

THE HIGH COURT OF SWAZILAND

REX VS GINGER MAGONGO CASE NO.88/04  
REX VS SIBONELO MAPHANGA CASE NO.89/04  
REX VS LOMALANGENI DLAMINI CASE NO.90/04  
REX VS SIBUSISO DLAMINI CASE NO.91/04  
REX VS ALFRED HILLARY DUBE CASE NO.92/04  
REX VS MICHAEL DLAMINI CASE NO.93/04

ORDER ON REVIEW 28TH JULY 2004

The above matters have come before this Court on automatic review from the Magistrate Court of Piggs Peak, Hhohho District. The accused persons have been charged and convicted on various charges which are immaterial to this Order, A common thread runs through all these matters and which deserves mention.

As is the normal procedure, the Clerk of Court, in respect of each matter, issued and signed a certificate assuring this Court that she (in this case) has compared the typed record with the original record of proceedings and certifies that it is true and accurate copy thereof. There is a further certification that the record is in a fit condition to be submitted to this Court.

The trial Magistrate, on the cover of each file also certifies that the record annexed is of the proceedings tried before him by appending his signature on the cover.

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The cause for concern in all the above matters is that notwithstanding the above certificates, the records are not a true and correct copy of the original. There is no record of the dates of remand; advice on the various accused persons' rights to legal representation; the reading of the charges to the accused persons and their respective pleas. A cursory glance at the original record in manuscript however reflects that all the above stages were gone through and documented, therefor rendering it indubitable that the typed record, notwithstanding the impressive contents of the certificates is not true, correct or accurate and therefor unfit to be submitted for proceedings in this Court.

The above state of affairs is highly unsatisfactory and occasions unnecessary delays in the finalisation of the matters for review, thereby denying justice to the accused persons, particularly those in respect of whom this Court may be minded to alter the sentence favourably.

It has been stated before by Judges of this Court and needs to be reiterated in view of the foregoing, that the certificate signed by the Clerks of Court must not be signed routinely and as a matter of course. This Court relies on the certificates and which must be signed after a detailed and meticulous examination and comparison of the original record with the typed record. The present practice of some Clerks of Court to lightly append their signatures to obviously inaccurate and incorrect records must come to an abrupt stop.

The learned Magistrates would also be encouraged to peruse and compare the records, particularly as to the material aspects of the record before the records are dispatched. This would assist in correcting the record at the relevant station, thereby arresting any anomalies early, and expediting the dispensation of justice in matters of automatic review.

In view of the deficiencies noted above in respect of these matters, I am unable, regard had to the present state of the records, to form an opinion as to whether the proceedings in their entirety accord

with real and substantial justice. I therefor return the files herewith for correction of the missing portions. This Court shall hopefully receive really true and accurate records of the proceedings of the Court a quo.

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I order that this judgement must be drawn to the attention of all Their Worships the Magistrates and the Clerks of Court for future direction and implementation.

T.S. MASUKU

JUDGE