

IN THE HIGH COURT OF SWAZILAND.

In the matter of:

Appeal No. 12/85

1. Maureen N. Gumedze
2. Annie P. Dlamini
3. Themba Mathala

versus

The Queen

CORAM

WILL, C.J.

FOR CROWN

NSIBANDE

FOR 1st APPELLANT

LITTLER

FOR 2nd & 3rd

APPELLANT

DUNSEITH

JUDGEMENT

(19/7/85)

The Appellants in this matter were charged before a Magistrate in Mbabane on a charge of Theft based on general deficiency. The three Appellants were all women clerks employed by the Department of Posts and Telecommunications. They were all sentenced to imprisonment without the option of a fine. The Magistrate held that he was obliged, in terms of Section 4 of Theft and Kindred Offences by Public Officers (Amendment) Act 1981, to sentence the Appellants to imprisonment. The Magistrate was unable to find that extenuating circumstances, as prescribed by that Act were present.

The record is very lengthy and is on manuscript, and there are a large number of documentary exhibits.

2

The appeal was noted against the sentence, the main ground of appeal being that the Magistrate erred in deciding that extenuating circumstances do not exist ; that the Magistrate was at large to impose a sentence in his discretion unimpeded by this Act, I have mentioned; and that the sentence imposed was too severe.

When the appeal came before me today no copy of the record was available, and it had apparently been hoped that the court would be prepared to deal with the appeal without a copy of this record. It was hoped that this unusual manner of dealing with the appeal would be adopted because of the length of the record and the shortage of secretarial services to provide a copy of the record.

All Counsel are prepared to co-operate in having this appeal heard without a copy of the record, but they require that certain facts be placed before the court to enable them to argue the appeal.

The conviction took place in October 1984 and if the case were to be post-poned for a copy of the record to be produced it would take months before the appeal would be ready for hearing.

All Counsel have consented to an order being made:

(i) That Crown Counsel and Counsel for the Defence will prepare a statement of those facts, both for the Appellants and for the Crown, which were established in evidence and might have a bearing on the case.

3

(ii) That the agreed statement of facts shall contain reference to any particular extract of the record which might be desired by Counsel;

(iii) That this Order is without prejudice to the right of any Counsel to refer in argument to the original record if he might wish to do so.

The Court with some reluctance has agreed to this unusual course because the circumstances of the matter dictate that this course be followed; because the order is made by consent; and because the course adopted in the case of this appeal against sentence only is not in the circumstances irregular.

D. D. WILL

CHIEF JUSTICE.