

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

REVIEW CASE NO. 024/08

REX VS

JUMA HUSSENI

SELMAN HUSSENI

JUDGEMENT 19th

FEBRUARY, 2008

MAMBA J

[1] Both accused appeared before the Magistrate facing two counts. They were unrepresented and they conducted their own defence.

[2] Count one is a charge of robbery involving property in the sum of close to E36, 000-00. The second count is one of contravening Section 14(2) (c) of the Immigration Act number 17 of 1982 (as amended). The latter count is not material to this brief judgement as I believe the accused were properly convicted and sentenced on it.

[3] When the accused were arraigned they both pleaded guilty to the second count and the first accused pleaded not guilty to the first count. The crown accepted the accused's pleas and did not offer any evidence. The first accused was accordingly acquitted

on that count.

[4] The second accused pleaded guilty on the first count. The crown accepted his plea and did not lead any evidence. This is of course permissible in terms of Section 238 (2) of the Criminal Procedure and Evidence Act 67 of 1938. The trial Magistrate found the first accused guilty on both counts and sentenced him to a fine of E500.00 or five months imprisonment on count two.

[5] On the first count, the second accused was sentenced to a term of imprisonment for a period of two years without the option of a fine. This is improper. In terms of the above quoted section of the Criminal Procedure and Evidence Act the learned Magistrate was obliged to impose a sentence not exceeding Two Thousand Emalangenani or a term of imprisonment not exceeding two years. He did not in the instant case grant an option of a fine. This sentence can not stand and its hereby set aside. Reference is made to the following judgement of this court: **Thulani Sipho Motsa and two others vs Rex, Criminal Appeal No. 30/06** (unreported) and all authorities cited therein.

[6] In the result the following orders are made:

1. The conviction of the second accused is confirmed on all counts.
2. The conviction and sentence imposed on both accused on count two is confirmed.
3. The sentence imposed on the second accused on count one

is set aside and the matter referred to the trial Magistrate to pass sentence de novo.

MAMBA, J

I agree

MAPHALALA J