



**IN THE HIGH COURT OF ESWATINI**

**JUDGMENT**

Held at Mbabane Case No. 697/17

In the matter between:

**REX**

**AND**

**MUZI SIBUSISO MTSETFWA**

**Neutral citation:** *Rex vs Muzi Sibusiso Mtsetfwa [697/17] [2021] SZHC 78*

*(5 May, 2021)*

**Coram:** FAKUDZE, J

**Heard:** 4 May 2021

**Delivered:** 05 May 2021

## JUDGMENT ON SENTENCE

[1]On the 29<sup>th</sup> April, 2021 the accused was found guilty of Murder in that upon or about the 3<sup>rd</sup> September, 2016 and at or near Nhlababa area in the Shiselweni Region, the accused person did unlawfully and intentionally kill one Themba Mdluli.

[2]The parties agree that there are extenuating circumstances in the form of drunkenness, provocation, and that the accused did not have a direct intention to kill the deceased. All these should serve as extenuation. The court agrees that the three factors do serve as extenuating circumstances.

[3]On the issue of sentencing, the court should always take into account the three issues: the interests of the accused; the interests of society and the crime itself. This is often referred to as the Triad. In **Sipho Malaza and Others V Rex, Criminal Appeal No. 30/2010**, His Lordship Ramodibedi C.J. as He then was, summarised the considerations in sentencing as follows:

*“It is of critical importance that sentencing of the accused person should be premised on a thorough investigation of all relevant facts surrounding the commission of the offence. The personal circumstances of an accused obviously needs to be taken into account. However the degree of his moral guilt is also dependant on the gravity of the offence as well as the mitigating and the aggravating feature of the offence. If the court process does not elucidate the factors, the court sentencing the offender may fail to do justice to an accused or per contra to ensure the protection of the public.”*

[3]In mitigation, the accused states that:-

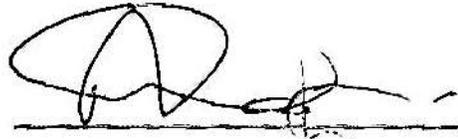
- (a) He is remorseful for killing the deceased who was far older than him;
- (b) He has a minor child to care for;
- (c) He wishes to go and apologise to the family of deceased when he comes out of jail. He also desires to compensate them for the loss of their relative;
- (d) He has never been to school. He therefore did not understand the implications of his actions;
- (e) He has recently lost his mother; and
- (f) He was 28 years of age when he committed the offence and was therefore relatively young.

[4] The Crown states as follows in mitigation:-

- (a) The accused committed a serious offence;
- (b) The personal circumstances of the accused should not outweigh the seriousness of the offence; and
- (c) A sentence meted by the court should serve as a deterrent to others because the crime of murder is on the increase in our society.

[5] Having considered all the factors above, the court is of the view that imprisonment for a period of fifteen years (15) without an option of a fine is

appropriate. The sentence is backdated to 3<sup>rd</sup> September, 2016 when the accused was arrested.

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FAKUDZE J.

JUDGE OF THE HIGH COURT