



**IN THE HIGH COURT OF ESWATINI
JUDGMENT ON SENTENCE**

CASE NO. 397/14

HELD AT MBABANE

In the matter between:

REX

Versus

MELUSI 'THONE' MKHWANAZI

Neutral Citation: *Rex vs Melusi 'Thone' Mkhwanazi [397/14] [2020] SZHC 54*
(30 March, 2020)

Coram: **M. LANGWENYA J.**

Heard: 9 March 2020; 10 March 2020; 17 March 2020; 26 March
2020.

Delivered: 30 March 2020

Summary: *The accused was found guilty of murder-consideration of the
triad-accused sentenced to eighteen years-sentence to*

take into
to being

account the period accused spent in custody prior
admitted to bail.

JUDGMENT ON SENTENCE

- [1] You have been convicted of the crime of murder. The Court is about to sentence you now.
- [2] In order to arrive at an appropriate sentence, the Court is required to consider the broad judge-made guiding principles known as the *triad*¹. In *S v Zinn*, the Appellate Division held that in imposing a sentence ‘what has to be considered is the *triad* consisting of the crime, the offender and the interests of society.’ These factors must be considered equally and one should not be heavily relied upon over the other².
- [3] Regarding the crime, the punishment imposed must not be disproportionate to the offence³.
- [4] In as far as the offender is concerned, the Court should consider the personal circumstances of the offender and ensure that the sentence fits the offender.

¹ *S v Zinn* 1969 (2) SA 537A.

² *S v Holder* 1979 (2) SA 70A.

³ *Dodo v S* 2001 (3) SA 381 (CC) at para 37.

[5] In as far as the society is concerned, a sentence that is imposed should not so much serve the community's wishes as it should the public interest⁴. The interests of society are not best served by too harsh a sentence, but equally so, they are not properly served by one that is too lenient. Differently put, the public interest requires that punishment imposed should serve as a deterrent to other would-be criminals; serve as a preventative measure to crime as well as serve to rehabilitate offenders⁵.

[6] An important consideration is that punishment should fit the criminal as well as the crime; that it should be fair to society and be blended with a measure of mercy according to the circumstances. Put differently, punishment should be tempered with compassion and humanity as the aim is not to take revenge or to destroy the offender.

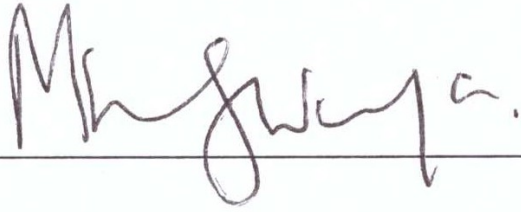
[7] Murder is a serious crime that negates another person's right to life. Your conduct was a violation of the deceased's right to life. The post mortem report shows that the deceased died due to stab wounds on the back side of the chest. That, the Court has found was your doing. In a serious crime of this nature, the Court must, in its imposition of sentence, promote respect for the law and in so doing must reflect the seriousness of the crime in the punishment imposed.

[8] The Court must never create the impression through its sentences that human life in the eyes of the law is cheap.

⁴ *S v Makwanyane* 1995 (2) SACR 1 (CC),

⁵ *S v Rabie* 1975 (4) SA 855(A) at 866A-C.

- [9] Courts are expected to be responsive to the outlook of the community to which they belong. Society cries for protection against all types of criminals and expects that convicted offenders should do time in the Correctional facilities for all serious crimes so that on return they respect the right to life of all people living in our country. Society requires that criminals who have committed serious crimes such as the one under consideration should be ideally removed from society for a long time. In that way, Courts would be fulfilling their role in protecting the society against lawlessness.
- [10] The Court has considered submissions made on your behalf on mitigating factors. The Court has been told that you are an unmarried man of 33 years old and that at the time of the commission of the offence you were 27 years old. You are not married and you do not have children. You have a dependent in the nature of your mother who is currently unemployed. You are a first offender. You were currently employed as a carpenter and earning E100 per day. I observe though that the fact that you were voluntarily intoxicated before you set out to cause a fight at deceased's home counts not so much in your favour as against. It is important that the Court also considers in your favour that you were young when the offence was committed.
- [11] In the result, you are sentenced to eighteen (18) years imprisonment. This sentence will take into account the period of imprisonment from October 2014 until November 2014 when the accused was admitted to bail.



M. LANGWENYA J.

For the Crown: Ms. N. Masuku

For the Defence: Mr. L. Dlamini