

IN THE HIGH COURT OF SWAZILAND

CRIMINAL TRIAL NO.117/95

In the matter between:

REX

VS

SIKELELA SIMON MAHLALELA

CORAM : J.M. MATSEBULA A.J.

FOR THE CROWN : MR. D. WACHIRA

FOR THE DEFENCE : MR. G. VILAKAZI

JUDGMENT

16/04/96

The accused who was initially charged with a crime Of attempted murder has pleaded guilty to assault with intent to do grievous bodily harm and the Crown has accepted the plea.

Mr. Vilakazi who represent the accused pleaded on behalf of the accused in mitigation without calling the accused to the witness stand. The procedure adopted by Mr. Vilakazi is against that recommended in MASEKO VS REX SWAZILAND LAW REPORT 1982/1986 @ Page 94 where the court of appeal stated that mitigating factors should as far as possible be placed before the court in evidence. It is true there was a written statement of facts which was not in dispute.

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However, the nature of the attack and the reason therefore has not covered sufficient ground to enable the court to consider material facts which may go a long way towards mitigation of sentence.

The only reason for the assault, the court was told is that the complainant had an illicit love affair with accused's wife and that at one stage the accused had found the complainant and his wife together.

There is no evidence how long this affair has been going on for and how long before the assault took place the illicit love affair had commenced. The assault was a vicious one on the complainant and the court would have had no difficulty convicting the accused of attempted murder. In the absence of any background and details of the illicit affair and the duration of this illicit affair and the time in relation to the assault the court is left with the impression that the accused committed this assault once he saw the complainant at a drinking place with others.

On behalf of the accused, however, the court takes into account that he is a first offender and that he is comparatively young and the court finds that the principle of keeping first offenders out of prison applies in this particular case. He is also a businessman, I was told, whose interest may suffer irreparably if given a custodial sentence.

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The rift caused by the complainant between the accused and his wife has led to the separation of the parties as man and wife. The accused however does not stand in the same position as a man who has one wife. He has a reserve, in that he still has two wives and he won't have to start looking for a partner immediately. He has also shown remorse, this was demonstrated by his voluntarily handing himself to the police and also handing the weapon with which he injured the complainant.

When the charge was put to the accused he pleaded guilty to what he considered to be the charge with which he should have been charged.

In the circumstances, the court finds the following to be an appropriate sentence. The accused will be fined a thousand Emalangenzi in default of payment to undergo imprisonment for six months. He is sentenced to a further three years imprisonment which is wholly suspended for a period of three years on condition the accused is not during the period of suspension convicted of an assault with intent to do grievous bodily harm.

J.M. MATSEBULA

ACTING JUDGE