



SWAZILAND HIGH COURT

Rex

v

**Thomas Manyisa
Sandra Shabangu
Martha Mavimbela**

Crim. Case No. 81/2000

Coram

SAPIRE, CJ

For Crown
For Defence

Mrs. M. Dlamini
Mr. S. Mdladla

JUDGMENT

(18/08/2000)

In this matter the accused, his wife and a person who I understand to be a maid or servant at his house, were arrested because a quantity of dagga was found in the house where they all reside. The matter was brought before court with commendable speed as the arrest took place only some 10 days ago. The matter received preference because one of the accused persons was a mother whose child required her attention. The matter also was facilitated by the attitude taken by accused presently before court who was accused no. 1.

At the commencement of the trial I granted the necessary permission to proceed by way of summary trial in the High Court whereon the representative of the Director of Public Prosecutions, Mrs. Dlamini applied for a separation of trials. This was granted and accused No. 1 was dealt with first while the other two accused awaited the outcome of his trial. The accused pleaded guilty and on his plea he was found guilty.

He elected to give evidence in mitigation and unfortunately unbeknown to me and the court officials, the evidence he gave was not recorded. The evidence is,

however, fresh in my mind and I will rely on what he said without it being necessary for him to repeat what he said on oath again.

In brief, he told how he was approached by two people who he knew to be customers at the garage which he operates in Sidwashini. They asked him to take custody for a short period of the bags of dagga which they had. Tempted by the earning of E2 000.00 in what seemed to be a very easy way, the accused took possession of the dagga which he kept at his house. It seems a coincidence that the Police decided to raid his home at the very time that the dagga was there. I do not believe I am unduly judicially cynical if I suspect that the length of time which the accused had the dagga in his possession was not quite as short as the accused says. His evidence is however uncontradicted and whatever reservations I may have in regard thereto I must accept it.

The amount of dagga involved is considerable amounting to 74.4 Kilograms. The evidence was led that the dagga was of a high quality if not the best. I was not told what the street value of this consignment was.

The question now arises as to what sentence should be imposed on the accused for the crime to which he has pleaded and been found guilty. A *locus classicus* in the passing of sentences in matters involving the contravention of the provisions of the relative legislation is *Rex vs Phiri*¹ This case is often referred to in the present connection. The wisdom of the guidelines laid down in that case by the then Chief Justice, Mr. Justice Hannah has often been recognised but equally it has often been stressed that each case has to be considered at its own merits.

In his judgment the then chief justice considered various sets of circumstances in which the provisions of the Opium and Habit Forming Drugs Act 37 of 1922 could be transgressed. The first category which merits the lightest sentence is where dagga is possessed for personal consumption only. The second category is dagga possessed for supply which is not strictly the position in this case. The case of the wholesale supplier, which is the third category should, according to the judge, be regarded as standing at the top of the sentencing scale. The accused does not fall into this category. The fourth category comprises members of the wholesalers distribution network. In this connection the judge observed that inevitably the wholesaler requires a number of couriers who play a vital role in his distribution network. These persons are motivated purely by financial gain and not infrequently will include persons whose background it is such that the principal believes or hopes will induce leniency on the part of the courts. Envisaged are the elderly women used as couriers and fronts for the principal perpetrators of the offence. In regard to these people, His Lordship said, those who engage in dagga trafficking should not expect to be dealt with leniently. Normally they should be dealt with by way of a substantial custodial sentence. His Lordship then went on to consider the retail supplier and a social supplier. According to the evidence, the accused was not a supplier.

Other factors which are important are the reasons for the offence and the circumstances in which the offence was committed. His Lordship also identified the case of the isolated transaction and said that a distinction should normally be drawn between the offender who is engaged in an isolated transaction and one who is part of

¹ 1982 to 1986 Swaziland Law Reports page 580.

a continuing enterprise. Depending on the scale of the transaction the sentence in such a case should be somewhat less and a partly suspended sentence may be considered. It was submitted that the accused falls within this category or is to be most likened with a person in this category. On the evidence this is a valid submission.

The other question of course is that the quantity of dagga found in possession of the accused precludes the trivialisation of the sentence. I must consider that a custodial sentence in this case may be suspended wholly or in part.

In favour of the accused it has to be said that he appears to be contrite, and has not taken advantage of any defences he may have had arising from the fact that he was not present when the dagga was found. He has collaborated with the Police and I understand that as a result of his information the person who he says gave him the dagga had been apprehended and will face trial.

The consideration of he being the first offender weighs heavily in his favour and prompts me if it is possible to avoid sending him to prison for any length of time. The accused's possession was very peripheral to the actual trading in dagga which was going on.

The fines prescribed by the act have become inadequate because of the depreciation in the value of money. Depreciation has not eroded the discomfort and disgrace of incarceration for any particular period. This has remained constant and to equate a maximum sentence of E15 000 with 15 years imprisonment at the present time is not valid.

In view of the accused's behaviour since his arrest, his relatively minor participation in trafficking in dagga, his position in society as a businessman and his responsibilities, and the way he has acted, I am confident in accepting his assurance that this experience and the sentence I will impose will be a warning to him and to others who may be tempted.

But the word must go out that possession of such a large quantity of dagga will normally require the possessor to be sent to prison. But there can be exceptions, and I think that the mitigating circumstances to which I have referred allow me without being in breach of my duty to avoid giving a sentence requiring the accused to spend time in prison. There are special circumstances in this case, not the least of which is his collaboration with the police, which has resulted in the apprehension of those alleged to be the principal offenders..

The sentence which I impose is as follows:

1. You are sentenced to a fine of E6 000.00 in default of payment of which you will be imprisoned for 2 years.
2. You will be sentenced to imprisonment for a period of 5 years suspended for a period of 3 years on condition that you are not hereafter found guilty of an offence involving the possession of dagga in contravention of the provisions of the Opium and Habit Forming Drugs 37 of 1922 or the Pharmacy Act 38 of 1929 committed during the period of the suspension.

3. The fine to be paid at the rate of E500.00 per month; the first instalment to be paid on the last day of this month and subsequent instalments are to be paid on the last day of each month thereafter until the full amount has been paid.

The exhibits to be destroyed forthwith and a certificate from the Senior Police Officer to be filed with these papers forthwith.


S.W. SAPIRE, CJ