



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

**HELD IN MBABANE**

**CASE NO: 118/15**

In the matter between:

**THE KING**

**And**

**BONGANI LUKHELE**

**FIRST ACCUSED**

**LUKE MALOLO MATSENJWA**

**SECOND ACCUSED**

**MBOKODVO KHOKHAYI DLAMINI**

**THIRD ACCUSED**

**LUKHETFO MAZIYA**

**FOURTH ACCUSED**

**Neutral Citation:**        *The King and Bongani Lukhele & 3 Others [118/15]  
[2022] SZHC 161 (27 July 2022)*

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

**Heard:**                        16, 28 March 2022; 13 April 2022; 15 June 2022; 14  
July 2022; 27 July 2022

**Delivered:**                  27 July 2022

**Summary:** *The accused were convicted of culpable homicide-consideration of the triad-consideration of uniformity of sentences should not interfere with the free exercise of judicial officer's discretion to impose the appropriate sentence-accused each sentenced to six years' imprisonment wholly suspended for a period of five years on condition the accused are not convicted of culpable homicide during the period of suspended sentence.*

## **JUDGMENT**

- [1] On 14 July 2022, the accused persons were convicted of the crime of culpable homicide. They were found to have negligently killed Fakazi Lukhele on 19 July 2014 at Sikhuphe area.
- [2] In sentencing, I am enjoined by law to consider the salutary triad factors of sentencing namely: the nature and seriousness of the crime, the interests of the offender and the interests of society<sup>1</sup>. Put differently, I am bound by law to consider the personalities of the accused persons, their ages and personal circumstances together with the crime and the interests of society<sup>2</sup>.
- [3] In addition to the consideration of the triad of factors, I must consider tampering the sentence meted out with the element of mercy, basic humanity or compassion. Mercy, in this context does not refer to over emotional sympathy for the accused. Where punishment is robust, compassion is a balanced and humane quality of thought that softens one's approach when considering the basic factors of letting punishment fit the criminal and the crime and being fair to society<sup>3</sup>.

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<sup>1</sup> *S v Zinn* 1969 (2) SA 537(A).

<sup>2</sup> *S v Jansen* 1975 (1) SA 425(A) 427-428

<sup>3</sup> *S v Khumalo* 1973 (3) SA 697 at 698B; *S v Rabie* 1975 (4) SA 855(A) at 861C-D

- [4] Sentencing requires a balancing approach between the competing factors to be steered to an appropriate punishment. It is, however, settled law that in the process, it may sometimes be unavoidable to emphasise one factor at the expense of the others.
- [5] Counsel of the accused persons prepared written submissions in mitigation of sentence on behalf of the accused.

*Personal Circumstance of the first accused-Bongani Lukhele*

- [6] The Court was informed that Mr Lukhele is a first offender. He is married and has five children. The ages of the children range from twenty years to five years old. All his children are still attending school. The first accused is forty-four years old. He dropped out of school in Form Four. Mr Lukhele is employed as a machine operator at Swazi Paper Mills in Matsapha and a breadwinner in his family. He is also responsible for the maintenance of his niece and grandmother.
- [7] The first accused person is a member of the community police in his home area; he is a church leader and an evangelist of a Zion Church. He is sickly as he suffers from hypertension.

*Personal Circumstances of the second accused-Luke Malolo Matsenjwa*

- [8] Mr Matsenjwa is a first offender. He has never attended school. He was born in 1947. He is not formally employed but earns a living by doing piece jobs of field clearance and weeding people's fields in his home area. He is responsible for the maintenance and support of his deceased daughter's three minor children whose ages range between twelve and seven years old. Mr Matsenjwa is also a member of the community police and a caretaker leader of the imbali regiment in the area. Mr Matsenjwa is sickly and has an old

wound on his leg which does not heal. He regularly visits the clinic to have the wound dressed.

*Personal circumstances of the third accused-Mbokodvo Dlamini*

[9] Mr Dlamini is a first offender. He was born in 1971. He has never attended school. He grew up in Malindza. He has never been in formal employment. He earns a living by doing piece jobs like herding people's cattle. He is married and has four minor children whose ages range from sixteen to three years old. He is a member of the community police and a bread winner for his family. He is a sickly person and is on Anti-retroviral treatment.

*Personal circumstances of the fourth accused-Lukhetfo Maziya*

[10] Mr Maziya is a first offender. He was born in 1970. He earns a living by herding cattle belonging to members of his community. He is not married but has eleven minor children whose ages range from ten years to two years. Mr Maziya is also a member of the community police. He is a breadwinner in his family and is responsible for taking care of his disabled mother since his father is deceased.

[11] Ms Ndlangamandla referred the court to several culpable homicide cases where the court gave the convicted persons an option of a fine. Her assistance to the court in this regard is appreciated. I remark however that it is always helpful to bear in mind that the exercise of compassion is not always as helpful as its proponents believe. This is mainly because cases and convictions as well as sentences imposed differ substantially regarding their facts and surrounding circumstances. Even where matters are remarkably similar, a small difference in the circumstances of a given case can make a similar sentence an inappropriate one for a subsequent case.

[12] Generally, it is not improper for a judicial officer to have regard to the sentences imposed upon other accused persons in respect of the same offence, or to sentences generally imposed in respect of an offence like the offence dealt with by her, it is important to remember what was stated by the court in *S v Reddy*<sup>4</sup> as follows:

**‘Though uniformity of sentences that is of sentences imposed upon accused persons in respect of the same offence, or in respect of similar offences or offence, or in respect of similar offences or offences of a kindred nature, may be desirable, the desire to achieve such uniformity cannot be allowed to interfere with the free exercise of his discretion by a judicial officer in determining the appropriate sentence in a particular case in the light of the relevant facts in that case and the circumstances of the person charged.’**

[13] In the present matter all but one of the accused persons are unemployed. They are people of little or no means. Imposing the punishment of payment of a fine might not achieve the desired result as they may not be able to raise the requisite amount.

[14] The evidence before this court is that the second, third and fourth accused got involved in the commission of the offence they have been convicted of at the behest of the first accused. The accused did not set out to kill the deceased but they acted negligently in assaulting him in the manner that they did.

[15] The second accused person is an elderly man of seventy-five years old. Prior to being convicted of culpable homicide in this matter, Mr Matsenjwa has been a law-abiding citizen and holds a responsible position within his community. It appears from the evidence that the second accused did, at some point caution the first accused against getting too involved and participating in the questioning and eventual assault of the deceased because

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<sup>4</sup> 1975 (3) SA 757 at 759H-760B.

he was the complainant. I am also cognizant of the fact that Mr Matsenjwa is sickly and is a bread winner of his deceased daughter's minor children.

[16] The first accused is related to the deceased person. Prior to the death of the deceased Mr Lukhele had tried to assist the deceased to secure employment and would provide him with necessities for his upkeep. I have taken the personal circumstances of the first accused into account. The reason for the commission of the offence was not so much actuated by avarice as it was for a laudable objective of helping the first accused get back his property that the deceased had taken and destroyed.

[17] The third and fourth accused persons did not have a personal interest in the matter in as much as they sought to help Mr Lukhele get back his property from the deceased person.

[18] That said, it is important to make this observation. This court has, in recent times and in quick succession dealt with matters where member of the community police are involved in the killing of people with mental illness. People living with a mental illness are as much a part of society as people who consider themselves free of mental illness. To their families, people living with a mental illness are treasured and loved. No one, not even a member of the community police has a right to deprive another human being the right to life. On the contrary, members of the community police are expected to set an example of good behaviour and strict adherence to the law within their communities. They are supposed to work hand in hand with the Royal Eswatini police; they are not supposed to take the law into their own hands.

- [19] Members of the community police should set an example of measured, rational, reasonable and proportionate responses to antisocial conduct and should never be seen to visit excessive violence against transgressors.
- [20] Society expects that convicted persons be sentenced appropriately. Courts must protect society and when called upon to do so the community should not be disappointed by the imposition of too lenient sentences for crimes that are serious. Lest the community take the law into their own hands. On the contrary, the accused persons and other prospective offenders must realize that killing someone is forbidden and will attract the appropriate sentence.
- [21] The death of another person is always serious, especially when the death is the result of an assault like in the present case. This requires that the offenders be punished accordingly. I am of the view that the accused persons in this matter can still be rehabilitated on account of their age and the fact that they are all first offenders.
- [22] Duly considering the personal circumstances of all the accused persons, the aforesaid mitigating factors and weighing same with the nature and seriousness of the offence, I find that the accused persons deserve a second chance. In the result, the accused are sentenced as follows:
- [23] Bongani Lukhele you are sentenced to six years imprisonment wholly suspended for a period of five years on condition that you are not convicted of culpable homicide committed during the period of suspension.
- [24] Luke Malolo Matsenjwa you are sentenced to six years imprisonment wholly suspended for a period of five years on condition that you are not convicted of culpable homicide committed during the period of suspension.

[25] Mbokodvo Khokhayi Dlamini you are sentenced to six years imprisonment wholly suspended for a period of five years on condition that you are not convicted of culpable homicide committed during the period of suspension.

[26] Lukhetfo Maziya you are sentenced to six years imprisonment wholly suspended for a period of five years on condition that you are not convicted of culpable homicide committed during the period of suspension.

**M. S. LANGWENYA**  
**JUDGE OF THE HIGH COURT**

For the Crown: Mr Khumbulani Mngomezulu

For the accused persons: Ms Noncedo Ndlangamandla