



IN THE HIGH COURT OF ESWATINI

JUDGMENT ON SENTENCE

CASE NO. 43/2016

HELD AT MBABANE

In the matter between:

REX

Versus

LWAZI TSHEPO KUBHEKA

Neutral citation: *Rex vs Lwazi Tshepo Kubheka [43/2016] SZHC 260
[2018] (15 November 2018)*

Coram: **M. LANGWENYA**

Heard: **14 November 2018**

Delivered: **15 November 2018**

Summary: *murder with extenuating factors-consideration of the
triad-accused sentenced to a term of twelve years
imprisonment.*

JUDGMENT ON SENTENCE

[1] The accused has been found guilty of murder with extenuating circumstances. The evidence before the Court is that the accused had been drinking alcohol when the deceased was stabbed. It is also evidence before the Court that the accused was provoked by the deceased. The provocation of the accused reduces the moral blameworthiness because of its effect on his state of mind.

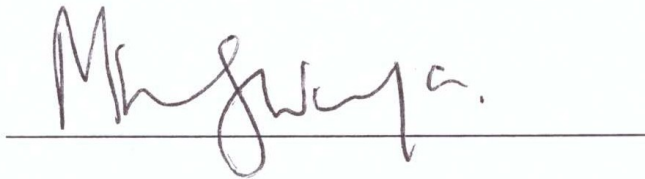
[2] In mitigation of sentence the defence submitted that the accused was intoxicated on the fateful evening. The defence submitted that the accused is a first offender; that he was twenty-one years old on the day of the incident and that he is now twenty-six years old. The accused is not married. It was further urged on the Court that the accused has two minor children aged between 5 years and 10 years old. The Court was also urged to pass a lenient sentence on the accused person because he is remorseful; to show his remorse, his family paid for the funeral expenses of the deceased. The accused submitted that the death of the deceased still weighs heavily on him. Finally, the accused stated that at the time of the commission of the offence he was employed at Matsapha. The accused was taken into custody on 13 June 2013 and has been kept in custody since. This means he has been kept in custody for five years, five months and two days.

[3] In considering the triad, I accept that the offence committed by the accused is very serious when considering that a human life was lost. It is equally true that society expects Courts to show its abhorrence at the senseless loss of life of

any person. However, when considering the personal circumstances of the accused, I am inclined to accept that a long period of imprisonment would not be in the interest of justice in this matter considering the youthfulness of the accused.

[4] I have also had occasion to refer to *Samkeliso Madati Tsela v Rex*¹-an authority which sets out the appropriate range of sentences in cases of murder in the country.

[5] I accordingly sentence the accused to twelve years imprisonment. The five years, five months and two days spent in custody to date will be taken into account in computing the period of imprisonment.

A handwritten signature in black ink, appearing to read 'M. Langwenya J.', is written over a horizontal line.

M. LANGWENYA J.

For the Crown: Ms M. Ngubeni

For the Defence: Mr S. Lokothwayo

¹ Supreme Court Case No. 20/2010 neutral citation: *Samkeliso Madati Tsela v Rex* (2010) [2011] SZSC 13 (31 May 2012).