IN THE HIGH COURT OF ESWATINI

JUDGMENT

HELD AT MBABANE **CASE NO. 27/18**

In the matter between:

JULIA MDLULI Applicant

And

MAGISTRATE PHILISIWE DLAMINI N.O. 1st Respondent

THE DIRECTOR FOR PUBLIC PROSECUTION 2nd Respondent

THE ATTORNEY – GENERAL 3rd Respondent

Neutral citation: *Julia Mdluli v Magistrate Philisiwe Dlamini N.O. & 2 Others (27/2018) [2018] SZHC 96 (28 May 2018)*

CORAM: **N.M. MASEKO J**

FOR THE APPLICANT: **MR P.K. MSIBI**

FOR THE RESPONDENT: **MR K. MNGOMEZULU (DPP CHAMBERS)**

HEARD: **28 MARCH 2018**

DELIVERED: 28 MAY 2018

PREAMBLE: *Criminal law – Possession and dealing in large quantities of dagga in contravention of The Pharmacy Act – Appropriate sentence – Whether revival of suspended imprisonment sentence a misdirection where Accused convicted of similar offence committed during period of suspension.*

Held: *Revival of suspended imprisonment sentence not a misdirection on the part of the Magistrate because a similar offence was committed during the period of suspension.*

Held further: *That the Magistrate who imposed the suspended sentence committed no misdirection as he intended that sentence to act as a deterrent to the Applicant who is a large-scale commercial producer and dealer in dagga in contravention of The Pharmacy Act and The Opium and Habit and Forming Drug's Act respectively.*

[1] The Applicant launched Application Review Proceedings before this Court on the 31st January 2018 seeking an order in the Notice of Motion as follows:

1. Reviewing, correcting and setting aside as unlawful the sentence imposed by the 1st Respondent on the Applicant on a criminal charge of possession of dagga to 30 years imprisonment with an option of a fine of E30 000 -00.

2. Reviewing, correcting and setting aside as unlawful the additional custodial sentence of five years – no fine imposed by the 1st Respondent on the Applicant on the same criminal

conviction of possession of dagga mentioned at prayer 1 above.

3. Declaring that the 1st Respondent exceeded her sentencing powers imposed by The Pharmacy Act of 1929 and correct the sentence to the maximum imposed by law being twenty years imprisonment and or E20 000-00 for a second offender.

4. Directing the Clerk of Court to present the record of proceedings for the above matter to the Registrar of the High Court forthwith.

5. And alternatively/admitting the Applicant to bail pending the determination of the review of the sentence imposed by the 1st Respondent on the Applicant.

6. Costs of the Application.

[2] The Applicant filed her founding Affidavit in support of the Review Application wherein she states that she was convicted by the 1st Respondent on the 19th October 2017 for the offence of unlawful possession of dagga under The Pharmacy Act 38/1929 (as Amended). She states that as a result of the conviction she was sentenced to 30 years imprisonment with the option of a fine of E30 000-00.

[3] At paragraph 11-12 of her Founding Affidavit she states as follows:

'11. The Court further added another sentence of custodial sentence being an additional 5 years without the option of a fine which I was to serve consecutively with the other sentence mentioned in paragraph 10 above. The argument for this was that I had a previous conviction which was imposed on me by the former Magistrate Mkhaliphi who sentenced me to five years imprisonment no fine for a similar offence but wholly suspended same on condition that I was not to be convicted of same within a five year period.

12. I wish to state that on a proper reading of the law under which I was charged for possession of dagga there is no provision for a custodial sentence without the option of a fine. The then Magistrate Mkhaliphi acted ultra vires his powers in the year 2014 when he sentenced me to additional five years no fine which sentence has now been activated by the 1st Respondent herein'.

HISTORY OF THE MATTER

[4] It is common cause that on the 4th August 2008 the Applicant was convicted for contravening Section 7 as read with Section 8 (1) (b) of Opium and Habit Forming Drug Act No. 37 of 1922 – being unlawful possession of 364.8kg of dagga a habit forming drug. She was duly sentenced to twelve (12) months imprisonment with the option of a fine of E1000-00. She paid the fine.

[5] Again on the 20th November 2014 she was convicted of contravening Section 12 (1) (a) of The Pharmacy Act No. 38 of 1929 (as Amended) – being unlawful possession of 485.67kg of dagga a potentially harmful drug. She had pleaded guilty to this charge and was sentenced to a fine of E10 000-00 (Ten Thousand Emalangeni) or to serve a term of 5 years imprisonment. The learned Magistrate M. Mkhaliphi sentenced the Applicant to a further 5 years imprisonment without the option of a fine and wholly suspended for a period of five (5) years on condition the Applicant is not during the period of suspension convicted of any offence under The Pharmacy Act 38/1929 (as Amended) and the Opium and Habit Forming Drug Act 37/1922.

[6] The Record of Proceedings filed before this Court reveal that the Applicant's rights to Review and Appeal were duly explained by the learned Magistrate M. Mkhaliphi.

[7] I must point out that the Applicant did not appeal against the sentence imposed on her, and in particular for purposes of these proceedings, she did not appeal nor take on review the wholly suspended imprisonment sentence of five (5) years.

[8] I must point out also that during her mitigation before Magistrate Mkhaliphi, the record reveals that she disclosed that;

> ***'During March 2014 she produced about thirty (30) bags of dagga and sold all of them to her South African customers without being caught by the long arm of the law'.***

[9] On account of her own voluntary statement that she had produced 30 bags of dagga and sold them to her South African customers, and the fact that in 2008 she had been convicted for possession of a huge consignment of dagga, the learned Magistrate saw it fit to impose the further five (5) year imprisonment wholly suspended sentence for a period of five (5) years on the condition that she is not to be convicted for possession of dagga either in contravening of The Pharmacy Act or the Opium and Habit Forming Drugs Act, during the period of such suspension.

[10] The essence of the five (5) years wholly suspended sentence is that, if the Applicant is convicted of contravening either The Pharmacy Act or Opium and Habit Forming Drugs Act during the period of such suspension, then the five (5) year imprisonment sentence is revived and the Applicant is to serve that sentence in custody without the option of a fine. The suspended sentence was also motivated by the realisation by Magistrate Mkhaliphi that the Applicant was a

subsequent offender and commercial dealer, he observed as follows:

(i) Applicant earns her living from the proceeds of dagga sales.

(ii) Applicant is a commercial producer of dagga and was never deterred by the sentence imposed on her in 2008.

(iii) Applicant deals in dagga whereas it is classified as a poison which is very harmful to human beings upon consumption and which result in severe physical and mental deficiencies.

(iv) The production and trafficking of dagga has reached a stage where it has become a pandemic that will wipe out society in this country.

(v) The Courts are being looked upon to make sure that this kind of crime is drastically reduced not only by imposing sentences that will deter the offenders but would be offenders out there as well.

PROCEEDINGS IN *CASU*

[11] After her conviction by Magistrate Mkhaliphi and the sentences imposed including the suspended sentence of five (5) years imprisonment, the Applicant was again on the 15th July 2016 charged for being found in unlawful possession of 505.5kg of dagga

a potentially harmful drug in contravention of Section 12 (1) (a) of The Pharmacy Act 38/1929 as Amended.

[12] I must point out that when the Applicant was charged for this offence on 15th July 2016, it was exactly 1 year 8 months after the conviction by Magistrate Mkhaliphi on the 20th November 2014.

[13] The Applicant was eventually convicted of this offence by the learned Senior Magistrate P.D. Dlamini on the 19th October 2017, exactly 2 years and 11 months after the 20th November 2014 conviction by Magistrate Mkhaliphi.

[14] Senior Magistrate P.D. Dlamini sentenced Appellant to 30 years imprisonment or a fine of E30 000-00 (Thirty Thousand Emalangeni). Her bail of E10 000-00 (Ten Thousand Emalangeni) was converted into a fine and she duly paid the E20 000-00 (Twenty Thousand Emalangeni) to comply with the E30 000-00 (Thirty Thousand Emalangeni) fine as imposed by the learned Magistrate PD Dlamini.

[15] The learned Senior Magistrate also revived the five (5) year suspended sentence without the option of a fine as imposed by Magistrate Mkhaliphi on the 20th November 2014.

[16] This was the beginning of the problems for the Applicant as she then launched these review proceedings to attack the actions of the Senior Magistrate in reviving this suspended sentence.

[17] The learned Senior Magistrate PD Dlamini was perfectly entitled to revive the sentence and she acted within her powers in doing so, hence her actions were lawful, because the Applicant has been convicted for contravening The Pharmacy Act during the period of the suspension of the sentence imposed on the Applicant by the learned Magistrate Mkhaliphi. There is therefore no misdirection or error of law on the part of Senior Magistrate Dlamini.

[18] This court will not interfere with the revival of the sentence by the Senior Magistrate and the Applicant has to serve the whole term of the revived suspended sentence of five (5) years to realise the effect of suspended sentences when they are revived and to appreciate the courts' disapproval of such conduct by offenders in the position of Applicant and also to deter other would-be offenders. When sentencing the Applicant the learned Senior Magistrate took into account her failure to comply with the order of Magistrate Mkhaliphi not to commit this similar offence during the period of suspension. Further the Senior Magistrate observed that the

Applicant's possession of 505.5kg of dagga was clearly meant for commercial purposes.

[19] A suspended sentence is by its nature very effective as a monitoring tool and or device on the conduct of the convict. A suspended sentence is the "guardian angel" of the convicted person to ensure that he or she does not commit a similar offence which result in a conviction during the period of suspension. The failure by a convict to observe and respect his/her suspended sentence results in its revival if he/she is convicted of a similar offence during the period of suspension. The suspension of this sentence was a lenient gesture by Magistrate Mkhaliphi but also a very stern warning that if she commits another similar offence during the period of such suspension and upon conviction, that suspended sentence would be revived. For a self-confessed commercial dagga dealer, the Applicant was very lucky to have such a sentence imposed more particularly because the weight of the dagga before Magistrate Mkhaliphi was 485.67kg.

[20] A convict, like the Applicant who finds herself faced with the revival of a suspended sentence can only have herself to blame and not the courts.

[21] In *casu* the Applicant is a third offender – having been convicted in 2008, 2014 and in 2017. In all these convictions she was always given the option of a fine. The courts were very lenient with her and she should have realised the seriousness of the suspended sentence, but she chose not to comply with that order of Magistrate Mkhaliphi hence she was convicted again for possession of 505.5kg of dagga a potentially harmful drug.

[22] There is no doubt that the Applicant is a wholesale producer and wholesale dealer in dagga. It is people like the Applicant who deserve stiff sentences upon conviction of possession and dealing in such huge consignments of the potentially harmful drug. This would serve as a deterrent to other would be offenders.

[23] It does appear though that the legislature has to review The Pharmacy Act and the Opium and Habit Forming Drugs Act to have the term of imprisonment and the fine increased, because it appears that large scale commercial producers and dealers like the Applicant always find it easy to pay these fines. Increasing the sentences would itself serve as a deterrent.

[24] In fact the leniency of the sentences is evidenced by the prevalence of these offences throughout the whole country. The courts are

flooded with these cases of large scale commercial farming and dealing in dagga on a daily basis. It has become very expensive for the Government and Royal Eswatini Police Service to deal with this scourge of crime.

E30 000-00 (THIRTY THOUSAND EMALANGENI) FINE

[25] The learned Senior Magistrate P.D. Dlamini sentenced the Applicant to E30 000-00 (Thirty Thousand Emalangeni) fine or 30 years imprisonment. It is common cause that the Applicant paid the E30 000-00 as stated early in this judgment.

Section 12 (1) (a) (ii) of The Pharmacy Act 38/1929 as Amended provides as follows:

> ***'A person who -***
>
> ***(a) is found in unlawful possession of a poison or potentially harmful drug***
>
> ***Shall be guilty of an offence and liable on conviction –***
>
> ***(ii) for a second or subsequent offence to a fine not exceeding E20 000-00 or imprisonment not exceeding 20 years'.***

[26] It follows therefore that there was a misdirection on the part of the court *a quo* in imposing this sentence of E30 000-00 or 30 years imprisonment. The provisions of the Act are mandatory and

therefore the sentence stands to be reviewed and corrected to conform to Section 12 (1) (a) (ii) of the Act.

THE LAW

[27] In the case of ***PHILILE DLAMINI & ANOTHER v THE SENIOR MAGISTRATE N.O (Nhlangano) & ANOTHER Case No. 4345/2007 HC*** per Maphalala J and Mamba J where at pages 4-6 paragraph 11, the Honourable Court stated the following:-

> ***'As a general rule in this jurisdiction, first offenders should normally be afforded the opportunity to pay a fine instead of being given a straight custodial sentence. The fine imposed must also be within the capacity of the offender to pay. This is a salutary rule aimed at giving first offenders the chance not to go to jail and be contaminated by hardened and serious offenders'.***
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> In the case of ***S v MKWINA & OTHERS 1996 (1) SA 814 (NPD) at 818 F-H*** Fannin J had this to say:-
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> ***'In most cases the first offender should, in my opinion be given the opportunity of paying a fine which is within his capacity to pay. Where there have been many cases of the possession of dagga coming before the courts something must obviously be done do discourage people from smoking and using dagga unlawfully. In such cases punishment may properly be stepped up, even for first offenders, but it seems to me that the object of discouraging such person from a second time will best be served by imposing upon them fines sufficiently heavy to hurt, but which they can afford to pay, and by adding a period of imprisonment suspended upon suitable conditions. This method of dealing***

> ***with first offenders --- will achieve two important purposes. The first will be to keep a first offender out of goal, and this is nearly always desirable. The second will be that the unlawful user of dagga will be punished for his contravention of the law and will be discouraged for at any rate the period of suspension from offending again'.***

The Honourable Court further observed at paragraph 12-13 page 6 that;

> ***'Where a court finds a reason to depart from this general rule, then, in my respectful view it must specifically say so and state that reason or reasons. In enacting Section 12 (1) (a) of the Act, the Legislature in its wisdom specifically set out the maximum sentence that may be found in possession of a large quantity or consignment of dagga as in the present case, but it still provided that such first offenders be given the option to pay a fine and only undergo a custodial sentence on failure to pay such fine.***
>
> ***I am mindful and in full agreement with the judgment of Hannah CJ (as he then was) in the case of R v Phiri 1982-1986 SLR 509, that depending on the circumstances of each case, a court would still be perfectly within its sentencing powers in imposing the maximum sentence stipulated in the Act or even ordering a first offender to undergo a custodial sentence without the option of paying a fine. There must be compelling reasons for doing so and the trial court as noted above must set out these reasons'.***

[28] I must point out that in *casu*, the Applicant's circumstances are perfectly in point with the principles and reasoning of the court in ***Mkwina*** case *supra*. The Applicant was on three occasions afforded the opportunity to pay a fine. The first two fines were relatively affordable with the last one being heavy i.e. the E30 000-00.

However I must mention that in all these three occasions she paid the fine with ease. This is the kind of a subsequent offender who now deserves a custodial sentence so that she can appreciate the stern disapproval of such prevalent offences by the courts.

[29] The only problem faced by the Applicant was the suspended sentence which was revived because she committed the same offence during the period of suspension. This type of sentence is also permitted in the ***Mkwina*** case *supra*, to serve as a deterrent. In fact depending on the circumstances of the case, even a long custodial sentence without the option of a fine would be appropriate. However in *casu*, the Applicant was treated fairly and leniently by the courts who imposed fair sentences which she easily afforded to deal with and chose to disobey the suspended sentence which was meant to discourage her from committing similar offences during the period of suspension.

[30] The learned Senior Magistrate exercised her judicial discretion in imposing the sentence which she did because such discretion vested with her as a trial court dealing with the matter. There was no misdirection on her part when she revived the suspended sentence because the Applicant had committed a similar offence during the period of suspension.

[31] It was argued by Counsel for Applicant Mr PK Msibi that the Court *a quo* i.e. Magistrate Mkhaliphi erred and misdirected himself in law when he suspended the sentence for five (5) years as opposed to the three (3) years as prescribed by Section 313 (c) of the Criminal Procedure and Evidence Act No. 7/1938 as Amended, which provides as follows:

> ***'If a person is convicted before a High Court or any Magistrate Court of any offence other than one specific in the Third Schedule, it may pass sentence, but order that the operation of the whole or part of such sentence be suspended for period not exceeding three (3) years ---'***

[32] I must state that this argument is deflated by the fact that the Applicant committed the offence in one (1) year eight (8) months from the conviction by Mkhaliphi. She was later convicted within two (2) years and eleven (11) months for this offence, so this falls squally within the three (3) years as prescribed by Section 313 (c) of The Cririminal & Evidence Act as cited herein cited.

There is no merit in complaining about the five year period of suspension now that there has been a transgression of the law by the Applicant. This should have been done immediately after the imposition of the suspended sentence.

[33] Mr Mngomezulu argued vigorously on the correctness of the revival of the five (5) year conditional suspended sentence and submitted

that there was no misdirection on the part of the court *a quo* to revive the said sentence. He referred the court to Section 294 (2) of The Criminal Procedure and Evidence Act No. 67/1938 (as Amended) which provides as follows:

> ***'a court may, before passing sentence, receive such evidence as it thinks fit in order to inform itself as to the sentence proper to be passed'.***

[34] The Court is grateful Mr Mngomezulu for the Bundle of Authorities submitted in support of the submissions by the Crown.

[35] I am in agreement with Mr Mngomezulu for the Crown that the commission of the offence and conviction of Applicant occurred within three (3) years which is the period envisaged by Section 313 (c) of The Criminal Procedure & Evidence Act (as Amended) and that the five (5) year suspended period was not prejudicial to the Applicant.

[36] Counsel for the Crown Mr K. Mngomezulu, rightfully conceded on the misdirection on the sentence of 30 years imprisonment or E30 000-00 fine as imposed by the court *a quo*.

[37] Further, the Applicant never challenged the suspended sentence either through an appeal or review. The Appellant was enjoined to

challenge the suspended sentence within the permissible time limits. For her to commit another similar offence whilst serving a suspended sentence during the period of such suspension and when its revived by court, she cries foul and attack the revival of the suspended sentence is totally unacceptable and such argument is rejected with the contempt that it deserves.

[38] I must point out that the prevalence of these offences countrywide and the sentences meted out by the courts have resulted in this court per Mlangeni J, Hlophe J and M Dlamini J issuing very comprehensive and authoritative guidelines in the sentences to be imposed in these cases, more particularly focussing on the aspect of deterrence to first offenders, subsequent offenders and would-be-offenders respectively, in the landmark judgment of the consolidated cases of ***MDUDUZI MOHALE & 11 OTHERS Review Application No. 139/2016*** wherein the court at pages 5-6 paragraphs 5, 6 and 7 respectively, stated as follows:

> ***'[5] The frequency of arrests and prosecutions is tangible proof that the law enforcement agencies are equal to the task. At the apex of this endeavour there is the judiciary which makes the ultimate pronouncement on what is to happen to those who are convicted of this offence. The main tool at the disposal of the courts is a criminal statute called 'THE PHARMACY (AMENDMENT) ACT 1983'. It is about 33 years old. In terms of the Act illegal possession of dagga carries a maximum penalty of 15 years term of imprisonment or***

a fine of E15, 000-00 for first offenders, per Section 12 (1) (b) (i) of the Act as amended. For a penalty provision of 33 years ago there is little room to doubt that the offence was regarded with considerable seriousness long before it escalated to the present alarming proportion.

[6] And yet, in the face of a menacing scourge our courts have adopted and maintained a sympathetic attitude towards offenders, influenced perhaps by the poverty argument, the persuasive theory that some offenders are driven to this vice by dire circumstances. So it is that the range of prison sentences is currently anything between one year to seven years or so, portions of which are sometimes suspended. The average fines are anything between E1, 000-00 and E10, 000-00. In an exceptional case, an amount of E15, 000-00 was meted out by His Worship P.M. Simelane, who is a Senior Magistrate for Nhlangano.[1]

[7] It is said the illegal trade in dagga is highly rewarding, and the higher grade finds its way to overseas markets. Judging by the increased rate of activity around the herb, one can conclude that indeed it is so. In the fight against this crime, is there any value in imposing fines, especially fines that are a far cry from the maximum prescribed by the statute? The farmers and the dealers can afford to pay the fines, and instantly go back to continue where they left off when they were arrested, this time perhaps more carefully in order to avoid another arrest. If we are to avoid the drug siege that is experienced in some Latin American countries the judiciary has to adopt a compulsive preference for jail term as opposed to fines.

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Discretion is obviously to remain unfettered, but the inclination towards jail term offers the only glimmer of hope for this beloved country. This is especially so when we consider that for several decades now the offence continues to escalate in spite of the overwhelming rate of conviction. Clearly, deterrence has been minimal.'

[39] At pages 18-19 paragraph 37 of **Mduduzi Mohale** *supra*, the learned Justices cited the case of ***MLUNGISI NKOSINGIPHILE MAKHANYA AND OTHERS vs. THE KING, Criminal Case No. 24/13.*** This case offers useful guidance on how to deal with the dagga offences going forward. In this case Ota J. has this to say:-

'[37] It remains for me to emphasize, that prevalence of these offences and the degree of success registered in the prosecution of the offenders, does not seem to deter other potential offenders from committing similar crimes. Instances of even repeat offences are on the increase. In the circumstances, speaking for myself, I am far from impressed with the suspended sentences and options of fines handed out to these offenders like candies to kids in a candy shop. If this trend is encouraged and allowed to subsist, I fear it will eventually sound a death knell to the intent of Parliament in enacting more punitive measures via the Pharmacy Act -----. Dire circumstances call for desperate measures. To my mind, what is expected of the courts in view of the pervading atmosphere of impugnity is to send the appropriate message ----'

[40] Again at page 19 paragraph 38 the learned Justices, in dealing with the guidelines for future sentencing stated that following:

> ***'[38] GUIDELINES FOR FUTURE SENTENCING***
>
> ***In any situation involving the exercise of discretion it is difficult to determine a closed list of considerations. What I highlight below is a guide which flows from the above discourse, and it is hoped that it will contribute to consistency and further fortify the efforts to rid our society of the ravages occasioned by the abuse of dagga.***
>
> ***38.1 Proportionality and Consistency: The statute prescribes 15 years imprisonment or E15, 000-00 as maximum sentence. There must be co-relation between the two. It would be inconsistent to order a jail term of one year with the option to pay E10, 000-00 fine.***
>
> ***38.2 Quantity is relevant to the extent of punishment. The larger the quantity, the higher the sentence.***
>
> ***38.3 Firm preference for custodial sentences.***
>
> ***38.4 Suspended sentences to be discouraged.***
>
> ***38.5 Commercial dealers should be at the highest end of the scale of penalties.***
>
> ***38.6 In the event of an option of a fine, which in our view must be in exceptional circumstances. The amount of fine should incline in favour of general deterrence.***

[41] I am of the considered view and satisfied that Magistrate Mkhaliphi and Senior Magistrate PD Dlamini committed no misdirection in the respective sentences which they imposed on the Applicant on the

20th November 2014 and 19th October 2017 respectively, in so far as the suspended sentence is concerned.

[42] As regards Senior Magistrate PD Dlamini the misdirection was sentencing the Applicant to 30 years imprisonment with an option of E30 000 00 fine. She exceeded the sentencing jurisdiction of 20 years imprisonment or E20 000-00 fine for second or subsequent offenders as prescribed in the provisions of Section 12 (1) (a) (ii) of The Pharmacy Act 38/1929. Therefore this court would be justified to review and correct that sentence.

[43] As regards the revival of the five (5) year imprisonment without the option of fine by the learned Senior Magistrate PD Dlamini, there is no misdirection on the court *a quo* because she revived that sentence when Applicant had committed the offence and convicted of such similar offence during the period of suspension and therefore there is no misdirection which entitle this court to interfere with that sentence.

[44] In ***Mduduzi Mohale*** *supra* at page 10 paragraphs 20 and 21 the Honourable Court referred to the case of ***ELVIS MANDLENKHOSI DLAMINI v REX APPEAL CASE NO. 3/2011*** where the Supreme Court stated the following:

"---- an appellate court will only interfere with such sentence if there has been a material misdirection resulting in a miscarriage of justice. It is the duty of the Appellant to satisfy the Appellate Court that the sentence is grossly harsh or excessive or that it induces a sense of shock as to warrant interference in the interest of justice. A Court of Appeal will also interfere with a sentence where there is a striking disparity between the sentence which was in fact passed by the trial court and the sentence which the Court of Appeal would itself pass----"

I stated earlier that the current penalty clause is about 33 years old. It prescribes the maximum penalty of 15 years imprisonment or E15, 000-00 for first offenders.

[45] On the basis of the above considerations, I therefore make the following orders:

1. The Application to review, correct and set aside the sentence of Thirty (30) years imprisonment with the option of a fine of E30 000-00 (Emalangeni Thirty Thousand) is hereby granted. This sentence is hereby corrected and replaced with the following sentence: - twenty (20) years imprisonment with the option of fine of E20 000-00 (Emalangeni Twenty Thousand), and;

2. The Treasury Department of the Government of Eswatini is hereby ordered to forthwith refund the Applicant the sum of E10 000-00 (Emalangeni Ten Thousand) being the balance of the original E30 000-00 fine imposed by

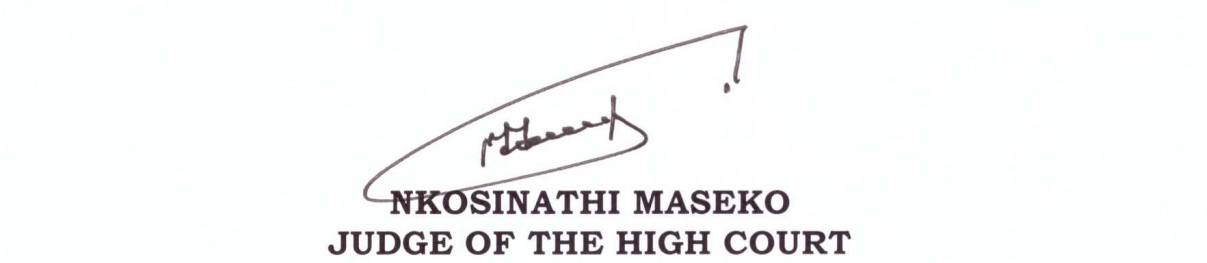
the learned Senior Magistrate PD Dlamini, which sentence has been reviewed and corrected as per paragraph 1 of this order.

3. The Application to review, correct and set aside the revival of the conditional suspended sentence of five (5) years imprisonment without the option of fine imposed on the Applicant by the learned Magistrate Mkhaliphi on the 20th November 2014 and revived by the learned Senior Magistrate PD Dlamini on the 19th October 2017 in Case No. NHO 675/2016 is hereby dismissed.

4. The Applicant is ordered to serve the five (5) year custodial sentence without the option of a fine as lawfully revived by Senior Magistrate PD Dlamini in Case No. NHO 657/2016 backdated to the 19th October 2017.

5. No order as to costs.

It is so ordered.



NKOSINATHI MASEKO
JUDGE OF THE HIGH COURT