

# IN THE HIGH COURT OF SWAZILAND

REVIEW CASE NO. 66/09

In the matter between

REX VS

SABELO DLAMINI

ACCUSED

CORAM

MAMBAJ

## JUDGEMENT

25<sup>th</sup> JANUARY, 2010

[1] The Accused, who was unrepresented, appeared before a Magistrate in Mbabane on a charge of Robbery. He pleaded not guilty to the charge but at the end of the trial he was found guilty as charged. From the evidence that was led before the trial magistrate, his conviction appears to be in order. This however, cannot be said about the sentence meted out by the court a quo.

[2] The sentence imposed on the accused was one of

"two (2) years imprisonment without the option to pay a fine. However, one half of the sentence (i.e. 1 year imprisonment) is suspended for a period of three (3) years" on specified conditions.

[3] In terms of section 313 (2) of the Criminal Procedure and Evidence Act 67 of 1938, no part or portion of a sentence in respect of an offence listed in the Third Schedule to that Act may be suspended. Robbery, is a third schedule offence. The Learned Trial Magistrate was therefore clearly in error in suspending part of the sentence of two years.

**See SANDILE SHABANGU v R, Criminal Appeal 15/07, delivered in 2007 (yet unreported). R v GUMEDE 1970-76 SLR 424. The case of STANLEY MAKHAKHA DLAMINI v R 1977-78 SLR 66, was in my respectful judgement, properly overruled in MNGOMEZULU SIBUSISO AND OTHERS v R, 1987-1995 (3) SLR 179 at 183F-G. See also MBHAMALI SIPHO AND ANOTHER v R, 1987-1995 (4) SLR 116 at 118, LUCKY NHLANHLA KHUMALO v R, (HC Crim. Appeal 19/2008 at para. 18 (unreported) and JANGO LONTOS MKHAVELA v R Criminal Appeal 3/2009 (delivered 20/08/09)**

[4] I have closely considered the full circumstances of this case and in particular regarding the sentence of two years of imprisonment and I am of the considered view that if it errs at all, it is on the side of leniency. I shall however, not interfere with it as there was no misdirection on the part of the trial court in imposing it and it is not a sentence that no court acting judicially and judiciously could have imposed in the circumstances. Though lenient, it does not evoke any sense of shock in me.

[5] In the result, I make the following order:

(a) The conviction and sentence herein are confirmed, save that the suspension of the portion of the sentence is set aside. The accused is to serve the term of two (2) years of imprisonment.

(b) This order is to be communicated to the accused and the prison authorities by the learned trial Magistrate forthwith.

**MAMBA J**