

Rex

vs

**Musa Mndzebele
Vusi Shabangu
John Mdluli**

Cri. Trial No. 18/1997

Coram

S.W. Sapire

Judgment

(7/05/97)

The three accused in this matter have been found guilty by a magistrate of the crime of robbery in which a firearm was shown to have been used. The magistrate was satisfied on the evidence before him that the three were implicated in this offence, and it is not for this court to consider whether or not the conviction is correct or not. This matter has been referred to this court for the imposition of sentence alone. In imposing sentence I must assume that the magistrate was correct and that all three did in fact take part in the robbery on the 3rd December, 1996. I concern myself only therefore of the appropriate sentence to be imposed

On the one hand, armed robbery is a very serious offence which is on the increase in in Swaziland as well as in neighbouring territories. There are too many people who resort to the use of a firearm to engage in this sort of activity. It is true that in this case nobody was injured and the money was recovered. The fact is that people could, however, be injured through the incompetent use of a firearm. Robbers may become excited and lose control of themselves even if they don't intend originally to kill people, their possession of firearms can result in the death of people.

There is little credit to be given to accused persons because nobody was actually injured.

The that the money was recovered, again, points to incompetence but it does not

indicate any remorse. The return of their possessions to the victims was not the result of remorse. There is no suggestion of remorse on the part of the accused or a suggestion that they realize the enormity of their offence or that they regret what they have done

I have been told that they have dependants. This is unfortunately true of most persons who have appeared before this court convicted of serious crimes. Everybody has relatives. I am told that they have children but I haven't been told to what extent they actually contributed to the support of these children.

They are all young men in your middle twenties according to the charge sheet. I haven't been told of their positions in society before the commission of this offence. I don't know whether they were in employment at the time of their arrest. In fact, I know very little about them. They despite being invited to do so, have placed very little before me and I must sentence them on the basis of your having committed this serious offence

I have to impose an appropriate sentence. An important factor is that they are first offenders. But they cannot expect that to override the considerations which make a custodial sentence for this offence necessary. The public has to be protected against this sort of behaviour. I would be failing in my duty if I did not keep them out of circulation for a considerable period. I also take into consideration that they have been in custody since their arrest on 3rd December, 1996.

I have in the circumstances determined to sentence them to eight (8) years imprisonment which would be deemed to have commenced on the date of their arrest, the 3rd December, 1996. Of those eight years three are suspended on condition that they are not hereafter found guilty of the commission of an offence involving dishonesty or violence committed during the period of the suspension which is three years starting from the date upon which you are released from prison.

It has been drawn to my attention that it is not permitted to suspend any portion of a sentence for the offence of which you have been convicted, I therefore sentence you to five (5) years imprisonment.

S.W. SAPIRE
ACTING CHIEF JUSTICE