



SWAZILAND HIGH COURT

Rex

V

Mavimbela, Bhani

Review case 152 /01

Judgment on Review

27th July 2001

This matter has come before me on review

Bhani Mavimbela was charged in the Manzini Magistrates' court on seven counts. (M64/2000) The first two counts related to his having escaped from lawful custody on two occasions, while serving a jail term. The escapes took place at and from different correctional services institutes.

The remaining five counts alleged offences comprising thefts and housebreaking.

He was found guilty on all counts save for count 7 where the evidence was conceded by the prosecution to be less than that required on which to base a conviction.

The difficulty I have in certifying the proceedings to be in accordance with substantial justice is that the particulars of the first two charges and the evidence led to support them of necessity informed the presiding magistrate before judgment on all the charges of the previous convictions. This is most irregular and prejudicial to the accused. See Sections 282 and 283 of Criminal Law and Procedure Act 67/1938. While evidence of the previous conviction was a necessary element of Counts 1 and 2, the allegations and evidence in support thereof should not have been alluded to in the same charge sheet specifying the other counts. The correct procedure in cases such as this would be to charge the accused separately in different proceedings before different judicial officers. One case would deal with the escaping allegations while the other offences would be the subject matter of other proceedings.

I had the matter set down for argument in open court. The representative of the Director of Public Prosecutions was unable to persuade me that my view was incorrect.

The convictions and sentences on counts 3,4,5,and 6 cannot stand and are accordingly quashed and set aside. I do not rule whether the accused may again be recharged with these offences.

S W Sapire

Chief Justice