A, B and C respectively. The knife which was used by the accused was also admitted in evidence as Exhibit 1.

[8] In respect of the post-mortem report, section 221 of the Criminal Procedure and Evidence Act provides, inter alia, that:

"In any criminal proceedings in which any facts are ascertained by a medical practitioner in respect of any injury

to, or state of mind or condition of the body of, a person, including the results of any forensic test or his opinion as to the cause of death of such person; such facts may be proved by a written report signed and dated by such medical practitioner and that report shall be prima facie evidence of the matters stated therein....."

[9] The Court has accepted the post-mortem report of Dr. R.. M. Reddy as prima facie evidence of the cause of death of the deceased.

[10] Upon perusal of the said Statement of Agreed Facts it is apparent that the following events and facts are agreed upon between the Crown and the accused person:

10.1. On the morning of the 22nd November, 2009 the accused and his friend by the name of Phumlani Matsebula were walking along the road at Hlatikhulu Town from Styles Bar and Restaurant en route to their residential place at Sakeni. When they were next to the Price Store, before the

Hlatikhulu Hospital's main gate, they met with the deceased and his friend Nkululeko.

10.2. When the accused and his friend met with the deceased and his friend, the deceased and Nkululeko told the accused and his friend that what had happened the previous days should be repeated, meaning that a fight should start as it had happened previously. Thereafter a fight started.

10.3. During the fight Nkululeko grabbed the accused by the sweater he was wearing. The accused freed himself from Nkululeko but the deceased then grabbed the accused by the sweater. The accused then took out a knife that was in the sweater and stabbed the deceased. The accused was eventually able to take his sweater from the deceased and he then ran away. The deceased rushed himself to Hlatikhulu Hospital where he later succumbed to death.

10.4 As the accused was on his way after he had freed himself from the deceased, he met with Terrence B. Bardenhost and his friends.

The accused related to Terrence that he had stabbed the deceased and that he had been injured on his hand during the fight. He also told Terrence that the source of their quarrel was a long standing dispute with Nkululeko and his friends. He said that Nkululeko was trying to revenge an attack which had been orchestrated by the accused.

10.5 When the accused was arrested on 23rd November, 2009, he led the police, to the homestead of his friend Phumlani Matsebula, in the company of one Joyce Mkhombe who was there to witness the pointing out of an Okapi knife by the accused. The accused has been in custody since the day of his arrest.

10.6. On 24th November, 2009, the accused freely and voluntarily recorded a statement before Senior Magistrate Peter Simelane at Nhlangano Magistrates Court in the presence of an interpreter called Tenele Mkhabela.

10.7. On the 25th day of November, 2009, at the Mbabane Mortuary, Dr R. M. Reddy, who is the Police Pathologist, conducted a postmortem examination on the deceased's body. He opined that the cause of death was due to "haemorrhage as a result of penetrating injury to left lung."

10.8. The accused is remorseful of his unlawful act of killing the deceased.

10.9 By stabbing the deceased with a knife, the accused unlawfully and negligently caused the death of the deceased. There was no legal justification for the accused's illegal conduct and he admits that the deceased died as a result of his unlawful and negligent act and that there was no *novus actus interveniens*.

[11] In the light of the evidence adduced by the Crown and the guilty plea tendered, the accused is hereby convicted of the offence of Culpable Homicide as charged.

[12] Counsel for the Crown has stated that he has no record of previous convictions in respect of the accused.

[13] In mitigation the accused pleaded with the Court to be lenient with him and I have taken his mitigating factors into consideration. Moreover, the accused is a first offender aged 19 years and he has pleaded guilty to the charge. However, I must not lose sight of the fact that the accused stands convicted of a serious offence which resulted in the loss of the deceased's life. He had stabbed the deceased in such a manner that the cause of death was haemorrhage as a result of penetrating injury to his left lung. In my considered view, even though the deceased, who was 27 years old, was the aggressor, the force used by the accused was in the circumstances excessive.

See **Rex v John Ndlovu 1970-1976 SLR 389@ 390-391**

[14] I must state that in sentencing the accused I have taken into account his personal circumstances, especially his age, the interests of society as well as the seriousness of the offence he has committed. 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 as follows:

"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."

[15] The accused is a young offender who was in Form 1 at Salem High School in Hlathikhulu at the time of the commission of the offence. It is noteworthy that he has been held in custody since the date of his arrest the 23rd day of November, 2009. In my considered view, this is a case where any punishment this Court is minded to impose should be blended with a measure of mercy.

[16] In the light of all the foregoing, I am of the firm view that the accused needs to be accorded another chance to be rehabilitated into society in order for him to be reformed. In the circumstances, the accused is hereby sentenced to 3 years imprisonment all of which is hereby suspended for a period of 2 years on condition that he is not convicted of an offence involving violence during the period of suspension. It is hereby so ordered.

M. M S E Y (MRS)
JUDGE OF THE HIGH COURT