



IN THE HIGH COURT OF ESWATINI
JUDGMENT ON SENTENCE

CASE NO. 270/15

HELD AT MBABANE

THE KING

Versus

ZAMA AUGUSTUS SIMELANE

Neutral Citation: *The King vs Zama Augustus Simelane [207/15] [2019] SZHC
154 (15 August 2019)*

Coram: **M. LANGWENYA J.**

Heard: 8 March 2018; 25 July 2018; 8 July 2019; 9 July 2019; 18 July
2019

Delivered: 15 August 2019

Summary: *The accused was found guilty of murder-extenuating factors
exist-consideration of the triad-accused sentenced to twenty
(20) years back-dated to the date he was taken into custody.*

JUDGMENT ON SENTENCE

- [1] You have been convicted of the crime of murder. The Court is about to sentence you now.
- [2] In order to arrive at an appropriate sentence the Court is required to consider the broad judge-made guiding principles known as the *triad*¹. In *S v Zinn*, the Appellate Division held that in imposing a sentence ‘what has to be considered is the *triad* consisting of the crime, the offender and the interests of society.’ These factors must be considered equally and one should not be heavily relied upon over the other².
- [3] Regarding the crime, the punishment imposed must not be disproportionate to the offence³.
- [4] In as far as the offender is concerned, the Court should consider the personal circumstances of the offender and ensure that the sentence fits the offender.
- [5] In as far as the society is concerned, a sentence that is imposed should not so much serve the community’s wishes as it should the public interest⁴. The

¹ *S v Zinn* 1969 (2) SA 537A

² *S v Holder* 1979 (2) SA 70A.

³ *Dodo v S* 2001 (3) SA 381 (CC) at paragraph 37.

interests of society are not best served by too harsh a sentence, but equally so, they are not properly served by one that is too lenient. Differently put, the public interest requires that punishment imposed should serve as a deterrent to other would-be criminals; serve as a preventative measure to crime as well as serve to rehabilitate offenders⁵.

[6] Another important consideration is that punishment should fit the criminal as well as the crime; that it should be fair to society and be blended with a measure of mercy according to the circumstances. Put differently, punishment should be tempered with compassion and humanity as the aim is not to take revenge or to destroy the offender.

[7] Murder is a serious crime which negates another person's right to life. Your conduct was a violation of the deceased's right to life. The post-mortem report shows that the deceased died as a result of strangulation. That, the Court has found was your doing. In a serious crime of this nature, the Court must, in its imposition of sentence, promote respect for the law and in so doing must reflect the seriousness of the crime⁶ in the punishment imposed. The Court must never create an impression through its sentences that human life in the eyes of the law is cheap⁷.

⁴ *S v Makwanyane* 1995 (2) SACR 1 (CC).

⁵ *S v Rabie* 1975 (4) SA 855 (A) at 866 A-C.

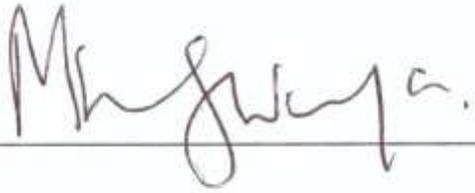
⁶ *S v Ngcongco & Another* 1996 1 SACR 55 (A)

⁷ *S v Magwathi* 1985 (4) SA 22 (T).

- [8] Courts are expected to be responsive to the outlook of the community to which they belong. Society cries for protection against all types of criminals and expects that convicted offenders should do time in the Correctional facilities for all serious crimes so that on return they respect the right to life of all citizens in our country. Society requires that criminals who have committed serious crimes such as the one under consideration should to be ideally removed from society for a long time. In that way, Courts would be fulfilling their role in protecting the society against lawlessness.
- [9] The court has considered submissions made on your behalf on mitigating factors. The court has been told that you are an unmarried man who is 39 years old; that you have a child who is ten years old, that at the time of your arrest you were working part-time as a tour guide and that you have been in custody since 9 June 2019. The court has been informed that you have a record of previous conviction for the offence of attempted murder. Further, the court has been told you are sorry for your actions.
- [10] I have tried to balance your personal circumstances against the interests and expectations of society and the seriousness of the crime.

[11] In the result, you are sentenced:

To twenty (20) years imprisonment which is backdated to 9 June 2014 this being the date you were first taken into custody.

A handwritten signature in black ink, appearing to read 'M. Langwenya J.', is written above a solid horizontal line.

M. LANGWENYA J.

For the Crown: Ms. N. Masuku

For the Defence: Mr. G. Mhlanga