

IN THE HIGH COURT OF SWAZILAND

In the matter of: Case No. 25/82

REX

vs.

1. Mshangane Ndlangamandla
2. Mboziswa Gama

Review Order No. 6/82 District of Shiselweni

Mbabane 22/03/82 Review Case No. 65/82

JUDGMENT ON REVIEW

NATHAN C.J.

The two Accused were convicted on two counts of stock theft -firstly the theft of one goat valued at E93, and secondly the theft of three fowls valued at E13.00. The two thefts were committed at the same time and from the same complainant; and it is difficult to appreciate why two separate counts were preferred. However as the Magistrate directed that the sentences on each count should run concurrently, there has been no prejudice to the Accused.

No. 1 Accused was sentenced to 3 years imprisonment on each count, the sentences to run concurrently, and No. 2 Accused was sentenced to 4 years imprisonment on each count, the sentences to run concurrently.

No. 1 Accused has a previous conviction for robbery in 1976 for which he received a suspended sentence, and two further convictions for stock theft in 1980 and 1981 for which he received fines with the alternative of imprisonment. These comparatively lenient sentences have apparently had no beneficial effect on the Accused, and I have no fault to find with a sentence of three years' imprisonment on Count. 1. In regard to Count 2, however, it appears to me that a sentence of 3 years for the theft of three

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fowls valued at E13.00 is grossly excessive, even though that sentence runs concurrently with the sentence on Count 1. The sentence on Count 2 will be altered to 4 months imprisonment, to run concurrently with the sentence on Countl.

No. 2 Accused has a shockingly bad record. He has 17 convictions for theft and allied offences dating back to 1961 and is in addition serving a sentence of 12 months imprisonment for house- breaking and theft, which was passed on 18th February 1982. The sentence of 4 years imprisonment on Count 1 is by no means excessive and I confirm the conviction on this count. I add to the sentence the warning that on a future conviction the Accused is liable to be declared an habitual criminal.

In regard to Count 2, the sentence on this case is, as in the case of Accused No. 1, excessive; and the sentence will be altered to imprisonment for 6 months, this to run concurrently with the sentence on Count 1.

In regard to Accused No. 1 the convictions and sentences are confirmed save that the sentence on Count 2 is reduced to 4 months imprisonment, to run concurrently with the sentence on Count 1.

In regard to Accused No. 2 the convictions and sentences are confirmed save that the Accused is also

warned that on a further conviction he is liable to be declared a habitual criminal, and the sentence on Count 2 is reduced to 6 months imprisonment, to run concurrently with the sentence on Count 1.

The Magistrate is to explain the effect of this judgment to the Accused.

C. J. M. NATHAN

CHIEF JUSTICE.

WILL A.J.

I agree.