



IN THE SUPREME COURT OF SWAZILAND
JUDGMENT

Criminal Case No.42/2012

In the matter between:

MXOLISI KHEHLA NKAMBULE

Appellant

vs

REX

Respondent

Neutral citation: *Mxolisi Khehla Nkambule v Rex (42/2012) [2014] SZSC 08 (30 May 2014)*

Coram: **RAMODIBEDI CJ, EBRAHIM JA and TWUM JA**

Heard: 6 May 2014

Delivered: 30 May 2014

Summary : *Criminal Law ; conviction on 2 counts for murder and robbery. Appellant sentenced to 26 years imprisonment for murder and a further 8 years for robbery. Appeal for reduction of sentence for murder by 10 years. Appeal dismissed. Court did not misdirect itself.*

JUDGMENT

DR S. TWUM

[1] This appeal is against the judgment of MCB Maphalala J. sitting at the High Court, Mbabane, delivered on 12th October 2012. He convicted the appellant on two counts of robbery and murder. There were two miscreants but only the first accused, Mxolisi Khehla Nkambule, was prosecuted and he has now appealed to this court. His appeal is against only the sentence. His ground is what he described as “the harshness and severity of my 26 year sentence.”

The facts

[2] On or about 22nd July 2012 the appellant, was among other revellers at Mamkhulu bar drinking alcoholic beverages. At about 2300 hours, Sifiso Mndzebele, the deceased, went to the bar. He was driving a silver grey VW Golf car. He parked it in front of the bar and beckoned one Nkosinathi Simelane, (who later testified at Sifiso’s murder trial as P.W. 1) and gave him money to buy him cigarettes from the bar. The car must have attracted attention of the revellers. In his testimony during the trial, Nkosinathi Simelane said that on his way to purchase the cigarettes, he met the appellant and Ntokozo Malinga, going towards the deceased’s car. He said

before he could buy the cigarettes the deceased came running back towards him holding his chest. He said the deceased told him that some persons had stabbed him in the chest and driven off with his car. Mr Simelane added that when he turned around he could not see the appellant and the other person he had met, who were going towards the deceased's car. He said he and others tried to assist the deceased to walk to a hospital but he fell down near the bar. Eventually, he was taken to hospital but died within 3 days of the stabbing.

[3] The police was informed by the deceased's friends, of his death and they took up investigations into the two crimes. The appellant was arrested and charged with two counts of armed robbery and the murder of the deceased. The other person managed to escape to South Africa and never returned. Hence only the present appellant was prosecuted.

[4] The appellant was arraigned before the High Court, Mbabane, presided over by His Lordship Mr Justice Maphalala J. After a full trial, he found him guilty of the offences of murder and armed robbery. During the police investigations each of the two claimed that it was the other who stabbed the deceased.

- [5] On 12th October 2012, the learned trial Judge convicted the appellant on the principle of common purpose which was clearly germane, in the circumstances. The appellant was sentenced to 26 years in prison for the murder of the deceased and a further 8 years imprisonment for the robbery charge. The court further ordered that his two sentences be reduced by any period he had spent in jail during his pre-trial incarceration. The sentences were ordered to run concurrently.
- [6] On 26th November, 2012, the appellant appealed against his sentence of 26 years imprisonment for the murder conviction. In his naivety, he pleaded for a reduction of 10 years in the sentence for murder.
- [7] During the hearing of the appeal before us the appellant further pleaded that he did not intend to kill the deceased, he merely intended to scare him. Consequently he argued that the actual stabbing was a mistake; particularly as he had been drinking. He concluded his plea by saying that he was remorseful after the death of the deceased and that he surrendered to the police as a sign of his remorse.

[8] Learned Counsel for the Respondent, Phila Dlamini, in reply, submitted that a sentence of 26 years imprisonment for a serious crime like murder committed in the course of robbery, was “extremely lenient.” He submitted that the appeal should be dismissed.

[9] In my considered judgment, greed and avarice brought the appellant to this “tsunami” in his life. If only he had not coveted the deceased’s car, he would not be facing 26 years in jail. The criminal fraternity must remember that they do not have an inalienable right to kill or rob other people of their possessions. If they do and the long arm of the law catches up with them, then well-regulated sentences will be meted out to them according to law.

[10] The appeal is clearly unmeritorious. It is hereby dismissed.

Ordered accordingly.

Delivered in Open Court in Mbabane on 30th May 2014.

DR. S. TWUM

JUSTICE OF APPEAL

**M.M. RAMODIBEDI
CHIEF JUSTICE**

**A.M. EBRAHIM
JUSTICE OF APPEAL**

For Appellant : In person

For Respondent : Mr. Phila Dlamini