# IN THE SUPREME COURT OF SWAZILAND

# JUDGMENT

Criminal Appeal Case No. 20/2014

In the matter between:

**DUMSANI TREVOR DLAMINI** **Appellant**

**And**

**REX** **Respondent**

**Neutral Citation:** *Dumsani Trevor Dlamini v Rex (20/2014)* [2014] SZSC 56 (3 December 2014)

**Coram:** DR TWUM JA, OTA JA and DR ODOKI JA

**Heard:** 07 November 2014

**Delivered:** 03 December 2014

## Summary

***Criminal appeal – Appeal against sentence – Appellant sentenced to twenty (20) years imprisonment without option of a fine for murder – Appeal on ground that it is harsh and should be reduced by ten (10) years – Sentence backdated to Appellants date of arrest – Sentence not harsh or excessive – No material irregularly or misdirection by court a quo – Appeal dismissed.***

## JUDGMENT

**DR B. J. ODOKI, JA**

[1] The Appellant was convicted of murder and sentenced to twenty (20) years imprisonment, without an option of a fine, on 8 March 2012. The sentence was backdated to 26th December 2007 when the Appellant was arrested and taken into custody.

[2] The Appellant has appealed to this court against sentence only. He accepts his conviction for the offence.

[3] In his application for appeal, the Appellant submits that his main ground for appeal is that the twenty (20) years sentence of imprisonment is too harsh and severe for him to bear, considering substantial extenuating

factors that exist in his case. The Appellant would like the court to clarify to what date his sentence was backdated.

[4] In his Heads of Argument, the Appellant starts with a request that the court should confirm the order of the court *a quo* that his sentence should be backdated to 26th December 2007, when he was arrested despite the fact that he was serving another sentence of nine (9) years and six (6) months imprisonment when the court *a quo* sentenced him.

[5] Regarding the complaint that the sentence is harsh and severe, the Appellant submits that the sentence should be reduced by ten (10) years because of the reasons he gives. First, he argues that there was no element of premeditation in the commission of the offence, and that he killed the deceased accidently, while they were fighting. Secondly, it was not proved that he stabbed the deceased with the intention of robbing him. Thirdly, the Appellant contends that he is very remorseful. Fourthly, he alleges that he was very drunk when he committed the offence. Fifthly, he submits that his youthfulness and mental immaturity contributed to his foolish and reckless decision to stab the deceased. Finally, he argues that he is a first offender.

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[6] Counsel for the respondent submitted that sentencing is a matter which pre-eminently lies within the discretion of the trial court. It was his contention that it is the primary duty of the trial court to impose a balanced sentence taking into account the three competing and to some extent divergent interests of the offender, the offence and the society. In support of this submission, counsel cited the cases of ***Vusi Madzalule Masilela v Rex, Criminal Appeal No. 14/2008*** and ***Douglas Mfanukhona Msibi v Rex Criminal Appeal No. 1/2006.***

[7] Counsel submitted further that in sentencing the Appellant, the trial court took into account the triad, and was of the considered view that the sentence it imposed would meet the justice of the case. He maintained that the sentence of twenty (20) years imprisonment for murder was not manifestly harsh or severe considering the factors the trial court took into account.

[8] It was counsel's submission that an Appellate court will not lightly interfere with the exercise of judicial discretion by the trial court in the absence of a material misdirection or irregularly resulting in a miscarriage of justice, or a sentence which is so severe as to induce a sense of shock. In the present case he argued there is no need for this court to interfere with the sentence imposed by the court *a quo*.

[9] In her judgment the trial judge in the court *a quo* expressly made an order backdating the sentence as follows:

> *"Accordingly, I hereby sentence the accused to twenty (20) years imprisonment without an option of a fine. The sentence in respect of this offence is backdated to the 26th December 2007, when the accused was arrested and taken into lawful custody".*

[10] The above order speaks for itself and is clear and unambiguous. It is same order which appears in the commitment warrant. It should be implemented by the Corrections Services accordingly.

[11] As regards the severity of the sentence of twenty (20) years imprisonment, and the prayer that it should be reduced by ten (10) years, the Appellant submitted that extenuating circumstances existed in the case. However, having accepted the conviction for murder without extenuating circumstances, it seems that what the Appellant is pleading now are mitigating circumstances.

[12] The mitigating factors the Appellant has outlined in his appeal were considered by the trial court which imposed the sentence of twenty (20) years imprisonment, after taking into account all the circumstances of the case.

[13] In her judgment, the trial judge said:

> *"I have taken all the above submissions into consideration. In addition I have taken into account the fact that the assault on the deceased was particularly vicious even for a youth of 19 years of age. I must send a strong massage to others that the killing of our people willy nilly should stop. This I must do by meting out a sentence that must convey the courts displeasure at this senseless killing"*.

[14] With respect, I think the learned trial judge was justified in making the above observations. The Appellant, though a young person aged about nineteen (19) years, attacked the deceased in a park with the intention of robbing him, and stabbed him on the chest with a sharp knife, and the deceased died immediately. The Appellant ran away to South Africa from where he was arrested and handed back to the Swazi Police. The Appellant was in habit of stabbing and robbing people and is serving a sentence of nine (9) years for such an offence. The Appellant, therefore, deserved a severe sentence.

[15] I find no material misdirection or irregularity in the sentence imposed by the trial judge. The sentence is not too harsh as to induce a sense of shock. The sentence is within the range of sentences confirmed by this court for murder. Therefore, there is no justification to interfere with the

discretion exercised by the trial court in imposing the sentence of twenty (20) years imprisonment without an option of a fine.

[16] In the result, this appeal is dismissed.

**DR B. J. ODOKI**
**JUSTICE OF APPEAL**

I Agree

**DR S. TWUM**

**JUSTICE OF APPEAL**

I Agree

**E. A. OTA JA**
**JUSTICE OF APPEAL**

**For the Appellant:** In Person

**For the Respondent:** M. Mathunjwa