



IN THE HIGH COURT OF ESWATINI

HELD AT MBABANE

CASE NO CRI 42/2018

In the matter of:

REX

VS

SIPHO SHONGWE

RULING

- [1] The Accused is charged with the Crime of Murder, it being alleged that on or about the 14th day of January 2018 and at or near Ezulwini, Galp Filling Station, acting in furtherance of a shared or common purpose, with other persons named in the Indictment, he unlawfully and intentionally killed Victor Gamedze.
- [2] The composite summary of the evidence gives very little information on the motive for the commission of the offence. The very scant evidence that has been led thus far, however, would seem to shed some light in this regard. I cannot and should not make any factual finding on this aspect of this case at this stage of the proceedings. Suffice to say that the name of Mbabane Swallows Football Club, of which the deceased was a Director, features prominently in the evidence.

- [3] When I joined the office of the Director of Public Prosecutions in the early 1980s, my boss was an ardent follower of Manzini Wanderers Football Club whilst his Deputy was an active fanatic of Mbabane Swallows Football Club, and, my colleague and office mate, was a fervent follower of Mbabane Highlanders Football Club. Almost every Monday, the talk or conversation amongst these three was centred around the football matches that had been played over the past weekend. I did not take part in the discussions although I listened attentively. This would prompt my boss to ask me “unguliphi wena” – meaning, what is your favourite team. I would reply that I had none and I truly meant it. This is still true even today. I am not affiliated to any football team in the country. But, that cannot be said of some of my closest relatives, friends, and acquaintances with whom I interact on a friendly and daily basis both in private and public life and fora. Some of them are former office bearers of Mbabane Swallows Football Club whilst the rest are mere supporters or fans of the team. For example, Bongani (Under Control) Mamba is an active and vocal former Public Relations Officer of the Team.
- [4] One of the fundamental principles of our Law, if not the fundamental principle, is that of equality before and under the Law. Every person accused of any crime or any litigant that comes before the Court must be given a fair and speedy hearing by an independent and impartial Court. That is what Justice demands and that is the oath every Judge takes upon ascending to the Bench – to do justice to all manner of persons without fear, favour or prejudice. This is a constitutional imperative. (See Section 21(1) of the Constitution). But Justice must not just only be done. It must be manifestly seen to be done.

- [5] Cognisant of the above precept of Justice and my own oath of office, I have, after much thought and reflection come to the conclusion that the ordinary reasonable and informed man out there would reasonably hold the view that because of my link or association, indirect as it is, described above, with Mbabane Swallows Football Club, I cannot reasonably be expected to bring an honest and impartial mind to bear on these proceedings. This perception is in my judgment fair and reasonable in the circumstances. Therefore, to continue with the trial would not be just for either the accused person or the administration of justice in general. It would amount to an injustice or a mistrial and I cannot allow myself to do that. Consequently, I recuse myself from hearing this case any further. The matter has to be tried by another Judge.
- [6] It is hereby recorded that no one has suggested to me that I should recuse myself from this case. The decision to do so has been reached independently by me and being fully aware of my duty to sit and hear cases before me in accordance with the oath of my office.
- [7] Lastly, I fully recognise the fact that this ruling shall cause or result in a delay in or to the conclusion of this case. This ruling is, however, the better of two evils as a mistrial would be a complete failure of justice.



MAMBA J.

Delivered in open Court on this 3rd day of June 2019.

For the Crown . Adv. M.R. Hellens (SC) (Assisted by Mr A. Makhanya)

For the Defence. Adv. L.M. Hodes (SC) (Assisted by Messrs L. Howe & B.J. Simelane)