



**IN THE SUPREME COURT OF SWAZILAND**

**JUDGMENT**

Criminal Appeal Case No. 34/2012

In the matter between:

**OUPA ZULU**

**Appellant**

**VS**

**REX**

**Respondent**

**Neutral citation:** *Oupa Zulu vs Rex (34/2012) [2014] SZSC 19  
(30 May 2014)*

**Coram:** A.M. Ebrahim JA  
S.A. Moore JA  
Dr. S. Twum JA

**Heard:** 05 May 2014

**Delivered:** 30 May 2014

**Summary:** *Criminal Procedure – sentence – appellant convicted of culpable homicide and sentenced to nine years imprisonment – appeal against sentence – held that the appeal against sentence imposed by the court a*

*quo is without merit - appeal dismissed and sentence confirmed.*

## **JUDGMENT**

### **EBRAHIM JA:**

- [1] The Appellant was charged with murder but pleaded guilty to culpable homicide. The Crown accepted the plea and the appellant was sentenced to ten years imprisonment with the nine days he spent in custody to be taken into account; in computing the sentence. He has appealed against the sentence.
- [2] The story leading up to the events which led to the demise of the deceased can best be gleaned from the summary of evidence placed before the court **a quo** and in particular from the synopsis of the statement attributed to **Mthetheleli Zulu**. It reads as follows:

**This witness was present when the accused, who is his cousin, accosted the deceased, who is also his cousin, over food. The trio stayed in one homestead and shared a room. This witness and the accused arrived home and found the deceased already sleeping at around 2100 hours. Upon their arrival, the accused opened a cooking pot and discovered that someone had eaten some of the food and assumed that**

**it was the deceased since he was the only one found at home.**

**The accused woke up the deceased and ordered him to leave at the moment, for the Nyamane area, their village. The deceased pleaded and asked to leave the following morning but the accused would hear none of that, and slapped the deceased twice across the face with an open hand. The deceased left the room and went outside, the accused followed.**

**Whilst outside, the accused picked up a pick-axe and struck deceased in the vicinity of the forehead. The deceased fell to the ground but rose again after a few seconds. The accused then took a beer bottle which lay in the vicinity and again struck the deceased on the head and the bottle broke. The deceased was cut and started bleeding profusely.**

**During course of the assault on him the deceased picked up a bush knife but never used it in retaliation on the accused.”**

The deceased died a day later after being taken to hospital.

[3] In my view the appellant was extremely fortunate in escaping a conviction of murder on the facts of this case. Counsel representing the Crown in this matter clearly erred in accepting a plea of guilty to a charge of culpable homicide.

[4] It follows that the sentence of ten years imprisonment imposed in this case is by no stretch of one’s imagination manifestly

excessive nor did the learned trial judge misdirect himself in any way. This is a serious case and accords with the views expressed by **Tebbutt JA** in **Musa Kenneth Nzima vs Rex, Criminal Appeal 21/07** where he stated:

**“There are obviously varying degrees of culpability in culpable homicide offences. This court has recognised this and in confirming a sentence of 10 years imprisonment in what it described as an extraordinarily serious case of culpable homicide said that the sentence was proper for an offence ‘at the most serious end of the scale of such a crime’ (see Bongani Dumsani Amos Dlamini v Rex CA 12/2005). A sentence of nine (9) years seems to me also to be warranted in culpable homicide convictions only at the most serious end of the scale of such crimes. It is certainly not one to be imposed in every such conviction.”**

[7] I consider this case an ‘extraordinarily’ serious case of culpable homicide and have no hesitation in confirming the sentence imposed on the appellant.

[8] Accordingly the appeal is dismissed.

---

A.M. EBRAHIM  
JUSTICE OF APPEAL

I AGREE :

---

S.A. MOORE  
JUSTICE OF APPEAL

I AGREE :

---

DR. S. TWUM  
JUSTICE OF APPEAL

**FOR THE APPELLANT** : **In person**

**FOR THE CROWN** : **B. Ndlela**