

IN THE HIGH COURT OF ESWATINI

HELD AT MBABANE

CRIM. CASE NO: 369/2019

In the matter between:

REX

v

NHLANHLA LUCKY MATJALO MAVUSO

Neutral citation : *Rex v Nhlanhla Lucky Matjalo Mavuso (369/2019)*
[2023] SZHC (08/02/2023)

CORAM: B.S. DLAMINI J

DATE HEARD: 12 December 2022

DATE DELIVERED 08 February 2023

Summary:

Criminal proceedings-Accused charged with the offence of Attempted Murder. Accused pleading self-defence in that he and his partner were attacked late at night by the complainant. Evidence shows that complainant attacked home occupied by Accused and broke down windows of the house. Evidence also shows that complainant threatened to burn down the house with the occupants inside. During the process of breaking down the windows by complainant, one occupant sustained injuries and had to be taken to hospital.

Held;

The evidence led in Court shows that Accused employed reasonable and acceptable force in defending himself and those around him during the attack by the complainant. The Accused is accordingly acquitted and discharged from any wrongdoing on the charge of Attempted murder.

JUDGEMENT

INTRODUCTION

- [1] The Accused person is Nhlahmha Lucky Matjalo Mavuso, an adult Liswati male of Nkhangala area in the Manzini Region. The Accused was charged with the offence of Attempted Murder in that *'upon or a about the month of June 2019 at or near Nkhangala area in the Manzini Region, the said accused did unlawfully with intent to kill, hack one SIFISO JELE with a bush knife and did thereby commit the crime of ATTEMPTED MURDER.'*
- [2] During trial, when the charge was read to the Accused, the latter pleaded not guilty and the trial proceeded in the normal manner. It should be pointed out at this stage that when the rights of the accused were read to him, in particular the right to legal representation, the Accused opted to conduct his own defence.
- [3] There were eight (8) witnesses called by the Crown to prove commission of the offence by the Accused. The first of these

witnesses was the complainant, one Sifiso Jele (PW1). PW 1 stated that on the 29th June 2019, he decided to go to a certain homestead in which he has relations with one Bongiwe Tsabedze. The witness had gone to Bongiwe tsabedze's homestead in order to ask for money with which to buy cigarettes. On arrival at the homestead, PW1 knocked at the door but there was no answer.

[4] As PW1 was knocking at Bongiwe Tsabedze's room, one Ncamsile Simelane, who is a neighbor to Bongiwe Tsabadze's homestead showed up and found PW1 standing and knocking at the door. According to PW1, Ncamsile Simelane shouted on top of her voice and told PW1 that she had caught him as this witness had come to commit crime at the homestead. PW1 responded by saying he had come to Bongiwe to ask for money only to find that there was no one at the homestead.

[5] According to PW1, Ncamsile Simelane formed the opinion that PW1 had come to the homestead in order to steal in the absence of any members of the family. The said Ncamsile Simelane informed PW1 that she would report him to Bongiwe upon her arrival in the evening.

According to PW1, he responded by telling Ncamsile Simelane that he had not come to steal and that it was her opinion that his intention was to steal at the homestead.

- [6] Upon PW1 leaving Bongiwe Tsabedze's homestead, he met one Mpendulo Nkambule along the way who was driving a Toyota Hilux vehicle. The said Mpendulo Nkambule requested PW1 to accompany him to Mankayane in order to wash the motor vehicle and also fetch water. Indeed PW1 got into the motor vehicle and they drove to Mankayane. At Mankayane they washed the motor vehicle and, after completing this task, they drove to one of the bars in the area. Mpendulo proceeded to buy alcoholic drinks for the duo and they began to indulge in alcoholic beverages.

- [7] According to PW1, they drank until it was in the evening when this witness met his brother by the name of Delisa Jele at the same bar and they continued drinking. The drinking of alcohol continued until it was around 9:00 pm when they decided to leave for home. When PW1 and his brother got to their area of residence, they proceeded to Khanyisile Simelane's homestead in order to buy some cigarettes.

Delisa Jele knocked on the door and asked to buy cigarettes and was given what he had asked for.

[8] According to PW1, the brief altercation he had earlier with Khanyisile Simelane was still on his mind. PW1 decided to go to the window of Khanyisile Simelane's room and once there, started shouting her name and demanding that she clarifies what she meant earlier when accusing him of attempting to steal at Bongiwe Tsabedze's homestead. According to PW1, Ncamsile insisted that PW1 had gone to Bongiwe's homestead in order to steal. Ncamsile also told PW1 that she had told Bongiwe about the incident.

[9] PW1's evidence was that he felt offended by Ncamsile's response and proceeded to break her window in anger. Thereafter one Matjalo Mavuso (the accused) came out carrying a bush knife. According to PW1, the accused person did not say anything but proceeded to hack him with the bush knife on his shoulder and left elbow. PW1 then ran towards the direction of his home and once reaching home, began to experience sharp pain resulting from the injuries.

[10] PW1 was taken to Mankayane Government Hospital where he was hospitalized for a week and thereafter discharged. According to PW1, he has not fully recovered from the injuries and still experiences sharp pain from the spine. PW1's testimony was that he decided to report the matter to the police. PW1 stated that he knows the accused person as someone staying with Khanyisile Simelane in the same area where he is also a resident. According to PW1, he did not provoke the accused person in any way. PW1 also informed the Court that he was able to identify the bush knife that was used by the accused person in assaulting him.

[11] PW1 was cross-examined by the Accused person. The Accused person sought to establish that it was PW1 who attacked them late into the night, broke windows of the house and in the process injured Khanyisile Simelane and also threatened to burn the house down.

[13] PW2 was 5461 Constable Thokozani Mndzebele who works in the Police Service under the General Duty Department. The witness narrated in detail the steps undertaken by the police upon receiving a report about someone who had been injured at a Jele homestead. PW2 stated that when taking PW1 to the hospital, he noticed that his

clothes were soaked in blood and that there was a serious wound on his left shoulder. It was upon arrival at the hospital that the witness also observed other injuries on the body of PW1.

[14] According to PW2, after making a report to their superiors, he and another officer in the criminal investigation department were instructed to investigate the matter further. Their investigation led to the arrest of a suspect by the name of one Nhlanhla Lucky Matjalo Mavuso who is the accused in the matter. The witness stated that he is not the main investigator in the matter.

[15] PW3, Delisa Jele is a brother to the complainant. This witness stated that on the 24th June 2019, when coming from Mankayane, he and his brother, PW1 went to a certain homestead in order to buy some cigarettes. PW3 told the Court that he had no idea that his brother, PW1, had engaged in an altercation with Khanyisile Simelane earlier on in the day. The witness stated that after buying the cigarettes and when about to leave the Simelane homestead, his brother, Sifiso Jele started to raise his voice and ordered him to stop the car.

[16] According to PW3, his brother alighted from the car and proceeded to a window of one of the houses at the Simelane homestead. The witness tried to warn his brother against engaging in unruly behavior at the homestead. The witness told the Court that because he and his brother were drunk, his brother refused to heed to his caution and proceeded with the altercation at the homestead. At that point the accused came out carrying a bush knife and the witness could not see what he did to his brother as he was drunk.

[17] When PW3 eventually got home, he noticed that there was blood on the verandah of his brother's house. The witness opened the door and found his brother asleep on the floor. His brother had a gaping wound on his arm. The witness wrapped his brother with a blanket and then went out to his neighbors to call for help. The witness went to Khanysisile Simelane's homestead and requested that they assist him in calling for police to ferry his brother to hospital. Indeed police came and took PW1 to Mankayane Government Hospital. According to PW3, after taking his brother to hospital, he was made to record a statement with the police. The police later went to the Simelane homestead to look for the accused person. The accused person,

according to PW3, was found by the police still holding the bush knife he had used to assault PW1.

[18] PW4 was Lindokuhle Fezile Nkambule, a daughter to Khanyisile Simelane. This witness told the Court that following an altercation that the complainant had with her mother earlier in the day, the complainant came to their house in the evening hours. On arrival, the complainant started shouting and told them that he was going to burn them inside the house. The complainant, according to PW4 left momentarily and then later came back. The complainant started breaking windows of the house. The witness later established that her mother had been injured.

[19] PW4 told the Court that the accused person then went out of the house and started to chase the complainant. Police were called and, upon arrival, they took her injured mother to the hospital. The witness stated that she did not know what caused the injuries on her mother as she found her already injured. According to this witness, when the police brought her mother back from hospital, it was discovered that

the complainant had also been injured and the police took him to hospital.

[20] PW4's evidence was that on the following day, the police came back to her homestead and arrested the accused person. The police also took the bush knife which was with one Rasta. The said Rasta was staying at the same homestead as with this witness.

[21] PW5 was 5317 Detective Constable Mduduzi Mhlanga. This witness is employed by the Police Service under the Scenes of Crime Department. The witness testified about his role in taking photographs of the complainant at the Mankayane Government Hospital. The witness later compiled a Photo Album of the complainant with the injuries on his body. The photo album was handed in Court as part of PW5's evidence.

[22] PW6 was Dr. Bongani S Thindwa, a Medical Doctor based at the Mankayane Government Hospital. In June 2019, this witness was the one who attended to the complainant when brought to the hospital for treatment. PW'6 testimony was that on the 25th June 2019, he was

called to attend to a case involving a patient who had been injured. The witness started by cleaning the wounds on the patient and placed bandages on them. According to PW6, the patient had a 3 cm laceration on the elbow as well as the shoulder. There was also a 25 cm by 3cm deep wound above the buttock area. The witness thereafter prepared a report regarding his observations and assessment. This report was handed in Court as part of PW6's evidence.

[23] PW7 was Nkosingivile Mabuza, a resident of Nkhangala area who is self-employed as motor mechanic. According to PW7, he is familiar with the accused person in the matter and is aware that accused is involved in a love relationship with Khanyisile Simelane. This witness was requested by the police on the 25th June 2019 to accompany them when going to do their investigations at the home in which the accused resides. The witness was present when the bush knife was taken from one Rasta.

[24] PW8, Detective Constable Muzi Mkhabela was the main investigator in the matter. This witness is attached to the criminal investigation department within the Royal Eswatini Police Service. The testimony

by PW8 was that in June 2019, the docket in the matter involving the complainant (PW1) was handed over to him for investigation. The witness carried out his investigations in accordance with the law and ended up arresting the suspect by the name of Nhlanhla Lucky Matjalo Mavuso for the offence of Attempted Murder. The witness was able to retrieve the bush knife allegedly used by the accused in the commission of the offence. The bush knife was handed in Court as part of PW8's evidence.

[25] PW8's testimony was that the accused person did not give him any problem during his investigation and when he finally got arrested.

[26] After the Crown closed its case, the rights of the accused person were explained to him in relation to the presentation of his defence. This was on account of the fact that accused person was not represented by an attorney. It was explained to the accused person that he has a right in law to defend himself against the case made out against him. It was further explained to the accused that there are three ways in which he can respond to the evidence presented against him in Court. These three options are that;

- (a) The accused can choose to remain silent in which case the Court would simply consider the evidence presented by the Crown and determine if a case beyond reasonable doubt has been made out against him.
- (b) The Accused can make an unsworn statement which is essentially testimony presented in Court without taking an oath as per the standard or normal procedure. Evidence presented in this manner carries less weight than evidence presented under oath.
- (c) The Accused can also present a sworn statement in rebuttal of the evidence presented against him by the State.

[27] The Accused chose not to say anything effectively meaning that the Court has to consider the evidence by the Crown as well as the cross-examination of the Crown's witnesses by accused person.

ANALYSIS AND CONCLUSION

[29] Even though the Accused person chose to remain silent upon the Crown closing its case, his defence to the charge was clearly

articulated during cross-examination. The following extract is from Accused person's cross-examination of PW1 (the complainant);

"Accused: Did it happen that we assaulted each other for no reason?"

PW1: There was no prior conflict between me and you. I think our rift was caused by the misunderstanding between myself and your girlfriend.

Accused: Is it not true that you said you will burn us inside the house?

PW1: It is not true because I had not directed that to you but the statement was directed to Khanyisile. I did not know that you were inside the house.

Accused: You said you will burn us inside the house.

PW1: That statement was directed to Khanyisile and not you.

Accused: You broke some windows and there were traces of blood inside the house that is why I came out to assault you with the bush knife.

PW1: There was no blood and you could not have seen it as you were inside the house.

[30] It is not in dispute that when the complainant attacked the people inside their place of abode, it was late in the evening around 10:00 pm. The defence raised by the Accused is that of provocation and/or self-defence.

[31] As a starting point, in the supreme law of the land, which is the Constitution of the Kingdom of Eswatini, it is provided in Section 15 (4) that;

“Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are mentioned in this subsection, a person shall not be regarded as having been deprived of life in contravention of this section if death results from use of force to such extent as is reasonably justifiable and proportionate in the circumstances of the case-

(a) For the defence of any person from violence or for the defence of property.

(b).....

(c)

(d) In order to prevent the commission by that person of a serious criminal offence.”

[32] The Constitution of the country allows citizens to take or use reasonable force in defending themselves against personal attacks or attacks on their properties. The complainant himself admitted to have attacked the Simelane homestead at around 10:00 pm, broke windows of the house and in the process injuring Khanyisile Simelane. The complainant also admitted to have threatened to burn down the house with those in it. It matters not that the complainant was threatening to burn Khanyisile Simelane inside the house. The fact of the matter is that if the complainant did in fact carry out those threats, everyone inside the house, including the accused person would have been affected.

[33] The Crown argued that even if the Court were to find that the accused was entitled to defend himself and those around him, still the force used in the circumstances was excessive. In **Bongani Bavukile Dlamini v The King (Case No.333/14) SZHC (143) 2017**, the Court held as follows;

“[32] But assuming that this account of events was reasonably possibly true, would he succeed in invoking self-defence?

The law relating to self-defence is well-settled in our jurisdiction, and the constitution of the country has added weight to it, as if that was necessary. According to section 15 (4), use of force that results in loss of life [I would add an attempt to cause the loss of life] is lawful where the force used “*is reasonably justifiable and proportionate in the circumstances of the case...*” In my view the Constitution has done nothing more than restate the well-articulated common law. The Supreme Court of Swaziland [*Siphamandla Henson Dlamini v Rex, Criminal Appeal Case No. 23/2013 at p.9*] has stated the requirements of self-defence as follows:

“31.1 The accused must have been unlawfully attacked and had reasonable grounds for thinking that he was in danger of death or serious injury at the hands of his attacker.

31.2 The means used in defending himself were not excessive in relation to the danger.

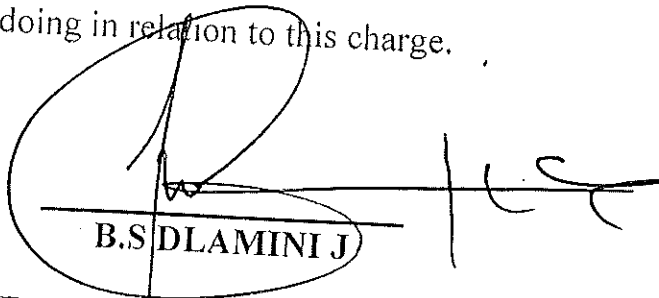
31.3 The means he used in defending himself were the only or least dangerous means whereby he could have avoided danger.”

[34] The complainant was in a drunken state and, in his own testimony, the altercation he had earlier on with Khanyisile Simelane was lingering on his mind the entire day. This could only have meant one thing and that is, the complainant was capable of doing serious damage to the life and property of the Simelane family during his drunken state. His own brother, Delisa Jele, could not control the complainant. The combination of intoxication and uncontrollable anger are a deadly combination.

[35] Inasmuch as the medical practitioner who examined the complainant stated that the injuries inflicted on the latter were life threatening (which I greatly doubt looking at the pictures presented in Court but of course not ruling this possibility out), the Court's conclusion is that the accused used reasonable force in repelling the danger that was posed by the complainant. Objectively speaking and all factors taken into account, it could have been worse for the complainant. It is an extremely dangerous thing to be going around attacking people in

their homes late at night, breaking their windows and threatening to burn them inside their homes.

[36] I therefore find that the accused is not guilty of the offence of attempted murder and, as such, accused is acquitted and discharged from any wrongdoing in relation to this charge.



B.S. DLAMINI J

THE HIGH COURT OF ESWATINI

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

For the Defence: In Person.