

IN THE HIGH COURT OF ESWATINI

HELD AT MBABANE

CASE NO: 285/2020

In the matter between:

REX

And

THAMI MHLONGO (FIRST ACCUSED)

ZWELI NELISO DLAMINI (SECOND ACCUSED)

Neutral citation : – *Rex v Thami Mhlongo and Another (285/2020)*
[2023] SZHC 112 (29/05/2023)

CORAM: B.S. DLAMINI J

DATE HEARD: 18 April 2023

DATE DELIVERED 29 May 2023

JUDGMENT

INTRODUCTION

- [1] The Accused persons, Thami Mhlongo and Zweli Neliso Dlamini are facing a single count of murder in that it is alleged by the Crown that on or around the 24th May 2020, at Mavalela area in the Lubombo Region, said accused persons, acting jointly and severally with others who are fugitives of justice and, in furtherance of a common purpose, did unlawfully and intentionally kill one Mncedisi Matse and thus did commit the crime of Murder.
- [2] When the charge was put to the accused persons, they both pleaded not guilty to murder but instead pleaded guilty to a lesser charge of Culpable Homicide. The Crown accepted the plea of guilty on Culpable Homicide tendered by both accused persons.
- [3] The parties concluded a 'Statement of Agreed Facts' in which the following facts are accepted as correct;

- (a) The deceased was well known to the accused persons as they all from the same community at an area known as Mavalela in the Lubombo Region. The accused persons and the deceased would occasionally meet at drinking spots within the community.
- (b) On the 24th May 2020, the accused persons were enjoying traditional brew at a certain Mabuza homestead within the area. The deceased was present at the drinking spot and was also enjoying the traditional brew. The traditional brew got finished at around 9:00 pm and all the patrons left the drinking spot. The deceased was amongst the first patrons to leave the drinking spot.
- (c) Along the way after having left the drinking spot, the First accused person caught up with Mncedisi Matse (deceased). The deceased had been engaged in an altercation with one Mbongeni Bhutana Mazibuko. During the altercation, the deceased had stabbed the said Mbongeni Mazibuko with a sharp object on the cheek. The First Accused person who had been joined by the other accused persons started to assault the deceased with open hands and, kicks and fists. When accused no.1 tried to intervene in the fight, the deceased assaulted him with a stone on the head. The accused

persons continued to assault the deceased. The deceased tried to run away but was caught and subjected to further assault by the accused persons.

(d) The accused persons all participated in assaulting the deceased with open hands, fists, kicks, and sticks after learning that he (deceased) had stabbed their colleague (Mbongeni) on the face with a sharp object.

(e) The deceased tried to run away but was again caught by the accused persons. As the deceased was being assaulted, he would trip and fall but the accused persons made him stand up and walk. The accused persons continued to assault the deceased and undressed him. The accused persons wanted to take the deceased to his homestead. As the accused persons were forcefully taking the deceased to his homestead, they passed Mavelela Sugar Fields and again the deceased tried to run away. This time the deceased was completely naked. Both accused persons agree that they participated in the assault of the deceased.

(f) The deceased died during the assault. One Mfanawenkhosi Sibusiso Dlamini came across the deceased who was lying on the

ground next to the road with a swollen face and injured near the community water point. The matter was subsequently reported to the deceased family including his mother Lizzy Nkosi and one Zweli Matse. Police were called to the scene and the deceased was transported to Good Shepard Hospital where he was certified dead upon arrival.

(g) A post-mortem was conducted on the deceased's body by Dr. Komma Reddy on the 26th May 2020. The cause of death was said to be due to 'multiple injuries'. The following ante mortem injuries were identified by the medical practitioner who examined the body of the deceased;

(a) Abrasion contused over face, right eye to cheek 13.5 cm, area seen with effusion blood soft tissues and eye lids.

(b) On reflection scalp intermingled contusion 15.1 cm area seen with diffuse subdural haemorrhage over brain about 120 ml.

(c) Intermingled contused abrasions over neck, limbs. Trunk, buttocks except palms, sole, genitalia, portion lower abdomen front, dorsum of feet present varying in size 0.7 cm x 0.4 cm to

5.1 cm. On dissection effusion of blood in soft tissue present more on back to trunk, buttocks and thigh. (142 x 55 cm area).

- [4] The parties also submitted in Court by consent the following items;
- (a) Clothes worn by deceased on the day of the incident.
 - (b) Broken stick used during assault.

ANALYSIS AND CONCLUSION

- [5] The accused persons have pleaded guilty to culpable homicide. They also agreed that they participated in the assault of the deceased with sticks, kicks, fists and open hands.

- [6] In **R v Malaza and Others (Criminal Appeal 30 of 2010) SZSC 14 (30 November 2010)**, the Court held as follows;

“[10] In my view, the contents of paragraph 6 of the Statement of Agreed Facts constitute an admission of relevant facts giving rise to culpable homicide. In this regard, s.272(1) of the Criminal Law [Procedure] and Evidence Act 67/1938 (“the Act”) provides as follows;

“272 (1). In any criminal proceedings the accused or his representative in his presence may admit any

fact relevant to the issue, and any such admission shall be sufficient evidence of such fact.”

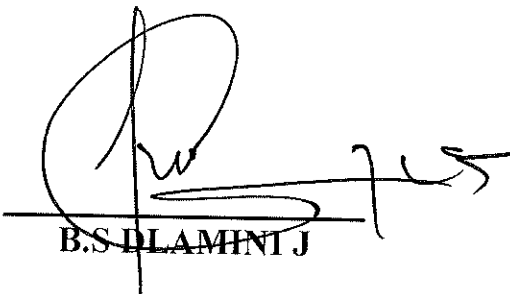
See in this regard such cases as **Mduduzi Mkhwanazi v Rex, Criminal Appeal No.3/2006; Chicco Fanyana Iddi, Appeal Case No.03/10; Jose Gabriel Machiva v Rex, Appeal Case No.09/10; Raymond David Malakara v Rex, Appeal Case No.10/10 (per my brother Moore).**

- [7] The facts of the matter demonstrate that the accused persons subjected the deceased to continuous beatings until he succumbed to his death. The human body can only take so much beating. A right thinking person ought to reasonably know when and where to draw the line in terms of inflicting injuries on another human being. The starting point is that it was wrong and unlawful for the accused persons to take the law into their own hands in seeking to avenge their friend who had allegedly been injured by the deceased. The facts of this matter demonstrate that the accused persons persistently and aggressively assaulted the deceased until he took his last breath at their hands

together with the other escapees. The accused persons are lucky to escape with a culpable homicide charge.

[8] The Statement of Agreement establishes commission of the offence of culpable homicide by the accused persons. The post mortem report reveals that large areas in the body of the deceased had large amounts of 'effusion' indicating extensive internal damage from the fists, kicks and use of sticks by accused person on the body of the deceased.

[9] The Court accordingly finds accused 1 and accused 2 guilty of the offence of culpable homicide.



B.S. DLAMINI J

THE HIGH COURT OF ESWATINI

For the Crown:

Miss. N. Mhlanga (D.P.P's Chambers)

For the Accused persons;

Miss N. Hlophe (Mongi Nsibande & Partners)