

IN THE HIGH COURT OF SWAZILAND

a: Mafitsifitsi

THE KING

vs

DAVID MAFITSIFITSI MSIBI

Criminal Trial No. 24/1997

Coram S.W. Sapire, A C J

For Crown Ms Langwenya

For Defence In Person

JUDGMENT

(10/2/98)

You, the accused David M. Msibi were charged with several other persons on three counts of armed robbery. As far as count 1 is concerned relating to the robbery which took place at the Vikizijula Supermarket at Phonjwane area Lubombo, the Crown has conceded that you have not been identified as the person who took part in that robbery. Accordingly you are found not guilty.

As far as counts 2 and 3 are concerned the position is entirely different. There is incontrovertible evidence that the offences took place, and you are identified as one of the participants in such robbery not only by the original accomplice witness but by me 2nd accused who was found guilty in the Court during your absence. The Court is acutely aware of the dangers of convicting on the evidence of accomplices. But in

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this case there is every guarantee that the evidence of the accomplices if correct and your denial of being involved are completely false.

Your defence which amounted to little more than an attack on Inspector Ndlangamandla. Your evidence in Court claiming to be reformed criminal, who had a criminal career under the protection of, if not in collaboration with, Ndlangamandla is a fanciful bag of lies. Your insistence in spite of my warnings on revealing that you have had a criminal career before this and your behaviour in escaping from custody and acting like a desperado are themselves factors which tend to support the evidence of the accomplices. In a previous judgment in this case, in the course of which I found Accused No 2 guilty I dealt with the acceptability of the evidence of Patrick Mavuso. He was apparently truthful, and his account was confirmed, not only by the evidence relating to the vehicle used in the commission of the offences, but by the convicted accused Joseph Sifundza who in mitigation confessed to the commission of the offences and gave an account of your participation therein. This he repeated once your trial was proceeded with. You made little serious effort to convincingly refute his evidence.

Your escape from custody during the hearing of this trial is notorious and has been admitted by you in this court.. Your actions are not that of reformed criminal who is determined to go straight. The evidence

demonstrates your undoubted participation in the two remaining charges on which you stand arraigned
You are found guilty on count 2 and 3.

SENTENCE

You have been found guilty on two counts of armed robbery. These robberies took place shortly after you had come out of jail from serving a sentence imposed by this Court in 1994. You have had but ignored any warning for which you asked in addressing the court on sentence The only warning I am going to give you is this that if ever you come before this Court again having been found guilty of a crime mentioned in the second schedule you may be declared an habitual criminal. That means you will stay in jail at the King's pleasure and only when the king decides to let you out will you be allowed to go out.

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I am going to sentence you however on the basis of your record which you have shown criminal tendencies for which you have been convicted at various times since 1983. I notice that you started off by stealing motor cars. In 1989 a very sinister conviction took place and that was that you were found guilty of being in possession of arms and ammunition in contravention of the Act. You were again found guilty of a much more serious crime. You were found guilty of attempted murder, robbery and possession of a firearm. In 1994 you were treated very leniently but you did not heed the warning you received and you embarked upon new offences shortly after your release from prison. I cannot impose a lesser sentence than you received the last time and in fact the time has come when the public must be protected from people like you. This can only be achieved through a long custodial sentence.

You will be sentenced to 14 years on each count which sentences are to run concurrently. You are also warned of the danger you stand of being declared a habitual criminal should you again be convicted of an offence included in the second schedule of the Criminal Evidence and Procedure Act

S.W. SAPIRE A C J