

HELD IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

REV. CASE NO. 49/94

In the matter between:

THE KING
VS
BOSS KHOZA

DISTRICT OF MANZINI

28 DECEMBER 1993

ORDER ON REVIEW

The accused was convicted of a contravention of section 7 read with section 8(1) of the Opium and Habit Forming Drugs Act 37 of 1922 in that he was found in possession of 690 grams of dagga.

He was sentenced as follows

"Eighteen months of imprisonment half suspended for three years on condition that accused is not convicted of dagga possession or cultivation committed during the period of suspension".

Strictly speaking there are no such offences as "dagga possession" and "dagga cultivation". Offences relating to inter alia dagga have been created by the legislature. In terms of section 7 of the Opium and Habit Forming Drugs Act it is an offence to possess dagga without the possessor being the holder of a permit or licence. In terms of section 2(1)(b) of the said Act it is likewise an offence to cultivate dagga without being the holder of a permit or licence.

The condition of suspension in the present matter should therefore have specifically referred to the relevant sections in the said Act. This was not done.

In terms of section 4 of the High Court Act 20 of 1954 the sentence is amended to read as follows

"Eighteen months imprisonment, half of which is suspended for 3 years on condition that the accused is not convicted of possessing dagga in contravention of section 7 or cultivating dagga in contravention of section 2(1) (b) of the Opium and Habit Forming Drugs Act 37 of 1922 committed during the period of suspension".



M J STRYDOM

JUDGE OF THE HIGH COURT OF SWAZILAND