IN THE COURT OF APPEAL OF SWAZILAND

HELD AT MBABANE CASE NO : **1**2/04

In the matter between

SIMON M. NHLEKO Appellant

and

THE KING Respondent

Coram LEON, JP

BECK, JA

JUDGMENT

ZIETSMAN, JA

The Appellant in this matter was convicted of Murder and he

sentenced to a period of 10 years imprisonment which sentence was not backdated by the trial judge.

The appellant appeals against his sentence only. In his notice of appeal the appellant alleges that the offence was not premeditated, that he has no previous convictions and he submits that the sentence is excessive in the circumstances.

When addressing us this morning, the appellant submitted that the death of the deceased was caused by him accidentally. He confirmed that his appeal is against the sentence only and he asked the court to consider two aspects of his sentence. He asked the court to consider reducing the sentence by one half. He also asked the court to consider backdating the sentence to the time of his arrest. From the time of his arrest to the time the sentence was passed upon him is a period of approximately 4 years. The sentence imposed by the trial court was a sentence of 10 years

backdated, the effective sentence was really a sentence of almost 14 years imprisonment. The question we have to decide is whether that sentence is excessive in the circumstances.

Any reduction in the sentence is opposed by the Crown. The submissions made by the Crown are that the sentence is not excessive in view of the seriousness of the offence, the type of weapon used and the fact that the offence was a brutal offence. It becomes necessary to deal very briefly with the facts of the matter.

The appellant stated in his evidence that on the 6th September 2000, the deceased came to his home and accused him of stealing his chickens. He then swore at him and threatened to kill him. An argument ensued between them and the appellant alleges that the deceased threatened to throw a stone at him. The appellant decided to go and

altercation between the two of them, the appellant struck the deceased who fell to the ground. The appellant alleges that the deceased got up again and once again threatened to kill him. The appellant alleges that he then went home and told his mother that he intended reporting the matter to the Police the

next day. That night whilst he was sleeping, he woke up to find the deceased shouting at him and again threatening to kill him and throwing stones onto the roof of his house. He got out of bed, seized a bushknife and went outside. He alleges that he and the deceased then again confronted one another and in the course of the struggle the deceased was fatally wounded by the appellant who was then wielding the bushknife. The appellant's evidence is, in a minor respect, corroborated by the evidence of Detective Constable Dlamini who states in his evidence that when investigating the matter he received information of a quarrel between the accused and the deceased, before the deceased was fatally injured. The Doctor

had been cut and it was this injury that had caused his death. He also found a cut wound over his right ear, and contused abrasions over his left forehead and cheek. It does not appear from the evidence that the appellant sustained any injuries.

In his notice of appeal the appellant alleges that he is very remorseful about the death of the deceased, which he says was accidental. The trial judge however found on the evidence that after the appellant had felled the deceased, he turned him over and then deliberately slit his throat. We cannot say that the trial judge erred in that finding. The appellant was found guilty, but the fact that there was provocation from the deceased was taken into consideration in finding that there were extenuating circumstances present. The important fact found by the trial court however was that after he had felled the deceased, the appellant then deliberately slit his throat, thereby causing his death. It is largely this aspect of the evidence that has caused the Crown to refer to the

We have considered the facts of the matter and the submissions made to us by the appellant, but we have come to the conclusion, on the facts, that the sentence imposed by the trial judge is not so severe as to warrant interference by this court. In the result then, the appeal is dismissed and the conviction and sentence confirmed.

DELIVERED IN OPEN COURT THIS 12™ DAY OF NOVEMBER 2004

N.W. ZIETSMAN,

I AGREE

R.N. LEON, JP

I AGREE

C.E.L BECK, JA