



SWAZILAND HIGH COURT

REX

vs

PAULOS NDLANGAMANDLA

1st Accused

MFUNGELWA JOHN SHONGWE

2nd Accused

JUSTICE ZWANE

3rd Accused

MALAMI VILAKAZI

4th Accused

Coram

SAPIRE, CJ

For the Crown

Mr. B. Magagula

For 1st Accused

Mr. E. Twala

For 2nd Accused

Mr. Ntiwane

For 3rd Accused

Mr. B. Simelane

JUDGMENT

(12/12/2002)

This is another case which comes before the court where the sentencing is nearly 2 years, 21 months after the accused persons were first taken into custody. The charge faced by the accused was robbery, which was non bailable.. The outcome is that the convicts, have already served their ultimate sentences. But we have to deal with the situation as we find it and I will deal with the sentence of No. 1 on counts 3 and 4. On each of the counts you will be sentenced to three years imprisonment of which one year is suspended for three years on condition that you are not hereafter found guilty of an offence involving possession of a firearm and / or ammunition in contravention of the arms and ammunition act committed during the period of suspension. The sentence is deemed to have commenced being served on the 16th February 2001.

The sentences on both counts are to run concurrently.

As far as accused nos. 2 and 3 are concerned, they have been convicted of theft. I have found in all probability the “robbery” was merely planned as a theft because no. 3 was the person who was going to hand out the money in any case. He arranged for persons to come and take the money and in so doing caused the abstraction of the money. This does reduce the moral capability of the offence in comparison to what it would have been had I found that a robbery had taken place. But the theft itself is a serious offence especially if it is a theft from an employer.

This consideration is tempered by the fact that accused no. 3 has served the complainant’s firm for over 20 years. He has money passing through his hands everyday, which makes his monthly salary insignificant. Unfortunately this consideration is of general application in Swaziland where the level of wages is not the same as it is in South Africa. But the point made by counsel is that the very large discrepancy is in itself a constant temptation. But this consideration cannot override the fact that a theft from an employer has always been regarded as a serious form of its kind. A custodial sentence would have at any time been appropriate in this case for both accused no.2 and accused no. 3. But there is also the consideration that they have in fact already spent nearly 2 years in custody. I have also considered that they will return to the outside world as former convicts, they will have lost their jobs and will have great difficulty in meeting their obligations as fathers and heads of their families.

In each of their cases I will impose the following sentence. Both No. 2 and No. 3 accused I will sentence for the theft as follows: 4 years imprisonment for which 2 years are suspended for 3 years on condition that the accused is not thereafter found guilty of an offence involving theft or other dishonesty committed during the period of suspension. The sentences will be deemed to have commenced being served on the 16 February 2001.

As far as the firearms are concerned they must be taken into custody of the state and destroyed. All exhibits consisting of money are to be held by the police for a period of 60 days and unless claimed by anyone entitled thereto after such period of 60 days be forfeited to the state for the benefit of the consolidated revenue.

As far as the accomplices are concerned they are given the indemnity against prosecution to which they are entitled.

SAPIRE, CJ