



IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

APPEAL CASE NO. 23/2009

In the matter between:

CELUCOLO DLAMINI

APPELLANT

v

REX

<u>CORAM</u>	:	MAPHALALA -PJ
	:	Q.M. MABUZA -J
FOR THE CROWN	:	MR. MAKHANYA OF THE DIRECTORATE OF PUBLIC PROSECUTIONS
FOR THE ACCUSED	:	MR. B. NGCAMPHALALA OF ZONKE MAGAGULA & COMPANY

JUDGMENT 13/09/10

Mabuza J

[1] The appellant herein appeals against a sentence imposed by the learned Magistrate of Manzini. The Appellant together with two others were charged before the learned Magistrate in respect of the following offences to which they pleaded guilty.

Count 1:

The Appellant Celucolo Dlamini (2nd Accused) and Nhlanhla Dlamini (1st Accused) were charged with the offence of house breaking with intent to steal and theft. It is alleged that they broke into Adam Misi Ali's house and stole goods to the value of E9617.00. This offence was alleged to have been committed on the 4th January 2009. They pleaded guilty and the Crown accepted their pleas. They were both sentenced to two years imprisonment without an option of a fine in respect of Count 1.

Count 2:

The Appellant and two co-accused were charged with the offence of house breaking with intent to steal and theft. It is alleged that they broke into Daniel Osei's house and stole goods to the value of E2850.00. This offence is alleged to have been committed on the 22nd January 2009. They pleaded guilty and the Crown accepted their pleas. They were all found guilty and sentenced to a fine of E1500.00 in default of payment, 15 months imprisonment.

Count 3:

The Appellant was charged with the offence of contravening section 64 (b) as read with section 62 of the

Crimes Act No. 6/1889; having been found in possession, without lawful authority of a bolt cutter and a pair of pliers these being implements for committing a crime. He was found guilty and was sentenced to pay a fine of E500.00 and in default of payment to five months imprisonment.

- [2] The sentences were ordered to run consecutively.
- [3] It is upon the conviction and sentence on the first count that the Appellant has noted an appeal.
- [4] The appeal is opposed by the Crown.

AD Conviction

- [5] The grounds of appeal advanced by the Appellant is that the learned Magistrate erred in law and in fact in finding the Appellant guilty. He contends that the evidence of PW1 Misi Adam Ali did not in anyway incriminate the Appellant; he only made reference to him as someone he knew.

The Appellant also contends that it was never alleged in the charge sheet and during the trial on the first count that he could have been acting in furtherance of a common purpose.

It was further contended on behalf of the Appellant that the Crown had failed to prove the Commission of the offence beyond a reasonable doubt.

[6] It is our view and we agree with Mr. Makhanya for the Crown, that since the Appellant pleaded guilty to the charge all that was needed from the Crown was to prove that **the offence was committed**. (emphasis added).

[7] The Crown called Adam Misi Ali (PW1) and Detective Constable M. Dlamini (PW2) to prove the commission of the offence. The evidence of these two witnesses clearly proves that the crime was committed. The appeal against the conviction is in our view ill-conceived and must be dismissed.

AD Sentence

[8] It is the Appellant's submission that the sentence meted out by the learned Magistrate is harsh and induces a sense of shock in that he (Appellant) was a first offender and was deprived of a fine.

[9] In response to the Appellant's submission with regard to the sentence Mr. Makhanya submitted that sentencing is a sole discretion of the trial court. The appeal court

can only interfere with it if it is found to be startlingly inappropriate in the circumstances.

[10] We agree with the submission made by Mr. Makhanya that an appeal court should not readily interfere with the sentence of the trial court.

[11] We find that the sentence imposed by the learned Magistrate is appropriate in the circumstances.

[12] In the event the appeal is hereby dismissed and the conviction and sentence confirmed.

[13] The Accused is ordered to serve two years imprisonment less 2 months being the period he spent in custody before he was admitted to bail. The Accused is to undergo 22 months imprisonment.

Q.M. MABUZA
JUDGE OF THE HIGH COURT
OF SWAZILAND

I agree,

S.B. MAPHALALA
PRINCIPAL JUDGE OF THE
HIGH COURT OF SWAZILAND

Delivered in open court on this the 13th Day of September, 2010.