



**IN THE HIGH COURT OF SWAZILAND**

**JUDGMENT ON SENTENCE**

**Criminal Case No: 142/05**

**In the matter between**

**REX**

**Versus**

**MUSA MBONGENI MYENI**

**ACCUSED**

Neutral citation: *Rex v Musa Mbongeni Myeni (142/05)* [2014] SZHC  
377 (4 November 2014)

**Coram: M. S. SIMELANE J**

**Heard: 13 OCTOBER 2014**

**Delivered: 4 NOVEMBER 2014**

**Summary: Criminal Procedure – Two counts of Attempted Murder – statement of agreed facts – Accused convicted on both counts – Sentences ordered to run concurrently.**

### **Judgment**

#### **SIMELANE J**

- [1] The Accused person was arraigned before me on 13 October 2014 charged with two offences of Attempted Murder. It was alleged by the Crown on the first charge that upon or about 29 January 2004 and at or near Luvatsi area in the Lubombo region the said Accused person did unlawfully and with intent to kill shoot Mamile Ngcamphalala with a shotgun and did thereby commit the said crime.
- [2] On the second count it was alleged by the Crown that upon or about 29 January 2004 and at or near Luvatsi area in the Lubombo district the said Accused person did wrongfully, unlawfully and with intention to kill shoot Lomkhizo Shongwe with a shotgun and did thereby commit the said crime.

- [3] When the charges were put to the Accused, fully interpreted in siSwati, he indicated that he understood both charges and pleaded guilty. The plea was confirmed by learned defence Counsel Mr. L. Gama.
- [4] At that stage Mr. A. Makhanya learned Crown Counsel told the Court that the parties had prepared a statement of agreed facts which they wished to tender in Court as evidence. This was confirmed by the learned defence Counsel.
- [5] The statement of agreed facts was read and explained to the Accused in siSwati. He accepted it as true and correct. Thereafter, the statement of agreed facts was admitted in evidence as Exhibit A. The statement of agreed facts states as follows:-

- “(a) In the year 1999 whilst the accused was 14 years old accused’s mother Margret Mbhidvose Myeni passed away.**
- (b) After the death of the mother, there was a belief held, more particularly by the accused and his family that the complainants were responsible for the death.**
- (c) On the 29<sup>th</sup> January 2004 the accused came back from school, took his father’s licensed firearm proceeded to the homestead of Mamile Ngcamphalala which is near to his home and shot Mamile once. Accused then proceeded to the homestead of Lomkhizo Shongwe and shot her once. The firearm is handed in court as an exhibit.**

- (d) **Accused then left the scene took the firearm back home.**
- (e) **On the 29<sup>th</sup> January 2004 and 30<sup>th</sup> January 2004 the 1<sup>st</sup> and 2<sup>nd</sup> complainants were examined by doctors respectively and the injuries observed were those inflicted by the firearm fired by the accused. The doctor's reports are handed in as exhibits.**
- (f) **Accused left the area to live with various relatives at different areas and eventually returned on the 6<sup>th</sup> February when his father was preparing to surrender him to the police, and was arrested and detained."**

[6] The parties also by consent tendered two medical reports in respect of the complainants in Count 1 and Count 2 which were admitted in evidence and marked Exhibits B and C respectively. The report in respect of the complainant in the first count reflects that she sustained injuries as a result of a gunshot at the left forearm middle shaft with in let and out let. The bullet reached the left breast. The complainant also had fractures on the left upper quadran and located in the abdominal cavity. Right forearm with compound and comminure.

[7] On the second count the medical report reflects that the complainant sustained a single gunshot wound to left flank entry on the side of the abdominal wall exit beside spinal column. Track of gunshot did not enter the abdominal cavity but it had exposed the lower tip of the kidney, there was extensive damage to the left paraspinal muscle.

- [8] The firearm that was used in the commission of the offences was handed in Court by consent and admitted in evidence as Exhibit D.
- [9] In the light of the evidence adduced before me as well as the guilty plea advanced by the Accused, I find that the Crown has proved beyond reasonable doubt the commission of both offences of Attempted Murder.
- [10] I shall now turn to consider the appropriate sentence befitting the crime committed by the Accused. I am mindful that I have to consider the *triad* when sentencing the Accused persons. The *triad* is the interest of society, the personal circumstances of the Accused as well as the seriousness of the offences committed.
- [11] See **Mfanasibili Gule v The King criminal case 02/2011, paragraph 17. The King v Xolani Dlamini Case No. 42/ 2011 paragraph 26 and 27.**
- [12] 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 the law as follows:-

**“Justice must be done, but mercy, not a sledge-hammer is its concomitant”.**

[13] In honour of the above trite principle of the law I have considered the following mitigating factors as adduced by the Accused under oath. The Accused submitted that he is married with three children. He is self-employed in the Republic of South Africa and his wife is not employed. He stated that he is remorseful. He further stated that he shot both complainants because he felt they had a hand in killing in his mother by poisoning her. He also told the Court that he has complied with all the bail conditions imposed on him upon his release on bail. He spent three months in custody before his release on bail.

[14] Having carefully considered all the factors *ante*, it is expedient for me to point out that the offences committed by the Accused are very serious. Another factor I need to take into account is that too many innocent lives are lost in this country as a result of the abuse of firearms.

[15] It is apparent to me that the vicious and gruesome shooting of the complainants was uncalled for and unacceptable. The Accused used an inherently dangerous weapon to shoot the complainants and inflicted severe injuries. He must have appreciated that there was a reasonable possibility of risk of life involved in his actions and was reckless as to the consequences.

[16] Having regard to the totality of the evidence adduced before me I am of the considered view that the following sentences are condign:-

Count 1

The Accused is sentenced to Five (5) years imprisonment with an option of E5000-00 fine.

Count 2

The Accused is sentenced to Five (5) years imprisonment with an option of E5000-00 fine.

Three months of the sentence is deducted to take care of the period of incarceration before the Accused persons release on bail.

[16] The sentences are ordered to run concurrently.

[17] It is so ordered.

[18] Rights of Appeal explained to the Accused

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

**For the crown** : **Mr. A. Makhanya**  
**For the Accused** : **Mr. L. Gama**