



**IN THE HIGH COURT OF ESWATINI**

**JUDGMENT**

Held at Mbabane

Case No. 350/19

In the matter between:

**REX**

**AND**

**MDUDUZI DOUGLAS NHLEKO**

**Neutral citation:** *Rex vs Mduduzi Douglas Nhleko [350/19] [2020] SZHC 239*

*(12<sup>th</sup> November 2020)*

**Coram:** FAKUDZE, J

**Heard:** 10/11/2020

**Delivered:** 12/11/2020

## SENTENCE

### EXTENUATION

- [1] The accused has been convicted of the crime of Murder and Theft. On extenuation, the accused is young and his education is low. The parties are agreed on this point. I therefore rule that there are extenuating circumstances in this case.

### SENTENCE

- [2] It is trite that courts have been implored to approach the matter of sentencing with great care. It must take into account the interests of the individual, the interests of society and the crime itself. See **Rex v Samkeliso Madati Tsela, Criminal Case No. 166/2008**.
- [3] As concerns the interests of the accused, I took into account the following:
- (a) The accused is the sole bread winner in his family. Three (3) dependants who are minor children depend on him;
  - (b) The mothers of the three minor children are unemployed;
  - (c) The accused is also responsible for taking care of his sickly mother who is also not employed;
  - (d) At the time of the arrest the accused was employed as an airtime vendor;
  - (e) If the accused goes to jail, the children will not have any formal education as they are dependent on the accused for their education.
  - (f) Although the accused assaulted the deceased all over the body, he did not foresee that the deceased will die as a result of this assault.

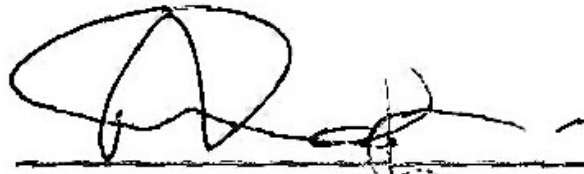
- (g) The accused is first offender and that he is relatively young. He has a bright future ahead of him.
- (h) The accused is not a sophisticated member of the society. He is not that educated.

[4] As regards the interests of society and the offence itself, I took into account that:-

- (a) The accused has been found guilty of a serious offence of murder;
- (b) At the time of murdering the deceased, the post mortem report showed that the deceased was six (6) months pregnant;
- (c) The killing of the deceased was brutal as evidenced by the post mortem report.
- (d) The deceased was the mother of a 1 year old child. She was a daughter to her parents and a sister.
- (e) The accused stated that he killed the deceased because she had condoms in one of her pockets.
- (f) The personal circumstances of the accused person, whatever they maybe cannot outweigh the demand that such conduct should be visited with a harsh and deterred sentence (see **Sabelo Kunene v The King (2016) [2017] (11 October, 2017) SZSC** page 13 paragraph 24.

[5] In imposing a proper sentence, this court should take into account the sentencing trends by our courts in similar matters as well as the circumstances of the matter at hand. Based on the abovementioned considerations, I am of the view that a sentence that fits the accused in light of the seriousness of the crime of murder and theft visa vis the interests of society is that of fifteen (15) years imprisonment without the option of a fine

as far as the murder case is concerned. As far as the theft of various items is concerned, the accused is sentence to Two (2) years imprisonment with an option of a fine of Two Thousand Emalangeneni (E2000.00). The sentences will run consecutively and both sentences shall take into account the period the accused spent in custody before he was granted bail.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned above a solid horizontal line.

**FAKUDZE J.**

**JUDGE OF THE HIGH COURT**

REX: N. MASUKU

ACCUSED: S. MABILA