

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

**CASE No. 403/2010**

In the matter between:

**REX**

**VS**

**SITHEMBISO SEVEN DLAMINI**

**CORAM: SEYJ.**

**FOR THE CROWN: MR. S. FAKUDZE**

**FOR THE ACCUSED: IN PERSON**

**JUDGMENT ON SENTENCE**

**15 JULY 2011**

**SEYJ.**

[1] On the 14<sup>th</sup> day of October, 2010, the accused named herein was convicted by the Senior Magistrate in Piggs Peak Magistrate's Court for the offence of rape. The accused was charged with two counts of rape.

[2] On count one, the particulars alleged that on the 15<sup>th</sup> August 2010, at or near Mphondla area in the Hhohho region, the said accused person an adult male, did intentionally have unlawful Sexual intercourse with S M a female who was aged 4 years old and incapable in law of consenting to sexual intercourse and did thereby commit the crime of rape.

[3] The Crown further alleged that the act of rape was accompanied by aggravating circumstances as envisaged by Section 185 bis of the Criminal Procedure and Evidence Act 67/1938 in that, in committing the offence, the accused did not use a condom, and thus put the complainant at risk of contracting sexually transmitted diseases and infections.

[4] On count 2, the particulars alleged that on the 15<sup>th</sup> August 2010, at or near Mphondla area in the Hhohho region, the said accused person an adult male, did intentionally have unlawful Sexual intercourse with T M, a female who was 3 years old and incapable in law of consenting to sexual intercourse and did thereby commit the crime of rape.

[5] The Crown further alleged that the act of rape was accompanied by aggravating circumstances as envisaged by Section 185 bis of the Criminal Procedure and Evidence Act 67/1938 in that, in committing the offence, the accused did not use a condom, and thus put the complainant at risk of contracting sexually transmitted diseases and infections.

[6] The accused pleaded guilty on count 1 and not guilty on count 2. At the conclusion of the trial in which the accused was not represented, and in which he gave evidence upon oath, the Magistrate found him guilty of the crime of rape with aggravating circumstances.

[7] The Magistrate then went on to address the accused as follows:

*""You have been convicted of committing serious crimes. You raped very young children, who were defenceless. It is unfortunate that such serious crimes are committed by young people like you. There are beautiful women of your age who are*

*waiting to be proposed love to. Instead you went for the very young children. In your case aggravating circumstances have been alleged. In the opinion of the court you deserve a greater punishment than this court has power to inflict. For that reason you are committed to the High Court for sentences in terms of Section 292 (1) of the Criminal Procedure and Evidence Act 67/1938 (as amended) "*

[8] The Magistrate having found the accused deserving of greater punishment than he was empowered to inflict has accordingly invoked the provisions of Section 292 of the Criminal Procedure and Evidence Act 67 of 1938 as amended and committed the accused to the High Court for sentencing.

[9] This case has now been brought before this Court for sentencing. In mitigation the accused pleaded for leniency and mercy and he told the Court that he was a first offender. He promised that if he is released he would never commit such an offence again.

[10] In arriving at my sentence, I have placed reliance on the recent decision of the Supreme Court of Swaziland in **Mfanabile Gule v The King**

**Criminal Appeal No. 03/2011.** In that case, His Lordship Moore JA opined as follows:

"In fashioning the appropriate sentence for the offence for which the Appellant was convicted it was the duty of the sentencing Judge to consider:

the circumstances of the offence the  
circumstances of the offender the public  
interest

the mitigating and aggravating factors applicable to the offence arising out of all of the material before her; The law and practice relating to sentencing in Swaziland The sentencing guidelines, norms and trends obtaining in contemporary Swaziland as disclosed in the most recent decisions and pronouncements of the Supreme Court and, where appropriate, those of the High Court."

[11] I am also mindful of the fact that the aggravating factors in this present case were that the victims were very young children of the tender ages of 4 years and 3 years respectively. As the Magistrate rightly put it "you raped very young children who were defenceless." Furthermore, the accused had not used a condom and thus put them at risk of contracting sexually transmitted diseases and infections. I must state that upon perusal of the

record of proceedings I have observed that the medical reports reflect that the genitals of both complainants had injuries and their hymens were infected.

[12] In this Kingdom the Courts have treated the rape of a child as a particularly serious aggravating factor warranting very stiff sentences. A case in point is that of **Ngubane Magagula v The King Criminal Appeal No. 32/2010** where the Supreme Court, inter alia, observed that:

*"it would appear that the appropriate range of sentences for the offence of aggravated rape in this Kingdom now lies between 11 and 18 years imprisonment — which is the mid range between 7 and 22 years - adjusted upwards or downwards, depending upon the peculiar facts and circumstances of each particular case. The tables also reveal that this Court has treated the rape of a child as a particularly serious aggravating factor, warranting a sentence at or even above the upper echelons of the range."*

[13] In the circumstances, Sithembiso Seven Dlamini, you are hereby sentenced as follows:

Count 1:15 years imprisonment without the option of a fine.

Count 2:15 years imprisonment without the option of a fine. The said sentences are ordered to run concurrently and they are hereby backdated to the date of his arrest on 15/08/2010.

[14] It is my considered view that these sentences would serve as a deterrent not only to you to abstain from similar behaviours in the future, but to others who may have like-minded schemes in contemplation.

It is hereby so ordered.

*M. M. SEY (MRS)*  
JUDGE OF THE HIGH COURT