



IN THE HIGH COURT OF SWAZILAND

JUDGMENT ON SENTENCE

Criminal Case No: 02/04

In the matter between

REX

Versus

MALANGENI RAPHAEL DLAMINI

ACCUSED

Neutral citation: *Rex v Malangeni Raphael Dlamini (02/04)* [2014]
SZHC171 (25 July 2014)

Coram: M. S. SIMELANE J

Heard: 17 July 2014

Delivered: 25 July 2014

Summary: Criminal Procedure – Culpable Homicide – Accused found guilty and convicted on a charge of Culpable Homicide.

Judgment

SIMELANE J

- [1] The Accused was convicted by this Court on 17 July 2014 for the offence of Culpable Homicide.
- [2] The task before this Court today is to impose a sentence on the Accused. In mitigation before this Court the Accused begged for leniency. He told the Court that he is a first offender which was confirmed by the Crown represented by Mr. S. Dlamini. It was further submitted by Mr. M.H. Mdluli for the Accused that the Accused is very remorseful as he lost a friend in the person of the deceased. It was also submitted in mitigation that the Accused is sixty seven (67) years old and not employed. He also submitted that he has eight (8) children who are dependant on him. It was also submitted that the Accused is a sickly person and a leader of his community.
- [3] In passing sentence, I am mandated by the law to consider this triad. The triad is your personal circumstances the seriousness of the offence

the interests of the society and the peculiar facts and circumstances of the case.

- [4] See **Mfanasibili Gule V The King Criminal Case No. 02/11 para. 17** and **The King V Sibusiso Xolani Dlamini Case No. 42/11 para 26 and 27**. More to the foregoing is that the sentence is expected to blend in a measure of mercy according to the circumstances. In the case of **S V Harrison 1970 (3) SA 684 (A) at 686 Holmes JA** demonstrated this trite principle of law as follows:- **“Justice must be done, but mercy not a sledge hummer is its concomitant.”** I have also armed myself with the oft quoted dictum by **Holmes JA in the case of S V Rabie 1975 (4) SA 855 A**

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

- [5] In passing sentence on the Accused, I have thus considered all his personal circumstances including that he is a sickly person. It is however an established fact that His Majesty’s Correctional Services where you are currently remanded and where you will be spending sometime from now has a commendable health care programme for inmates.
- [6] However the Accused should know that competing with his personal circumstances demonstrated *ante*, is the fact that the offence committed is very serious and prevalent one in the Kingdom.

- [7] Having carefully considered the triad consisting of the offence, the offender and the interests of the society, the Accused is sentenced to Seven (7) years imprisonment Two (2) years of which is suspended for a period of Two (2) years on condition that he is not convicted of a similar offence during the period of suspension.
- [8] Rights of Appeal explained to the Accused.

M. S. SIMELANE J.
JUDGE OF THE HIGH COURT

For the Crown: Mr S. Dlamini
For the Accused: Mr M.H. Mdluli