

IN THE HIGH COURT OF ESWATINI

Held at Mbabane

Criminal Case No. 363/2011

In the matter between:

REX

V

SIPHO MBONGENI TWALA

Neutral citation: *Rex v Sipho Thwala (363/11)SZHC125 [2019] (12/07/2019)*.

CORAM            D Tshabalala J

Heard: 31/05/2018

Delivered: 12/07/2019

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**SENTENCE**

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[1] The Accused has been convicted of murder of the deceased Elizabeth Kunene. <sup>1</sup> The Court found existence of extenuating circumstances, following the

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<sup>1</sup> Judgment was delivered on the 12 July 2019.

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court's satisfaction with the evidence that over some time the Accused held a belief that the deceased who was his neighbour, was responsible for the illness of his young daughter who attended the same pre-school with deceased's granddaughter. The courts or the law does not in any way glorify a belief in witchcraft as free ticket for perpetrators of murder to escape the full consequences of their heinous crimes. The Accused may escape the noose but the court retains the powers to ensure an appropriate punishment reflective of society's disdain for the lack of respect of life.

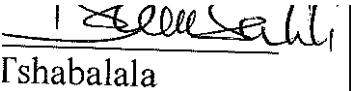
[2] In sentencing the Accused I consider the mitigating factors highlighted by his counsel, including that he is a first offender, he has minor children and that he is a bread winner for his family. The court is also mindful of remorse shown by the Accused which he verbalised during trial.

[3] The court also takes into account against the Accused, prevalence of violent crimes against women perpetrated by their fellow community members labouring under the misguided belief in witchcraft. The court must pass a sentence that balances the interests of the Accused which have been articulated by his counsel, and those that came through during trial. The society he has offended by taking the life of an innocent person from its midst must feel protected by the law as administered by the courts. The Accused's decision to vest the innocent deceased with supernatural powers should not have resulted with her brutal death. The court must pass a sentence that will deter like-minded person from similar offences. The nature of the offence must also be considered. In this case the accused deliberately used a spear to stab a defenceless woman several times while taking a bath in the privacy of her house. Pathologist's description of the injuries from which the deceased died raises a sense of shock.

[4] Having considered the relevant factors in this matter, and guided by the Supreme Court's authority in *Somisi Mbhamali v Rex*<sup>2</sup> on appropriate sentence in similar cases the Accused is sentenced as follows:

[4.1] Sentence: 20 (Twenty) years imprisonment.

[5] Order: the sentence is backdated to 10 October 2018 when the Accused was taken back to custody.

  
Tshabalala  
D Tshabalala  
Judge of the High Court

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<sup>2</sup> (38/2011) [2013] SZSC 08 (31 MAY 2013).