

IN THE HIGH COURT OF SWAZILAND HELD

AT MBABANE

REVIEW CASE NO.97 OF 2009
District Record No. B17 of 2009

In the matter between:

THE KING

VERSUS

MELUSI NDUMISO DLAMINI

Date of consideration: 27 March, 2009

Date of order: 27 March, 2009

JUDGMENT ON REVIEW

MASUKU J.

[1] I have had occasion to peruse the proceedings in the instant matter. The accused pleaded guilty to two counts of assault with intent to cause grievous bodily harm. The State chose not to lead evidence. Upon his aforesaid plea, he was convicted and sentenced to E2000.00 fine,

and in default, to two years' imprisonment on each count. The sentences were ordered to run concurrently and half of thereof was suspended conditionally.

[2] In my opinion, the proceedings are in accordance with real and substantial justice. The only issue I wish to point out as of concern, relates to the conditions attached to the suspension of the sentence. On sentencing the accused, the learned Magistrate said.

"Half of the whole sentence suspended for a period of 2 years on condition accused person is not involved in violent crime during the period of suspension."

[3] I have great difficulties with the conditions of suspension which were attached to the conviction. I say so primarily because the word "involved", employed by the trial Magistrate is nebulous. The accused may be "involved" in "violent crime" as a witness, complainant or an accused. Granted that the trial Magistrate intended that the accused person should not be "involved" as an accused person, still that presents problems for the reason that an accused person may be so "involved" but is at the end not convicted of the offence and is acquitted. He may also be converted to a Crown witness.

[4] The other difficulty is with the definition to be attached to the words "violent crime". This again is a minefield and may defy precise definition and may be subject to various interpretations by different persons, judicial officers included.

[5] It would appear to me that the use of the words "involved" and "violent crime" were unfortunate. I say so recognizing as I must that the sentence imposed on a person must be crystal clear, leaving no room for doubt or debate. This is more the case where an accused person is expected to order his conduct after sentence in a particular manner. He would be called upon by the conditions of suspension, to eschew certain types of conduct. Those types of conduct to be avoided must be clear to him thereby conducing to proper behaviour on his part, lest the suspended portion of the sentence be activated.

[6] In order to avoid any confusion in this matter and for future guidance, the proper order to grant in such cases and which I will prescribe in the instant case is the following:-

"Half to the whole sentence be and is hereby suspended for a period of 2 years on condition that the accused person is not, during the period of suspension found guilty of an offence in which violence to the person of another is an element."

[7] In the premises, I hereby certify the proceedings as being inconsonance with real and substantial justice but hereby alter the conditions for suspension in the manner set out in paragraph 6 above.

**DONE AND DATED IN CHAMBERS IN MBABANE ON THIS
THE 27th DAY OF MARCH, 2009.**

T.S. MASUKU

JUDGE