

# **IN THE HIGH COURT OF SWAZILAND**

**HELD AT MBABANE**

**CASE NO. 75/09**

**In the matter between:**

**REX**

**VERSUS**

**NGANONO VINCENT SIMELANE**

**CORAM**

**HLOPHE J.**

**FOR THE CROWN**

**MASEKO N.**

**ACCUSED**

**IN PERSON**

**JUDGMENT ON SENTENCE  
16<sup>th</sup> NOVEMBER 2009**

**HLOPHE J.**

[1] Following your plea of guilty to culpable homicide which was accepted by the Crown, I have found you guilty of the said offence, whose particulars are that on the 30<sup>th</sup> December 2007, you unlawfully and negligently killed one Sanele Simelane.

[2] Your plea aforesaid was followed by the reading and handing up to court by consent, of a statement of agreed facts which you also confirmed when asked if it reflected what had been agreed upon.

[3] This now leaves me with the task of passing the appropriate sentence. I am alive to the fact that such a task is the most difficult stage of all criminal proceedings as expressed in numerous judgments of this court, one of which is *The King v Mpiyakhe Albert Shongwe*, High Court Criminal Case No: 441/07 (unreported), which describes sentencing as a "lonely and onerous task."

[4] I however seek to deal with this matter by taking into account the moral blameworthiness of the accused, the seriousness of the offence and the interests of the society. This approach has often been referred to as the triad consisting of the foregoing considerations and as expressed in cases such as *S.V.Zinn 1969 (21 SA 537 fAl at 542 and Sifiso Zwane vs Rex, Appeal Case No: 05/08 (unreported) at page 5.*

[5] In approaching this matter I subscribe to what was stated by Corbert J.A in *S. V. Rabie 1975 (4) SA 855 (A) at 866 A - C* as quoted with approval in the case of *The King vs Mpiyakhe Albert Shongwe* mentioned above.

"A judicial officer should not approach punishment in a spirit of anger, because, being human, that will make it difficult to achieve that delicate balance between the crime, the criminal and the interests of society which his task and the objects of punishment demand of him. Nor should he strive for severity; nor in the other hand surrender to misplaced pity. Whilst not flinching from firmness, where firmness is called for, he should approach the task with a humane and compassionate understanding of human frailties and the pressures of society which contribute to criminality. It is in the context of this attitude of mind that I see mercy as one tenet in the determination of the appropriate punishment in the light of all the circumstances of a particular case."

[6] These are the guidelines I have to follow in this matter. In doing so I consider your personal circumstances which appear from the facts of the matter and may be summed up as follows:-

6.1 You are a first offender.

6.2 You pleaded guilty to the offence and saved the court and witnesses the time including assisting the witnesses avoid reliving the horror of the events of that fateful day. This also evinces remorse on your part.

6.3 You are about 33 years of age which I believe will enable you reform after having been exposed to what I believe are corrective measures at the Correctional Services.

6.4 I must accept that you did not intend to kill the deceased.

6.5 You were on the day in question drinking alcohol and it has not been contended nor shown that same was aimed at enabling you gain what is often referred to as "Dutch courage." In this regard I will take it in your favour that your personal judgment may have been impaired as a result.

6.6 I also take into account that the deceased was your drinking mate, and by extension was a close person to you. I therefore take the fact of his dying in your hands to be a punishment on its own.

[7] Having considered all the foregoing, I must emphasise that you have been convicted of a serious offence which has resulted in the loss of life. I have to *juxta pose* the foregoing factors against the fact that the statement of agreed facts does not articulate clearly what exactly happened leading to you stabbing and killing the deceased as all that it says is that, "the accused person had a quarrel with the deceased and the accused person subsequently produced a knife and stabbed the deceased who subsequently died as a result of the stab wound inflicted by the accused."

[8] After your having been found guilty, and just before the commencement of mitigation, and obviously owing to the generality of the contents of the statement of agreed facts referred to above, I enquired from the parties as

to what exactly had happened leading to the fateful stabbing and killing of the deceased. You stated that the deceased had hit you with a stick, which the Crown Counsel appearing disputed, stating that, that was not covered in any of the statements before him including your own statements.

Seeing that this was opening a disputed area when the idea had been to proceed on what had been agreed upon, I decided to ignore your contention and that of the Crown on this aspect and proceeded with the matter on what had been agreed upon. In fact when asked to mitigate you only stated that you did not intend killing the deceased and did not say much even when asked to do so.

This was strange if indeed you had been provoked to the extent that you had to kill the deceased as I have little doubt that if it were so, you would

have taken the initiative at that stage, and even perhaps at the time the statement was being prepared, to disclose facts mitigating on your blameworthiness if they were there.

Notwithstanding the foregoing I approached the matter on the understanding that you had not intended to kill the deceased and that you were remorseful about what had happened.

[9] The killing of a fellow human being through violent means, particularly through stabbing is now prevalent in our society as this court deals regularly with such matters. It is for this reason that this court must give a sentence that sends a clear message that the killing of another human being through violent means shall not be tolerated.

[10] I have also taken into account that you and the deceased appear to be from the same area. This makes the community have a greater interest in the outcome of this matter, which is a requirement that this court must meet in fchte managing that delicate balance referred to above.

[11] Taking into account all the foregoing I have had an opportunity to consider sentences which have been imposed by this court or confirmed by the Supreme Court, on similar matters which have, together with the circumstances of the matter guided me in arriving at what I consider to be an appropriate sentence. These are the matters:-

11.1 In Sifiso Zwane vs Rex Criminal, Appeal Case No: 05/08 (unreported), I have noted that the Supreme Court, whilst emphasising the importance of the

discretion placed on the Presiding Judicial Officer in such matters, confirmed as appropriate a sentence of 8 years imposed by this court on the accused who had, whilst acting in common purpose with others, and after a "fight that had ensued" stabbed deceased and thereby caused his death.

11.2 In *Rex v Musa Bhondi Nkambule* High Court Criminal Case No: 376/08(unreported) the accused was sentenced to 9 years imprisonment following his being convicted of culpable homicide after he had stabbed the deceased to death following his being provoked by the deceased.

11.3 In *The King vs Mpiyakhe Albert Shongwe*, High Court Criminal Case No: 441/07, the accused was sentenced to 7 years, three of which were suspended for a period of three years on condition he was not found guilty of an offence in which violence to the person of another is an element. In this case the accused was drinking alcohol together with the deceased when he was killed. The deceased had also been shown to be an aggressor.

[12] In this matter, no provocation by the deceased has been disclosed for this court to be able to assess your blameworthiness except for the contention that the two of you had a quarrel before the death of the deceased. As stated above it works in your favour that you and the deceased were drinking alcohol together as it tends to show that you are already being punished by the fact that the deceased who was in a way close to you died in your hands.

[13] It also cannot be disputed that such alcohol taking had an effect on your personal judgment which goes together with the fact that, the killing of the deceased was not shown to have been pre-planned.

[14] It is my considered view that taking into account the circumstances of this matter the following sentence would be appropriate:-

14.1 You are hereby sentenced to 8 years imprisonment.

14.2 Two years of such sentence be and is hereby suspended for a period of 3 years on condition that you are not, during the period of such suspension found guilty of an offence in which violence is an element.

14.3 The sentence is to be backdated to the 30<sup>th</sup> December, 2007, when you were arrested and taken into custody.

**DELIVERED IN OPEN COURT IN MBABANE ON THIS THE 16<sup>th</sup> DAY OF NOVEMBER, 2009.**

**N.J. HLOPHE**

**JUDGE**