

IN THE HIGH COURT OF SWAZILAND

CRIM. APPEAL NO. 4/85

In the matter of:

SAMUEL M. THOMO

vs

REGINA

CORAM: WILL. C.J.

FOR APPELLANT: MR LITTLER

FOR THE CROWN: MR DLAMINI

JUDGEMENT

(10/5/85)

Will . C.J.

This appeal was set down for hearing today (10/5/85) but it had to be adjourned until 17th May because Mr. Littler, who appeared for the Appellant, stated that he had received a copy of the record and the Magistrate's reasons only three days ago.

The Appellant was charged before the Magistrate, Siteki with the theft of three head of cattle. The offence was alleged to have been committed on 17th June 1981 but the Appellant appeared before the Magistrate's court for the first time on the 18th January 1983 although it appears from the record that he must have been charged sometime in 1982. The case was adjourned from time to time after evidence had been led and judgement was given on the 22nd February 1983 when the Appellant was convicted and was sentenced to a fine of E300 or 3 months imprisonment which, incidentally, appears to be an inadequate sentence for a serious charge such as theft of stock. An appeal was noted on 10th March, 1983.

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Mr. Littler informed the court that, since the appeal was noted repeated requests were made to the Magistrate for a copy of the record and of his reasons for judgement. He only received them, as I have stated, three days ago. I need hardly mention that a delay of this nature is inexcusable.

Mr. Littler informed me that it was becoming increasingly difficult to secure copies of records of appeals which have been noted in Magistrates' courts, and stated that the excuse always given is that magistrates are not provided with the secretarial resources to enable them to have records prepared. What Mr Littler told the court in the present case finds support in two other matters which engaged my attention in the past ten days.

On 26th April an application was made to me to issue a Mandamus on the Magistrate, Mbabane, to produce a copy of the record and his reasons for judgement in the matter of Luleka Mavuso. The Applicant, in her launching affidavit in that matter, stated that although she had noted an appeal on 5th February 1985 the record had not been prepared and her attorney even went to the extent of having the record typed by his own staff but it still was not complete for appeal purposes. I was reluctant to issue a mandamus upon a judicial officer, inter alia, for the reason that I did not wish to disturb the amity which should exist between Bench and Bar. I induced Applicant's Counsel to withdraw the application and he did

so upon the assurance given by him Dlamini, Deputy Attorney General, that the record would be available within ten days. I am told that it still has not become available.

Yesterday (9/5/85) a complaint was lodged with me about yet another case, Braz Construction, in which the Magistrate, Siteki

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had failed to furnish a copy of the appeal record in a matter in which an appeal was noted on 19th November, 1984.

If, indeed, inordinate delays are caused by lack of staff, magistrates should take the matter up with the Ministry of Justice which, if no other course is open to it, might be able to arrange for the preparation of records in Mbabane. Delays in preparation of appeal records, because of shortage of staff, should be reported to the High Court.

What cannot be countenanced is that inordinate delays should merely be accepted without real and determined efforts being made to overcome them.

In the present case over two years have elapsed, despite repeated requests for a copy of the record. Such a state of affairs is grossly unsatisfactory and cannot be tolerated.

I direct that these remarks be drawn to the attention of Magistrates and the Principal Secretar, Ministry of Justice.

D. D. WILL

CHIEF JUSTICE