



**IN THE HIGH COURT OF SWAZILAND**

**JUDGMENT**

Review Case No.18/14

In the matter between:

**THE KING**

**Applicant**

vs

**1. ROSE DLAMINI**

**1<sup>st</sup> Respondent**

**2. JABU DLAMINI**

**2<sup>nd</sup> Respondent**

**3. NELSIWE DLAMINI**

**3<sup>rd</sup> Respondent**

**Neutral citation:** *The King vs Rose Dlamini & 2 Others (18/2014) [2014] SZHC 344 (22<sup>nd</sup> September 2014)*

**Coram:** **MAMBA J**

**Heard:** 22 September 2014

**Delivered:** 22 September 2014

Summary: [1] *Criminal law & procedure – where an accused has pleaded not guilty to the charge and the Crown abandons prosecution against him in terms of section 6 of the **Criminal Procedure & Evidence Act 67 of 1938**, the accused is*

*entitled to a verdict of acquittal on that charge that has been withdrawn or abandoned.*

- [1] The three accused persons herein appeared before the Pigg's Peak Magistrate on 09 April 2014 on a charge of unlawful possession of 38kg of dagga in contravention of section 12(1) (a) of the **Pharmacy Act 38 of 1929**. They were not represented by counsel during the trial.
- [2] On being arraigned only the first accused, pleaded guilty to the charge whilst accused 2 and 3 pleaded not guilty. Following these pleas, the Crown abandoned prosecution against the second and third accused whereupon the learned trial Magistrate noted that the charge was being withdrawn against them and they had no further participation or role in the trial.
- [3] In view of the fact that the 2<sup>nd</sup> and 3<sup>rd</sup> accused had already pleaded to the charge, they were, in law, entitled to a verdict following the abandonment of the prosecution against them. To merely note that the charge was being withdrawn against them was not enough. They were entitled to a verdict and the only legally permissible verdict in the circumstances was one of not guilty. Section 6 of the **Criminal Procedure and Evidence Act 67 of 1938** provides that –

**“The Attorney-General may, at any time before conviction, stop any prosecution commenced by him or any other person; but in the event of the accused having already pleaded to any charge, he shall be entitled to a verdict of acquittal in respect of such charge.**

See also **Director of Public Prosecutions v The Senior Magistrate, Nhlanguano & Another, 1987-1995(4) SLR 17 @236b-c.**

- [4] For the above reasons, whilst I do certify or confirm that the trial herein was in accordance with real and substantial justice, I make the following further order to that entered by the court **a quo**:

**“The second and third accused are hereby acquitted and discharged of the crime of unlawful possession of dagga in contravention of section 12(1) (a) of the Pharmacy Act 38 of 1929.”**

**MAMBA J**