



**THE SUPREME COURT OF SWAZILAND**

**APPEAL CASE NO. 16/2007**

**In the matter between:**

**MARTIN MABUZA**

**APPELLANT**

**Vs**

**REX**

**RESPONDENT**

**CORAM**

**BANDA CJ**

**STEYN JA**

**ZIETSMAN JA**

**FOR THE APPELLANT**

**FOR THE RESPONDENT**

**HEARD ON 1<sup>ST</sup> NOVEMBER 2007**

**DELIVERED ON THE 12<sup>TH</sup> NOVEMBER 2007**

---

**JUDGMENT**

---

## **SUMMARY**

**Appeal against sentence of 10 years (1 conditionally suspended)**

**Statement of Agreed Facts – Incompleteness of – Nevertheless sufficient evidence to make some assessment of the moral guilt of the appellant – Sentence severe but court not entitled to interfere – Appeal dismissed.**

STEYN JA

1. This is an appeal in person by the appellant against the sentences imposed upon him by the High Court – per Mabuza J - on a charge of culpable homicide. The applicant was sentenced to 10 years imprisonment (1 year conditionally suspended) and 6 months imprisonment on a count of common assault. The two sentences were ordered to run concurrently.
2. As in appeal case of *Xaba v Rex* No, 9/2007 the sentence was imposed pursuant to a “Statement of Agreed Facts” settled by the Crown and the legal representative of the accused and accepted by the court. In so far as it served as the basis for determining the

degree of the moral guilt of the appellant on the charge of culpable homicide it reads as follows:

- 5.1 ***Deceased who was imbibing in alcoholic beverages with her boyfriend (complainant in count 2), tried to intervene between a fight her boyfriend and accused were engaged in over liquor.***
- 5.2 ***Accused who was carrying a brown okapi knife stabbed deceased once on the head. Deceased ultimately succumbed to death consequent to the knife injury to her head.***

This statement leaves more questions than answers as to how the fight was started, and what kind of intervention occurred.

3. However, how the fracas commenced is elucidated somewhat by the same “Statement” when detailing the factual basis for the plea of guilty of common assault. In so far as relevant, it reads as follows:

- 4.1 ***Accused and complainant were fighting over***

*liquor, which accused wanted to forcefully take from complainant.*

4.2 *Complainant kicked accused on the face, accused reacted by stabbing complainant on his shoulder with a knife.*

4. Although not as uninformative as the statement in the Xaba matter, this rendition also leaves questions to be answered; e.g. how did the deceased “try to intervene”?; did she use physical force when doing so, did she use an object such as alleged by the accused before us (a shoe), and did she cause him any injury or injuries?
5. However, there is sufficient evidence in this case, particularly if regard is had to the averments in paragraphs 4.1 and 4.2 above, for the *court a quo* to make some assessment of the degree of the appellant’s moral guilt. As in the Xaba case however, the learned Judge here also tended to overemphasize the aggravating features of the appellant’s conduct and has shown little regard for certain

mitigating features of the fracas. It was indeed a drunken brawl – the complainant was intoxicated when examined by the doctor shortly after the event. However it was the unlawful conduct of the appellant that initiated the fight. He had no right to use a knife. Moreover, he not only stabbed his contestant, but also stabbed the deceased, a 53 year old woman in the head, fracturing her temporal bone and penetrating her skull.

6. Whilst therefore a sentence of 10 years (1 year suspended) is a severe sentence, I am not of the view that the sentence we would have imposed differs sufficiently from that imposed by the High Court so as to entitle us to interfere. I would however point out to the learned Judge that, when a lengthy sentence is imposed it makes little sense just to suspend 1 year of such sentence. As to the considerations that should be borne in mind when imposing a wholly or partially suspended sentence. See **S V NDLOVU 1982 (3) S.A. 519 (Z.H.)**.
7. There is no need to interfere with the sentence on count 2.

8. For these reasons the appeal is dismissed and the convictions and sentences are confirmed.

J.H. STEYN

Judge of Appeal

I agree

R. A. BANDA

Chief Justice

I agree

N. W. ZIETSMAN

Judge of Appeal