



IN THE HIGH COURT OF SWAZILAND

JUDGMENT

CRIMINAL CASE NO: 59 /11

In the matter between:

THE KING

VS

MACHAWE NKOSINATHI DLAMINI

Neutral Citation:

Machawe Nkosinathi Dlamini v Rex (Case No. 59/11) [2017] SZHC (48) (2017)

Coram:

MLANGENI J.

Heard:

7th December 2016, 23rd February 2017
and 8th March 2017.

Delivered:

23rd March 2017

Summary: *Criminal Law - Accused charged with murder, having inflicted four stab wounds upon deceased - pleaded self-defence.*

Court found that there was no attack upon the accused by deceased person who, at the relevant time, was un-armed. Even if there was an attack, accused would in the circumstances be found guilty on the basis of dolus eventualis.

Extenuation not canvassed at the trial, but court's duty is to deal with this aspect if the evidence discloses it so as to safeguard the accused from carrying a burden that is beyond the measure of fairness.

Accused found guilty of murder with extenuating circumstances.

After due consideration of mitigating circumstances, accused sentenced to sixteen (16) years imprisonment without the option of a fine.

JUDGMENT

[1] Until the death of the deceased, she and the accused person were in a love relationship. The evidence does not disclose when the relationship started. It is common cause, however, that a child was born of the relationship. Unfortunately the child lived for about one month only. According to the accused, the two did have differences that are common to love relationships but they often resolved them

amicably. The death of the child apparently drove the wedge between the two and probably led to a number of momentous events that culminated in the death of the deceased.

[2] It is common cause that the deceased died in the hands of her loved one, the accused, and he now stands accused of her murder. The indictment states that ***“upon or about 17th February 2011 and at or near Mhlaleni area, in the Manzini Region, the said accused did unlawfully and intentionally kill one NKOSIBONE NONTSIKELELO MAVUSO”***. He pleaded not guilty to the charge and the plea was confirmed by defence Counsel Ms. P. Dlamini.

[3] At the trial the Crown led the evidence of several witnesses. A number of exhibits were handed in by the Crown. I will deal with these at a later stage. They include two important items that were handed in by consent, being ***“Exhibit 8”*** which is a post-mortem report and ***“Exhibit 9”*** which is a statement that was made by the accused to a Judicial Officer a day after the death of the deceased.

[4] In murder cases it is often unavoidable that a more direct account of relevant events comes from the accused person. I therefore accept

that some details of the accused's evidence cannot be fully tested. That notwithstanding, the picture that I perceive from the evidence reveals some aspects that I am prepared to accept, and I outline those presently.

[5] At different times prior to her death the deceased and the accused intermittently lived together and apart. They had a child together, and it is the death of this child that caused a major rift between the two because the accused felt that the deceased was the cause of the death. As a result, they agreed to live apart indefinitely, subject to mutually arranged visits. Whilst they were living apart, the deceased kept a key to the accused's residence, which was part of a residential compound at Mhlaleni area in the Manzini Region.

[6] One Sunday morning the deceased is said to have come to the accused's residence unannounced and got inside the room, whose door was not securely closed. At that point in time the accused was lying on the bed, tired and sleepy as he had been to a night vigil. She demanded his attention but he insisted that he needed to have a rest. After a brief but strained engagement accused fell asleep while the deceased was still in the room. After a while the accused woke up and realized that the deceased has left. He later discovered that some of

his personal belongings were missing, being bank cards, cell phone, National Identity Card, driver's licence and E1, 000-00 in cash. Accused later went to Matsapha Police Station to report a case of theft, but nothing came out of it until the deceased met her tragic death. On the 17th February 2011, the day the deceased died, she came to the accused's residence and was met by the accused a short distance away. A physical conflict ensued, resulting in the deceased dying through four stab wounds that were inflicted by the accused using a knife. According to Exhibit 8, the post-mortem report, she died through multiple injuries – two on the back of the head and two on the chest area.

CROWN WITNESSES

- [7] None of the Crown witnesses actually saw the stabbing incidents. PW1 is Nontobeko Matsenjwa and she was at the vicinity at the material time. She was living in a room in the same homestead. Her evidence does not go beyond peripheral facts. According to her, just before the fatal conflict the accused had related to her that a certain lady had taken his belongings. She further states that ***“I believe that he saw the lady appear. He then stood up and went to his room. He came back and passed by my door. I stood up and went inside my room.”*** Thereafter, she saw the deceased with blood stains,

outside a gate **“but not far”**. At that stage the deceased was able to walk; she moved forward and then turned back in the direction she had come from. PW1 then called one Nhlanhla and told him that accused had been fighting. She did not come close to the scene because she was scared, but Nhlanhla did. She further stated that she saw only two ladies in the vicinity who however were not close to where the fight had taken place. Her reference to only two ladies in the vicinity is significant when viewed in the context of accused’s version which is to the effect that when the deceased approached she was in the company of two men. Given that the accused does not deny the stabbing, the importance of PW1’s evidence is the aspect that places only two ladies nearby who however were not close to the scene.

[8] Nothing much came out of her cross-examination by the defence. It transpired that she did not know the deceased, she did not know that deceased was the accused’s girlfriend and she did not know that the deceased was a bully who once stabbed the accused.

[9] One Nhlanhla Dlamini was paraded as PW2. This witness’s home is at Mhlaleni where the accused was renting a room. They went to Hillside School together. He states that they actually grew up together. He further states that at the material time he went to Lomthandazo’s

room to make juice and found the accused talking to PW1, Nontobeko. He greeted them, and later the accused went to his room. It is apparent that PW2 also went back to his own room because he states that later he was called by PW1 who told him that the accused was in a fight. He looked at the scene and saw a lady bending over, and by the time he got close to the scene the lady was lying down, facing downwards. Accused was no longer there. He estimates the distance between the home and where the deceased was lying down to be about 80-90 metres. Exhibits **"A"** and **"B"** are pictures that show the motionless body of the deceased lying prostrate and facing the ground. The witness states that when he got to the body of the deceased she was still breathing – with difficulty – and that at her back there were bubbles of blood. He recognised her as the accused's girlfriend. He had known her for several months, but he did not know her name.

[10] It is clear that PW2 also did not see the stabbing occur and by the time he got to the scene the accused was no longer there. He states that he was with PW1 only at that time. Cross-examination by the Crown was inconsequential and did not bring about anything new.

[11] PW3 is one Liphi Phila Dlamini who resides at Mhlaleni area. He states that he knows the accused as someone who was renting a room in the

same area, different compounds. He was invited by the investigating officers to witness a pointing out by the accused who retrieved a knife next to an electricity pole which was next to a road. He stated that the knife had a black handle and was with blood. He stepped out of the witness box and identified a kitchen knife with a black handle. He also made reference to the accused's T-shirt which he described as torn, as if there was a fight. Since the accused does not deny the stabbing or the knife, the evidence of PW3 is, to a large extent, *ex abundante cautella*, an effort by the Crown to leave no stone unturned.

- [12] 6234 Constable Ntokozo Ginindza featured as PW4 and he stated that in the year 2011 he was stationed at Matsapha Police Station under general duty, and he was on duty on the 17th February 2011. He and other officers received a report through the emergency line 999 that there was an attempted murder case at Mhlaleni area and they immediately proceeded there. At Mhlaleni they found a lady lying on the ground face down, with blood all over the back, and it looked like there were many stab wounds. In her hands she was holding a cell phone on one hand and a bank card holder on the other. This latter aspect is confirmed by Exhibit **"A"** which shows a cell phone on the left hand and a card holder on the right hand of the deceased, both in a fairly secure grip.

[13] At this stage the deceased was still breathing but the witness could see that there was no hope of recovery. He was in the company of one Dlamini who is a Scenes of Crime Officer and took pictures. They then took the deceased to RFM hospital where she was certified dead upon arrival. Thereafter the witness, together with 3980 Det. Insp. Mhlanga, 3894 Det. Sgt. Masuku and 5522 Det. Constable Dlamini went for further investigation in the company of the accused. On this same day they recorded statements from people who were at the scene.

[14] During cross-examination the witness was asked if he was aware that on the 14th February 2011 the accused had gone to Matsapha Police Station to report a case of theft of personal items, in respect of which the deceased was the suspect. Further, that the Police had actually gone to deceased's place but did not find her there. He answered in the negative. Further probing of the witness revealed that there was no record of a report of that nature at Matsapha Police Station, either in the form of an OB report or RCCI. OB stands for "**occurrence book**" where all reported incidents are recorded, and for an enquiry to be undertaken an RCCI file is opened. From the line of cross-examination the defence version is that Matsapha Police took active steps in investigating the alleged theft against the deceased, including

calling the deceased on her mobile phone number, going to her residence but not finding her there and going to her place of work at Matsapha and again finding that she was not at work on that occasion. It is most strange how an investigation was carried out without a record of the report having been made in one form or another. It is possible that there was no record of the report, or that the witness did not find the report in his search. However, since this aspect does not affect the case one way or the other I do not need to make a finding of fact on it.

[15] PW5 is 6258 Constable Vusi Myeni who stated that on the fateful day he was OB keeper at Matsapha Police Station. He says that on the 17th February 2011 he received the accused at the Police Station. The accused looked anxious, his hands were blood stained and his T-shirt was blood stained as well. Further evidence is that the accused introduced himself to the witness who was taken to an appropriate room for attention. It is indeed common cause that the accused handed himself over to the Police, apparently immediately after the incident. This witness was not cross-examined.

[16] The sixth witness for the Crown was 5522 Detective Constable Dlamini who was stationed at Matsapha Police Station as a Scenes of Crime

Officer and was on duty on the 17th February 2011. His evidence pertains mainly to Exhibits A, B, C, D and E which are pictures taken at the scene of crime, and which he handed in to court as part of his evidence. I have already made reference to some of these exhibits and I do so again, in brief because there are no disputes regarding what these exhibits stand for. **“A”** and **“B”** show the body of the deceased lying on the ground face down. The evidence is that she was still alive at this stage. The additional evidence of PW6 is that the deceased was holding a NedBank card holder on the one hand and a cell phone on the other. **“C”** and **“D”** are the scene where the knife was retrieved by the accused, and **“E”** shows the knife itself, in the right hand of the accused. Cross-examination of this witness was brief and inconsequential.

[17] The main investigating officer in the matter was 3980 Detective Constable Bongani Mhlanga who was called as PW7. He received the docket on the 17th February 2011 at Matsapha and proceeded to Manzini Police Station where the accused had handed himself over. He states that upon meeting the accused he introduced himself to the accused and cautioned him in accordance with the Judges’ Rules. Accused indicated that he would like to make a statement to a Judicial Officer, that he did this of his free volition. The statement was

recorded and has been handed in by consent of the accused, as Exhibit “9”. This witness was also present when the accused pointed out and retrieved the knife and states that the accused did so of his free volition. The knife was not handed in, the reason being that the witness is now stationed at Bhunya where he came from on the day of trial, and the knife was mistakenly not brought from Matsapha. The defence’s position was that the absence of the knife does not prejudice its case.

- [18] During cross-examination it again transpired that this witness was not aware of a formal report of theft that was made by the accused person against the deceased although the accused did inform witness about the alleged theft. Once again this raises serious questions about this alleged report which has no trace at the Police Station. It was put to the witness that the deceased was an aggressive person who once strangled and stabbed the accused and assaulted him with a spade. The witness’s response was that these allegations were made by the accused but they were unsubstantiated. In the witness’s words – **“I did confirm that these were just allegations by the accused”**. It also transpired that the accused never told the investigating officer about two men who were allegedly in the company of the deceased when she approached accused’s residence on the final journey of her

life. Accused also did not tell the officer that when he demanded his personal belongings from the deceased she responded by insulting him. He also did not tell the officer that the deceased started the fight, if fight it was. It is more probable that this was one-way aggression by the accused.

DEFENCE CASE

[19] At this stage the Crown closed its case. The case of the defence is based on the evidence of one witness only – the accused. In his evidence the accused depicts the deceased as an amazon, a bully. He relates an incident during the period when they were living apart, when he noticed in his room that his new pair of shoes was missing. He figured out that they had been taken by the deceased as she had a key to his room. He then proceeded to her residence at Mathangeni. He found her in the room and when he demanded his shoes she yanked them out of her washing basket. He states that when he attempted to leave the room the deceased locked the door and threw the key outside through a window. Before the key was thrown out there was a struggle over it as the accused tried to gain possession of it and the deceased resisted. Accused further states that the deceased then reached for a knife to hurt him and he was actually pricked by the

knife during the ensuing struggle for possession of it. He finally overpowered her and took the knife from her. He states that she then took a spade from under her bed and used it to assault him, but he again overcame her and used the spade to force the door open and in that way he escaped from her.

[20] What is conspicuously missing in this scenario is that there is no mention by the accused of the exact cause of this nasty confrontation involving a knife and a spade, with the accused sustaining some minor injuries which did not require hospitalization. He got his pair of shoes and was leaving. It is a mystery why the deceased suddenly became aggressor in no small way. Unfortunately, the deceased cannot give her version of these events, if they did occur at all.

[21] It is clear from the evidence of the accused that the death of the couple's child left the relationship in tatters. The accused believes that the deceased was the cause of the child's death in that she intentionally made the child ingest a medical substance that was for external use. The couple, in the company of the accused's friend, rushed the child to Raleigh Fitkin Memorial hospital at a very late hour - about 8:00 p.m. They were at the hospital for a couple of hours. During this time the accused waited outside the consultation rooms

while the deceased and the child were inside. Finally, mother and child came out of the consultation rooms and the group went back to accused's residence. At the room the deceased bathed the child and changed her clothes. Only then did the accused realize that the child had died, and upon asking the mother about this, the deceased stated that the child was already dead when they left the hospital some hours earlier. Her reason for not telling this to him at the hospital was that she was afraid.

- [22] If this is the manner in which events unfolded on the night, then it qualifies for a *partina* horror movie. It is obviously difficult to understand how a hospital can release the body of a dead child in the manner that is related by the accused person. Assuming that this did occur in the manner alleged, and assuming that the accused finds it relevant to his defence, it does not help his case that no independent witness was introduced to deal with the gory story. For my part, I find this difficult to believe and I think it reflects badly on the credibility of the accused. He says that he and the deceased walked the whole night to his parental home at Mkhulamini, a distance of at least twenty kilometres away, carrying the dead child so that it would be buried. Yet no one was brought in to corroborate this degrading and bizarre experience.

[23] Coming to the more immediate antecedents, the witness relates how one Sunday morning the deceased, who had come to his residence unannounced, later took his personal belongings and left the room while accused was asleep. As stated earlier in this judgment his efforts and allegedly those of the Police were unsuccessful in getting his personal things back.

[24] The accused was obviously frustrated by the loss of his personal belongings, more especially by the false promises by the deceased that she would bring them back. On at least one occasion she cut out the call while he was pleading for the return of the things.

[25] During the time when accused was without his cell phone he had the use of a friend's phone, one Mpendulo Dlamini. He had access to use this phone on an on-going basis and he used this phone to contact the deceased on some occasions. On Thursday the 17th February 2011 accused received a call from the deceased's number. The call came through the friend's cell phone. According to the accused, a male person spoke and said they ***"were coming for me - why did I report the matter to the Police"***. He further states that soon

thereafter he saw the deceased approaching his residence, in the company of two men who were following her.

- [26] He assumed that one of those men is the one who had made a threat earlier. He then went to hide in his room but later realized that this was of no help since the deceased had a key to the room. Fearing that the deceased and the two men could cause damage to the landlord's property he then grabbed a kitchen knife from his room and went out to confront what he allegedly perceived as a threat. It appears that the deceased had, in the meantime, advanced closer to the compound. He states that the knife was intended to scare the two men away. As he approached the group of three he saw the deceased bend over as if to hide or pick up something from the ground. He did not see what it was. He asked the men what their business was and they immediately ran away, leaving the deceased alone. He states that he then demanded his belongings from the deceased, who responded in an insulting manner whose effect was that he was not going to get those things. He further states that the deceased leaned over a fence as if to pick up something, and while attempting to restrain her from picking something up a struggle ensued and she held the knife that accused was having in his hand. She fell and she was injured by the knife. Later on his evidence changed slightly to say that they both fell and

deceased was injured by the knife in the process. The impression created was that there was one injury, yet there were four stab wounds.

[27] The allusion to accidental injury was not developed by the defence. The defence being pursued is self-defence. The accused's evidence in chief that most closely relates to the defence being advanced is as follows:-

"She leaned over the fence to pick up something which I thought she had placed there. I did not see what she was picking up. I sought to restrain her from picking something up, and a struggle ensued. She realized that I had a knife and she held it, it was next to my left waist, she fell and she was injured by the knife."

[28] The above words were the last in chief. They were immediately followed by cross-examination by the Crown. Somewhere in these words I am asked to find an act of attack upon the accused by the deceased. I would need to be very creative in order to achieve that. The accused's own evidence shows that at no point in time was the deceased armed with anything. The suggestion that she bent over as if to hide or to pick up something is a work of art. I say so because there is no description of such a thing in the statement that the

accused made before a judicial officer, **“Exhibit 9”**, neither did he describe it in evidence in chief. What he does say in his confession is that while they were struggling for possession of the knife he (the accused) fell, he then proceeds to say that **“I rose and then stabbed her on the back left side and her right side next to the stomach and I went to the Police station ---”**. There are no better way to demonstrate intention to injure.

- [29] The allegation that the deceased approached in the company of two men is extremely improbable. If such men were there, and on a mission, they would not have melted away upon being asked by one man what their mission was. They would most likely have responded by executing their mission. Further, none of the witnesses who were in the immediate vicinity – PW1 and PW2 – saw the two men. In this I am fortified by the fact that when the accused went to his room **“to hide”** PW1 was outside, and she would have seen the group of three approaching. But even more importantly, the accused does not mention the two men in his statement before a judicial officer. If the two men gave him fear, as he suggests, to the extent that he armed himself with a knife, surely he would have mentioned this important aspect in his statement. In his statement he also does not mention the threat by a male voice in a cell phone call.

INTENTION TO KILL

[30] The evidence around this fatal injury points towards an intention to kill. Ms. Dlamini for the defence argues that the Crown has failed to bring evidence of intention. Intention hardly comes in the form of a palpable object, it is often demonstrated by the actions and behavior of those who are the subject. In the case of **THE KING v MADEYI PARIS DLUDLU**¹ Her Lordship Sey J., quoting with approval from **R v JABULANI PHILEMON MNGOMETULU**², had this to say –

“----the intention of an accused person is to be ascertained from his acts and conduct. If a man without legal excuse uses a deadly weapon on another resulting in his death, the inference is that he intended to kill the deceased.”

[31] In the case before Sey J. the Crown’s case was based on legal intention (*dolus eventualis*) as opposed to direct intent. In *casu* the Crown has sought to establish direct intent. The accused was obviously unhappy with the deceased, apparently for a number of reasons, the latest being the alleged theft of his personal goods. When he saw her approach, his anger got the better of him. I have already observed that there were no two men escorting the deceased. Accused went to his room to fetch a kitchen knife. He went to the deceased with the

¹ (447/2010) [2012] SZHC 35

² 1970 – 1976 SLR 7. See also Ota J. in **THE KING v KHETHA MAMBA** (198/11) [2012] SZHYC 186 at page 48

intention to use the knife on her. If there had been two men, and he succeeded in scaring them away as he claims, then there was no more use for the knife. He should then have engaged the deceased more constructively.

- [32] Four stab wounds on different parts of the body cannot be accidental. This is especially so when on the receiving end there is only one party, the one who was unarmed. According to the postmortem report two stab wounds were on the chest area and two were on the backside of the neck, clearly suggesting that at some point in time the deceased was running away from the danger, without success. Annexures **“A”** and **“B”** show the deceased holding a cell phone on one hand and a bank card holder on the other. Those two things cannot hurt a fly.

ONUS UPON THE CROWN

- [33] The onus upon the Crown is to prove, beyond reasonable doubt, that the deceased was killed by the accused intentionally. It is often said that the two requirements must exist contemporaneously. The accused does not deny that the deceased died through his hand. The only question to be answered is whether he sought to procure that result or not. If he did not directly intend to kill, he could still be guilty

of murder on the basis of *dolus eventualis*. His Lordship Justice T.S. Masuku had occasion to deal with the distinction between *dolus directus* and *dolus eventualis* in the case of **R v MDUDUZI D.J. ZWANE**³. At paragraph 31 of the judgment His Lordship, in typically lucid language, has this to say –

“In my view, it cannot be said that the accused had harboured a direct intention to kill the deceased. His version, which I have accepted is that he was angered by the deceased and as a result chanced upon the hammer and dealt her telling blows with it. In my view, intention in the form of dolus eventualis is borne out by the weapon used, the force applied and the number of blows administered, considered in tandem with the area of the deceased’s anatomy to which the blows were directed.”

The blows were four, and the hammer was four-pound size. The Honourable Judge proceeded to observe that the accused clearly foresaw the possibility of death, but persisted in the unlawful conduct.

[34] I have already expressed my considered view that the totality of the surrounding circumstances point unwaveringly towards an intention to kill the deceased.

³ Criminal Trial No. 68/09

[35] When the accused saw the deceased approaching he, without saying a word to PW1 who was with him immediately before, went into his room, according to him to hide. Because I do not accept that the deceased was being escorted by two men, I do not accept that the accused went into his room to hide. He went there to fetch a knife and fetch it he did. He approached the unarmed lady, and I accept that a struggle for possession of the knife may have ensued. The four stab wounds suggest that she was no match in the struggle and the assault was a one-way affair. Whether the accused alone fell or both of them fell is, in my view, immaterial because I do not accept that the deceased was injured as a result of falling. The notion that a person can get savagely hurt under those circumstances, numerous times, is not persuasive at all. In the case of **MDUDUZI D.J. ZWANE**, *supra*, Honourable Masuku J. rejected the accused's story that the four blows inflicted by hammer **"just happened"** – by accident, as it were. Once the accused had accomplished the assault he left the deceased to die, and rather than render assistance to her he went to hand himself over to the Police, well-aware of the inevitable result. He saw no need to take her to hospital.

[36] If the above analysis was not enough the accused, in his own words in the confession, states that he **"rose and then stabbed her ----"** ⁴.

⁴ See last page of the typed statement, Exhibit "9".

SELF DEFENCE

[37] While dealing with the onus upon the Crown I have simultaneously made reference to the accused's version that he was attacked by the deceased, and he acted in self defence. For this version to save the accused it must be reasonably possibly true. In other words objectively looked at, it must be possibly true. Regrettably for the accused, it falls short of the standard. It is common cause that the deceased was unarmed, and she could not have waged conflict using a cell phone and bank card holder. But even if she had been armed and did attack first, the accused would still need to show that his response of four stab wounds was proportionate to the attack, for his defence to succeed. Justice Ota⁵ makes reference to the Constitutional provision Section 15 (4) that the force used to repel the aggression must be ***“to such extent as is reasonably justifiable and proportionate in the circumstances of the case.”***

[38] The Crown, in my view, has proved its case beyond reasonable doubt, and since I do not accept the accused persons defence of self, the conclusion is that he is guilty as charged.

⁵ The King v Khetha Mamba, *supra*, p 29

[39] But the matter does not end there. In my view although the defence did not venture into the important issue of extenuation I cannot then adopt a supine attitude and let this ride. If I did that I would be abandoning my responsibility to do justice, and the accused could well carry a burden that in law is beyond fairness. Extenuating circumstances ***“are any factors that morally, though not legally, serve to attenuate the moral blameworthiness of the accused person in committing the crime that he did”***.⁶ In other words, although the accused is legally guilty of the offence, there may be some circumstances that reduce the perceived gravity of the wrongdoing.

[40] I am satisfied that at the time of this ghastly incident the relationship between the two love birds was far from pleasant. Only the two know why none of them took firm steps to terminate it. Of immediate relevance is that the accused's evidence regarding what could be described as the last straw – the theft of his personal goods by the deceased, is largely unchallenged. I may have reservations about the accused's credibility, but there is nothing of note to gainsay this version. Some of the belongings that were taken are used on a daily basis, e.g. the bank cards and the driver's licence. Evidence is that the accused works as a driver and the experience on the roads is that it

⁶ S v Letsolo 1970 (3) SA 476, as quoted by Masuku J. in Mduduzi D.J. Zwane.

can be demanded by traffic police literally at any turn. Undoubtedly, the accused was placed in a frustrating situation, exacerbated by the deceased's unfulfilled promises to return same. The average person may have lost their cool upon seeing the deceased, but the fact remains that this particular reaction cannot be justified in the circumstances of the case.

[41] In a few words, I find that the accused person endured a certain degree of provocation. To totally disregard this aspect would burden the accused with more than he legally should carry. I therefore find that there are extenuating circumstances, and the accused is found guilty of murder with extenuating circumstances.

SENTENCE

[42] Mr. Dlamini, it has been submitted on your behalf by your attorney in your favour that you are a first offender. The Crown accepts this position because it is not in possession of any record of previous conviction upon you. I am also aware from the evidence and it is also submitted by your counsel that when this crime occurred, you were approximately 21 years of age. This is a relatively tender age, during which, judgment can easily go wrong because of your age.

[43] It is possible that, had you been older, you might have reacted differently. Your counsel has also submitted that you are remorseful. I take that with a pinch of salt because during the trial, when you were giving evidence and under-cross examination, I wasn't able to make any observation or remorse. Your counsel says you are now a pastor at a certain church and says that this is a beginning of a path to rehabilitation.

[44] At the age of about 25/26 now, you could well in future have a more useful part in future I think. Now, when I say these things I must emphasize that I am not allowed to overlook the seriousness of the crime with which you are charged. Murder is a serious offense under all circumstances. This country in particular is reeling under the scourge of the death of females at the hands of their loved ones. This scenario has certainly arrived at alarming proportions.

[45] And could well be the bases for international embarrassment. One message that must come to you Mr. Dlamini is that you must see yourself as a protector of those that are weaker than you. I am aware that I need to consider a sentence that gives you an opportunity to be

a better person in future. But I am also aware that a would-be offender out there must also learn from this case that it is unacceptable for this thing to happen. The stab wound was not just one, but there were 4 on an unarmed and helpless woman.

[46] In the totality of circumstances, I am bound in duty to send you to jail for a period of 16 years, without the option of a fine.

A handwritten signature in black ink, appearing to read 'T.M. Mlangeni', written over a horizontal line.

T.M. MLANGENI
JUDGE OF THE HIGH COURT