

## IN THE HIGH COURT OF SWAZILAND

**HELD AT MBABANE**

**CASE NO. 428/2021**

In the matter between:

**THE KING**

*vs*

**BONIFACE MBOKODVO NZALO**

**Neutral Citation:** *The King vs Boniface Mbokodvo (428/2021) [2023] SZHC 378 (14 December 2023)*

**CORAM:** N.M. MASEKO J  
**FOR THE CROWN:** MS. N. MABILA  
**FOR THE DEFENCE:** MR. P.M. DLAMINI

**DATES OF HEARING:** 21/11/23  
22/11/23  
08/12/23

**DATE OF JUDGMENT ON SENTENCE:** 14/12/23

**Preamble:** Criminal Law – Murder reduced to Culpable Homicide – the trial – factors rendering the sentence of Culpable Homicide to be severe but

befitting the crime – Prevalence of domestic violence cases between couples and family members.

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### **JUDGMENT ON SENTENCE**

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- [1] The accused person stands charged with Murder in that upon or about 6<sup>th</sup> June 2021 and at or near Engcwengweni area in the Hhohho Region, the said accused person did unlawfully and intentionally kill one Zanele Nzalo a 46 years old female and thus committed the said offence.
- [2] When arraigned the Accused pleaded guilty to the lesser offence to murder but that of Culpable Homicide which plea the Crown accepts.

#### **THE AGREED FACTS:-**

- [3] From the evidence of the witnesses it transpired that on the day of the incident there were only three people present inside the house, being the Accused, the deceased and a 5 year old child (Carol Hlatshwako). Carol Hlatshwako is the only eye witness in the matter who recorded a statement to the effect that she saw the Accused getting inside her grandmother's house (deceased). She stated that her grandmother was in her bedroom and she saw Accused stabbing deceased on the neck. She stated that all this happened whilst she was in the sitting room and witnessed it.
- [4] Busi Tsabedze ((PW1) states that on the 6<sup>th</sup> June 2021 at about 0730hrs she went to a Nzalo homestead to look for her child Thando Dlamini who usually sleeps at deceased's homestead. She states that when she arrived at the Nzalo homestead she found all windows closed and she knocked at

the door and there was no response from either the deceased or the Accused save to state that she only heard Carol Hlatshwako shouting saying "**my mother is dead.**"

- [5] She states further that she was shocked and decided to go back home to seek for help. When she came back with other community members she met her grandchild along the way and was relieved. When they arrived at the Nzalo homestead it was discovered that the deceased was in fact dead having been stabbed by the Accused. Worth noting is that the Accused was on the scene also waiting for the arrival of the police.
- [6] 3983 Detective Constable Siphithemba Motsa together with 6314 Detective Constable Magagula of Pigg's Peak Police Station took first action in the matter after a report of a murder incident was reported at Engcwengweni area.
- [7] Upon arrival at the suspect's house they were joined by 5742 Detective Constable Sipho Dlamini a Scene of Crime Officer who took over the scene and took photographs of the scene of crime. The other police officers mentioned herein above conducted investigations of the matter and Accused after being cautioned in terms of the Judges Rules freely and voluntarily pointed to a brown handle of a knife, with blood stains, a silver blade and an okapi knife which was inside a room that looked like a bathroom in the presence of an independent witness Sonnyboy Nhlanhla Nkambule.

- [8] On the 8<sup>th</sup> June 2021 the Accused recorded a confession statement at Pigg's Peak Magistrate's Court before Her Worship Magistrate Sibonelo Dlamini, and also present was Musa Matse a sworn Interpreter. The Accused was accompanied by 7664 Detective Constable Mbali Ngwenya who was not in the vicinity when the confession was recorded.
- [9] It is stated that the Accused and the deceased had a disagreement concerning the deceased's grandchildren who were about to leave early in the morning that day around 6am when Accused enquired from the children including a neighbour's child belonging to Busi Tsabedze where they were leaving so early. The deceased emerged and started shouting at the Accused that those were her children and she had sent them.
- [10] The Accused went to charge the phone at deceased's bedroom, being their mother's bedroom, and then went outside to the deceased who was washing dishes in the kitchen. He stated that he enquired why the deceased was shouting at him as he only asked the children where they were going.
- [11] This sparked more arguments as deceased started telling the Accused their past disputes and further grabbed a kitchen knife which was with the dishes she was washing and charged towards Accused and pointed the Accused with it. It is stated that deceased stabbed Accused with the kitchen knife but he suffered superficial wounds.
- [12] The deceased continued waving the kitchen knife to Accused and both arguing with Accused reversing in the process. The Accused was able to

get hold of the knife on deceased's hand and broke it into 2 pieces. The deceased quickly grabbed an okapi knife which was on a dressing table in the bedroom and continued to attempt to stab deceased. The Accused had no other way to escape, or exit the house as deceased was standing by the door of the bedroom. Accused had lacerations on the mouth, hand and thumb when he grabbed blade of the knife and that this is when Accused grabbed the okapi knife from deceased and stabbed deceased on the neck and she fell on the floor.

- [13] Dr. R. M. Reddy, a police pathologist who then compiled a post mortem report PM 204/2021. According to his report the deceased's body was identified to him by Patience Mndzawe a sister in law of the deceased. The Pathologist concluded that the cause of death was due to cut injury over neck. This is consistent with the use of the knife pointed out by the Accused to inflict the fatal stab wound on the deceased's body.
- [14] The Accused specifically admits the following:-
- (a) He is the one who inflicted the stab wound to the deceased which eventually caused her death as shown at page 1 paragraph [10] of the Post Mortem Report compiled by the pathologist that death was due to **CUT INJURY OVER NECK.**
  - (b) He acted unlawfully under the circumstances.
  - (c) He also acted negligently when he inflicted the fatal stab wound on the deceased.
  - (d) There was no *novus actus inter viniens* between his unlawful act and the death of the deceased.

[15] It is further agreed that the following be handed in by consent to form part of the Crown's evidence:-

1. Statement of Agreed Facts **Exhibit "A"**.
2. Post Mortem Report showing the cause of death of the deceased (PM 204/21) **Exhibit "B"**.
3. Knife (a silver and brown knife with a wooden handle). **Exhibit "1"**.
4. Confession statement of Accused **Exhibit "C"**.
5. Photo album of the crime scene **Exhibit "D"**.

[16] In mitigation Counsel for the Defence P.M. Dlamini submitted that the Accused is remorseful hence his plea of guilty to the lesser charge of Culpable Homicide. Mr. Dlamini submitted further that the deceased was the aggressor and the one who started to use a lethal weapon, to wit, a bread/table knife, and that after failing to use the bread knife she grabbed an okapi knife that was on the dressing table and she tried to stab the Accused with it, however, the Accused dispossessed her of the knife and in the process she got stabbed in the throat.

[17] The Accused states that he does not know what happened and how he stabbed the deceased but soon realised that she had been stabbed in the throat and was on the ground writhing with pain. All of this happened in the presence of the five (5) year old child.

[18] Defence Counsel submit further that the Accused is a first offender and is 59 years old. He has four children two of whom are at University and the

other two are at home and unemployed. He is a breadwinner since his wife is also not employed. Counsel urged the Court not to pass a lengthy custodial sentence.

- [19] I have considered the submissions in mitigation of sentence. I must point out that the cause of the misunderstanding between the deceased and the Accused is because on that fateful day in the early morning the deceased sent her children somewhere, and the Accused questioned the children where they were going so early, the deceased overheard that conversation and peeped through the window and told the Accused that these were her children and he should leave them alone.
- [20] If the Accused had not questioned the children of the deceased, my view is that the two were not going to fight or quarrel. It is clear that there was bad blood between the deceased and her brother the Accused.
- [12] If the Accused had not entered the house, again the two were not going to fight. I understand that the house belonged to their parents and the Accused had entered to charge his phone in his mother's bedroom which was used by the deceased. Again the Accused went into the kitchen to confront her further about her children and then the fighting between them began.
- [22] I do not understand the explanation by the Accused that he doesn't know how he stabbed or cut the deceased's throat. The Accused is an elder brother of the deceased, and because they did not see eye to eye, the Accused should have prevented all forms of confrontation with his younger

sister. She had a right to send her children wherever she wanted and he had no right to interfere with that, and let alone to further confront her about this whilst she was in the kitchen. I reject the submission that she is the aggressor when it is the Accused who confronted her in the kitchen and eventually the deadly fight started.

- [23] Further when PW1 Busi Tsabedze came to the homestead and started knocking on the door, the Accused did not respond but hid from her. It was only the five (5) year old child who was with them in the room who shouted that ***“my grandmother (or my mother) had died”***. PW1 tried to gain entry into the house but the door did not open, and the Accused who was in the house with the deceased did not open for her, instead he says PW1 was ***“lucky not to come in and see the mess.”***
- [24] The question becomes why didn't the Accused raise an alarm as soon as his sister fell down after the fatal stabbing in the neck and try to save her life, instead it was PW1 who went to raise an alarm and called the community who came to the gruesome scene and the police were called. The Accused is the one who should have raised an alarm but he did not instead he chose to remain and hide in the house with his badly injured sister writhing in pain and bleeding profusely and together with her grandchild who probably would be traumatized for the rest of her life as she witnessed the gruesome stabbing of her grandmother by the Accused.
- [25] The Accused's actions are a species of domestic violence and it is the prevalence of these cases amongst family members and spouses that needs to be deterred through appropriate custodial sentences. I take cognizant of the fact that this will traumatize the Accused himself for the



rest of his life because the deceased is his sister but the actions of the Accused in failing to help his injured sister and hiding from PW1 whilst his sister was on the ground bleeding and writhing in pain is a factor that calls for an appropriate custodial sentence on the higher scale. This is not your ordinary culpable homicide where there would be no mystery or concealment of evidence, instead the Accused informed the Magistrate when he recorded the statement that **"PW1 was lucky not to be able to get into the house and see the mess."**

- [26] The mess he was talking about is his deceased sister who was lying on the floor, bleeding and dying or even dead since the child shouted that her mother (grandmother) is dead and PW1 Busi Tsabedze tried to enter, but could not open the door and then she went to raise an alarm and community members came and saw the mess which the Accused was referring to.
- [27] It is the five (5) year old Carol Hlatshwayo **who raised the alarm by shouting to PW1 that her mother or grandmother had died, and not the Accused who was hiding in the house from the view of PW1 whilst his sister who had been injured by him was lying in a pool of blood.**
- [28] The interest of society must also be considered during sentencing and it is in cases like these where society expect sentences that must befit the crime committed particularly violent crimes where women and children end up losing their lives. The Accused had no reason whatsoever to cut his sister's throat in the manner he did and in front of her five (5) year old grandchild.

- [29] These offences are highly prevalent these days and society deserves to be protected from people who act on the spur of a moment and commit violent crimes without any justification.
- [30] I am alive to the fact that the Accused is 59 years of age and that a long sentence of imprisonment will not be good for him, but still a light sentence too, would result to a mockery of justice in the circumstances of this case. I have observed the **triad** and believe that this sentence I will impose is one that will fit the offence as well act as a deterrent to other potential would be offenders.
- [31] In the case of **S v Rabie 1975 (4) SA 855** Holmes JA stated as follows when dealing with the aspect of sentencing:-
- "punishment should fit the criminal as well as the crime, be fair to society and be blended with a measure of mercy according to the circumstances."*
- [32] Holmes JA continued to caution judicial officers of the approach to be adopted by a Court when sentencing accused persons as follows:-
- "Nor should he strive after severity, nor on the other hand, surrender to misplaced pity. While not flinching from firmness, where firmness is called for he should approach his task with humane and compassionate understanding of human frailties and the pressures of society which contribute to criminality."*
- [33] In the case of **Samkelo Mdati Tsela v Rex (20/10) [2011] SZSC 13 (31 May 2011) at para 27** Moore JA stated as follows when assessing the

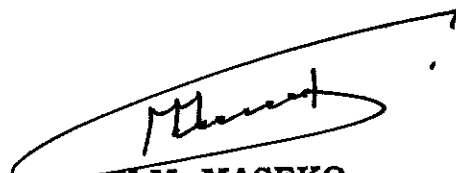
nature of sentences to be imposed on particular cases of culpable homicide:-

*“In equal measure, culpable homicide includes cases of the grossest negligence bordering upon recklessness as well as those where the negligence is so slight as to be just on the wrong side of an accident or mishap.”*

[34] The assessment of the culpable homicide *in casu* is exactly as assessed by Moore JA in the Samkelo Ndati Tsela case (*supra*).

[35] In the circumstances, the sentence imposed is the following:-

1. Fifteen years imprisonment without the option of a fine.
2. The sentence is backdated to the 6<sup>th</sup> June 2021.

  
**N.M. MASEKO**  
**JUDGE**