IN THE HIGH COURT OF SWAZILAND

HOLDEN AT MBABANE **REVIEW CASE NO. 18 OF 2009**

District Record NO. 15 OF 2009

In the matter between:

REX

VERSUS

LINDA MABUNTINI GWEBU

Date of consideration: 08 October, 2009 Date of judgment: 08 October, 2009

J U D G M E N T

MASUKU J.

[1] The above-named accused person was arraigned before the Nhlangano Magistrate's Court charged with seven counts, comprising of offences of theft and house breaking with intent to steal and theft *simpliciter.* He pleaded guilty to all the offences which I need not set out for purposes of this judgment.

[2] The learned Magistrate, as he was bound to, on the facts, returned a certitude of guilty and sentenced the accused person to twenty-three months imprisonment without the option of paying a fine. He had, before issuing the verdict properly satisfied himself that the accused's plea was unequivocal. I am of the view that where no evidence is led, for the Court to be properly satisfied about the unequivocal nature of the plea of guilty, it is imperative that the various constituent ingredients of the offence be

put to the accused person and he or she should admit them, as well as the admitted facts upon which the conviction is sought to be predicated. See my remarks in *R v Melusi Boy Hlatshwako* Review Case No. 112/09 (unreported). In the instant case, evidence to prove commission of the offence, as required by section 238 (1) (b) of the Criminal Procedure and Evidence Act, 67 of 1938, was led, however.

[3] I have no qualms whatsoever regarding the certitude of guilt returned by the trial Court in the circumstances. I accordingly find that the conviction accorded, in my opinion, with real and substantial justice. The one issue that unfortunately collides with my sense of justice, relates to the manner in which the sentence was imposed by the trial Court.

[4] As indicated above, the trial Court, in its wisdom, sentenced the accused person to 23 months' imprisonment without the option of a fine. What concerns me is that the sentence imposed by the trial

Court was a global sentence with no specificity regarding the sentence imposed on him in respect of each count. As a result, it is unclear, both to the accused and this Court what particular sentence was meted out in relation to each count, considering in particular, that the offences differed in nature and also in relation to the nature and value of the items stolen and by extension, the items that were later recovered or not recovered, as the case may be.

[5] If, for argument's sake, the accused, as he is well entitled to, decided to appeal against the sentence imposed, it will be well nigh impossible for him to do so without attacking the entire sentence, whereas if an individual sentenced was attached to each count, it would be possible to appeal only in respect of those sentences that he would regard as unduly harsh. It would also be possible for this Court in those circumstances, to satisfy itself that the sentences imposed in respect of each offence are condign, an exercise that is rendered impossible in the present scenario by the global sentence imposed in relation to offences that were clearly committed on diverse occasions and dates.

[6] The undesirability of imposing global sentences was frowned upon in the Botswana case of *State v Botha* [1986] B.L.R. 232 (H.C.) at 234, where O' Brien Quinn C.J. said:

> . . I consider that the magistrate was wrong in principle to have passed one sentence in respect of three counts as the correct practice is to pass a separate sentence in respect of each count and, if appropriate, to order them to run concurrently."

[7] A similar conclusion was reached by the Court of Appeal of that country in the case of *Kelapile v The State* [1985] B.L.R. 113 at 118 F-G, where Hannah J.A. said the following regarding the imposition by the trial Court of global sentences:

> " . . . I must comment briefly on the global sentence passed by the court-martial. Where an accused is convicted of more than one offence a separate sentence should be passed in respect of each offence. A global

sentence such as the one imposed by in the instant case is not a competent sentence."

There is no reason in law or principle, in my view to suppose that the situation in this country is or should be any different, considering, in particular, the difficulties that arise as a result of imposing a globular sentence as I have indicated in para [5] above.

[8] In the premises, it is my considered view that this would be a proper case to remit to the learned Magistrate to enable him to impose a sentence in accordance with the ethos stipulated in this judgment, as I hereby do.

[9] In the result, I issue the following order:

[9.1] the conviction of the accused person be and is hereby declared to be in accordance with reai and substantial justice.

[9.2] the globular sentence imposed on the accused person be and is hereby set aside and the trial Magistrate be and is hereby ordered to impose a separate sentence in respect of each offence and retaining his discretion as to whether to order the same to run concurrently or consecutively, as the case may be.

DONE IN CHAMBERS IN MBABANE ON THIS THE 9th DAY OF OCTOBER, 2009.

T. S.
MASUKU
JUDGE