



**IN THE HIGH COURT OF ESWATINI**

**JUDGMENT**

Case No. 10/2014

In the matter between:

**REX**

**And**

**MFANUKHONA MAPONYANE MABUZA**

**1<sup>st</sup> Accused**

**ZIBUSE PETROS MABUZA**

**2<sup>nd</sup> Accused**

**Neutral citation:** *Rex v Mfanukhona Maponyane Mabuza and Zibuse Petros Mabuza (10/2014) [2020] SZHC 144 (24 July 2020)*

**CORAM** : **T.L. DLAMINI J**

**Heard** : 12 June 2020

**Delivered** : 24 July 2020

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**JUDGMENT ON SENTENCE**

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- [1] On the 8 June 2020 the accused persons were convicted of the Attempted Murder of Congress Ace Mavuso, hereinafter called the complainant. He was assaulted using a slasher and a bolted stick and sustained injuries that required him to be admitted at the Mbabane Government Hospital from 20 January up to 4 March 2015.
- [2] The complainant suffered a cut left hand and his extension tendon was injured. This injury did not allow him to use his hand because the muscle which allows it to flex was damaged. Save the one for the thumb, the tendons for all the fingers of the left hand were cut. On the right hand, the complainant's flexor tendon of the middle finger was damaged. This is the muscle which allows the hand to make a fist. One of his fingers was cut at the scene during the assault whilst another finger had to be amputated at the hospital because it sustained an injury that cut the vein which supplies blood. It was amputated because the injury rendered the finger unable to function.
- [3] Due to the injuries, the complainant had to undergo three operations. One was to fix the left hand extension tendon together with a bone that was fractured. The second was to fix the flexor tendon on the right hand whilst the third was to amputate the index finger on the right hand. He also suffered injuries on the head and the leg. All this evidence was tendered to this court by Dr. Zebenguni Mkhathshwa who worked with Dr Mthethwa who examined the complainant.
- [4] In mitigation, it was submitted that both accused persons are first offenders and have shown remorse. It was also submitted on their behalf that they

cooperated with the police throughout the police investigations and have always attended court whenever required to do so.

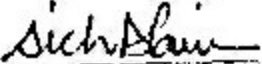
- [5] It was further submitted that Accused No.1 is self-employed and earns a living through farming at his homestead. He has two minor children who attend primary school and are fully dependent on him for support, and also has an unemployed fiancée with whom he was to get married to but were delayed by the obtaining coronavirus pandemic.
- [6] A submission made on behalf of Accused No.2 is that he has eight (8) biological children and two of his brother who are dependent on him for support. In total, he has 10 children to take care of. He also has a wife who is unemployed and is dependent on him as well. Of the 10 children who are dependent on him, five (5) are still in school and one suffers a disability. The court was implored by the defence attorney to be lenient when passing sentence.
- [7] The crown confirmed that both accused persons are first offenders. It however submitted that the complainant also has a family and the injuries inflicted on his hands left him unable to fend for the family members. The crown also submitted that the accused persons had no regard to the fact that cattle are animals and can trespass anywhere without someone driving them. It therefore implored the court to impose a sentence that would deter other would be offenders, and also demonstrate that people who take the law into their own hands have no place in our society.

- [8] In coming to a fitting sentence, I have taken into consideration the personal circumstances of the accused persons. I have also taken into consideration the offence and the interests of society as well. I have also taken into consideration the range of sentences which this court has deemed fit to impose in respect of this offence.
- [9] In the case of **Rex v Nhlanhla Dambayi Maseko (71/2013) [2020] SZHC 121 (29 June 2020)** I cite the case of **Rex v Bongwa Mcondisi Dlamini, Criminal Case No.102/2008 (unreported)** where the court state what I quote below:
- “the range of sentences in cases of Attempted Murder is three years for the less serious cases up to ten years for the more serious cases.”**  
(para 68)
- [10] In **Rex v James Mandla Mkhali (351/2011) SZHC 161 [2012] (31 July 2012)** **Ota J** sentenced the accused to seven (7) years for Attempted Murder. In the case of **Bhekizizwe Motsa v Rex (37/2010) [2012] SZSC 6 (31 May 2012)** the Supreme Court dismissed an appeal against an imprisonment sentence of seven (7) years in respect of an Attempted Murder conviction.
- [11] Cases of Attempted Murder using dangerous weapons are now prevalent in the Kingdom and society looks up to the court for effectively dealing with offenders by imposing severe custodial sentences. The injuries that were inflicted by the accused persons on the complainant were very serious. The submission on behalf of the accused that they cooperated with the police during investigations is incorrect in my view. This is so because the slasher and the bolted stick that they used to assault the complainant were not found

up to date. The inescapable conclusion that I arrive at is that the accused persons concealed and disposed those exhibits.

[12] Attempted Murder is an offence in respect of which a suspended sentence cannot be imposed in terms of **s.313 of the Criminal Procedure and Evidence Act of 1938 (as amended)**.

[13] After having considered the entire facts of the matter, this court sentences each accused person to five (5) years imprisonment without the option of a fine. The sentence is backdated to take into account any period which the accused persons have spent in custody in respect of this offence.

  
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T. L. DLAMINI  
JUDGE OF THE HIGH COURT

For the crown: Ms N. Masuku  
For the accused persons: Mr S. Jele