

IN THE HIGH COURT OF SWAZILAND

REVIEW CASE NO.12/92

In the matter of:

REX

VS

SIBOBO T. MATIMAKHULU

Lubombo District

22/04/92

ORDER ON REVIEW

DUNN J.

The accused was convicted on two charges under the Game Act 1957 as amended. The charges were for hunting a wildebeest and possession of 25 wire snares. The two counts were treated as one for purposes of sentence and the accused was sentenced to a fine of E600.00 in default of which, 6 months imprisonment. The accused was further ordered "to pay E900.00 to the Clerk of Court, Simunye, for onward transmission to eHlane Game Reserve. Payment is to be made on or before the 29th May 1992 failing which, to show cause why he should not be given a term of imprisonment without the option of a fine as provided in the Act".

The conviction and sentence are in order and are hereby confirmed. I have some difficulty with the order for compensation. Section 26(3) of the Act as amended provides -

/In addition ...

In addition to any penalties levied under sub-section (1) any person who contravenes the provisions of Section 6(2) or 12(1), shall be required by the court to either replace that game or compensate fully for its replacement value, failing which such person shall be liable to a further period of imprisonment of not less than one year but not exceeding three years.

The record reflects that an application for compensation was made by the prosecutor after the conviction of the accused. Mahhelane Mnisi, an employee of eHlane Game Reserve, was called to give evidence in support of the application for compensation. This is all Mnisi had to say -

I am employed by eHlane Game Reserve. I have been instructed to apply for a replacement value of the blue wildebeest. The replacement value is E900.00.

There is no indication of how this figure was arrived at. One would have expected some evidence as to the age, sex and condition of the animal for consideration in the exercise of determining its value. There was no suggestion that the Game Reserve had replaced the wildebeest at a cost of E900.00 or that E900.00 would be the cost of such replacement. The onus rests on the person applying for compensation to prove the "replacement value" of the game. The court should have before it the best available evidence as to the replacement value of the game in question. See R v. CHARLES NGENGE MGABHI ORDER ON REVIEW NO. 142/91 (unreported) at pages 3 and 4.

The Magistrate states that he "did not think, it needed expert evidence to give a price value of the animal killed".

This, in my view, is no excuse for not ensuring that proper evidence of the replacement value, is adduced by the party applying for compensation.

The order for compensation is set aside. The matter is remitted to the Magistrate, Simunye, for the hearing of evidence as to the replacement value of the wildebeest, in the presence of the accused. On completion of such evidence and upon issue of any order thereon, the matter is to be returned for further review.

  
B. DUNN  
JUDGE