

IN THE HIGH COURT OF SWAZILAND

CRIMINAL TRIAL NO.167/95

In the matter between:

REX

VS

BHEKIE ENOCK SIKHONDZE

CORAM : J.M. MATSEBULA A.J.

FOR THE CROWN : MISS S. NDERI

FOR THE DEFENCE : MR. T. NKAMBULE

JUDGMENT

16/04/96

The witness on whom the Crown would have relied for proving their case against the accused has decided not to give to support the statement evidence which she made to the police.

The Crown is in charge of the proceedings and Miss Nderi has now decided in terms of Section 6 of the CRIMINAL PROCEDURE AND EVIDENCE ACT to abandon the prosecution at this stage. And she states that the reason for this is because this witness has been declared a hostile witness because she was not prepared to adhere to the statement she made implicating the accused in the crime he is indicted on. The court understands why the witness decided to change the statement she made to the police and why she is now saying the police

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told her what to say. She stated that you are the father of her two minor children but the court must make this very clear that it is not the Crown who has failed to prove this case against you because this case can have very far reaching implications in the society. The court does not say it will acquit the accused because there is no evidence or because the Crown has failed to prove the case beyond any reasonable doubt but because the Crown witness has decided to somersault. As I said before this can have far reaching implications in the matter because the relatives of the deceased may decide to take the law into their own hands thinking the courts are not doing their work when infact it is a member of the community, the witness who has somersaulted.

The court does not say at this stage whether or not you are the person who committed the crime but the court is merely explaining because there are so many stories going around that courts are releasing guilty people because of the inefficiency of the prosecution. This is a clear cut case where a member of the community decide to change the statement in such a way that the possibility exist that the accused is the one who murdered the deceased but because the member of the community somersaulted, the accused has to be acquitted and; the court or the prosecution should not be blamed.

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It is up to the Crown whether they want to deal with this witness in the light of the cross examination conducted by Miss Nderi after the witness has been declared a hostile witness or not. The court would strongly recommend that that be done so that noone takes the law into their own hands as a result of the court acquitting the accused at this stage.

This court is concerned but it is bound by the rules not by what we think. The accused has pleaded not guilty to both charges that is the charge of murder and armed robbery and, because the witness is not prepared to give evidence the court must give the accused an acquittal. At this stage the court finds the accused not guilty on both charges and is discharged thereof.

J. M. MATSEBULA

ACTING JUDGE