

IN THE HIGH COURT OF SWAZILAND

CRIMINAL APPEAL NO.25/2000

IN THE MATTER BETWEEN:

FELIX TEMBE

VS

REX

CORAM

:

MATSEBULA J

MAPHALALA J

FOR THE CROWN

:

MRS. M. DLAMINI

FOR THE ACCUSED

:

IN PERSON

JUDGMENT

08/05/2000

Accused was charged before a Magistrate court of contravening with Section 11 of Theft of Motor Vehicle Act No.16/91. The Act reads as follows:

“Any person who unlawfully possesses or manufactures or causes to be manufactured a key, stamp, book or other document or gadget used or likely to be used in the commission of an offence under this Act, commits an offence and is liable on conviction to a fine not exceeding E10,000.00 or an imprisonment not exceeding five (5) years.”

Accused was co-charged with another person against whom (second accused) the charge was withdrawn and accused appearing before us pleaded guilty.

The evidence was led and accepted by the learned Magistrate. His legal rights were explained to him and he chose to give evidence on oath. He does not dispute that this key which was manufactured is not a proper key for a motor vehicle and that it was found

amongst his tools in a toolbox. He stated that these were many tools that he had and amongst them was also this key which was manufactured and; he was subsequently charged. He was convicted and sentenced to a payment of a fine of E3,000.00 (three thousand Emalangeni) or in default of payment to undergo an imprisonment for three (3) years.


He noted an appeal and we have confirmed this morning, from him the appeal is aimed at, according to him, the severity of the sentence. He states his reasons why he feels the sentence is severe and one of them being that he says he has a child that is attending school. According to him, he says the sentence induces a sense of shock.

In my view, that is incorrect because the maximum sentence which can be imposed is an amount of E10,000.00 or in default of payment, a period not exceeding a period of five (5) years. The learned Magistrate only fined him E3,000.00 or in default of payment three (3) years.

We have drawn the accused's attention to Section 14(2) of the same Act which states that no sentence or part of the sentence under this Act may be suspended. In my view, therefore, I find that there is no merit in the appeal against the sentence. He was lucky to have come out with a very light sentence the learned Magistrate imposed. In my view therefore I dismiss the appeal against conviction and sentence and I so order.


J.M. MATSEBULA
JUDGE

I agree:


S.B. MAPHALALA
JUDGE