



# IN THE SUPREME COURT OF SWAZILAND

## JUDGMENT

Criminal Appeal Case No. 17/2013

In the matter between:

**SIPHAMANDLA HENSON DLAMINI**

Applicant

And

**REX**

Respondent

**Neutral Citation:** Siphamandla Henson Dlamini v Rex (17/2013) [2016]

*SZSC 62 (30 June 2016)*

**Coram:** **R. CLOETE AJA, C. MAPHANGA AJA, and M. LANGWENYA AJA**

**Heard: 13 MAY 2016**

**Delivered: 30 JUNE 2016**

*Summary: Criminal Procedure – Conviction of murder – Sentenced to fifteen years imprisonment – Applicant appealed against decision of the High Court and his appeal was dismissed by the Supreme Court in November 2014 – Applicant abandoned appeal against sentence – Application for review – Sentence was not backdated – Applicant’s heads of argument reflect Application for review of Supreme Court decision under Section 148(2) of the Constitution – No formal application under Section 148(2) of the Constitution filed – Matter removed from the roll pending filing of formal application for review.*

## JUDGMENT

### **M. LANGWENYA AJA**

[1] The appellant was charged with the murder of Thulasizwe Msibi on 12 March 2011 at or near Mathendele location, Shiselweni. Despite his plea of guilty, the appellant was convicted in the High Court of murder and sentenced to fifteen years imprisonment. The sentence was not backdated to the time the

applicant spent in custody before his matter was finalized at the High Court. The applicant had spent a period of five months in custody before he was convicted and sentenced.

[2] On 4 November 2014 the applicant appealed to the Supreme Court against conviction and sentence. The applicant's appeal against conviction was dismissed. The applicant's legal representative abandoned the appeal against sentence. Accordingly, the Supreme Court dismissed the applicant's appeal against both conviction and sentence.

[3] On 29 April 2016 the applicant filed his heads of argument where he purported to make application for review under section 148 (2) of the Constitution without filing a formal application for review.

[4] Respondents raised a point of law, namely that the matter was *res judicata*.

[5] Applicant's Counsel conceded that he had not filed a formal application for review and undertook to do so as soon as possible.

[6] Pending filing of a proper application for review under section 148(2) of the Constitution, the matter was removed from the roll.

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**M. LANGWENYA AJA**

I agree \_\_\_\_\_

**R. CLOETE AJA**

I agree \_\_\_\_\_

**C. MAPHANGA AJA**

**For Appellant:** Mr S. Mthethwa

**For Respondent:** Mr. F. Gamedze

