

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CRIM. CASE NO. 192/2005

In the matter between:

REX

VS

SAMSON DENNIS

1ST ACCUSED

DANIEL KINGIPANGA

2ND ACCUSED

CORAM

Q.M. MABUZA ^J MR.

FOR THE CROWN FOR

P.L. MDLULI MR. IN

THE ACCUSED

PERSON

JUDGMENT ON SENTENCE 22 /04/09

Mitigation

[1] Accused 1 addressed me in mitigation. He stated that he was a young man of 39 years old and that he still had expectations for his future. He had a small child who

lived with his parents. His parents were unemployed. His child was attending primary school. He was the sole provider for both parents and his child. While he was in custody he was informed that the mother of his child had passed away. He would return home to Kenya if released. That if he was given a long custodial sentence that would be like a death sentence especially to his child and parents.

He stated that he had two younger brothers who attend secondary school. They together with his child and parents depended on him. That he had been in custody for a long time since December 2004 long enough for his behaviour to have changed.

That he was a first offender.

It was his first time to be involved in such a case. It was also his first time to be arrested and to appear before a court of law.

[2] Accused 2 addressed me in mitigation. He stated that he was a young man of 24 years. He apologised for what had happened. He was humbling himself to the court's mercy when passing sentence. He was requesting the court to give him an opportunity so that he could contribute to his nation and himself. That he was a first offender and it was his first time to appear before a court of law. He was the eldest in a family of five. His father died on the 5/2/2002 and his mother depended on him. He had younger brothers whose only source of income was him. He paid their school fees before he was arrested but since his arrest he has not communicated with them nor his mother and does not

know how they are surviving. He requested leniency and a suspended sentence.

[3] Mr. Mdluli for the Crown confirmed that both accused were first offenders.

[4] In passing sentence I have to consider the nature of the crime, the interests of society, the accused and the victim. The crime of robbery is a very serious one and is gaining frightening momentum in Swaziland. It is even more dangerous when a firearm is used. A firearm invariably has fatal consequences. In this case it was used to subdue the owners and customers of the shop. Accused 2 used the firearm to fend off the police who were pursuing him. Fortunately, no one was killed.

[5] Society has to be protected from this type of crime. It threatens people's lives. It takes away by force what people have honestly acquired. While it is being carried out it threatens the victims who are left traumatised.

[6] The accused persons are young and able bodied. They could have been gainfully employed. I have taken their personal circumstances into account as revealed by them during mitigation. I have also taken into account that when they attacked the radio shop they did not shoot at any person. They shot the glass counter where the cell phones were. When they left they shot at the floor. I have taken into account that most of the cell phones were recovered and given back to the owners of the radio shop. In respect of accused 2, I have taken into account that nobody was fatally injured whilst he was being chased by the police.

[7] The sentence of the court is as follows:

Count 1


Both accused are sentenced to 5 years imprisonment without an option of a fine

Count 2

Accused 2 is sentenced to 5 years imprisonment without an option of a fine.

Accused 2 is sentenced to 5 years without an option of a fine.

[8] The sentences are backdated to the 25 December, 2004. The sentences in respect of accused 2 are to run concurrently. The right to appeal and review explained to accused persons.


Q.M. MABUZA -J