

IN THE HIGH COURT OF ESWATINI

HELD AT MBABANE

CRIMINAL CASE NO. 349/2013

In the matter between

The King

V

Bongani Dlamini

1st Accused

Mphumelelo Ndwandwe

2nd Accused

Celimphele Dlamini

3rd Accused

Neutral citation: *The King v Bongani Dlamini & 2 Others (349/13) [2022] SZHC 198 [2022] (19/09/2022).*

Coram : Tshabalala J

Heard : 26/09/2022

Delivered : 05/10/2022

Summary: Murder – Sentence – The Accused was convicted of murder with extenuating circumstances, the effect of which is among others that he may not be sentence to the ultimate capital punishment.

JUDGEMENT ON SENTENCE

- [1] This is judgment on sentence that was reserved on the 26 September 2022. Initially, three Accused persons who were brothers,¹⁵ were charged with murder of the deceased Sibusiso Mlamuli Zungu on allegations that:

“...upon or about the 15th February 2015 and at or near Mhlosheni, Emakhatsaweni in the Shiselweni Region, the said Accused persons each or all of them acting in furtherance of a common purpose, did unlawfully and intentionally kill one Sibusiso Mlamuli Zungu...”

- [2] When trial commenced A2, Mpumelelo Ndwandwe had passed on leaving A1 and A3 to stand trial. Judgment was issued in which both A1 And A3 were found guilty of murder with extenuating circumstances. It is worth mentioning that, on the day judgment was delivered the court was informed that yet another Accused, Celimphilo Dlamini (A3) had passed away. Therefore, only A1 Bongani Dlamini remains to receive sentence for the crime.

- [3] The crown informed the court, among others, that there was no record of previous convictions against the Accused. Crown counsel submitted that the court must consider the triad, including the interests of society which he said outweigh those of the Accused, in that an innocent person was killed. Counsel asked the court to consider the range of sentences for similar offences in accord with the Supreme Court's guidance which he said was around 15 – 22 years imprisonment.

- [4] Defence counsel submitted a number factors in mitigation of sentence, including that the Accused dropped out of school at form II; he is married with four

¹⁵ A1 and A3 were born of the same mother and father while A2 was their half brother by a different father.

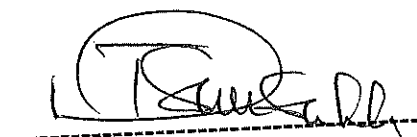
young children of school going age; he was of a young age of 24, when he committed the offence, which contributed to the reckless decision that he made with his brothers to go to deceased's house that night; the long time it that has lapsed since the incident to finalization of the trial bore heavily on Accused; and that the Accused diligently abided the bail conditions and stood trial.

[5] In arriving at appropriate sentence the court is enjoined by the triad to consider the interests of the Accused, those of society and the crime. The Court takes into considerations in favour of the Accused firstly that he is a first offender and that extenuating circumstances were found to exist in this matter. The court also takes into account submissions made by defence counsel that he be given a lenient sentence based on the grounds that he was of a young age at the time of committing the offence and that he has four young children who he provides for.

[6] The Court is also mindful of the interest of the society, the society that is under siege from violent inhumane crimes. The society looks to the courts to send a strong message that violence and unlawful taking of human life cannot be tolerated. More importantly members of society must not take the law into their hands to avenge the wrong they may believe to have been committed against them.

[7] Having found existence of extenuating circumstances, the consequence is that the Accused escapes the ultimate capital sentence for the murder of the deceased. From the foregoing facts the court considers that the appropriate sentence which is in line with sentences previously imposed by this court in similar matters with similar circumstances is twelve years imprisonment. The Accused is so sentenced.

[8] Sentence: twelve (12) years Imprisonment.

A handwritten signature in black ink, appearing to read 'D Tshabalala', is written over a horizontal dashed line.

D Tshabalala
Judge

For the Crown: Mr S Mdluli – (DPP's Chambers)
For Defence: B Dlamini – (B C Dlamini Attorneys)