

IN THE HIGH COURT OF ESWATINI

HELD AT MBABANE

CRIMINAL CASE NO. 77/2014

In the matter between

REX

V

SIFISO MTHETHWA

1⁸_T ACCUSED

MLUNGISI MAVIMBELA

2ND ACCUSED

SIBONISO GWEBU

3RD ACCUSED

Neutral citation: *Rex v Sifiso Mthethwa & 2 Others (77/14) [2022] SZHC - JO [2022]*
(08 February 2022).

Coram Tshabalala J

Heard 08/02/2022

Delivered 08/02/22

SENTENCE

[1] The Accused were indicted for murder however were convicted of culpable homicide on the 03 February 2022. The matter was postponed for sentencing pending submissions by the crown and defence.

[3] The Crown advises that it has no record of previous convictions in respect of the Accused, in which case the Accused persons are presumed to be first offenders for sentencing purposes.

Mitigating factors

[4] The court takes into consideration the following mitigating factors in favour of the Accused: that they are first offenders; they are bread winners with families and dependants.

[6] The court is also obliged to consider the interests of society and the nature of the offence. The court must send a strong message that mob justice shall not be tolerated and that citizen's arrest must always be followed by a safe handover of suspects to the police for the law to take its course.

[7] The nature of the offence is that the deceased met his death at the hands of the Accused who were entrusted by the community as their grass roots police forum. As community police the Accused had higher responsibility than their fellow villagers, and to be exemplary in the handling of suspects. The Accused failed in their responsibility, not only in not protecting the suspect from assault, but participating in the unlawful act.

[8] The Court bears in mind that the Accused are convicted of culpable homicide and therefore must assess the nature and degree of negligence involved and

whether it attracts severe approach or leniency from the court. As the Supreme Court aptly put it in **Nhlanhla Mdaka Motsa v Rex**¹

"I am, however, of the view that there are varying degrees of severity in respect of counts of culpable homicide. The negligence complained of may either be slight or it can be more serious or even gross and bordering on recklessness. Consequently, the punishment in each case should therefore vary depending on the nature of the negligence involved and such deterrent effect as it may be thought to have, may also require to be ameliorated according to the particular circumstances. "

[9] It has been suggested that the Courts in both Swaziland and Botswana have passed sentences ranging from two years up to eight years in culpable homicide cases where the heat of passion was the defence.² The present case may compare with those cases due to the evidence that the deceased met his death while committing an offence of theft that enraged the community. This should by no means suggest that the mob response of self-help is ameliorated. The court nonetheless must take into account particular circumstances of each case.

[10] The court in **Rex v Mpendulo Bonny Ginindza**³ noted the sentencing trend in culpable homicide to range from zero to ten years, again with each sentence being placed at the point within the range that takes into account its seriousness or otherwise.⁴ Having reviewed sentences in cases of culpable homicide in this jurisdiction, and having considered the role of the Accused, which the evidence placed as minimal; therefore, that should be reflected in the punishment. The appropriate sentence in my view is **ES000 fine** for each Accused, failing payment, **five years imprisonment, half of which is suspended** for a period of three years

¹ Mndaka v Rex (27/2014) [2016] SZSC 28 (30 June 2016).

² Mndaka v Rex Supra.

³ Rex v Mpendulo Bonny Ginindza (167/2017) [2020] SZHC 77 (29 April 2020)

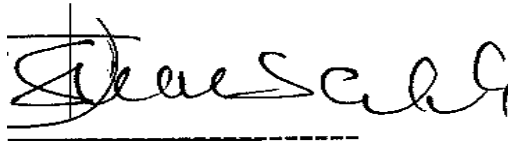
⁴ Rex v Ginindza. Supra at paragraph [42].

on condition that each of the Accused is not found guilty of an offence involving violence committed within the period of suspension.

Order

1. Any bail deposit paid by the Accused should be refunded
2. Any time spent in custody prior to release on bail should be discounted from the period of sentence.

3.

A handwritten signature in black ink, appearing to read 'D Tshabalala', is written over a horizontal line. The signature is cursive and somewhat stylized.

D Tshabalala
Judge

For the Accused persons: Mr M Sibandze (Mongi Sibandze & Partners)

For the Crown: Mr M. Lukhele (DPP's Chambers)