



IN THE HIGH COURT OF SWAZILAND

Criminal case No. 377/10

In the matter between:

REX

VS

MCEBO MJENGA DLAMINI

Neutral citation: *Rex vs Mcebo Mjenga Dlamini (377/2010) [2012] SZHC228 (2012)*

CORAM

MCB MAPHALALA, J

Summary

Criminal law – accused charged with murder – pleads guilty to Culpable Homicide – Crown accepts plea – Statement of Agreed Facts admitted in evidence – section 238 of the Criminal Procedure and Evidence Act invoked – accused convicted and sentenced to nine years imprisonment.

Judgment
14th September 2012

[1] The accused was charged with Murder and the Crown alleged that on the 24th December 2009 at Jabulani Area in the Shiselweni region, the accused acting jointly and in furtherance of a Common Purpose with two others who are at large unlawfully and intentionally killed Mcoshwa Reuben Dlamini. He pleaded guilty to Culpable Homicide and the Crown accepted his plea.

[2] A Statement of Agreed Facts was admitted in evidence by consent and was marked Exhibit 1. It reads as follows:

“Whereas the accused is indicted with murder in that upon or about 24th December 2009 and at or near Jabulani area in the Shiselweni region, the accused acting together in furtherance of a Common Purpose with others who are at large did unlawfully and intentionally kill Mcoshwa Reuben Dlamini.

And now the accused pleads guilty to Culpable Homicide in that upon or about 24th December 2009 and at or near Jabulani area in the Shiselweni region, the accused did unlawfully and negligently kill Mcoshwa Reuben Dlamini. The Crown accepts the plea, and the accused accepts that:

1. The deceased died as a direct result of his unlawful and negligent conduct.

- 2. There is no other intervening cause of death other than the accused person's unlawful and negligent conduct of assaulting the deceased.**
- 3. The deceased died due to traumatic intracranial haemorrhage inflicted and or caused by the accused.**
- 4. The report on the post-mortem examination on the body of the deceased be admitted to form part of the evidence in this matter.**
- 5. On the fateful day, the accused was returning home from a drinking spree in town in the company of two companions. The trio came across the deceased who shouted at them and said they should disperse. An argument ensued and the accused and the deceased engaged in a fight. The deceased was injured on the head and the trio left him lying motionless on the ground. The deceased was discovered dead the very next morning at the scene where he was injured when fighting the accused.**
- 6. The accused was subsequently arrested on the 5th January 2010 and was admitted to bail on the 15th January 2011 and he has been out of custody ever since."**

- [3] A post-mortem report was also admitted in evidence by consent and was marked Exhibit 2. The cause of death was due to traumatic intracranial haemorrhage. Three injuries were noted on his body.
- [4] Section 238 of the Criminal Procedure and Evidence Act provides that if a person is arraigned before any court upon any charge and has pleaded guilty to such charge or to any other offence and the prosecutor has accepted such plea, the court may sentence him for such offence without hearing any evidence. In the circumstances there is no need for the Crown to lead further evidence. I am satisfied that the Crown has proved the commission of the offence beyond reasonable doubt. The accused is accordingly convicted of culpable homicide in light of section 186 of the Criminal Procedure and Evidence Act which makes culpable homicide a competent verdict on a charge of murder.
- [5] In mitigation of sentence the defence submitted that the accused was a first offender; that he pleaded guilty to culpable homicide which was accepted by the Crown; that he is the sole breadwinner in the family; that he is married with three minor children to support; that he is remorseful for having committed the offence; and, that he contributed to the funeral expenses of the deceased.
- [6] In aggravation of sentence the Crown submitted that there was a loss of human life and that the deceased's family lost a member and a breadwinner.

[7] The Supreme Court in the case of *Musa Kenneth Nzima v. Rex* Criminal Appeal case No. 21 of 2007, the court laid down the fundamental guideline that a sentence of nine years imprisonment is warranted in Culpable homicide convictions only at the most serious end of the scale of such crimes. However, the court stressed the individualization of cases of culpable homicide as well as the particular facts of each case.

[8] Considering the serious nature of the offence and the fact that the accused was not provoked, I hereby sentence the accused to nine years imprisonment without the option of a fine.

M.C.B. MAPHALALA
JUDGE OF THE HIGH COURT

For Crown
For Defence

Principal Crown Counsel S. Fakudze
Attorney Lucky Manyatsi