



**IN THE SUPREME COURT OF SWAZILAND**

**JUDGMENT**

Criminal Appeal Case No.10/13

In the matter between:

**MANCOBA LBOGANG MOKOENA**

**Appellant**

**vs**

**REX**

**Respondent**

**Neutral citation:** *Mancoba Lebogang Mokoena vs Rex (10/13) [2013] [SZSC 55]*  
(29 November 2013)

**Coram:** A.M. Ebrahim J.A.  
M.C.B. Maphalala J.A.  
P. Levinsohn J.A.

**Heard:** 01 November 2013

**Delivered:** 29 November 2013

**Summary:** *Criminal law – Murder charge – Appellant convicted of murder and sentenced to 18 years imprisonment. Also convicted of contravening section 14(2) of the Immigration Act 17/82 and sentenced to pay a fine of E500 or 6 months imprisonment in default of payment. Appeal against the sentence of 18 years imprisonment. Appeal dismissed.*

## JUDGMENT

### **EBRAHIM JA**

- [1] The Appellant was convicted of murder and sentenced to 18 years imprisonment. His sentence was backdated to the 24<sup>th</sup> February 2010. He was also convicted of contravening section 14(2) of the *Immigration Act 17/82* and was sentenced to pay a fine of E500 or 6 months imprisonment in default of payment.
- [2] The Appellant has appealed against the sentence of 18 years imprisonment and seeks the reduction of the sentence by 9 years.
- [3] The facts leading up to the deceased's death are that on the 24<sup>th</sup> February 2012 at approximately 2p.m. the Appellant attended a beer drink at which the deceased and others were partaking in drinking marula beer.
- [4] The deceased whilst drinking this brew was coughing and as he drank the beer he was spitting in the close proximity of the group who were drinking with him. The other participants complained to the deceased and asked him to desist from doing so. The deceased far from complying with this request, spat on the Appellant's foot.

[5] This angered the Appellant and he retaliated by throwing a cup of the marula beer at the deceased which landed on his face and chest and resulted in soiling his T-shirt. The deceased in response punched the Appellant who fell off the seat he was sitting on.

[6] The deceased then ran from the scene pursued by the Appellant who caught with him and a fracas developed between them during the course of which the deceased was stabbed five times. During the course of the struggle the Appellant also received a wound to his thigh.

[7] The Appellant then left the scene and proceeded to his house. The knife with which the deceased was stabbed was recovered from the Appellant's homestead. It was clean, and found hidden under a blanket on a bed.

[8] The post mortem report on the deceased revealed the following injuries:

- “1. Penetrating injury over front of chest middle towards left side midline 7cm medial below nipple 2.3x0.5cm heartdeep. It involved muscles, 5 space sternal structures, pericardium, right ventricle edges clean cut, angle sharp, slight obliquely placed front to back.
2. Cut wound over front of right shoulder in axillary fold area 2.9x1.4cm muscle deep.

3. Cut wound over back axilla in posterior fold area 1x0.4cms muscle deep.
4. Penetrating wound below above injury on back of chest left 6x1.2cm lungdeep. It involved muscles, 5 space intercostal structure, pleura, lung upper lobe (1.7x0.9cms) edges clean cut angle sharp back to front pleural cavity contained about 1400ml blood.
5. Cut wound over back trunk lower region on right side 1.6x1cm muscle deep.
6. Abrasion over left thigh outer aspect 2cm area, front of left leg 3x1cm area.”

[9] Against the background of this evidence the learned judge *aquo* in a very well reasoned judgment concluded that the Appellant was guilty of murder.

[10] I am satisfied that the learned judge came to the correct decision and has not misdirected herself in anyway in arriving at the conclusion she came to. Neither do I consider that the sentence imposed as being manifestly excessive so as to justify interference.

[11] The imposition of sentence is a matter which lies within the discretion of the trial court. This court will ordinarily not interfere unless there is a material misdirection resulting in a miscarriage of justice see *James Mthembu v Rex (23/2011) [2013] SZSC 03 (31 May 2013)* and the cases cited therein, see also *Elvis Mandlenkhosi Dlamini vs Rex (30/11) [2013] SZSC 06*.

[12] There is no rational basis for interfering with the sentence imposed, accordingly the appeal is dismissed.

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A.M. EBRAHIM  
JUSTICE OF APPEAL

I agree

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M.C.B. MAPHALALA  
JUSTICE OF APPEAL

I agree

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P. LEVINSOHN  
JUSTICE OF APPEAL

**For the Appellant:** In person

**For the Respondent:** A. Makhanya