

IN THE HIGH COURT OF SWAZILAND

REVIEW CASE NO. 36/2007

In the matter between:

Rex

Versus

THABISO BLESSING MABASO	•	1 ST ACCUSED	2 ^{RO}
MZWANDILE MADDOCK SIMELANE		ACCUSED	3 RD
MADODA P. VILAKATI		ACCUSED	

CORAM

MAJORS

JUDGMENT

The accused was found guilty of robbery and sentenced to pay a fine of E5000-00 or in default of such payment, to a term of imprisonment for a period of five years. Half of this sentence was conditionally suspended for a period of three years. Robbery is one of the offences listed in the Third schedule to the Criminal Procedure and Evidence Act, 67 of 1938.

In terms of section 313(2) of the said Act a sentence for a Third schedule offence cannot be suspended. Vide **R v GUMEDE 1970 -1976 SLR 424, R v HLATSHWAYO, MBHABHA. 1987 - 1995 (1) SLR 389 @ 390E, MBHAMALI SIPHO AND ANOTHER v R, 1987 -1995 (4) SLR, 116 @**

**118G AND MNGOMEZULU SIBUSISO AND OTHERS v R, 1987 -1995 SLR 179
@ 182A.**

Three hours after passing the above sentence, the learned Magistrate realized his error and since he was himself functus officio on the matter, he then ordered that the record of the proceedings be transmitted to this court for this court to correct the error. He was right and this was the proper course to take.

The sentence meted out to the accused was incompetent and is therefore set aside. The matter is referred back to the trial Magistrate to pass sentence anew.