IN THE HIGH COURT OF SWAZILAND

CRIM. CASE NO. S.131/85

In the matter of

REGINA

vs

DOCTOR S. MHLONGO

AND ANOTHER

CORAM: WILL. C.J.

FOR THE CROWN: MR MAMBA

FOR THE DEFENCE: IN PERSON

JUDGEMENT

(21/685)

WILL, CJ.

The two Accused in this most unsatisfactory case were found not guilty and were discharged after Crown Counsel had withdrawn the charges against them after evidence had been given but before the close of the Crown case.

Although the case was due to start at 9.30a.m. it could only be called on at 11.30a.m. because the wrong exhibits had been brought to court and the police were required to fetch the correct exhibits from Manzini.

Then when the case started the Accused stated that they required an interpreter in Shangaan and the case had to stand down until one was found.

The Accused pleaded not guilty to the indictment of house-breaking with intent to steal and theft which had been lodged against them. Evidence was given by the manager of a supermarket that it had been broken into and that goods to the value of approximately E10,000-00 had been stolen. Later he was shown

goods worth about E1,000-00 which had been recovered and which he identified as being portion of those stolen.

A police officer gave evidence of having found the goods in possession of the two Accused.

It was clear from the questions put in cross-examination by the two Accused that they were fully aware of the nature of the charge which had been put against them and the effect of the evidence which had been given. Later in the day, however, and after the Accused had cross-examined the police officer who recovered the goods at some length they both complained for the first time, by producing the documents which had been served upon them, that they had been brought to court to face a charge of rape. What had obviously happened, presumably in the office of the Registrar, had erroneously pinned the notice of trial made out in the names of the Accused, to the indictment and summary of evidence on a rape charge intended for someone else.

Clearly there was a gross irregularity of the nature mentioned in S v Moodie 1961(4) S.A. 752 and S v Naidoo 1962(4) S.A. 348.

Crown Counsel suggested that I dismiss the case against the Accused on the ground of the irregularity leaving it open to the Crown to consider whether to re-indict them, if it should be permissible for the Crown to do so. Accused No.1 agreed to this course but Accused No 2 objected. He wanted the present trial to proceed. It was unnecessary for me to give a decision on the point as Crown Counsel then withdrew the case on the ground of the irregularity intimating that he would consider the question whether there should be a new trial. I accordingly found the Accused not guilty and discharged them.

This most unsatisfactory case resulted from inexcusable mistakes, one by the police in bringing the wrong exhibits to court, and the other by the Registrar's office in pinning the wrong indictment and summary of evidence, to the Accused's notice of trial.

Unfortunately this has not been an isolated case in which inexcusable errors have been made. Several cases have had to be adjourned because of a failure to assign pro-deo counsel to Accused charged with murder; notices of trial have been served upon Accused persons so close to the dates of their trials that their cases have had to be adjourned to enable them to procure legal representation or otherwise prepare for trial; and exhibits have not been brought to court or have been mislaid.

The administration of justice in a slap-dash manner brings the courts into disrepute and members of the public, particularly witnesses, are subjected to unnecessary inconvenience. The cost to Government in witness and pro-deo fees is unnecessarily increased.

Steps must be taken by all those connected with the bringing of cases before the court to ensure that unnecessary delays and mistakes are reduced to a minimum.

D.D. Will CHIEF

JUSTICE