

IN THE HIGH COURT OF ESWATINI

HELD AT MBABANE

CASE NO: 350/2021

In the matter between:

REX

And

VUSI SOTJA MOTSA

Neutral citation : *Rex v Vusi Sotja Motsa*

CORAM: **B.S. DLAMINI J**

DATE HEARD: 27 June 2022

DATE DELIVERED 27 July 2022

JUDGMENT ON SENTENCE

INTRODUCTION

- [1] The Accused person, Vusi Sotja Motsa, has been found guilty on a charge of culpable homicide in that upon the month of July 2021 at or near Siyendle area in the Shiselweni Region, the said accused person did unlawfully and negligently kill one Menzi Ngwenya by hitting him on the head with a stick resulting in the victim dying from internal bleeding. The Accused person suspected the victim to be a thief as the latter was found inside the house of accused person's relative.
- [2] The parties were directed by the Court to prepare and file written submissions on what they each would consider to be an appropriate sentence in the matter.
- [3] At the hearing of the matter, the Court expressed its reservations about the admission of certain evidentiary components of the statement of

agreed facts concluded between the Crown and the Defence. Nonetheless, this document remains valid and forms the basis of the conviction of the Accused person on the charge of Culpable Homicide. The Statement of Agreed Facts recorded that;

(a) The victim or deceased had come to the home of Accused person's relative in order to steal certain specified items.

(b) The victim was hit on the head twice by the Accused person with a stick.

(c) The Accused person is remorseful for his actions.

[4] It is against this background that an appropriate sentence ought to be considered by the Court. The Crown, from its written submissions appears to be of the view that an appropriate sentence in the matter would be a sentence of 10 years imprisonment without the option of a fine. The Defence on the other hand has asked the Court to impose a sentence of 5 years imprisonment with 2 years of such sentence wholly suspended on condition that Accused person is not found to have committed a similar offence.

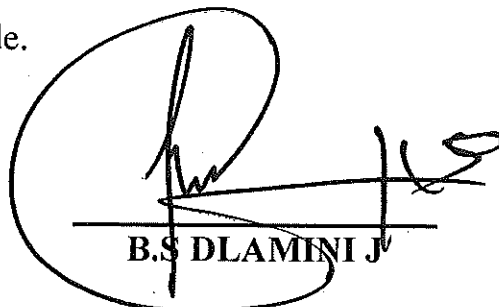
- [5] The Court has considered the submissions of both parties and the legal authorities relied upon by each one of them.
- [6] As has been indicated herein above, the Court must confine itself to the statement of agreed facts concluded between the parties and also consider the mitigation factors made on behalf of the Accused person in meting out an appropriate sentence in the matter. In this regard, the Court must consider that the deceased had come to the home of Accused person's relative in order to steal certain items and also that the Accused administered two blows on the deceased's head with the stick. The Court must also consider that the Accused person is remorseful for his actions and that he has some relatives who are dependent on him for support.
- [7] The fact that according to the evidence before Court, the accused person administered two blows on the deceased's head with a stick and the fact that the victim had come to steal some items in the homestead weighs in favour of the Accused person. On the other hand, hitting the head of a 17 year old with a strong stick and not caring what happens to the victim thereafter constituted negligence on the extreme by the Accused person. The Accused person did not

provide any explanation at all on why he failed to call law enforcement upon finding the deceased at the house of his relative. The Accused person also failed to provide any explanation on what prompted him to administer his own punishment on the deceased as opposed to simply detaining him and then calling law enforcement. There is no evidence that the victim posed any threat at all to the accused person nor was there any evidence that the victim was attempting to escape from the place where he was found.

[8] The Court accordingly sentences the accused person to **10 years imprisonment or to pay a total sum of E 18,000.00 (Eighteen Thousand Emalangeni)**. The cumulative sentence is broken down as follows;

- (a) **4 years' imprisonment with the option to pay a fine of E 4,000.00 (Four Thousand Emalangeni) to the State.**
- (b) **In addition to paragraph (a) above,** the accused is, in terms of Section 321 of the Criminal Procedure and Evidence Act, No.67 of 1938 ordered to compensate the victim's family with

2 (two) cows or pay E 14,000.00 (Fourteen Thousand Emalangeni) *in lieu* of the said cows for the negligent killing of their son. In the event of accused person failing to compensate the deceased family with the said cows or the said sum of money, the accused is to spend an additional period of 6 years in custody. Each cow for purposes of this sentence represents a period of 3 years in custody or a sum of E 7,000.00. This sentence does not take into account the time spent by the accused person in custody upon arrest nor does it take into account the period already spent by the accused person in custody upon conviction for the offence of culpable homicide.



B.S DLAMINI J

THE HIGH COURT OF ESWATINI

For Accused Person: *Mr. S. Mabila*

For the Crown: *Miss P.N Dlamini (DPP's Chambers)*