

IN THE HIGH COURT OF SWAZILAND

REVIEW CASE NO.
46/09

In the matter between

REX

VS

BEN SIHLONGONYANE

1st

ACCUSED

BRIGHT NXUMALO

2nd ACCUSED

BONGEKILE ZIQUBU

3rd ACCUSED

CORAM

MAMBAJ

JUDGEMENT 27th October,
2009

[1] The 3^m Accused, a 48-year-old female citizen of the Republic of South Africa, Bongekile Ziqubu of Thembisa was the only person convicted herein. I shall refer to her in this short judgement as the Accused.

[2] She conducted her own defence.

[3] The Accused appeared before the Mbabane Principal Magistrate on the 10th August, 2009 on two counts, viz (a) a contravention of

section 12 of the Pharmacy Act Number 38 of 1929, it being alleged that on the 7th August 2009 she was found in unlawful possession of 97.4 kg of dagga which is a potentially harmful drug, and (b) that she had on the same date unlawfully entered and remained in Swaziland without a valid permit or licence in contravention of section 14(2) (c) of the Immigration Act 17 of 1982.

[4] She pleaded guilty to both counts and was, based on her plea found guilty as charged. There can be no doubt, I think, about the correctness of the verdict on either count.

[5] On the first count the accused was ordered to pay a fine of E10,000-00 or in default thereof to undergo imprisonment for a period often (10) years. That seems to be in order too. She was sentenced to pay a fine of E1000-00 failing which to serve a period of 1 year imprisonment on the second count; the immigration charge. She paid the fines in respect of both counts. This, according to the warrant of her liberation, was done on the 8th September, 2009.

[6] However, the penalty laid down for a Contravention of section 14(2) (c) of the Immigration Act is a fine not exceeding E500.00 or imprisonment not exceeding 6 (six) months. Clearly, the sentence imposed by the learned Principal Magistrate on the Accused on the second count is in excess of that stipulated in the relevant provisions of the law and cannot be allowed to stand and is hereby set aside.

[7] The Accused was liberated upon payment of the fine as stated above. She is a peregrinus of this court. I see no useful purpose to be served by remitting this case to the trial court for that court to subpoena her or cause her to re-appear in court in order to make

the required correction in respect of her sentence. That, notwithstanding, her cause is not irredeemably lost. She is entitled to a proper sentence under the law and it would seem to me that the maximum sentence stipulated in the relevant law would be appropriate in this case.

[8] For the foregoing reasons, the sentence imposed by the court a quo on the Accused on count two is substituted with the following: "The accused is ordered to pay a fine of E500-00 failing which to undergo imprisonment for a period of 6 (six) months."

[9] A sum of E500-00, being the difference between the amount imposed by the lower court and paid by the accused, and that which has been imposed by this court - is to be refunded to the accused. The trial court is ordered to execute all the necessary documents to give effect to this order.

MAMBA J