

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

Review Case No. 91/2009
District Record No. MPT
162/2007

In the matter between:

THE KING

VERSUS

JOSHUA MKHONTA

Date of consideration: 31
March, 2009 Date of Order: 31
March 2009

JUDGMENT ON REVIEW

MASUKU J.

[1] I have read the record of proceedings in the above matter in which the accused was charged with the contravention of section 122 (6) (b) of the Road Traffic Act No.6 of 2007 and contempt of Court.

[2] The Court convicted the accused of the first count and sentenced him to E2000.00 fine or 1 years' imprisonment in default of payment and this was wholly suspended conditionally.

[3] No reasons are advanced, even briefly, as to why the accused was acquitted on the second count of contempt of Court. It is imperative, considering that justice is not a cloistered virtue, that reasons for any order or judgment are laid for the public glare and scrutiny, including the appellate or reviewing Court. The complainants also need to know the reasons for such acquittals and to appreciate them if at all possible. It serves to undermine the whole edifice of the administration of justice when a person, particularly who pleads guilty, is suddenly and without any reason being apparent or advanced, acquitted.

[4] The other issue of concern is that in the instant case, the conditions for suspension were such that the accused person should not "contravene" any provisions of the Road Traffic Act during the period of suspension.

[5] Two issues arise for comment in that regard. First, the word "contravene" is not apposite for a person may contravene the Act but be acquitted during the trial. It would be wrong merely to apply for the suspended sentence to be activated only on the unproved allegation of a contravention of the Act. In this context, the proper condition should be the accused being found

guilty of an offence in contravention of the Act during the period of suspension.

[6] The second issue relates to the implausibility of attaching the condition that the accused be not found guilty of contravening the Act. The reason for so holding may be manifest from an example. If "A" is convicted like the accused of contravening section 122 and is sentenced to E2000.00 fine or 1 years' imprisonment, wholly suspended a serious injustice may be occasioned if he, within the period of suspension, is found guilty of a relatively minor offence e.g. failing to fasten his seat belt, whose fine is E20. Strictly construed this conviction should result in the activation of the suspended sentence, which clearly would lead to an injustice and points inexorably in the direction that the conditions for suspension are not apposite at all. Furthermore, the conditions are in any event too wide for a convict to keep his conduct in check.

[7] Speaking for myself, I even doubt the correctness of suspending any portion of such sentences at all in these matters considering that some of these matters occur by accident and not infrequently, there is lack of care expected

of a reasonable man. In any event, the deterrent aspect of punishment the seriousness and ubiquity of such offences is diminished by the suspension, not to mention the revenue otherwise due to Treasury as a result of the commission of these offences which appears from the records to be daily occurrence. Rather, the convicts should be afforded a reasonable time, within their means to pay the fine, even if they have to do so by instalments.

[8] For present purposes, however, I require the reasons for the acquittal of the accused person on the second count, particularly in the light of his plea of guilty. They should be furnished within 14 days from the date of receipt of this judgment.

T.S. MASUKU

JUDGE