



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

### **SENTENCE**

Case No. 2624/2001

In the matter between:

**MADLENYA FARMERS IRRIGATION  
SCHEME**

**Applicant**

And

**MNTJINJWA MAMBA**

**First**

**Respondent**

**MTHININI DLAMINI**

**Second**

**Respondent**

**DUMISA DLAMINI**

**Third**

**Respondent**

**THE COMMISSIONER OF POLICE**

**Fourth**

**Respondent**

**ATTORNEY GENERAL**

**Fifth**

**Respondent**

**Neutral citation:** *Madlenya Farmers Irrigation Scheme v Mntjinjwa Mamba*  
*(2624/2001) [2014] SZHC133 (4<sup>th</sup> July 2014)*

**Coram:** **M. Dlamini J.**

**Heard:** **9<sup>th</sup> June, 2014**

**Delivered:** **4<sup>th</sup> July, 2014**

*Contempt of court – failure to comply with an order of court – sentencing – court to be persuaded by demonstration of remorse in order to pass lenient sentence – where there is no remorse – court to pass sentence commensurate to offence – however, court still bound to consider the personal circumstances of defendants as mitigating factors.*

**Summary:** Having found respondents guilty of contempt of court, it remains for me to pass sentence.

Mitigation by respondents

[1] Counsel on behalf of respondents mitigated as follows:

- The respondents had a large family and were breadwinners;
- The respondents are pleading for a sentence of an option of a fine as they are presently carrying on business.

Learned Counsel then proceeded:

*“Respondents are saying they are not responsible for the damage caused”.*

[2] When pressed by this court to support a plea for an option of a fine, the learned Counsel replied:

*“There is a likelihood that the court might be wrong in having found them guilty”.*

He further submitted:

*“There is no purpose for incarceration. If they are given an option of a fine, they will be rehabilitated”.*

Applicant’s response

[3] Applicant on the other hand informed the court that the respondents having been convicted of contempt of court by defying a court order, the court should pass a sentence which would send a message to would-be offenders that orders of court are there to be obeyed. The respondents have further

caused massive damage to the property of applicant in defiance of an interdict by this court. Applicant was not opposed to an option of a fine but stated that the figure should be commensurate to the offence and the extensive damage caused to applicant's property.

### Guiding Principle

[4] In **Ferreira v Bezuidenhout 1970 (1) SA 551** at 553, **De Villiers J** held:

*“Mr. Kotze admitted that an order for imprisonment for contempt of court will not be made by a Supreme Court for the willful failure to comply with an order ad pecunian solvendam; it will only do so if the order not complied with is an order ad factum praestendum”.*

[5] An order “*pecunian solvendam*” has been defined as one “*to discharge a commercial debt or an order to pay costs.*” An order for *ad factum praestandum* on the other hand is one “*to be performed in a particular manner and at a particular place*” as per the case of **Ferreira supra** at page 553.

### Adjudication

[6] From the above, it is clear that the order interdicting respondents from entering the applicant's property is one that falls within orders “*ad factum praestandum*”. It is therefore competent for this court to order committal. That as it may, I consider as submitted in mitigation on behalf of respondents that respondents are breadwinners of their respective families. They carry on legal businesses thereby responsible members of society.

[7] The judgment pending sentence reads:

*“On the basis of AW2’s evidence that while some of respondents were outside camping at the main entrance and carrying weapons to prevent their entry whereas some were inside applicant’s field “appearing to be weeding”, I draw inference that it is respondents who destroyed applicant’s irrigation pipes. Those who appeared to be weeding were not but destroying applicant’s pipes. This evidence of some respondents remaining in the field and appearing weeding was also not disputed under cross examination.”*

From this in mitigation, respondents submitted that:

*“they are not responsible.”*

And further:

*“There is a likelihood that the court might be wrong.”*

[8] The above submission on behalf of respondents does not demonstrate any iota of remorse from them. Could this court in the face of absence of remorse pass a lenient sentence?

[9] In **Swaziland Independent Publishers (Pty) Ltd and Editor of the Nation v The King (74/13) [2014] SZSC 25** his Lordship **Moore JA** stated:

*“This court has been moved by the pleas of the appellants in mitigation. We are minded of the humane response of Lord Denning in England when a group of well meaning Welch students – wishing to draw attention to the beauties of the Welch language committed acts amounting to contempt of court. Lord Denning illustrated to them the error of their ways; and made it clear that such behaviour could not be countenanced in democratic England. Nevertheless, he was moved with the compassion which resides within the breast of every judge. The sentence of Lord Denning’s court was accordingly lenient.”*

[10] I have already stated that the respondents are responsible citizens of this country as they trade in legal business and are supporters of their families. For these reasons, I am inclined not to pass a sentence of committal to goal.

[11] However, their lack of remorse, as demonstrated above and in view of the position that contempt of court charges are there not only to “*vindicate the court’s honour*” as per De Villiers J *op. cit.*, but also to prevent mayhem in society caused by individuals who pay total disregard of court orders and should, therefore, be considered with seriousness, I am inclined to order payment of a fine which will be commensurate to the offence but taking into consideration their personal circumstances highlighted *supra*. In deciding the *quantum*, I am guided by the observation during inspection *in loco* and submission in court that the respondents, as businessmen, are cultivating vast land of sugar cane, more than applicant’s forty three hectares which is adjacent to applicant’s fields. They are therefore in a position to pay the fine to be imposed. I, however, bear in mind that in deciding the said *quantum*, I should consider a figure which will not put defendants out of business at the same time as was the view in **Swaziland Independent Publishers (Pty) Ltd** *supra*.

[12] In the circumstances, I therefore order as follows:

1. Each respondent is to pay the sum of E20,000 as fine over a period of ten months commencing end of October 2014; failing which
2. Each respondent is sentenced to three years imprisonment. For the custodian sentence, one year is suspended for a period of three years on condition that each respondent is not convicted of a similar offence;

3. Each respondent is ordered to thereafter file his monthly receipt of payment with the Registrar of this court not later than the tenth day of each month;
4. The Registrar of this court is ordered to monitor payment of the said fine and in the event of any respondent's default, the Registrar is to immediately enroll the matter, and issue processes to the defaulting respondent to show cause on the enrolled date of his default and why the custodian sentence should not be invoked against him;
5. Respondents are ordered to pay costs of suit jointly and severally, one to pay the other to be absolved.

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**M. DLAMINI**  
**JUDGE**

**For Applicant: Mr. N. D. Jele**

**For Respondents: Mr. L. Maziya**