

SOLOMON MAPHOSA

IN THE HIGH COURT OF SWAZILAND

REX

VS

SOLOMON MAPHOSA HUMPHREY MASEKO

CRT. CASE NO. 161/98

CORAM S.W. SAPIRE

FOR CROWN MR. NSIBANDZE

FOR DEFENCE MR M. MATSEBULA

JUDGMENT

(30/11/98)

It is alleged that the accused, Solomon Maphosa and Humphrey Maseko, not being holders of a valid permit or licence to possess, did unlawfully possess 98.7 kg dagga or cannabis, a habit forming drug, and in this way the said accused did contravene Act No. 37 of 1922.

For the prosecution we have the evidence of two Police Officers. One is Station Commander Mamba and the other. John Lukhele. They were patrolling around Fonteyn in the middle of the night at the time of the alleged discovery of the offence. Their attention was drawn to a vehicle which was behaving in what they considered a suspicious manner. Although Station Commander Mamba said that it was the speed of the vehicle which drew their attention, Lukhele said that there are

SOLOMON MAPHOSA

other features. Whatever gave rise to their suspicions, they were confirmed because when they stopped the vehicle and searched it they found the exhibits before Court, comprising five identical carrying bags each containing dagga. It is common cause that the substance found was dagga or cannabis. It is not contested that in response to the request by the Police to produce some licence to possess the material the accused did not produce such a licence.

The Police evidence is that the accused persons took them firstly to a house in Fonteyn where the dagga is said to have been dried and packed. A device was produced to this Court as an exhibit which was found at the house which is clearly an instrument for sealing the plastic bags. The accused persons together also took the Police to another house where a device for compressing dagga was found. This particular press was subsequently taken into possession by the Police and was inspected by the Court where it now stands at the Police Headquarters. The dagga, which was found, was obviously packed for commercial purposes and prima facie the accused had a substantial case to answer.

The accuseds' answer to the charge was to the effect that although they were found in possession of the dagga it was not their dagga and they did not know that the substance was in fact dagga.

The evidence on behalf of the accused was given first by accused number 2 and thereafter by accused

no. 1 who confirmed the story of accused number 2. The purpose of the version given by the accused was to explain how they came to be in the area in question with a load of dagga on their vehicle and to indicate that they did not have the required intention in regard to the possession of the dagga.

The basis of the explanation attested to by the accused persons is that accused no. 2 required thatching grass and had intended to buy some of a woman of the same surname with accused no. 1 but no relation. She lived in an area some distance from Mbabane and from Fonteyn known as Maphalaleni. This place Maphalaleni is to the knowledge of the Court in a rural area somewhere off the Mbuluzi River. It occurred to me that the time for collecting thatching grass was inappropriate to September, but the accused explained to me that this woman kept stock of the grass.

3

SOLOMON MAPHOSA

Accused NO. 2 did not have transport and called accused number 1 to assist Mm. He apparently paid him at least E200.00 for his services. Accused no. 1 is the owner of the lorry or bakkie and it is the same vehicle in which the dagga was eventually found.

Together the two accused went in the vehicle but were unsuccessful in collecting the thatching grass. They proceeded to Manzini. Accused no. 2 says that when they saw the would-be supplier of the thatching grass she asked them as a favour to collect some parcels when they returned from Manzini to collect the thatching grass which would then be ready to be taken by them.

The accused persons went to Manzini, did what they had to do there and decided at 9.00 at night, so they say, to return to Fonteyn to pick up the consignment of goods as requested and to deliver it to the woman that night. Thereafter they would return to their respective homes, spend a night there and come back and collect the thatching grass the following morning. To behave in such a manner is quite unbelievable. Firstly they must have arrived at the house in Fonteyn shortly before midnight. In the absence of any evidence of some arrangement, why did they expect those people in whose possession the goods were to be up and available at that time of night? And it is also impossible to fathom why people who are on the business of trading in dagga on a commercial scale should put a large quantity of dagga in the hands of complete strangers. Equally unlikely is that the woman, supposedly the supplier of the thatching grass should send these people who she had only met once to collect these goods of great value to bring it from an urban area into the country is quite contrary to human experience.

This story is to be examined in the light of the Police evidence namely that when the accused were found in possession and having been warned of the charges against them they allegedly took the Policemen to the houses and the places where the dagga had been dried and packed. The accused version cannot be accepted even as being reasonably possibly true. I am driven to the conclusion that the accused knew very well what the substance was at the back of their lorry and that they explained to the Police how it came about that they were in possession. The explanation is

4

SOLOMON MAPHOSA

confirmed by the exhibits found by the Police who were obviously used for the packing and compressing of the dagga.

The accused are therefore found guilty as charged.

SENTENCE

Accused No. 1, who is a first offender, it is my view that he must suffer both the criminal loss and he must have a custodial sentence which will prevent him from doing this again. In his case I think it is appropriate

that he be given a prison sentence which, because of his being a first offender, I propose to suspend. I also think it appropriate in this case to declare the vehicle forfeit to the state as he, No. 1 is clearly the owner of the vehicle and was using it for the transportation of dagga.

You will therefore be sentenced to three years imprisonment all of which will be suspended for three years on condition that you are not hereafter found guilty of contravening Section 7 of Act 37 of 1922 and convicted of an exceptional offence committed during the period of suspension. The vehicle mentioned in the evidence and presently in the possession of the Police will be declared forfeited under Section 324.

As far as accused No. 2 is concerned he will be sentenced to a fine of E2 000.00 in default of payment of which imprisonment for 2 years. He will also be sentenced to 3 years imprisonment, all which will be suspended for a period of 3 years on condition that he is not hereafter found guilty of the commission of the same offence under Section 7 of the Act committed during the period of suspension.

S.W. SAPIRE

CHIEF JUSTICE