



**IN THE HIGH COURT OF SWAZILAND**

Criminal case No: 126/2011

In the matter between:

**REX**

**VS**

**MUZI DLAMINI**

Neutral citation: *Rex v. Muzi Dlamini (126/2011) [2013] SZHC53 (2013)*

**Coram:** **M.C.B. MAPHALALA, J**

For the Crown: Principal Crown Counsel S. Fakudze  
For the Accused: Attorney Melusi Simelane

**Summary**

Criminal Law – Accused charged with one count of attempted murder and another count of assault with intent to cause grievous bodily harm - pleads guilty to both counts – convicted and sentenced to ten years in respect of attempted murder and twelve months in respect of common assault – sentences in respect of both counts will run concurrently.

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**JUDGMENT**  
**6<sup>th</sup> MARCH 2013**

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- [1] The accused was charged with one count of attempted murder as well as another count of Assault with Intent to do Grievous Bodily Harm. The Crown alleged that on the 4<sup>th</sup> April 2011 at Makhonza area in the Shiselweni region, the accused unlawfully assaulted Mthokozisi Thwala with intent to kill him. On the second count the Crown alleged that on the 4<sup>th</sup> April 2011 at Makhonza area in the Shiselweni region, the accused unlawfully assaulted Siphwe Matsebula with intent to cause grievous bodily harm. The accused pleaded guilty to both counts; and, the defence counsel confirmed the pleas.
- [2] A Statement of Agreed Facts duly signed by Counsel on behalf of the Crown and the defence was admitted in evidence, and, it was marked Exhibit 1:

**FORMAL ADMISSIONS AND STATEMENT OF AGREED FACTS.**

1. **WHEREAS the accused is indicted with the counts of attempted murder in that upon or about 4<sup>th</sup> April 2011 and at or near Makhonza area in the Shiselweni region, the accused with intent to kill, did unlawfully assault Mthokozisi Thwala.**
2. **WHEREAS the accused is indicted with the count of assault with intent to cause grievous bodily harm in that upon or about 4<sup>th</sup> April 2011 and at or near Makhonza area in the Shiselweni region he did unlawfully assault Simphiwe Matsebula with intent to cause grievous bodily harm.**
3. **The charges upon being put to the accused he pleaded guilty to both counts and such pleas were confirmed by his counsel and accepted by the Crown.**

4. **AND NOW THE accused accepts that he used an axe to assault both complainants in respect of each count.**
5. **The complainant in count one was severely injured on the head and sustained lifelong injuries and scares with visible deformity as a direct result of his assault by the accused upon him using the axe.**
6. **The complainant in count two also sustained grievous body injuries owing to the assault upon him on the head by the accused using the axe.**
7. **And now it is agreed that the medical examination reports relating to the complainants be submitted by consent to form part of the evidence.**
8. **The axe that the accused used in assaulting the two complainants is handed in by consent to form part of the evidence.**
9. **The accused was arrested on the 10<sup>th</sup> April 2011 and was admitted to bail on the 27<sup>th</sup> April 2011 and has been out of custody ever since.**

[3] The Medical Report in respect of Count 1 was admitted in evidence by consent and it was marked Exhibit 2. According to the report, the complainant was confused when he was admitted and only became conscious upon surgery; he had a depression of the left temporal bone, and, swollen on the left side of the face with bleeding from the left ear. He sustained a multiple skull fracture on his left side and subdural haemorrhage.

[4] Another medical Report in respect of the second count was admitted in evidence by consent and it was marked Exhibit 3. According to the report, there were no open wounds at the time of examination of the complainant on the 28<sup>th</sup> April 2011; and, that the complainant merely complained of pain over the head and body.

[5] The axe which was used in the commission of the offence was admitted in evidence by consent, and, it was marked Exhibit A.

[6] The statement of agreed Facts constitutes a formal admission in terms of section 272 (1) of the Criminal Procedure and Evidence Act No. 67 of 1938. The section provides as follows:

**“272 (1) In any criminal proceedings the accused or his representative in his presence may admit any fact relevant to the issue, and any such admission shall be sufficient evidence of such fact.”**

[7] I am satisfied that the evidence of the Crown does prove the commission of the offence beyond reasonable doubt. The injuries sustained by the complainant in the first count clearly shows that the accused had the required *mens rea* to commit the offence. It is a trite principle of the law that in order to support a conviction for attempted murder there need not be a purpose to kill proved, it is sufficient if there is an appreciation that there is some risk to life involved in

the action contemplated coupled with recklessness as to whether or not the risk is fulfilled in death.

See the cases of *Rex v. Huebsh* 1953 (2) SA 561 (A) at 567;

*Henwood Thornton v. Rex* 1987 – 1995 SLR 271 (CA) at 273.

[8] Accordingly the accused is convicted of attempted murder in respect of the first count.

[9] In respect of the second count, the evidence tendered by the Crown does not prove the offence of Assault with Intent to cause Grievous Bodily Harm in light of the medical report admitted as Exhibit 3. I would accordingly convict the accused of common assault in accordance with section 184 (2) of the Act as a competent verdict.

[10] In mitigation the accused submitted that he was a first offender, that he showed remorse by pleading guilty, that he was still a scholar at Pongola in South Africa, and that he was twenty-three years of age at the time of the commission of the offence. He further told the Court that he was arrested on the 10<sup>th</sup> April 2011 and released on bail on the 27<sup>th</sup> April 2011.

[11] In considering the appropriate sentence, I have taken into consideration the triad, consisting of the personal circumstances of the accused, the seriousness of the offence as well as the interests of society.

[12] In the case of *Rex v. Bongwa Mcondisi Dlamini* Criminal case No. 102/2008 at paragraphs 68-72, I had occasion to state the following in respect of sentencing in cases of attempted murder:

**“68. I have taken into consideration the Triad in the preceding paragraphs; however, I would like to state that the range of sentences in cases of Attempted Murder is three years for the less serious cases up to ten years for the more serious cases.**

**69. In the case of *Siboniso Sandile Mabuza v. Rex* Criminal Appeal No. 1/2007, the Supreme Court of Swaziland confirmed a sentence of three years in respect of each of the two counts of Attempted Murder; and, the appellant had to serve a total of six years imprisonment.**

**70. In the case of *Mduduzi Mkhwanazi v. Rex* Criminal Appeal No. 3/2006, the Supreme Court confirmed a sentence of seven years imprisonment for Attempted Murder.**

**71. In the case of *Delisa Tsela v. Rex* Criminal Appeal No. 11/2010 the Supreme Court of Swaziland confirmed a sentence of seven years**

**imprisonment with two years suspended for three years on condition that the appellant was not convicted of an offence involving violence during the period of suspension. With due respect, section 313 of the Criminal Procedure and Evidence Act precludes a suspended sentence in offences mentioned in the Third Schedule: Murder, Rape and Robbery and any conspiracy, incitement or attempt to commit any of these offences cannot be a subject of a suspended sentence.**

**72. In the case of *Gerald Mvemve Valthof v. Rex* Criminal Appeal No. 5/2010, the Supreme Court reduced a sentence of Attempted Murder from fifteen years to ten years imprisonment. Certainly this was a serious case of Attempted Murder where the appellant had attempted to kill his wife. In addition he was convicted of the murder of his two children; however, I will not deal with this aspect."**

[13] There is a sudden upsurge in this country with the use of bushknives, slashers as well as axes in the commission of serious and violent offences against innocent and law-abiding citizens. Many of these cases are committed against defenceless women. This court has a Constitutional duty to come to the assistance of members of the public who cannot defend themselves and impose appropriate sentences that will serve to curb this scourge.

[14] Accordingly, I will sentence the accused to ten years imprisonment in respect of the first count and twelve months imprisonment in respect of the second count. The sentences imposed on both counts will run concurrently, and, the seventeen days spent in custody shall be taken into account in computing the period of imprisonment.

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