

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

REVIEW CASE NO. 18 OF 2009
District Record No. B.133 of 2008

In the matter between:

THE KING

VERSUS

**THOKOZANI MDLULI
BONGANI MDLULI**

Date of consideration: 17 February, 2009

Date of judgment: 18 February, 2009

JUDGMENT ON REVIEW

MASUKU J.

[1] The above-named persons, who were unrepresented, were convicted of contravening the provisions of section 11 (1) as read with section 11 (8) of the Arms and Ammunitions Act 24 of 1964, as amended. It was alleged that on or about 28 November, 2008 at or near Kaluhleko, next to Sappi Mill, they, or each one of them, acting in furtherance of a common purpose, not being holders of a valid licence or permit, did wrongfully and unlawfully have in their

possession, a single barrel Norico S/B short gun, bearing serial number 9402972.

[2] The Accused persons were convicted upon their respective pleas of guilty and were each sentenced to a fine of E2, 000, failing which they would be imprisoned for two years, half of which was conditionally suspended. No evidence at all was led by the Crown before the conviction was returned.

[3] Subsequent to their pleas of guilty, in what I consider a commendable approach, the learned Magistrate sought to establish from the Accused persons the circumstances in which they were found in possession of the firearm in question. In unison, they proclaimed that they did not know that the owner of the vehicle in which they were traveling, had left the firearm inside his vehicle.

[4] I am of the opinion that notwithstanding the respective pleas of guilty, in view of the explanation that they gave, albeit after their respective pleas of guilty had been tendered, they declared that they were not aware that the firearm in question was in the vehicle. The proper plea for the Magistrate to have entered in the circumstances was one of not guilty, as it appears that the Accused persons did not unequivocally admit their guilt, it being apparent that they claimed not to have had knowledge of the presence of the firearm in the vehicle, and by extension, the allegation of common purpose was clearly tenuous in the circumstance and required proof by way of *viva voce* evidence.

[5] In the premises, it is my considered opinion that the conviction of the Accused persons must be quashed and their sentences set aside.

[6] I do, however, order that the matter be placed before a different Magistrate in the same Court for a trial *de novo*.

DONE AT MBABANE ON THIS THE 18th DAY OF FEBRUARY, 2009.

**T.S. MASUKU
JUDGE**