



# **IN THE HIGH COURT OF SWAZILAND**

**REVIEW CASE NO.140/2002**

**MANZINI MAGISTRATE'S COURT CASE NO.348/2001**

**In the matter between:**

**REX**

**VS**

**PATRICK M. FAKUDZE**

**CORAM**

**ANNANDALE J**

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## **JUDGMENT ON REVIEW**

**22<sup>ND</sup> MAY 2002**

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The accused appeared in the Magistrate's court at Manzini, ostensibly on a charge of theft. He pleaded not guilty, and after the trial he was convicted of theft of some motor spares to the value of E27 000 and sentenced to three years imprisonment.

An essential averment in any charge or indictment where the crime of theft is alleged, is that the *contractatio* has to be wrongful (or unlawful, if the charge is brought under the provisions of the THEFT OF MOTOR VEHICLES ACT).

The present charge sheet lacks this averment. It reads verbatim as follows:-

“Patrick M. Fakudze... (hereinafter called the accused) charged with the offence of theft in that upon (or about) the 10<sup>th</sup> April 2001 and at or near Matsapa in the said District, the said accused and intentionally steal car parts valued at E27 000 being the property of or in the lawful possession of Themba Ntshalintshali”.

Thereafter, on the printed and typewritten charge sheet follows a statement, devoid of any context, the words:- “did wrongfully and unlawfully”.

As quoted, the latter script has no connotation with the charge, it does not fit into the lingual context and it does not form part of the charge. All it is followed up with are printed words... “on the ... day of .....” into which is inserted 26<sup>th</sup> and October 2001. Thereafter, the charge sheet reads:- “The accused bring (sic) arraigned pleaded not guilty”.

This practise not only leaves much to be desired but is not in accordance with substantial justice. An accused person is to be fully informed of the particulars of the charge he is to meet. Per definition, the crime of theft cannot be committed if it is not done with a wrongful intent. Where no averment of wrongfulness is made in the charge sheet, even if the Crown proves that the conduct of the accused was wrongful, the trial court cannot be expected to automatically infer the same. The charge sheet has to contain each and every essential of the crime of which the accused is placed on trial.

In appropriate cases, the lack of essential averments must by way of course lead to an acquittal, which shall be the obvious result of a review or appeal, if the trial court did not do so at the conclusion of the trial. Such is our law.

In the present case under review, having considered the evidence and merits of the defence raised by the accused, I have come to the conclusion that in this particular case, the accused was not prejudiced by

the impoverished charge sheet, by the poor and shoddy framing of the charge levied against him. He did know which case he was to meet and he could not raise a sufficient defence against the evidence led against him.

Despite the abovementioned deficiency the conviction and sentence stand to be upheld.

The Registrar is directed to bring a copy of this judgment to the attention of the Director of Public Prosecutions to take appropriate remedial action in so far as charge sheets are concerned. The suggested way of action is the implementation of *pro forma* charge sheets, which contain all the essentialia of different crimes, which are to be attached as annexures to SC10 coversheets, and in which the variable averments are entered by his prosecutors, i.e. details pertaining to dates, places, complainants, goods and values of allegedly stolen items.

A further criticism that requires mention that the accused was sentenced on the 26<sup>th</sup> day of March 2002, with the record on review only being placed before me on the 17<sup>th</sup> day of May 2002, some one and a half months later. Review cases have one week day for filing with the Registrar, not one and a half months. There can be no excuse tendered to say that the record had to be typed, with ancilliary reasons, as it was not done, a manuscript of all proceedings was presented, with only the reasons by the trial court for its judgment and sentence being prepared in typed form.

The trial Magistrate is reminded of the provisions of the Act pertaining to reviews and to also explain it to undefended accused persons, as was apparently not done or recorded in this matter.

J.P. ANNANDALE  
JUDGE