

**IN THE HIGH COURT OF SWAZILAND**

**CRIMINAL TRIAL CASE NO. 72/06**

**In the matter between**

AGRIPPA MTJOPANE DLAMINI

VS

REX

<b>CORAM</b>	:	S.M. MONAGENG J
FOR THE CROWN	:	MR. S. FAKUDZE
FOR ACCUSED	:	MR. B.J. SIMELANE
ACCUSED	:	PRESENT

**SENTENCE**

**9<sup>th</sup> OCTOBER 2008**

## **Ben Simelane**

### **[1] Mitigation**

The accused instructs me that he does not know how old he is given that he never went to school but I estimate that he is over forty. He has a wife four minor children. Before he was arrested he was earning his keep as a security guard earning E400.00 per month. Before being released on bail he spent 12 months in gaol awaiting trial and I ask the Court to take this into account when considering sentence.

[2] The deceased brought about his own demise. He is the one who assaulted the accused person. The accused sustained injuries which injuries are calculated in the medical form. The only thing that somehow that precluded the accused of preferring the defence of self defence is that he exceeded reasonable limit of self defence, but the bottom line is that there was no time to count the number of stab wounds he administered on the deceased which led to his death.

[3] There is a very thin line between self defence and culpable homicide, but urge the Court to consider that the accused was provoked and assaulted first. We submit that a proper sentence would be partially suspended sentence, he is a first offender who also handed himself over to the authorities.

### **[4] Sentence**

The accused person was charged with murder but has pleaded guilty to culpable homicide, a plea that was accepted by the Crown. The accused is a first offender who pleaded guilty and also shows some remorse for this offence. He is a father and breadwinner. It is clear to me that the deceased was the aggressor in this matter although the injuries he visited on the accused have been described by the doctor as minor and that

moderate force might have been used, 'v' :

[5] This is why the accused quite rightly pleaded guilty to culpable homicide. I should observe that the use of lethal weapons has reached unprecedented proportions in the country and Courts should respond to this social ill appropriately, although considering each case on its own merits. I have anxiously considered all the mitigation and personal antecedents of the accused person. In considering this I am also awake to the fact that a human life was lost. I also take cognizance of the fact that he. has spent 12 months in gaol.

[6] Given the totality of the "-.case, the accused is sentenced to a period of 5 years imprisonment, 2 years shall be suspended for a period of 3 years, on condition that he is not convicted of any offence of which violence of any kind is an

element. The sentence shall take account of the 12 months that he has already served for purposes of computing the period he shall serve.

[7] Right of appeal against sentence only.

SM MONAGENG  
JUDGE