

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CRIMINAL CASE NO. 72/05

In the matter between :

REX

VS

NICHOLUS MBUTFO SIBUSISO MYENI

CORAM: MAMBA AJ

FOR CROWN: NO APPEARANCE

FOR ACCUSED: IN PERSON

JUDGEMENT

2nd MARCH, 2006

[1] On the 27th day of October 2005, the accused who is undefended appeared before this court on a indictment containing three counts. He pleaded not guilty on count one, which is a charge of attempted murder and he pleaded guilty to counts two and three, which are contraventions of the Arms and Ammunitions Act 24 of 1964 [as amended]. His pleas on the last two counts were mero motu entered as pleas of not guilty by the court.

[2] For some reason which is not immediately apparent from the court record, the case could not be heard beyond the plea stage and was referred to the Registrar to allocate another trial date.

[3] The matter then came before me yesterday and the case could not proceed because all the crown witnesses were absent. Counsel for the crown applied that the case be postponed to today and made an undertaking that he would have all his witnesses ready then. This application was, not without justification opposed by the accused who protested that he was being prejudiced by these postponements. I allowed the application .

[4] This morning at 10 of the clock I was informed by the interpreter that prosecuting counsel was not then available as he was busy in an appeal case in another court within the High Court premises.

[5] After an adjournment of about two hours, the court resumed its business at 1205 hours and still there was no one from the office of the Director of Public Prosecutions to prosecute the case for the crown. This is unacceptable and intolerable.

[6] This court or any other court does not sit at the behest of any litigant. It has its own schedule or roll. The ordinary business of this court starts at 9.30 a.m. on each court day. Insofar as the management of all the cases before it, this court does not sit at the whim of any litigant. It is the master of its own house. It is not in the best interests of justice that cases should now and then be easily postponed. Oftentimes these postponements compromise the administration of justice and are an unwarranted expense borne by the fiscus.

[7] In the present case the accused has been in custody awaiting trial since December 2003. Another postponement of his trial shall cause him further prejudice and I am not prepared to postpone the case yet again.

[8] The order that I make is that the case shall be removed from the roll and the Director of Public Prosecutions is at liberty to reinstate it for hearing once she is ready to proceed. Meanwhile, the accused is to be released from custody with immediate effect, unless otherwise detained or held for any other cause.

MAMBA AJ