

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

REVIEW CASE NO.20 OF 2009
District Record No. MK 111 of
2008

In the matter between:

THE KING

VERSUS

DUMSANI MKHONTA

**Date of consideration: 17 February,
2009 Date of judgment: 18
February, 2009**

JUDGMENT ON REVIEW

MASUKU J.

[1] The above-named accused person was arraigned before the Manzini Magistrates Court. He stood there charged with two counts of assault with intent to cause grievous bodily harm. He pleaded guilty to both and as his just desert, the trial Court sentenced him in respect of each count, a fine of E500.00 or in default of payment thereof, imprisonment for five months. The sentences were ordered to run consecutively.

[2] Upon reading the record of proceedings, I have grave misgivings regarding the propriety of the conviction on the first count. It was therein alleged that on 2 November, 2008, at or near Bhadzeni No.I, in the Manzini District, the accused wrongfully, unlawfully and intentionally assaulted one Bongekile Mabelesa with fists, kicks and an open hand on the face, head and all over the body with intent to do her grievous bodily harm.

[3] As indicated above, the accused pleaded not guilty to the offence. The Crown, notwithstanding the provisions of section 238 (1)

(a) of the Criminal Procedure and Evidence Act, 67 of 1938, chose not to lead any evidence. It would appear that acting cautiously in the circumstances, the Court ascertained from the accused the circumstances in which offence to which he pleaded guilty occurred.

[4] The learned Magistrate recorded that the accused alleged that the complainant in that count accused him of beating one Nontobeko, apparently the complainant in count two. Bongekile then drew a knife and tried to stab him with it. It was his version that it was whilst trying to dispossess her of the knife that he assaulted her.

[5] My immediate reaction is that it would appear, from what the accused stated in Court that he may have acted in self-defence. That is, in my view abundantly clear from the accused's narration of the events. In the circumstances, I am of the view that with that veiled defence apparent, the Court ought not to have convicted him. In my view, it ought to have entered a plea of not guilty on the second count and tried the accused thereon.

[6] In the circumstances, I am of the view that the conviction on count one ought to be set aside and the case remitted to the Magistrate's Court in respect of that Count. It would, however be proper that the trial proceeds before a different Magistrate.

[7] In the premises, I order the following;

7.1 The conviction and sentence of the accused of the offence of assault with intent to cause grievous bodily harm on count 1 be and is hereby set aside.

7.2 The trial on that count be and is hereby remitted to the Magistrate's Court for trial before a different Magistrate.

7.3 The accused's conviction on count 2 substantially accords real and substantial justice and is accordingly confirmed.

DATED AT MBABANE ON THIS 18TH DAY OF FEBRUARY, 2008.