



**IN THE HIGH COURT OF ESWATINI**

**JUDGMENT**

Held at Mbabane

Case No. 539/20A

In the matter between:

**REX**

**V**

**YUSUF PALM BEACH**

**AND**

**TEBOGO SIPHIWE VILAKATI**

**Neutral citation:** *Yusuf Palm Beach vs Tebogo Siphwe Vilakati [539/20A]*  
*[2022] SZHC 32 (7 March 2022)*

**Coram:** FAKUDZE, J

**Heard:** 07/03/2022

**Delivered:** 7 March, 2022

## **JUDGMENT ON SENTENCE**

- [1] The accused persons have been found guilty of Culpable Homicide in that upon or about the 29<sup>th</sup> November, 2020 at or near Manzini Woodmaster in the Manzini Region, the said accused persons acting jointly and in furtherance of common purpose did unlawfully and negligently kill one Michael Thabo Silindza and thereby commit the crime of Culpable Homicide.
- [2] The court's duty is now to consider the appropriate sentence having taken into account the personal circumstances of the accused and the interest of society and the crime itself.

### **THE PARTIES' ARGUMENT**

#### **The accused**

- [3] The accused persons state that on the day in question the accused was drunk at the time of the commission of the offence. They had been drinking the whole night. An unfortunate incident unfolded at night when Thabo Silindza a man of unsound mind was killed. The deceased was killed in the accused's place because he was an intruder there. Their place had accommodated two (2) females who were also drunk. They were also naked and this was after the accused persons had gone to bring more liquor from a filling station. Upon their return they then found the deceased inside the house and given that the two females were naked the accused persons concluded that they had been raped by the deceased. That is when they beat him using a broom stick. The deceased was also naked and carried a sack. The accused persons thought he had also stolen some goods

- [4] The accused persons contend that an insignificant weapon was used to consult the accused and they never thought it would lead to the death of the deceased. Unfortunately, life was lost. The court should therefore issue out a sentence that should hang on accused persons heads for the rest of their lives. Given the circumstances of the case which are peculiar a suspended sentence should do. Alternatively, imprisonment with an option of a fine should be considered by the court.
- [5] On the issue of personal circumstances, the first accused person was forty (40) years old when he committed the offence; first accused has three children aged 19, 13 and 10 years old. He is a businessman who runs a Supermarket in Manzini. His parents passed away; he is therefore the family breadwinner. Accused person two is a student at IDM pursuing a course in IT. He also runs a car wash business in Matsapha and he was nineteen years of age when he committed the crime. He has a minor child aged two (2) months. They are both remorseful.

### **The Crown**

- [6] The Crown submits that in the imposition of the sentence the court has a duty to consider the principle of triad. The taking of someone's life is now prevalent. The court should therefore impose stiffer penalties so as to deter other would be offenders.
- [7] The court should also take into account the fact that the accused persons repeatedly assaulted the deceased several times and they did so after they had been admonished to cease doing so. May be the drunkenness was a contributing factor.

[8] The Crown further submits that society looks upon the courts to give effect to the law in arriving at an appropriate sentence. The range of sentences for Culpable Homicide in our jurisdiction is between two (2) years and eleven (11) years custodial sentence with or without an option to pay a fine. The court usually grants the option of a fine in rare circumstances.

### **COURT’S OBSERVATION AND CONCLUSION**

[9] Having heard counsel for both parties the court wishes to quote the words of the Learned Judges in **Musa Kenneth Nzima V Rex, Criminal Appeal Case No. 21/07** where it was stated as follows:

*“There are obviously varying degrees of culpability in Culpable Homicide offences. This court has recommended this and in confirming a sentence of 10 years imprisonment in what is described as an extra ordinarily serious case of Culpable Homicide the sentence was proper for an offence “at the most serious end of the scale of such a crime.”*

[10] In **Rex V Ntokozo Patty Simelane and Another Case No. 15/2019 [2021] SZHC 179**, the court observed that “the option of a fine is not prohibited for Culpable Homicide.”

[11] Having considered the interests of society, the crime itself and the personal circumstances of the accused, the court takes the position that the accused persons be convicted to imprisonment for a period of seven (7) years with an option of a fine of Seven Thousand Emalangeneni (E7.000.00). In arriving at this sentence, the court has taken into account that the accused persons repeatedly assaulted the deceased notwithstanding that they were admonished not to do so. They also knew that the deceased was a person of unsound mind. The sentence will take into account the period the accused spent in custody from the time of their arrest to the time when they were admitted to bail.

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FAKUDZE J.

JUDGE OF THE HIGH COURT

Rex: L.S. Dlamini

Accused: O. Nzima