



IN THE HIGH COURT OF SWAZILAND

CRIM.CASE NO.73/98

In the matter between:

REX

VS

**MAJAH MNI
MATOLO MAKHANYA**

CORAM : MASUKU J.

**For the Crown : MR J.W. MASEKO
For the Accused : Both in Person**

JUDGEMENT ON SENTENCE 26/5/00

Both of you have been found guilty of having committed the crimes of rape and housebreaking and theft. This has been so, notwithstanding your respective pleas of not guilty.

In arriving at an appropriate sentence, the Court must take into account what is in legal parlance referred to as the "triad", consisting of three competing interests: - that of the accused, the society and the nature of the offence committed.

The factors that I will take in favour of Accused 1 are that he is a first offender and has a two-year-old child which stays with the mother. Accused 1 also asked the court to consider that his mother is dependant upon him, following the demise of his father and further requested the Court to blend the sentence that it will be minded to impose with leniency.

Accused 2, on the other hand asked the Court to consider that he is a first offender and that he has four minor children, the youngest which is four (4) years old. He stated, regarding the children that they may no longer be attending school due to his incarceration. The Court was

further requested to consider that this accused person is the only male child of his family and that his parents are now an elderly couple with very little or no energy to be engaged in gainful employment.

Jones J., in the case of **S v QAMATA 1997 (1) SACR 480 at 499** expressed the following view regarding the considerations to be taken into account on sentence:-

"It is now necessary for me to pass sentence. In doing so, it is proper to bear in mind the chief objects of punishment, namely, retribution, the prevention of crime, the deterrence of criminals, and the reformation of the offender. It is also necessary to impose a sentence which has a dispassionate regard for the nature of the offence, the interests of offender, and the interests of the society. In weighing these considerations I should bear in mind the need-

- (a) to show an understanding of and compassion for the weaknesses of human beings and the reasons why they commit serious crimes, by avoiding an overly harsh sentence;*
- (b) to demonstrate the outrage of society at the commission of serious crimes by imposing an appropriate, and, if necessary, a severe sentence; and*
- (c) to pass a sentence which is balanced, sensible, and motivated by sound reasons and which will therefore meet with the approval of the majority of law abiding citizens. If I do not, the administration of justice will not enjoy the confidence and respect of society."*

I now intend translating the above guiding remarks into reality. As a preface, it is my duty to state that the crimes of which you were convicted are serious. Rape is an innately degrading and dehumanising crime, the effects of which can hardly be quantified. It violently robs the victim of her self-esteem, self worth and drains her confidence. It constitutes a flagrant violation of the woman's femininity and relegates her to an object, devoid of feeling and entirely lacking in her God-given right to say "no".

To rape a woman in a forest or some other deserted place is a terrible affront to her dignity and is a reprehensible offence. But to break into the last place of her security, unlocking or destroying the safety gadgets thereat installed just to gratify your sexual appetites is worse and inexcusable. If people's houses will be broken down, their property vandalised, their sense of security and their persons violated, surely, the Courts must stand up and defend the defenceless, be a voice for the voiceless and inflict heavy punishment on behalf of those who are less endowed in terms of physical strength.

This is exactly what you did. You raped these young women right inside their place of refuge, in the cleft of their rock, as it were, and under the blade of open knives. You raped them in the presence of children with nonchalant disregard for their integrity and privacy. Rape has now assumed crisis proportions in Swaziland. Rape statistics are alarming. The women look to the Courts to be their buffer and restraining force in face of the violent onslaught by predators like you.


Housebreaking and theft is another scourge to this Kingdom. Countless people, who have toiled for long to obtain their valuable possessions, have lost that property at the hands of your compatriots in a matter of a few minutes. That they expend extra money to install extra safety gadgets is no deterrent to you. With stealth and undaunted resolve, you march into people's houses knowing full well that they are inside and you subject them to torture of all sorts. People have now virtually become prisoners in their own houses because of people like you. In this case, some of the property you stole was not recovered and the doors you broke have had to be replaced or repaired at some cost.

Your circulation in society jeopardises public security in at least two respects and two panic buttons are activated when you are not in custody. Firstly, people's property is not safe. Secondly, women are an endangered species. I will mete out sentences that reflect the society's outrage at your newfound but dangerous vocation, which sentences will be blended with mercy.

Accused 1 will be sentenced to ten (10) years imprisonment on Count 2 and to five (5) years on Count 3, two years of which will be suspended for three years, on condition that you are not, during the period of suspension found guilty of a crime of which theft is an element. These sentences be, and are hereby ordered to run consecutively, with effect from the 28th July, 1998, the date of your arrest.

Accused 2 will be sentenced to ten (10) years imprisonment on Count 1 and to five (5) years imprisonment on Count 3, two years of which will be suspended for 3 years, on the condition that you are not found guilty of a crime of which theft is an element during the period of suspension. Both sentences be and are hereby ordered to run consecutively with effect from the date of your arrest namely 15th August 1998, and it is so ordered.

The exhibits are to be returned to PW 3, Mr Sisimo Sihlongonyane.



T.S. MASUKU
JUDGE