



IN THE HIGH COURT OF ESWATINI
JUDGMENT ON SENTENCE

CASE NO. 6/2012

HELD AT MBABANE

In the matter between:

REX

Versus

VUKA MXOLISI DLAMINI

CHURCHILL SIGCINO DLAMINI

Neutral Citation: *Rex vs Vuka Mxolisi Dlamini & Another [6/2012] [2020]*
SZHC 67 (21 April 2020)

Coram: **M. LANGWENYA J**

Heard: 1 July 2019; 1 August 2019; 12 August 2019; 14 August 2019;
9 September 2019; 7 November 2019; 13 November
2019; 4 December 2019; 12 February 2020; 9 March 2020;
25 March 2020; 21 April 2020.

Delivered: 21 April 2020.

Summary: The accused persons were found guilty of culpable homicide-consideration of the triad-both accused sentenced to eight years imprisonment two years of which are hereby suspended for a period of three years, on condition that they are not, during the period of suspension, found guilty of a crime in which violence to the person of another is an element. The sentence takes into account the number of days each of the accused spent in custody before they were released on bail. Both accused persons were arrested on 1 January 2012. The first accused was released on bail on 20 January 2012. The second accused was released on bail on 19 January 2012.

JUDGMENT ON SENTENCE

- [1] You have both been found guilty of culpable homicide.

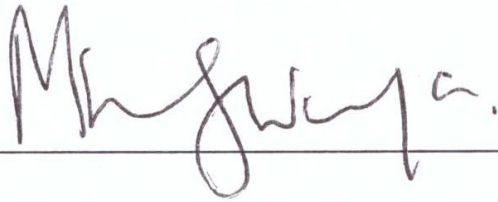
- [2] The Court found that you ought to have known as reasonable persons that the assault you meted out on the deceased might possibly result in his death. You were negligent. The deceased was not violent towards you when you both assaulted him to death. He pleaded with you not to assault or tie him. You assaulted him regardless.

- [3] In mitigation of sentence, it was stated that you are both first offenders. You have both been good and law abiding citizens until, as your attorney puts it, this unfortunate incident happened.
- [4] The first accused is a family man and a breadwinner. He is employed at RFM hospital in the maintenance department. Since conviction for this offence, the first accused has lost his job. He has a wife who is unemployed and three minor children who are all entirely dependent on him for support and maintenance. The children are all school going. His wife is pregnant with their fourth child.
- [5] The first accused takes care of his mother and his siblings as well as his brother's siblings. Any long incarceration, the Court was told will be of great prejudice to his family for the reasons set out herein.
- [6] The second accused is also a family man, a bread winner with four minor children who are all school going. He is unemployed but ekes a living by selling chickens. The second accused is on antiretroviral medication. The environment and diet at the Correctional facilities is not conducive to his medical condition. A period of long imprisonment would be prejudicial to his health. I am of the view, however that the Correctional Services currently cater for inmates who are taking the ARVs treatment and have the necessary know-how to look after people who are similarly placed as the second accused.

- [7] Both accused persons-it was argued, cooperated with the police during their arrest. They pointed out the relevant items used in the commission of the offence-a factor that demonstrates remorse on their part.
- [9] The first and the second accused were arrested on 1 January 2012 and were subsequently granted bail on 20 January 2012 and on 19 January 2012 respectively. They have waited for seven years through no fault of theirs for the matter to be heard. Awaiting trial has been hanging over their heads like the proverbial sword of Damocles. That, it was submitted has been punishment on its own.
- [10] It was submitted further on behalf of the accused that having a family member die in their hands is a matter that will haunt them for the rest of their lives.
- [11] I acknowledge and accept the favourable circumstances of the accused persons and what was said on their behalf.
- [12] Having said this, there is nothing to gainsay the fact that culpable homicide is a serious crime which involves the taking away of the life of another. For that reason, the Courts must show high regard for the sanctity of life.

- [13] The crime is made more reprehensible by the fact that the deceased was a person who had a mental illness and at the time he was assaulted, he was not violent but contrite as he pleaded with both accused persons not to assault or tie him. Instead of acceding to deceased's plea, the accused persons resorted to the use of violence against the deceased. The Courts cannot be seen to be encouraging a return to the state of nature. For this reason, the accused persons' behaviour is deprecated.
- [14] After assaulting the deceased, both accused persons did nothing to help him. He was assisted by his son into the police vehicle which finally took him to the hospital.
- [15] With regard to the interest of society, I am of the view that society must know that taking a life of another away, even if unintentionally is no light matter. This Court must show its commitment to the sanctity of life and its abhorrence to the senseless killing of another person by meting what it considers an appropriate sentence.
- [16] The first accused is accordingly sentenced to eight (8) years imprisonment-two (2) years of which are hereby suspended for a period of three (3) years, on condition that he is not, during the period of suspension, found guilty of a crime in which violence to the person of another is an element. The sentence will take into account the period of twenty (20) days the first accused spent in custody prior to being released on bail.

[17] The second accused is accordingly sentenced to eight (8) years imprisonment-two (2) years of which are hereby suspended for a period of three (3) years, on condition that he is not, during the period of suspension, found guilty of a crime in which violence to the person of another is an element. The sentence will take into account the period of nineteen (19) days the first accused spent in custody prior to being released on bail.

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. N. Mhlanga.

For Accused Persons: Ms. N. Mabuza.