

## **IN THE HIGH COURT OF SWAZILAND**

**HELD AT MBABANE**

**Review Case No. 84/2009**  
**District Record No. MP 370/07**

**In the matter between:**

**THE KING**

**VERSUS**

**MDUDUZI RICHARD "SLOVO" ZWANE**

**Date of consideration: 8 March, 2009**

**Date of judgment: 9 March, 2009**

### **JUDGMENT ON REVIEW**

#### **MASUKU J.**

[1] The above-named accused was convicted by the Manzini Magistrate's Court on five counts being of robbery (2); housebreaking with intent to steal and theft (3). He was, however, acquitted of a further two counts of robbery and house-breaking with intent to steal and theft, respectively.

[2] I have no qualms with the conviction returned, the acquittals and the sentence imposed by the Court *a quo*. It is my considered

opinion that the proceedings were conducted in accordance with real substantial justice and I so certify.

[3] There is, however, one issue that I need to comment on which appears to be occurring with disturbing regularity in a number of the proceedings I have perused in recent weeks. In cases, particularly of robbery, and to a lesser extent, those of housebreaking and theft, the witnesses, particularly complainants, are asked by the prosecution to describe the items stolen from them during the commission of the offences and they do so.

[4] What is disturbing is that the complainants normally give very vague descriptions of the items. If for argument's sake, the item in question is a mobile telephone, the witness will just mention the name and calibre thereof. Shortly thereafter, the witness is called upon to identify the mobile telephone in question amongst the exhibits displayed in Court.

[5] There are primarily two issues of concern that arise with regard to this procedure. Firstly, it is desirable that as full a description of the item in question as possible is given to the Court e.g. the colour; size; serial and other numbers of the cell phone and where possible the receipt issued on purchase thereof. Any distinguishing features by which the item can be described and identified amongst others of the same class should be furnished to the Court. This is to ensure that the Court is satisfied that the item testified about and subsequently identified indeed belongs to or was in the possession of the witness concerned.

[6] Secondly, it would appear, from a reading of the record that exhibits seized during investigations are placed in the open during Court proceedings and where the witnesses can readily see them and proceed to give the vaguest of descriptions which the Court thereupon accepts as positive identification of the item testified about.

[7] It is my considered view that the safest and fairest way is first for a full description as stated in paragraph 5 above to be given. The exhibit should, at this time be concealed and it should be for the witness to go through whatever exhibits are present in Court and identify the correct one by reference to the identifying marks he or she would have mentioned earlier in the evidence.

[8] In this way, both the Court and the accused will be satisfied that the item indeed belongs to or was in the accused's possession and that the vague description given in evidence was not influenced by the item being readily placed on display in front of the witness concerned. The procedure I have outlined, if followed, would in my view conduce to the integrity of the identification process and would eliminate any bad after taste particularly with the accused that the witness' recollection was assisted and jogged by the prosecution placing the exhibits in a vantage position for the accused person to see and testify about.

[9] I should, notwithstanding the above observations, state that I am not persuaded that the procedure followed did do the interests of justice a fatal or shattering blow in the instant case. My view

that the proceedings in question accord with real and substantial justice remain unaffected and are hereby reaffirmed.

[10] I order that a copy of this judgment should be distributed to Their Worships, the members of the Magisterial Bench for future guidance.

**DONE IN CHAMBERS IN MBABANE ON THIS THE 9<sup>th</sup> DAY OF MARCH, 2009.**

**T.S. MASUKU  
JUDGE**