

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

REVIEW NO. 57/08

In the matter between

REX

VS

VELEBANTFU ISIAH MADUNA

JUDGEMENT

22nd AUGUST,

2008

MAMBA J

[1] The 1st Accused, a 42 year old lady appeared before the Pigg's Peak Magistrate's Court together with 5 other persons on a charge of contravening section 2 (1) (b) as read with section 8 (1) of the Opium and Habit Forming Drugs Act 37 of 1922. It was alleged that they had, acting jointly in furtherance of a shared purpose unlawfully planted fifteen plants of dagga, a habit forming drug, at Nyonyane area in the Hhohho region. They were all unrepresented.

[2] On being arraigned on 2nd March 2007, she pleaded guilty to the charge whilst all her co accused pleaded not guilty.

[3] The crown accepted her plea and did not offer any evidence in

support of its case and she was accordingly found guilty and sentenced to pay a fine of E2400-00 or a term of imprisonment for 24 months. She paid the fine and was liberated. Her co-accused were acquitted and discharged. Because the Crown did not lead evidence, her case was dealt with under the provisions of the proviso to section 238 (1) (b) of the Criminal Procedure and Evidence Act 67 of 1938. This proviso states that:

"Provided that if the offence to which he has pleaded guilty is such that the court is of the opinion that such offence does not merit punishment of imprisonment without the option of a fine or of whipping or of a fine exceeding E2000-00, it may, if the Prosecutor does not tender evidence of the commission of such offence, convict the accused of such offence upon his plea of guilty, without other proof of the commission of such offence, and thereupon impose any competent sentence other than imprisonment or any other form of detention without the option of a fine or whipping or fine exceeding E2000-00, or it may deal with him otherwise in accordance with law."

[4] From the aforequoted provisions of the Act, it is plain to me that the fine imposed on the accused was incompetent inasmuch as it was in excess of the maximum amount of E2000.00 provided.

[5] In the result, the sentence imposed by the learned trial Magistrate can not stand and it is set aside. The conviction of the Accused is, however, confirmed.

[6] I do not think it would serve any useful purpose to remit the matter to the trial Magistrate to impose sentence afresh as this

may cause further delays and unnecessary costs and inconvenience. This court is at large to consider sentence afresh because of the above misdirection by the court below. Taking into account all the circumstances of this case, I think the justice of the case will be met by sentencing the accused to pay a fine of E2000-00 or to undergo a term of imprisonment for 2 years. The sentence imposed by the trial court is therefore substituted by this sentence. The extra sum of E400-00 paid by the accused is to be refunded to her and the trial court is ordered to facilitate this.

MAMBA J