

**IN THE HIGH COURT OF SWAZILAND**

**REX**

**Vs**

**LOMTHANDAZO MAVIS MKHWELI**

Criminal Case No. 94/2006

Coram: S.B. MAPHALALA – J

For the Crown: MR. T. MASINA

For the Accused : MR. HLOPHE

**REASONS FOR SENTENCE**

(20<sup>th</sup> September 2006)

[1] This case involves a "love triangle" that has led to tragic consequences. The accused Lomthandazo Mavis Mkhweli has been convicted of the crime of culpable homicide relating to the death of the other woman in the said "love triangle". The circumstances leading to the death of the other woman Zanele Mabuza are clearly outlined in the Statement of agreed facts by the parties.

[2] The said facts are that the accused and the deceased, who were both girlfriends to PW1 one

Thomas Maphiko Dlamini, were imbibing marula (bugani) beer at PW1's homestead. At around 2.00pm of the same day the deceased and accused in their drunken stupor engaged in a fight over PW1, the boyfriend. PW1 managed to separate the fighting women, taking deceased out of the family yard and ordering accused to go into a certain hut within the family compound. After being -momentarily separated, the deceased returned to PW1's family yard and went straight to the hut where the accused person was housed. A fight ensued again and deceased was fatally stabbed by the accused person.

[3] The court heard submissions in mitigation of sentence by defence attorney *Mr. Hlophe* and also *Mr. Masina* for the Crown. It was contended for the accused firstly, that the accused person has pleaded guilty to the offence and therefore showing that she was remorseful to what she has done. Secondly, it was contended that the accused is 32 years old and thus relatively young. Thirdly, that she has three (3) minor children, the 1<sup>st</sup> born aged 8 years old, the 2<sup>nd</sup> born aged 5 years old and the last-born aged 2 years old. All these children were born of her relationship with PW1. Accused resides at the homestead of this boyfriend where they had this live-in-lover affair. Fourthly, it was contended that the accused person has been in custody for six (6) months from the 12<sup>th</sup> January 2006 until

she was released on bail on the 5<sup>th</sup> July 2006. Fifthly, it was contended for the accused that at school she did not go very far as she only attended up to Standard 5. Sixthly, that she is unemployed and that this tragic event will haunt her for the rest of her life. Lastly, it was contended further that the deceased was the aggressor in that after they had been separated by PW1 the boyfriend she proceeded to where accused was to continue with the fight.

[4] The Crown also made a number of submissions to the effect that in this case the accused clearly exceeded her bounds of self-defence regarding the sheer size of the knife used and the part of the body the deceased was stabbed. The accused was stabbed according to the postmortem report on the left lung.

[5] Presently, the court is concerned with the question of what sentence to impose in the circumstances. The general principles in this regard are trite and were forcefully enunciated in the "*triad of Zinn's case*" (*S vs Zinn 1969 (2) S.A. 537 (AD) at 540 G*) where the court laid down the following Criterion: "What has to be considered is the triad consisting of the crime, the offender and interest of society". Furthermore the Appellant Division in the case of *R vs Swanepoel 1945 AD 444 at 454* summed up the position as follows:

**'The ends of punishment are four in number, and in respect of the purposes to be served by it,**

punishment may be distinguished as  
1. deterrent, 2. preventive, 3.  
reformatory, 4. retributive of these  
aspects the first is the essential and  
all important one, the others being  
merely accessory".

The *triad* was also expanded upon in the case of  
*S vs Qamata and another 1997 (1) S.A. 479*  
where Jones J refined it as follows:

"It is now necessary for me to pass  
sentence. It is proper to bear in mind  
the chief objectives of criminal  
punishment namely, retribution, the  
prevention of crime, the deterrence  
of criminals, and the reformation of  
offender. It is also necessary to  
impose a sentence, which has a  
dispassionate regard for the nature  
of the offence, the interests of the  
offender, and the interests of the  
society. In weighing these  
considerations should bear in mind  
the need:

a) to show an understanding of and  
compassion for the weaknesses of human beings  
and the reasons why they commit serious crimes,  
by avoiding an overly harsh sentence;

b) to demonstrate the outrage of society  
at the commission of serious crimes by imposing  
an appropriate and. If necessary, a severe  
sentence; and

to pass a sentence, which is balanced, sensible, and motivated by sound  
reasons and which therefore meet with the approval of the  
majority of law-abiding citizens. If I do not, the administration of  
justice will not enjoy the confidence and respect of society.

[6] These are the legal authorities and facts in

this matter. I have considered them and it appears from the facts related to the court that the deceased was the cause of all these problems. Even after the two have been separated by the boyfriend PW1 the deceased proceeded to where the accused was to continue with the fight which had been stopped by the boyfriend. It appears from the facts that where accused was she picked up a domestic knife and stabbed the deceased who had invaded the hut where accused was after the first skirmish.

[7] On these facts I have come to the considered view that the accused acted in self defence. She took a knife which happened to be there as this was a dwelling hut. It appears to me that in that sequence of events when deceased advanced towards her she stabbed her with the said knife. After considering all these circumstances and the fact that the accused was in custody for six (6) months and I have come to the considered view that the following sentence will be appropriate to the facts of this case. The accused has already served a number of months in custody and in my view she must have learnt a lesson.

[8] The accused is sentenced to 5 years imprisonment the whole sentence is suspended for a period of three (3) years on condition that the accused is not convicted of an offence in which violence is an element committed during the period of suspension.

**S.B. MAPHALALA**

**JUDGE**