

**IN THE HIGH COURT OF SWAZILAND HELD
AT MBABANE**

**REVIEW CASE NO. 862 OF 2008
District Record No. ML 7 OF 2008**

In the matter between:

THE KING

VERSUS

MAKHENDZE KHUMALO

Date of consideration: 25 January, 2009

Date of Order: 27 January, 2009.

ORDER ON REVIEW

MASUKU J.

1. Upon his own plea, the above-named accused person was convicted by the First Class Magistrate, sitting in Manzini, of the offence of cultivating or allowing the cultivation of six (6) dagga plants, a habit forming drug, in contravention of the provisions of section 2 (1) (b), as read with section 8 of the Opium and Habit-forming Drugs Act, No. 37 of 1922.


2. The charge sheet alleged that on 5 November, 2008, at about 0850 hrs, the accused person, not being the holder of a licence or permit, to cultivate, did cultivate or allow the cultivation of six dagga plants at Sidvashini area. In the light of his aforesaid plea, the accused was convicted of the offence charged and was sentenced to a fine of E600.00 or six months' imprisonment in default of paying the fine.

3. The matter now serves before me on automatic review. Upon a perusal of the record of proceedings, I immediately realized that there does not appear on the record, to have been any facts, either proved by the Crown or admitted by the accused and upon which the conviction was predicated. It also does not appear that there was any evidence led proving the commission of the offence as required by law, particularly the provisions of section 238 (1) (b) of the Criminal Procedure and Evidence Act, 67 of 1938.

4. In the circumstances, I issue the following Order:

4.1 The trial Magistrate is hereby called upon to furnish to this Court, a transcript of the facts upon which the certitude of guilt was returned in the instant case and such facts shall be either those proved by the Crown or admitted by the accused during the course of the trial.

DATED AT MBABANE ON THIS THE 27TH DAY OF JANUARY, 2009.



T. S. MASUKU
JUDGE