



**IN THE HIGH COURT OF ESWATINI  
JUDGMENT ON SENTENCE**

**HELD AT MBABANE**

**CASE NO: 360/2007**

In the matter between:

**THE KING**

Versus

**MANDLA MNAKEKELI SHABANGU**

**Neutral Citation:** *Rex vs Mandla Mnakekeli Shabangu [360/07] [2023]*  
*SZHC 231 (21 August 2023)*

**Coram:** LANGWENYA J

**Heard:** 11 April 2023; 31 May 2023; 6 June 2023; 21 June 2023;  
18 July 2023; 21 August 2023.

**Delivered:** 21 August 2023.

**Summary:** *Criminal law-Criminal Procedure-accused found guilty of murder and of contravening the Arms and Ammunition Act, 1964-Extenuating circumstances exist-Consideration of the triad-accused sentenced to fifteen years for murder-accused sentenced to five years imprisonment with an option of a fine of five thousand Emalangenzi for count two.*

### JUDGMENT ON SENTENCE

- [1] On 18 July 2023 this Court convicted the accused of murder with *dolus eventualis* of his uncle, Sipho Mfundi Shabangu and with contravening Section 11(1) of the Arms and Ammunition Act 24/1964. The court will proceed to hand down sentence. It is the court's unpleasant and difficult task to impose the sentence on the accused, but justice demands that sentencing be the consequence following the commission of crimes and that it should be meted out by the courts.
- [2] As Plasket J (as he then was) observed in *S v Arends & Others*<sup>1</sup> that the imposition of sentence is not a mechanical process in which predetermined sentences are imposed for specific crimes. It is a nuanced process in which the court is required to weigh and balance a variety of factors to determine a measure of moral as opposed to legal blameworthiness of an accused. That measure is achieved by a consideration and an appropriate balancing of what the well-known case of *S v Zinn*<sup>2</sup> described as the triad consisting of the crime, the offender and the interests of society.
- [3] The factors making up the triad state that in determining an appropriate sentence, the court must take into consideration the accused person's

<sup>1</sup> [2010] ZAECGHC 16 (1 March 2010).

<sup>2</sup> 1969 (2) SA 537 (A) at 540G-H.

personal circumstances, interests of society, the crime and the circumstances surrounding its commission. Although these interests may be conflicting in nature, it is expected of the courts to keep a fine balance between them and it must endeavour not to over or under emphasize anyone of them. The court is also called upon to exercise a measure of mercy when imposing sentence<sup>3</sup>. In sentencing the accused, the punishment should fit the criminal as well as the crime; it must be fair to society and must be blended with a measure of mercy according to the circumstances. It must be borne in mind that the harmonization and balancing of these principles and to the apply them to the different factors is not an easy task. It is trite that equal weight or value need not be given to the different factors and, obviously depending on the facts, the situation may arise where one or more factors require emphasis at the expense of others. Punishment has to be meted out with regards to the circumstances of the particular accused; the facts and circumstances under which the crime was committed and what sentence would best serve the interests of society. The purpose is to find a just and fair sentence that would not only serve the interests of the offender, but also that of society.

[4] The accused is 41 years old and was twenty-four years old when these offences were committed. It was urged that at the time of the commission of the offences, the accused was a young man. He is a first offender. The accused has nine minor children who are all school going and live with the accused person's relatives at eDlangeni. Prior to his conviction, the accused was employed as a kombi driver and supported his children as their mothers are unemployed. It was submitted further on behalf of the accused that after

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<sup>3</sup> *S v Rabie* 1975 (4) SA 855(AD).

the death of the deceased, the accused person took over the responsibility of supporting and maintaining the deceased person's child.

- [5] It was submitted that the accused person hails from rural eDlangeni; that he is an unsophisticated and slow man who dropped out of school in Form 2 due to lack of funds.
- [6] It is the accused person's contention that he has had this matter hang over his head like a sword of Damocles for sixteen years; that just when he was establishing his life and raising a family he has to leave his home to go and serve his punishment. That, the court was told is punishment on its own.
- [7] The Court heard that the accused was arrested on the day the offence was committed. The accused does not recall how long he spent in pre-trial incarceration before he was released on bail. During submission today the court was told he spent three (3) months in pre-trial incarceration.
- [8] The accused person was the aggressor as he confronted the deceased and later shot him with a firearm he had no licence to possess and use. The deceased was an uncle (*babe lomncane*) of the accused and older than the accused person. It appears that within the Shabangu family there was suspicion and talk that the deceased was responsible for the death of Phineas. How and why the accused, as a young person within the Shabangu household would get entangled in such talk to a point of confronting, remonstrating and finally shooting the deceased his unclear. It is clear from the evidence that the accused did not have much respect for the deceased. It is the evidence of the accused that he had refused to come to deceased when the latter called him because deceased had assaulted him on the previous day. The court heard also from a Crown witness that the accused and the

deceased were exchanging heated words before the deceased was shot. How and why as a 'son' of the deceased, the accused would argue with someone who stood in a position of a parent over him is to me unclear.

- [9] The accused has not shown any remorse for his unlawful action during the trial and at the post-conviction stage of the proceedings. It has not been argued on his behalf that he is remorseful.
- [10] The interests of society are not served by a sentence which is too lenient<sup>4</sup> and too harsh. The courts should also not ignore society's reaction of indignation and public outcry against those who make themselves guilty of committing terrible crimes as doing so would be out of touch with reality and the legitimate expectations of society. It is these circumstances that this court considers it justifies that retribution, as an objective of punishment should come to the fore in a case such as the present one. Furthermore, given the gravity of the murder count, a lengthy custodial sentence seems inevitable. Not only should it serve as specific deterrence to the accused, but also as a general warning to like-minded criminals.
- [11] Despite the accused being a first offender, his personal circumstances and interests simply do not measure up to the gravity of the crime committed coupled with the interests of society. In the circumstances of this case, reformation, as an objective of punishment becomes a lesser consideration.

### **Extenuating factors**

- [12] I am of the view that extenuating factors exist in this matter. The court heard that the accused is a man with a rustic background; that he is unsophisticated, slow and of little education as he dropped out of school at

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<sup>4</sup> *S v Flanagan* 1995 (1) SACR 13 (A).

secondary school level. When the offences were committed, the accused person was a young man of twenty-four years old. This, to me is another extenuating factor.

[13] It is the court's view that it is the accused person's rustic background, lack of education and youthfulness that also contributed to him committing the offences he stands convicted of. It is the extenuating factors that allow the court the discretion to pass a sentence other than a death sentence on the accused person.

[14] In the result, the accused is sentenced as follows:

[15] The accused is sentenced to fifteen (15) years imprisonment for the crime of murder.

[16] The accused is sentenced to five years imprisonment with the option to pay a fine of five thousand Emalangenzi for the contravention of section 11(1) of the Arms and Ammunition Act 24/1964.

[17] The sentences will run concurrently. The sentences will take into account the time the accused spent in pre-trial incarceration before he was released on bail.

  
M. S. LANGWENYA

**JUDGE OF THE HIGH COURT**

**For the Crown:            Mr M. Lukhele**

**For the Defence:        Ms N. Ndlangamandla**