

**IN THE SUPREME COURT OF SWAZILAND****HELD AT MBABANE****APPEAL CASE NO. 5/09**

In the matter between:

**MPIYAKHE ALBERT SHONGWE****APPELLANT**

v

**REX**

CORAM

M.M. RAMODIBEDI ACJ

A.M. EBRAHIM, JA

S.B. MAPHALALA AJA

MR. Z. MAGAGULA FOR APPELLANT

MR. M. MATHUNJWA FOR RESPONDENT

**JUDGMENT****Ebrahim J.A.**

The appellant was convicted of culpable homicide. He pleaded guilty and was sentenced to seven years imprisonment of which three years was suspended for a period of three years, on condition that he is not convicted during the period of suspension, of an offence in which, violence to the person of another is an element; resulting in him being sentenced to a custodial sentence without the option of a fine. When sentencing him the learned trial judge directed that a period of five days during which the appellant was in custody prior to when being released on bail, be taken into account and that this period be deducted from the effective instance to be served by the appellant.

The appellant when pleading guilty admitted the following facts:

**"THE FACTS OF THE CASE**

**On the 14<sup>th</sup> December 2007 at about 1400 hours the accused was at the homestead of Justice Shimela Mamba together with the deceased, Mbulawa Mamba and Richard Mamba. They were drinking traditional brew. The deceased blamed the accused of letting his cattle graze in his fields, stating that he had spent a lot of money cultivating his fields. The accused denied that.**

**The deceased stood up and went straight to where the accused was sitting telling him to shut up. He was pointing at the accused as he was telling him to shut up. The deceased got hold of the accused by his neck. He, deceased, threatened the accused and also hit him once on the head. Ngwenya Pat Mamba got hold of the deceased and told him to go to his homestead. The deceased complied. The accused also wanted to leave but Justice Shimela Mamba told him to sit down and enjoy the drinks and he agreed. After a long time the accused left using the same direction which the deceased took.**

**Along the way the accused met up with the deceased. The fight started all over again and it was at that stage that the accused severely assaulted the deceased on the head and body with a knob-stick (sic) and further broke both arms during the assault. After having brutally assaulted the deceased, the**

**accused stole deceased's cellular phone, a Nokia 1100 and then left him lying on the ground helpless.**

**The deceased was discovered by people passing by and he was lying motionless and helpless on the ground. The accused surrendered himself to the police and further made a statement to the Magistrate."**

The learned judge *a quo* in sentencing the appellant took into account that the appellant pleaded guilty, is a first offender, that he is 61 years old, married and has six children. The learned judge also took into consideration that at the time of his conviction the appellant was a subsistence farmer who had spent the early days of his life working in the mines in South Africa. The learned judge commented that by pleading guilty the appellant has showed remorse and also took into consideration that the appellant surrendered himself to the police after committing the offence. A further factor taken into account was the fact that the deceased had been the initial aggressor towards the appellant and both parties had partaken of alcohol.

Against these mitigating factors the learned judge weighed the aggravating factors, that the appellant stood convicted of a serious offence which resulted in the loss of the deceased's life. Furthermore that the appellant had subjected the deceased to a "merciless and severe beating". "The autopsy report records lacerations on the scalp, fractures in the skull, abrasions on the temporal regions, a fracture in the right forearm, to mention but a few". The learned judge concluded "this is a case on the upper scale of culpable homicide, in terms of seriousness". I entirely agree with these sentiments.

