



**IN THE SUPREME COURT OF SWAZILAND**

**JUDGMENT**

Case No.19/2013

In the matter between:

**MUZIKAYISE KHUMALO**

**Appellant**

**vs**

**REX**

**Respondent**

**Neutral citation:** *Muzikayise Khumalo v Rex (19/2013) [2014] SZSC 07 (30 May 2014)*

**Coram:** Twum J.A., Maphalala MCB J.A. and Odoki J.A.

**Heard:** 7 May 2014

**Delivered:** 30 May 2014

*Summary :* Criminal Law, Accused found guilty of 5 offences – including attempted murder and robbery. Sentenced to consecutive terms of imprisonment. Plea for sentences to be made concurrent. Trial court correctly applied s300 (2) of the Criminal Procedure and Evidence Act when passing sentences. Appeal dismissed.

## **JUDGMENT**

### **DR S. TWUM**

[1] This is an appeal from the judgment of Justice N. J. Hlophe, sitting at the High Court, Mbabane, whereat he convicted the appellant on five counts, namely:- (i) Attempted murder, (ii) Robbery, (ii) Being in possession of a firearm without a valid permit (iv) Being in possession of 5 rounds of live ammunition without a valid permit or licence, and (v) unlawfully entering Swaziland and unlawfully remaining in the country.

[2] The brief facts are that on or about the 23<sup>rd</sup> of June 2010, the appellant, armed with a 9 mm parabellum firearm went to a supermarket in Ngwane Park in Manzini District to steal. He threatened one Bongekile Mamba, who

was then selling MTN Airtime cards and robbed her of the sum of E960.00 being the day's sales; under threat of being shot if she resisted.

[3] Subsequently, the appellant ran away with his booty and an alarm was raised by members of the public who saw the robbery. The police was contacted about the robbery and hurried to the scene of the crime. Members of the public pointed towards the direction the appellant had taken and the police gave chase in their vehicle. When they caught up with the appellant, he fired 3 shots towards the police vehicle in order to facilitate his escape. The police abandoned their car which had been damaged in the process and gave chase on foot to the appellant. When he realised that the game was up appellant threw down the gun he was holding and surrendered to them. It transpired that he had sustained some injury and he was taken to Raleigh Fitkin Memorial Hospital, Manzini, for treatment.

[4] The appellant was later put before the High Court at Mbabane and charged with the offences listed above. He pleaded "not guilty" to all of them except the charge of "unlawful entry". After a full trial (at which the Prosecution called some 7 witnesses), he was found guilty on all the counts and sentenced as follows:-

1.1 Count 1 – Attempted Murder

The accused be and is hereby sentenced to five (5) years imprisonment.

1.2 Count 2 – Robbery

The accused be and is hereby sentenced to five (5) years imprisonment.

1.3 Count 3 – The Contravention of Section 11 (2) as read with Section 11 (8) (a) of the Arms and Ammunition Act of 1964 as amended.

The accused be and is hereby sentenced to five (5) years imprisonment or pay E5 000.00 fine.

1.4 Count 4 – Contravention of Section 11 (2) as read with Section 11 (8) (a) of the Arms and Ammunition Act of 1964 as amended.

The accused be and is hereby sentenced to two (2) years imprisonment or to payment of a E2 000.00 fine.

1.5 Count 5 – Contravention of Section 14 (2) (c) of the Immigration Act 17 of 1982

The accused be and is hereby sentenced to six (6) months imprisonment or to a fine of E600.00. The sentence was suspended for three years on condition that the accused is not convicted of a similar offence.

[5] In essence, the cumulative effect of all the sentences was that the appellant would serve a total prison term of 10 years subject to reduction on account of any time he spent in lawful custody whilst awaiting trial.

[6] On 17<sup>th</sup> June 2013, the appellant filed an “Application for Appeal.” This I consider to be Notice of Appeal. The quintessential complaint he raised in the “Notice of Appeal” was a plea for all the sentences in counts 1, 2, 3 and 4 to be ordered to run concurrently instead of the sentence for count 1 (attempted murder) being made to run consecutively with the sentences for counts 2, 3 and 4. The appellant submitted that all the offences were committed on the same day and at the same place. Further, he argued that nobody was injured. He added that he had four (4) school-going children

who have had to drop from school because they have nobody to pay their school fees.

[7] In my judgment, the learned trial judge did not misdirect himself in the sentences he meted out to the appellant. The sentence of 5 years for attempted murder of a police officer was overly lenient; so also was the sentence of 5 years imprisonment for the robbery offence. As the learned trial judge pointed out the offences did not occur at the same place. The robbery was at the supermarket, the attempted murder was on the road whilst the robber made his get-away. The people affected were different. Indeed, the robbery offence alone could attract a sentence of between 5 and 15 years. The attempted murder was equally serious and the appellant could count himself lucky to have been sentenced to only 5 years in prison. He could have been sentenced to 10 years for that offence only. In my view, the learned trial Judge correctly interpreted and applied s300 (2) of the Criminal Procedure and Evidence Act when sentencing the appellant.

[8] The remaining plea that his family are suffering goes to no issue about the correctness of the sentence. In my view, the appellant should rather take his just deserts with stoic equanimity. Before this Court, he explained that he

got the gun from his friend. One may ask, what for? My own view is that he had secreted the gun into the country for the sole purpose of conducting armed robbery operations. This may not be his first attempt. The way he was alleged to be saying “fast, fast, fast,” to P.W.1 in apparent demand for money, suggests to me that he is a diehard criminal. He criminally hit another employee in the shop with the back of the gun.

[9] I will dismiss the appeal as totally without merit. There is no legal reason why the sentences should be disturbed. They are hereby confirmed.

---

**DR. S. TWUM**  
**JUSTICE OF APPEAL**

---

**M.C.B MAPHALALA**  
**JUSTICE OF APPEAL**

---

**DR B.J. ODOKI**  
**JUSTICE OF APPEAL**

**For Appellant** : **In person**

**For Respondent** : **Bryan Magagula**