

IN THE HIGH COURT OF ESWATINI

HELD AT MBABANE

CASE NO: 495/2019

In the matter between:

REX

And

OSCAR METHULA (1st ACCUSED)

MACHAWE P. NDWANDWE (2nd ACCUSED)

Neutral citation : *Rex v Oscar Methula & Another (495/2019)*
[2023] SZHC 24 (30/03/2023)

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

DATE HEARD: 14 March 2023

DATE DELIVERED 30 March 2023

JUDGMENT ON SENTENCE

INTRODUCTION

- [1] The Accused persons have been convicted for the offence of culpable homicide in that on the 16th November 2016 at Mpholi area in the Manzini District, the accused persons negligently caused the death of Thubelihle Maphanga by throwing her out of a moving motor vehicle and/or failing or omitting to stop the motor vehicle at her destination.
- [2] Procedurally, the Accused persons are, at this stage of the trial, required to furnish the Court with grounds of mitigation aimed at persuading the Court to issue a reduced or lenient sentence. By the same standard, the Crown is expected to furnish the Court with aggravating factors, if any which may persuade the Court to issue a stiff sentence.

MITIGATION BY ACCUSED PERSONS

- [3] In mitigation of sentence, it was submitted on behalf of the Accused persons that in the case of **R v Maziya 87/2005 ([2007] SZHC 176 (18 July 2007))** it was held that; *'in passing sentence the court is implored to consider the triad being the crime, the offender and the interests of justice.'*
- [4] On behalf of the First Accused, it was submitted that he went up to Form V and had been in the transport industry ever since, a period spanning up to 10 years. During these years, he has not been involved in any road traffic accident. The First Accused has five children and that the oldest of these children is in Form III and the youngest is in pre-school. The First Accused is the breadwinner in his family and is also responsible for his mother and nephews and nieces. The Court was also urged to consider that the First Accused person had recently obtained a job in a construction company in order to look after his family.
- [5] The Second Accused person had just dropped out of school in Standard V when the incident took place in 2016. At the time he was

14 years old. The Court was implored to consider the fact that the Second Accused obtained a job as a kombi conductor in order to fend for his family. The Second Accused is also responsible for the wellbeing of his siblings including his mother. The Court was urged to consider the youth of the Second Accused and the fact that due to his age, he could not fully appreciate the consequences of his actions. The Court was urged to apply the provisions of Section 79 of the Children Protection and Welfare Act, 2012 in sentencing the Second Accused person.

AGGRAVATING FACTORS

[6] On behalf of the Crown, it was submitted that the accused persons have been convicted of a very serious crime. It was submitted on behalf of the Crown that the accused persons have shown no remorse at all for the commission of the offence, a position they have maintained throughout the trial. In that regard, the Crown referred the Court to the case of *S v Matyityi (695/2009) [2010] ZASCA 127* in which it was held that;

“To that should be added, it [sentence] also needs to be victim-centred. Internationally the concerns of victims have been

recognized and sought to be addressed through a number of declarations the most important of which is the UN Declaration of the Basic Principles of Justice for Victims of Crime and Abuse of Power. The Declaration is based on the philosophy that adequate recognition should be given to victims and that they should be treated with respect in the criminal justice system. Restorative justice seeks to emphasize that a crime is more than breaking of the law or offending against the state- it is an injury or wrong done to another person.”

[7] The Crown further submitted that;

“1.3 There has been a rise in the reckless killing of people. Societal morals have disintegrated through such acts and there seems to be less value for life. Death no longer scares us. It is the family that is facing the loss at that point in time that is left alone to endure the pain and consequences of having lost their loved one.”

ANALYSIS AND CONCLUSION

[8] The High Court of South Africa (KZN Province) in *S v Soni* (CC29/14P) [2018] ZAKZPHC 74 (26 October 2018) stated as follows as regards the subject of sentence;

“[5] Imposing sentence is one of the most difficult tasks which a presiding officer has to grapple with. It has been described as a ‘painfully difficult problem’ and it involves a careful and dispassionate consideration of all factors. The Court must consider the factors referred to in *S v Zinn* being the interests of society, the personal circumstances of the accused and the nature of the offences that have been committed. The Court must also take into account the recognized objectives of sentencing being prevention, rehabilitation, deterrence and retribution.

[9] In the same case (*Soni’s case*, supra), it was held by the Court that;

“[14] SS Terblanche in the book *The Guide to Sentencing in South Africa* 3rd ed (2016) at 209 describes mitigation and aggravating circumstances as those which present during and after the commission of a crime which may influence

the sentence. There is no generally applicable list of mitigating and aggravating factors and whether a factor is mitigating or aggravating is determined by the presiding officer in each particular case when imposing a sentence. In *S v Rambla* the Court indicated that aggravating and mitigating factors are all these factors which a court can properly take into account in aggravating or mitigation of sentence.

[15] The passing of sentence often requires ‘balancing’ of mitigating and aggravating factors and requires a sufficient amount of weight to be attached to each of these factors. It may often occur that aggravating factors might outweigh the mitigating factors even to the extent that mitigating factors have no effect on the sentence, such as when life imprisonment is imposed. A party wishing to rely on a mitigating factor must provide sufficient factual basis for that by producing evidence to satisfy the court that the mitigating factors justify a departure from the prescribed minimum sentence.”

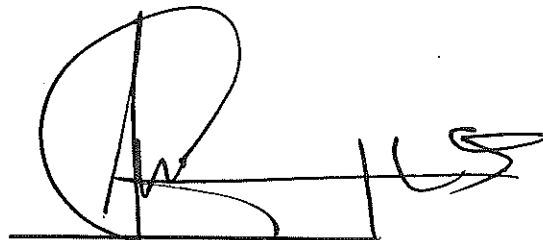
[10] The second accused person has not provided the Court with evidence that he was 14 years old when the offence in question was committed. Otherwise the rest of the mitigation factors have been considered by the Court in passing sentence in this matter.

[11] In our jurisdiction, the Legislature has given a sentencing Court the power to consider compensation and restitution for loss or damages suffered as result of criminal conduct. This however, would be not be an ideal case to invoke the provisions of Section 321 of the Criminal Procedure and Evidence Act, 67 of 1938. As a substitute to section 321 of the Act, the family of the deceased, in particular the minor child left behind by the deceased, is at liberty to consider filing a civil suit against the owner of the Toyota Quantum on the basis of vicarious liability flowing from the negligible actions of the accused persons. Public transport owners ought to properly train their operators on customer care because ultimately, they are legally liable for the actions of their employees.

[12] There is no sentence that can bring back the life of the deceased. Her death was uncalled for and could have been prevented. The Court can

only hope that the family finds closure and accepts the unfortunate fate of their family member at the hands of the Accused persons. Having so said, the Court accordingly issues the following sentence to Accused 1 and Accused 2;

- (a) Each of the Accused persons is sentenced to 8 years' imprisonment without the option of a fine. 3 years' of the sentence is suspended for 2 years on condition that accused persons do not commit a similar offence.
- (b) The sentence is to be reduced by such period as may have already been spent by the accused persons in custody.

A handwritten signature in black ink, appearing to be 'B.S. Dlamini J.', written over a horizontal line.

B.S. DLAMINI J

THE HIGH COURT OF ESWATINI

For the Crown: Miss. E. Matsebula (D.P.P's Chambers)

For the Accused: Miss N. Hlophe (Mongi Nsibande & Partners)