



IN THE HIGH COURT OF SWAZILAND

JUDGMENT

REPORTABLE

HELD AT MBABANE

Review Case No. 08/2016

In the matter between:

REX

VS

SAMKELISO SHABANGU

Neutral citation: *Rex v Samkeliso Shabangu* (08/2016) [2016] SZHC 39
(29 February 2016)

CORAM

MAMBA J

CONSIDERED:

29 February, 2016

DELIVERED:

29 February, 2016

[1] Criminal Law and Procedure – unrepresented accused pleading guilty and crown leading evidence in support of its case. After first crown witness court returning a verdict of guilty of the accused without affording the crown to close its case and the defence to open and close its case. This is grossly irregular and constitutes a miscarriage or failure of justice. Trial, conviction and sentence imposed on accused set aside.

[2] Practice and Procedure – cases on automatic review have to be brought before a judge as soon as is reasonably possible. A 3 year delay is rather long and potentially prejudicial to a convicted person and the administration of justice.

- [1] The accused who was not represented by Counsel, was convicted by the Manzini Magistrate's Court on 04 April 2013 on a charge of robbery. The crown alleged that the offence was committed at Macembe area on 13 February 2013 whereby the accused robbed the complainant, one Thamsanqa Dlamini, of goods or items valued at E1200.00.
- [2] According to the charge sheet, the accused was 20 years old and he made his first appearance before the Court on 05 March 2013. After he was advised of his rights to legal representation, he opted to conduct his own defence and pending his trial, the accused was periodically remanded into custody. His trial took place on 04 April 2013.
- [3] On being arraigned, he pleaded guilty to the charge. The crown only led the evidence of the complainant in support or proof of its case. The accused, after having his rights to cross examine the witness explained to him, indicated that he had no question to pose to the complainant. Rather bizarrely, what followed this step in the trial was that the trial magistrate returned a verdict, finding the accused guilty as charged. There is no indication whatsoever that the crown was allowed to close its case or the accused to open and close his own case. This is grossly irregular.

- [4] After mitigation, the accused was sentenced to a term of 3 years of imprisonment without the option of a fine. The sentence was, to boot, not backdated despite the fact that he had spent about a month in custody since his first appearance in court. (Vide article 16(9) of the Constitution)
- [5] The fact that the accused had pleaded guilty to the charge did not constitute a waiver of his fundamental right to present his own defence. His plea of guilt and failure to cross examine the complainant did not bar him from presenting his case. These factors did not deny the crown the right to lead as many witnesses as it wished and also to close its case whenever it desired to do so. The fact that neither the accused who was unrepresented, nor the crown, did not object to this bizarre procedure adopted by the Learned Magistrate did not render the proceedings fair or in accordance with acceptable ways of conducting a criminal trial.
- [6] It is a fundamental or foundational principle of our criminal law and procedure that every person who stands trial, must be afforded the right to state his case or defence before he is declared guilty or otherwise; unless he pleads guilty and his plea is accepted by the crown. In the present case, the crown did not accept his plea. It tendered evidence and this made it imperative that the accused be afforded his right to present his

defence to the court. This was not done. Such failure was an irregularity so gross that it resulted in a failure or miscarriage of justice. For this reason the trial of the accused was a complete failure or farce. It was a mistrial. His conviction and sentence stand to be set aside.

[7] For the foregoing reasons, the trial, conviction and sentence meted out to the accused are hereby set aside. The accused, if still in custody is to be notified of this judgment and be released forthwith from prison.

[8] It is a matter of grave concern to this court that it has taken close to three (3) years to have this simple and short matter brought to this court for automatic review. The typed court record; together with the charge sheet is barely four pages. The court record was placed before me on 24 February 2016. The delay, which is inordinate, is unexplained. No one has bothered to do so. This is most regrettable indeed a terrible indictment, stain or blot on our practice pertaining to reviews in particular and criminal justice in general. This judgment is to be brought to the attention of the Registrar of this Court who is ordered to investigate such delays with a view to correcting them as this case is not an isolated one. It is one of many such cases. The problem is, it would seem, also not confined to one region or court too.

MAMBA J