

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

REVIEW CASE NO. 16 OF
2009 District Record No. B 131 of
2008

In the matter between:

THE KING

VERSUS

ELMON MAYAKA DLAMINI

Date of consideration: 19 February,
2009 Date of judgment: 19
February, 2009

JUDGMENT ON REVIEW

MASUKU J.

[1] The accused person was, upon his own plea of guilty sentenced to a fine of E2, 000.00. and in default of paying the same, to a custodial sentence of two (2) years' imprisonment.

[2] The accused had been arraigned on a single count of contravening section 15 (4) as read with section 15 (6) of the Arms and Ammunitions Act, 1964, as amended. It was alleged that on 28 November, 2008, at or near Bhunya police station, he, being a holder of a current licence to possess a firearm, being a Norico short gun, 12 bore serial number 9402972, failed to keep the said firearm in a safe condition and safe custody and further failed to take all reasonable precautions to ensure that it does not become available to a person not lawfully entitled to possess it.

[3] In establishing the circumstances in which the offence occurred upon his plea, the accused stated the firearm was in a motor vehicle and some people decided to drive away with it and he stated further that he did not think the people would drive the vehicle away.

[4] The record does not show that the status of the accused's previous convictions as required by section 284 of the Criminal Procedure and Evidence Act, 1938, was established. Furthermore, the accused person was not given an opportunity to at least make submissions in mitigation of sentence. This appears to be contrary to section 294 (2) of Act mentioned immediately above. Although the word "may" is used in the said section in relation to the Court deciding to receive evidence before meting out a sentence, this has become a salutary practice the non observance of which may vitiate the sentence.

[5] In the circumstances, it does not appear to me that there was before the trial Court sufficient evidence or information which would have placed the Court in a vantage position to determine the condign sentence.

[6] In the circumstances, I issue the following Order:

6.1 The sentence imposed on the accused be and is hereby set aside.

6.2 The matter is remitted to the Magistrate's Court for the trial Magistrate to determine the proper sentence after being advised of the accused's previous convictions, if any, and upon the accused having either led evidence or having submissions in mitigation of sentence.

DATED AT MBABANE ON HIS THE 19th DAY OF FEBRUARY, 2009.