

**IN THE HIGH COURT OF SWAZILAND**

**HELD AT MBABANE**

**CASE No. 172/2008**

In the matter between:

**REX**

vs

**PARTY MCABANGO MBHAMALI**

**CORAM:  
FOR THE CROWN  
FOR THE ACCUSED**

**SE Y J.  
MR. M. MATHUNJWA  
IN PERSON**

**J U D G M E N T**

**04 JULY 2011**

**SEYJ.**

[1] **Party Mcabango Mbhamali** [hereinafter referred to as the accused]

stands charged with the offence of Culpable Homicide.

[2] When the accused was arraigned before this Court on the 22<sup>nd</sup> day of June, 2011, he was reminded of his rights to be represented by counsel. The accused however opted to represent himself. He has pleaded guilty to the charge, which plea the Crown accepts.

[3] The Crown thereafter intimated to the Court that it 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.

[4] 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.

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

[6] 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. By consent the said documents were duly admitted into Court as evidence and marked as Exhibits A and B respectively.

[7] The Statement of Agreed Facts reflects that on the eve of the year 2010 the accused, was drinking brew outside the Ekupholeni Bar in Mpaka with his friends.

[8] The deceased came out from the said Bar and just before he went past where the accused and his friends were sitting, an altercation ensued between the accused and the deceased.

[9] During the course of the altercation the accused produced a knife and stabbed the deceased once on the right collar bone. The deceased fell on the ground as a result and police who were on patrol in the area were alerted.

[10] The police transported the deceased to Good Shepherd Hospital where he was pronounced dead on arrival. The accused was arrested the following day and has been on remand till the present day.

[11] Following his arrest and upon being cautioned in terms of the Judges' Rules, the accused freely and voluntarily pointed out the knife which he had used to stab the deceased.

[12] On the 5 day of January 2010, Dr. Komma Reddy, a police pathologist, conducted a post mortem examination on the cadaver of the deceased. He stated that the cause of death was "due to a stab wound to the chest".

[13] In the said Statement of Agreed Facts dated at Mbabane the 20<sup>th</sup> day of June 2011, the accused person admits that the deceased is dead and that he has committed an unlawful and negligent act which was the immediate cause of the deceased's death. There was no novus actus interveniens.

[14] It is worthy of note that when a case has to be decided on a Statement of Agreed Facts, it is necessary that sufficient particulars of the event be included in the said Statement of agreed Facts. This would not only prove the guilt of the accused but would also enable the Court to determine what would be an appropriate sentence for the offence committed. This trite principle of law was clearly stated in the case of **Zwelithini Dlamini v Rex Criminal Appeal No. 5 of 2008 at page 4.**

[15] Judging from the circumstances of this present case, I find that by stabbing the deceased with the knife, resulting in the injury found by the pathologist, the accused unlawfully and negligently caused the deceased's death. I therefore find the accused guilty and I hereby convict him as charged.

[16] In arriving at my sentence, I have taken into consideration all the mitigating factors put forward by the accused and I have also considered the fact that, by pleading guilty, he has not wasted the Court's time. However, in

so doing, I must not lose sight of the fact that a life has been lost. 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.

[17] Moreover, I note that the altercation between the accused and the deceased took place whilst the accused was drinking brew at the Ekupholeni Bar in Mpaka. I must state that I afford little weight to the drunkenness of the accused as a mitigating factor in the circumstances of this case. In the words of His Lordship **Moore JA**, in the case of **Mbuso Siphon Dlamini v The King**, Criminal Appeal No. 34/2010

"he who continues to abuse alcohol to such an extent that the control of his voluntary actions is impaired and then commits serious crimes, must face the full penal consequences of his

conduct. Voluntary drunkenness as a mitigating factor in cases such as this has lost its efficacy."

[18] Thus bearing in mind the trinity of factors for my consideration, namely, the offence, the offender and the public interest, I find that an appropriate sentence would accordingly be the following:

7 years imprisonment, 2 of which are suspended for 3 years on condition that the accused is not convicted of any offence committed during the period of suspension of which violence is an element and for which he is sentenced to imprisonment without the option of a fine. This sentence will be backdated to 01/01/2010 which was the date of arrest of the accused. It is hereby so ordered.

M M *SEY(MRS)*

JUDGE OF THE HIGH COURT

