



IN THE HIGH COURT OF ESWATINI

JUDGMENT

Held at Mbabane

Case No. 68/12

In the matter between:

REX

AND

SHADRACK MELUSI MKHONTA

Neutral citation: *Rex vs Shadrack Melusi Mkhonta [68/12] [2021] SZHC 207*
(2nd November 2021)

Coram: FAKUDZE, J

Heard: 27/10/2021

Delivered: 2nd November, 2021

SENTENCE

[1] The accused was found guilty of the murder of Nozipho Mngometulu on the 5th October, 2021. Now the court has to consider the issue of extenuation and sentence.

[2] The inquiry into extenuating circumstances is the duty of the court in collaboration with the accused representative and the Crown. What is clear

in this case is that there was an element of provocation. It comes in handy as an extenuating circumstance in that the accused was provoked by the deceased's infidelity. This point suffices to establish the existence of an extenuating circumstance. I now move on to deal with the issue of sentence.

- [3] When sentencing an accused person a court must deal with three interests: (a) the interests of the individual; (b) the interests of society; and (c) the offence itself. In the case of **Sifiso Malaza and Others v Rex, Criminal Appeal No. 30/2010**, His Lordship Ramodibedi CJ, as He then was, summarised as follows:

“It is of critical importance that the sentencing of an accused person should be premised on a thorough investigation of all relevant facts surrounding the commission of the offence. The personal circumstances of an accused person obviously needs to be taken into account. However, the degree of his moral guilt is also dependent on the gravity of the offence as well as the mitigating factors and aggravating features of the offence. If the court process does not elucidate these factors, the court sentencing the offender may fail to do justice to an accused person or contra to ensure the protection of the public.”

- [4] The following factors have been advanced in favour of the accused;

- (a) The accused is a first offender;
- (b) He is remorseful for his actions;
- (c) He is the father of three children who still need him for their upbringing;

(d) The accused committed a crime of passion. This is evidenced by the fact that he committed the offence because of the accused's misdeeds.

(e) The accused is fifty (50) years of age. He still has a bright future;

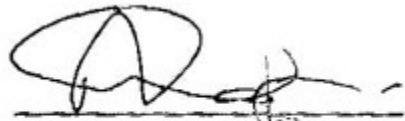
[5] As far as the offence is concerned, the court takes into account the following:

(a) The accused has been convicted of a serious crime of murder;

(b) The accused used a dangerous weapon to kill the deceased. He stabbed her in very delicate parts of the body;

(c) The crime for which the accused has been convicted is on the rise in our society.

[6] In totality of the above mentioned factors, the accused is sentenced to fifteen (15) years imprisonment without the option of a fine. The period the accused spent in custody prior to being admitted to bail is taken into account in computing the accused's sentence. The court has also taken into account the sentencing patterns imposed on murder cases where extenuating circumstances have been established (See **Dlamini v The King [18/2019] [2021] SZSC 13 (03/06/2021)**).



FAKUDZE J.

JUDGE OF THE HIGH COURT

Rex: S. Gama
Accused: B.J. Simelane