



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

**HELD AT MBABANE**

**CASE NO. 485/19**

In the matter between:

**REX**

Versus

**MATHOKOZA ANTHONY DLAMINI**

**Neutral Citation:** *Mathokoza Anthony Dlamini vs Rex [485/19] [2021] SZHC 24*  
*(2 March 2021)*

**Coram:**               **LANGWENYA J**

**Heard:**               23 February 2021

**Delivered:**       2 March 2021

**Summary:**       *Criminal law-Criminal Procedure-accused charged with  
murder but pleads guilty to culpable homicide-Section  
155 of the Criminal Procedure and Evidence Act 1938  
invoked- statement of agreed facts tendered in court-  
accused convicted on basis of his own plea and on content of*

*statement of agreed  
sentence evaluated in light of*

*facts-Evidence in mitigation of  
the 'triad' principle.*

## **JUDGMENT**

- [1] The accused was charged with the offence of murder. In that upon or about 19 May 2014 and at or near KaMnyani, eNgcoseni area in the district of Manzini, the said accused did unlawfully and intentionally kill Khaya Dlamini.
- [2] When the accused was arraigned he pleaded not guilty to murder but guilty to culpable homicide. The Crown accepted the plea. In this vein, Section 155 of the Criminal Procedure and Evidence Act applies and states as follow:
- That the accused may plead that he is guilty of the offence charged, or with the concurrence of the prosecutor, of any other offence of which he might be convicted on such indictment or summons.**
- [3] Accordingly, the Court accepted the accused's plea and proceeded on a charge of culpable homicide.
- [4] The Crown submitted a statement of agreed facts signed by both Counsel for the Crown and the Defence. The autopsy report was also handed into Court by the Crown. The statement of agreed facts was marked exhibit 'A' and the autopsy report was marked exhibit 'B.'
- [5] Both documents were handed into Court with the consent of both Counsel for the Crown and the Defence. The Court duly admitted same as evidence.
- [6] The statement of agreed facts was read out in Court by the Crown and its contents were confirmed by defence Counsel.

- [7] The Court enquired from the accused personally if he was conversant with the contents of the statement of agreed facts and whether he had any objections to it being admitted into Court as evidence. The accused said he was aware of the contents in the statement of agreed facts and also pointed out that he had no objection to it being admitted into Court as evidence.
- [8] The common cause factors are that on 19 May 2014, the accused, deceased and a certain Nkululeko Gamane Gama were drinking home brew around a fire at the home of the accused. A knife was used in the vicinity where they sat to cut meat which they roasted. The knife was left on the floor.
- [9] The accused and deceased were in good terms. On a prior occasion, the accused had lent deceased a thirty tonne jack. Deceased failed to return the said jack. The accused enquired about his jack from the deceased while they were enjoying the home brew. A misunderstanding resulting in a scuffle between the accused and deceased ensued. The deceased tried to grab the knife which was on the floor and accused grabbed a log of firewood and disabled the deceased by striking him with it on the head.
- [10] The accused, with the help of Phumlani Dlamini and Ellen Dlamini administered first aid to the deceased before he was conveyed to Mankayane Government hospital by Alfred Dlamini. The accused accompanied deceased to the hospital aboard Alfred Dlamini's car.
- [11] The deceased was admitted in hospital at about 2100 hours of 19 May 2014 and died on 20 May 2014. Dr. Komma Reddy, a police pathologist, conducted a post mortem examination on the body of the deceased on 22

May 2014 and determined the cause of death to have been due to injuries to the head.

[12] Section 221(1)(a) of the Criminal Procedure and Evidence Act, 1938 states as follows:

**In any criminal proceedings in which any facts are ascertained-**

**(a) By a medical practitioner in respect of any injury to, or state of mind or condition of the body of, a person, including the result of any forensic test or his opinion as to the cause of death of such person;**

**Such facts may be proved by a written report signed and dated by such medical...practitioner, as the case may be, and that report shall be *prima facie* evidence of the matters stated therein....**

[13] Based on the above provision, I have accepted the autopsy report without the doctor handing it in Court because both Counsel for the Crown and the Defence consented to it being so admitted. Accordingly, the Court accepts the autopsy report as *prima facie* evidence of the cause of death of the deceased. The autopsy report was marked exhibit 'B'.

[14] I am satisfied that the Crown has proved the commission of the offence beyond reasonable doubt. This I say based on the evidence before Court and the plea of guilt tendered by the accused. The accused is found guilty of culpable homicide.

### **Sentence**

[15] The Crown submitted that the accused does not have previous convictions.

### **Submissions in Mitigation of Sentence**

[16] In mitigation of sentence, it was submitted on behalf of the accused that the accused is a first offender. He is forty-six years of age; has no wife but has

five minor children. He spent four months in pre-trial incarceration. He earns a living by doing construction work in the area where he lives. It was urged on the Court that on the fateful day, the accused was enjoying his traditionally brewed beer-not for purposes of acquiring Dutch courage-but with the accused, a person whose company he enjoyed. The talk about the jack boiled over and resulted in a scuffle that led to the death of the deceased.

[17] Mr. Simelane for the accused submitted that the accused used more force than was necessary in the circumstances and urged that this can be attributed to the alcohol beverage he had been drinking. The Court was informed that the accused is remorseful as he pleaded guilty to the charge; confessed to a magistrate; cooperated with the police during the investigation of the matter and worked with his mother to administer first aid to the deceased before he was conveyed to hospital. It was submitted that this was a matter of-as EmaSwati will say-*licala lembula ingubo lingene* as deceased tried to pick up a knife and accused tried to save his life by using a firewood log. In the process he used more force than was necessary to avert danger. The Court was urged to suspend a greater portion of the sentence. The Court was entreated to look at the accused favourably as his action after deceased was injured support the view that this was an accident. The Court was urged to blend its sentence with a measure of mercy.

### **Submission by the Crown**

[18] The Crown submitted that since the day the accused was admitted to bail, he has never breached his bail conditions. Although the Crown submitted that the Court should not lose sight of the fact that a life was lost, Mr Mkhathswa

submitted that the Crown has no objection to a wholly suspended sentence in this matter.

### **Finding of the Court**

- [19] The accused's plea of guilt is a sign of regret and a demonstration of remorse and penitence. The accused did not waste the Court's time or resources in having his matter prosecuted. The accused made a clean breath of what transpired and the matter was finalized in the shortest possible period without calling witnesses. A plea of guilt should be credited for what it is worth; and that, in my view can be shown and reflected in the sentence imposed.
- [20] After realizing that the deceased had been seriously injured, the accused assisted in administering first aid to him and further assisted in ferrying him to hospital.
- [21] Upon his arrest, the accused cooperated with the police and later recorded a confession before a judicial officer.
- [22] It is, in my view a mitigatory fact that the accused will forever live with the fact that he caused the death of the deceased. The general public make no distinction between murder and culpable homicide. That is the preserve of those who know the law. The accused would simply be viewed as a murderer and this stigma will not only haunt him for life but is punishment on its own. In other words, the blood of the deceased will always be in the hands of the accused.
- [23] The circumstances of this case are rather unfortunate. The accused, the Court has heard had no issue with the deceased. In fact, the accused enjoyed the

company of the deceased. The innocent enquiry about jack he had given to the deceased however led to a scuffle between the two resulting in deceased attempting to go for a knife which was on the floor while the two were engaged in the scuffle. The circumstances surrounding the commission of the offence, in my view are such that the conduct of the accused resulting in the death of the deceased was not premeditated as he grabbed a firewood log-I presume which was where they sat- next to the fire where they enjoyed the traditional home brew. The degree of force used was not ascertained from the statement of agreed facts.

[24] In determining an appropriate sentence, I am enjoined by law to have regard to the degree of culpability or blameworthiness exhibited by the accused in committing the assault which resulted in the death of the deceased. In this regard, I have taken into account the accused person's unreasonable conduct in the circumstances, foreseeability of the consequences of his negligence and the consequences of his negligent act<sup>1</sup>.

[25] The community expects that a serious offence will be punished, but also expects at the same time that mitigating circumstances must be taken into account. The accused person's particular position also requires thorough consideration.

[26] That a life was lost is an important consideration but it is not the only factor that the Court ought to consider. If one has regard to the fact that the accused and deceased had been enjoying each other's company when a scuffle ensued between them; that it was the deceased who went for a knife while the two were engaged in the misunderstanding; that the accused has waited

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<sup>1</sup> See: *S v Nxumalo* 1982 (3) SA 856(A) at 861G-H.

seven years for the matter to come to trial; that the accused is a first offender; that prior to this incident he had not had a brush with the law, and the fact that he has shown remorse for his actions are all factors which I have considered to arrive at a sentence which, under the circumstances of this case is appropriate.

[27] It is evident from case law<sup>2</sup> that sentences imposed for culpable homicide vary quite considerably. This is so because the Court in each case has to determine the degree of culpability or blameworthiness exhibited by the accused in committing the negligent act for which he was convicted.

[28] Considering all these factors, I am of the considered view that the moral blameworthiness of the accused in the circumstances does not warrant a custodial sentence.

[29] In the result, the following sentence would meet the justice of the case:

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<sup>2</sup> See: *Musa Kenneth Nzima v Rex* Criminal Appeal No. 21/2007; *Petros Mangisi Masuku v Rex* Criminal Appeal Case No. 11/2008; *Vusi Madzalule Masilela* Criminal Appeal case No. 14/2008 & *Lucky Sicelo Ndlangamandla & Two others*, Criminal Appeal Case No. 8/2008; *Rex v Nkosinathi Bright Thomo* High Court Criminal Case No. 203/2008 as well as *Thandi Tiki Sihlongonyane* Court of Appeal Case.

[30] The accused is sentenced to six (6) years imprisonment wholly suspended for a period of five years on condition that the accused is not convicted of culpable homicide committed within the period of suspension. The sentence takes into account the period of four (4) months spent in pre-trial incarceration by the accused.



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**M. LANGWENYA J.**

For the Crown:

Mr. P. Mkhathwa

For the Defence:

Mr. B. J. Simelane