



**IN THE HIGH COURT OF ESWATINI**

**JUDGMENT**

**CRIMINAL CASE NO. 252/21**

In the matter between:

**REX**

**VS**

**SANELE DLAMINI**

**Neutral Citation:** *Rex Vs. SANELE DLAMINI*  
*SZHC 21<sup>st</sup> February, 2023)*

**Coram:** D.V. KHUMALO A.J.

**Heard:** 13<sup>th</sup> February, 2023

**Delivered:** 21<sup>st</sup> February, 2023

**Summary:** *1. Criminal Law – Accused charged with murder.*

*2. Criminal Procedure – Accused pleads not guilty to murder but guilty to culpable*

*homicide – accordingly convicted and sentenced to ten (10) years imprisonment for culpable homicide – of which five hundred and sixty one days (561) spent in custody before liberation bail are to be deducted in the sentence.*

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## **JUDGMENT**

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- [1] The accused person appeared before this court charged with murder being alleged that upon or about the 31<sup>st</sup> December, 2020 and at or near Maseyisini area in the Shiselweni district, the said accused did unlawfully and intentionally kill Mandlenkhosi Dlamini. When the charge was read to him he pleaded not guilty but guilty to a lesser charge of culpable homicide. The plea was confirmed by the defence attorney and accepted by the crown representative.
- [2] A statement of agreed facts was handed in by consent and marked as Exhibit "A" by this court. Also forming part of the statement were the post mortem report and the photo-album which were marked as exhibits "B" and "C" respectively. Facts of the case as alleged in the statement of agreed facts are that on the 30<sup>th</sup> December, 2020 the accused person exhibited strange behavior when he poured himself with cold water over his body while fully dressed in front of

other family members. When asked as to why he was doing that, he alleged that he was facing too many challenges. There was also an instance when he allegedly took a rope and threatened to hang himself – claiming that no one was assisting him in his problems.

- [3] The accused is alleged to have now and again disappeared and found naked in the mountains. He would threaten to kill anyone who dared to come near him. Having been eventually captured and brought home, he hallucinated and made strange utterances. The deceased who was his cousin and a Christian faith believer prayed for him. He is said to have calmed down.
- [4] On the following day – the 31<sup>st</sup> December, 2020 the accused again disappeared from home and later found naked at the neighbour's home. He was brought back home and kept in one of the huts. While the accused was showing restless tendencies, the deceased noticed two (2) knives and thinking that the accused would possibly use them in causing danger to the family members, he seized them. The accused is said to have forcefully snatched one of them and stabbed the deceased on the chest in the process. The deceased was certified dead upon arrival in hospital. The accused person was apprehended and charged with murder. The statement of agreed facts read thus in full:

“Sanele Dlamini (hereinafter referred to as accused) stands charged with the offence of Murder in that upon or about 31<sup>st</sup> December 2020 and at

or near Maseyisini area in the Shiselweni Region, the said accused person did unlawfully and intentionally kill Mandlenkosi Dlamini.

The accused person pleads guilty to unlawfully and negligently killing the deceased. In effect accused plead guilty to a lesser offence of Culpable Homicide which the Crown hereby accepts.

Now accused admits the herein under mentioned relevant facts in terms of Section 272 of the Criminal Procedure and Evidence Act 67/1938 as amended.

Accused is a male adult of Maseyisini area in the Shiselweni Region under Chief Mgodzi. Both the accused and deceased were related and staying together in their parental homestead at Maseyisini area.

During the afternoon of 30<sup>th</sup> December 2020, the accused was at his parental homestead and was acting very strange. He was pouring himself with water while fully clothed and saying strange things. Siboniso Dlamini, who is PW1 in the Summary of Evidence, asked the accused what he was doing. The accused told PW1 that he was cooling himself as there was a lot going on in his life. PW1 then went to report to their mother Phumaphi Thalitha Dlamini who is PW2 in the Summary of Evidence and to report to the accused's wife. PW2 told PW1 that accused has been acting strange since the evening of the 28<sup>th</sup> December 2020 and they were now scared of him. PW1 went back to the accused and told him to go to sleep. PW1 then went to his house.

While in his house PW1 heard the accused shouting outside. PW1 came out of his house and calmed down the accused. The accused took a rope and threatened to commit suicide as no one was willing to help him. PW1 took the rope from the accused and asked him to go to sleep.

At about 2300 hours PW1 was awoken by PW2 who asked for his (PW1) assistance as the accused was hallucinating. PW1 rushed to accused's house and found him speaking strange things. The deceased who was also at the homestead was called to pray for the accused. The deceased was a member of the Nazareth Baptist Church (Shembe) and after the prayer the accused stopped hallucinating.

PW1 then went out of the accused's house and on his return he did not find the accused. A search for accused was conducted in the neighboring homesteads but to no avail. After sometime they heard accused shouting from a nearby mountain. They rushed there and found him naked. The accused threatened to assault anyone coming closer to him. They were able to overpower him and took him back to his house where he was kept under guard. The accused again escaped naked. They searched for him without any success.

On the morning of the 31<sup>st</sup> December 2020 at around 0600 hours a neighbor came to report that accused was at his homestead naked. The neighbor told them that accused came running claiming that they were people who were chasing him. PW1, the deceased and other family members went to fetch the accused.

On their return they put the accused in the kitchen. PW1 then went to his house to take a bath. While PW1 was in his house the deceased called him and reported that accused wanted to escape. PW1 and deceased then caught the accused and took him a traditional hut ("endlini kagogo"). The accused kept on moving around the hut. The deceased then took two (2) knives which were placed under a goat

carcass inside the hut. The accused asked the deceased if he wanted to kill him. The accused then snatched one knife from the deceased and stabbed him on the chest. PW1 pushed the accused outside the hut and returned to the hut. PW1 found the deceased lying down with blood on his neck. PW1 went out of the hut and reported to other family members who were outside the hut what the accused had done. The accused was threatening to kill anyone with the knife. They dispossessed him of the knife. Mlandvo Gumbi who is PW3 in the Summary of Evidence took the knife and threw it on top of a kitchen roof. The accused then ran away towards Maseyisini stores.

Police were called and they promptly arrived at the scene. The scene and the body of the deceased was photographed by 4932 D/Constable Motsa the Crime Scene Officer who is PW9 in the Summary of Evidence. He then compiled a photo album. The police found the deceased unconscious and took him to Nhlanguano Health Centre where he was certified dead on arrival by a medical doctor. The knife which was used in the commission of the crime was taken by the police and the accused was then arrested.

On the 06<sup>th</sup> January 2021 PW6 Doctor Komma Reddy, a Police Pathologist, conducted a post-mortem examination on the body of the deceased at Mbabane Government Hospital. He opined that the deceased's death was due to a "stab injury to chest". The said Doctor Komma Reddy prepared a report of his examination.

The accused person admits that the deceased died due to his negligent conduct and there was no intervention cause of the death on the deceased.

The following items are handed as part of the Crown's Evidence by consent of both parties;

Post-mortem examination report

Knife

Photo album

A statement of agreed facts "

- [5] The court having satisfied itself that the guilt of the accused had been sufficiently established, proceeded to accordingly find him guilty of culpable homicide.
- [6] In mitigation of sentence, the court considers that the accused is a first-time offender and has pleaded guilty and demonstrated that he is remorseful. He also has two (2) children to maintain, in respect of whom he is the sole bread-winner. He also fends for his parents who are also old and ailing.
- [7] It is trite law that when passing sentence, the court should consider three factors being; 1. The crime – which may include its seriousness and prevalence of same in the society; 2. The accused – inclusive of his personal circumstances and attendant factors as

may appear in mitigation of sentence; 3. The interests of the society. The court must then balance the interests of the accused person as against those of the society and to then strike a balance between those interests. See **S VS ZINN (1969) (2) SA 525**. Also see **THE KING VS POLYCARP DLAMINI – CASE NO. 403/2011 (UNREPORTED) AT PAGES 6 – 7**.

[8] Again when passing sentence, the courts have been advised to consider that weakness and frailties inherent in human nature may at times render certain beings prone to committing crimes including those of a serious nature. It therefore becomes incumbent upon the court to as far as possible pass a balanced sentence that will be manifestly fair and just. The sentence should not be seen to be overly harsh. Even where the court finds itself enjoined to pass a stiff sentence, same must be fair and justifiable in the circumstances of the case.

[9] This position was expressed by the court in the case of **S VS QAMATA 1997 (1) SACR 480 AT 499** as follows;



*"In weighing these considerations, I should bear in mind the need –*

*(a) To show an understanding of and compassion for the weaknesses of human beings and the reasons why they commit serious crimes, by avoiding an overly harsh sentence.*

*(b) To demonstrate the outrage of society of serious crimes by imposing an appropriate, and, if necessary, a severe sentence;*

*(c) To pass a sentence which is balance, sensible, and motivated by sound reasons and which will therefore meet with the approval of the majority of law abiding citizens. If I do not, the administration of justice will not enjoy the confidence and respect of society.*

[10] Again, the court will have failed in its duties if prior to passing sentence it does not conduct an enquiry on whether or not extenuating factors exist in a given case – a duty that squarely rests on it. See in this regard **DANIEL DLAMINI VS REX – APPEAL CASE NO. 11/1998 (UNREPORTED) AT PAGES 2 – 3**. In law, extenuating circumstances are all those factors bearing on the

commission on the crime, which morally reduce the accused's moral blameworthiness or degree of guilt. See **S. VS MASINA 1990 (4) SA 710 (AD) AT 714 A**. In the context of this case, the court has taken into account that even though the Psychiatrist report reflects that the accused was mentally stable at the time of commission of the offence, the manner in which he conducted himself reflects that he was not in his normal self. This is however not to say that he was mentally unstable as the doctor as found otherwise.

- [11] This court has endeavored to establish as to what was the motive behind the killing of the deceased by the accused. No ill-motive was found save to say that the accused had allegedly lost his job during that period and same had greatly devastated and destabilized him – hence the abnormal state of affairs which claimed the life of the deceased. As already pointed out that even though the accused was clinically found by the doctor to be mentally stable, his abnormality of conduct that brought about commission of this offence has been found by this court as both a mitigation and extenuating circumstances. This is more so because there is nothing to show that the accused person had ever exhibited similar conduct in the

past. There is also nothing to show that he had bad blood with the deceased. Their relationship was good such that when the accused started to show signs of strange behaviour, the deceased was the first person to be called upon to pray for him as he was a member of the Christian faith.

- [12] It has however not been overlooked by this court that the accused has been convicted with a serious offence which prevails all over the country. He killed his own blood relative. As already alluded to above, the deceased had not provoked the accused in anyway. He stabbed him on the chest – a fragile and dangerous area of the body where death was reasonably anticipated. It is incumbent upon the courts to pass sentences that may have the effect of discouraging such violent acts that cause unnecessary loss of life. This court however does not lose sight of the fact that a sentence must be lenient enough to enable the offender to reform and be rehabilitated. See **Ntokozo Dlamini vs The King – Criminal Appeal Case No. 10/2001.**

[13] The court should as well consider that there are varying degrees of seriousness in culpable homicide cases and the sentencing range for such cases. One of the lowest sentences ever to be passed in such cases where the court viewed the case as being at a low degree of seriousness, was that of two (2) years imprisonment without an option of a fine. This was in the case of **Rex vs Banny Meshack Masangane – Criminal Case No. 134/2008**. At the highest scale of sentencing in culpable homicide cases, the court sentenced the accused 16 years imprisonment and suspended 4 years conditionally. This was in case of **Sabelo Ntsolo Ndlangamandla vs Rex - Criminal Appeal case no. 35/2014**. Another culpable homicide case which the court viewed to be at a higher degree of seriousness was that of **Rex vs Lucky Mbongiseni Mndzebele - Criminal Case No. 239/2016** where the court sentenced the accused to fifteen (15) years imprisonment without an option of a fine with only three (3) years suspended conditionally. This court has found that in as much as the culpable homicide at hand is serious in nature, it cannot be classifiable with those that are at the highest degree as already shown above.

[14] Having said all the above and having considered the personal circumstances of the accused, all his attendant interests as shown in his mitigation of sentence, the seriousness of the offence, the interests of the society and having balanced the interests of society as against those of the accused person, I find it proper in the circumstances of the case inclusive of the extenuating factors already alluded to above, to sentence the accused person to ten (10) years imprisonment without an option of a fine. A total of five hundred and sixty one (561) – being the number of days spent by accused before liberation on bail shall deducted from his sentence.



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**D.V. KHUMALO**

**ACTING JUDGE OF THE HIGH COURT**

For the Crown: Dlamini M.

For the Defence: Mthethwa X.