



**IN THE HIGH COURT OF SWAZILAND**

**JUDGMENT**

**Criminal Case No: 168/08**

**In the matter between**

**REX**

**Versus**

**MBHASOBHI MAMBA**

**ACCUSED**

Neutral citation: *Rex v Mbhasobhi Mamba (168/08)* [2014] SZHC 408  
(5 December 2014)

**Coram:** **M. S. SIMELANE J**

**Heard:** **1 December 2014**

**Delivered:** **5 December 2014**

**Summary: Criminal Procedure – Culpable Homicide – Statement of agreed facts – Accused found guilty and convicted of Culpable Homicide – Sentenced to Eight (8) years imprisonment**

### **Judgment**

#### **SIMELANE J**

- [1] The Accused person was arraigned before me on 1 December 2014 charged with the offence of Murder. It is alleged by the Crown that upon or about 30 March 2008 and at or near Sigcaweni area, in the Lubombo Region, the said Accused person did unlawfully and intentionally kill Majahonke Mamba.
- [2] When the charge was put to the Accused fully interpreted in siSwati the Accused indicated that he understood the charge and pleaded guilty to a lesser charge of Culpable Homicide. The plea was confirmed by defence Counsel Mr. K.Q. Magagula and the Crown represented by Ms. N. Masuku

- [3] The Crown thereafter intimated to the Court that they had come to an agreement with the Accused and that they had prepared a statement of agreed facts which was duly signed by both Counsel.
- [4] The Crown then read into the record the statement of agreed facts and same was handed into Court by consent as Exhibit A.
- [5] The statement of the agreed facts is to the effect that:-

**“1. On the 30<sup>th</sup> March 2008 Accused was with the deceased and the following people:**

- (i) Madzinga Msibi**
- (ii) Malangeni Sihlongonyane**
- (iii) Sikelela Mamba**
- (iv) Mthunzi Msibi**

**Near a Sihlongonyane where they were clearing a bush preparing for the construction of a grocery shop and also erecting barbed wire around that place.**

**2. Whilst still working Tholakele Msibi a local resident passed by and Khuze went to her, and Malangeni Sihlongonyane shouted and told Tholakele that she should not talk to people like Khuze and Khuze told Malangeni that they will fight and indeed they went for each other exchanging words and Tholakele left. Deceased told them to stop the noise they were making.**

3. **After this the deceased went to the Accused saying “you boy I heard that you want to assault me”. Then the Accused said “you must not call me a boy” and the deceased asked him what was wrong with that as he was young. Accused then insulted deceased saying “fuseki” and deceased assaulted Accused once with an open hand on the face.**
4. **After being assaulted Accused went for the iron rod that was being used for fencing and wanted to assault deceased with it, but was held by Madzinga Msibi who ordered him to lay down the iron rod which he did and they continued working.**
5. **Unnoticed whilst everyone was busy with their job Accused took the iron rod and hit deceased once on the head and deceased fell down, after that Accused ran away.**
6. **Madzinga Msibi poured water on the deceased who was then lying on the ground and tried to clear his nostrils however deceased died on the spot.**
7. **It is agreed further between the Crown and Accused that:
  - (i) **The Accused negligently caused the death of the deceased;****
8. **It is further stated that he is remorseful of his actions.”**

[6] The postmortem report for the deceased person was also admitted in evidence by consent and marked Exhibit B. In the report the good doctor opined that the cause of death was due to an injury on the head.

- “1. lacerated wound of 10 x ½ cms, vertical in direction, present on the middle portion of the top of the head, extending on to the fore head.**
- 2. An abrasion of 5 x 4cms, present on the right side of the fore head.”**

[7] The iron rod (*umgcala*) that was used in the commission of the offence was admitted in evidence by consent and marked Exhibit C.

[8] Considering the totality of the evidence adduced before Court as well as the guilty plea advanced by the Accused the Court is convinced that the Crown has proved beyond reasonable doubt the commission of the offence of Culpable Homicide. I find that the Accused did not have the intention to kill the deceased person. Death however occurred due to Accused’s negligence and carelessness. I accordingly find him guilty on his own plea of guilty to the offence of Culpable Homicide.

[9] What remains for the Court at this juncture is to impose an appropriate sentence that brings at equilibrium the *triad*. The *triad* is the seriousness of the offence, the interest of society and the interests of the Accused as well as his personal circumstances.

[10] The defence submitted in mitigation that the Accused is remorseful. He is a father of four children and takes care of his four siblings. It

was further submitted that the Accused is twenty eight years old and illiterate. The defence further submitted that the Accused is sickly and is employed as a labourer at Langa Bricks. He spent four (4) months in custody before his release on bail.

[11] It is pertinent for me to state that there are varying degrees of Culpability in Culpable Homicide cases and invariably our Courts recognize this. In **Musa Kenneth Nzima v Rex Criminal Appeal No. 21/2007** the Appellate Court in confirming a sentence of 10 years imprisonment in what was described as an extra-ordinary serious case of Culpable Homicide held that **“the sentence was proper for an offence at the most serious end of the scale of such a crime.”**

[12] Having taken into account the *triad* alluded to us paragraph [9] above, I am of the considered view that the interest of society far outweigh the mitigating factors. I cannot lose sight of the fact that precious life which cannot be resuscitated was lost. The sanctity of human life should be sacrosanct and the protection of the fundamental rights and freedoms of individuals is enshrined in the Constitution of the Kingdom of Swaziland Act 2005.

[13] In the circumstances the Accused is sentenced to Eight (8) years imprisonment. Two (2) years of the sentence are suspended for a period of Three (3) years on condition that the Accused is not convicted for a crime in which violence is an element. Four (4) months of the sentence is deducted to take care of the time spent in custody before the Accused person's release on bail.

[14] It is so ordered.

[15] Rights to Appeal explained to the Accused.

**M. S. SIMELANE J.**  
**JUDGE OF THE HIGH COURT**

**For the Crown:            Mr. K. Q. Magagula**

**For the Accused:        Ms. N. Masuku**