



IN THE HIGH COURT OF SWAZILAND
JUDGMENT

REVIEW CASE NO. 1188/2017

HELD IN THE MATTER BETWEEN

REX

VS.

SIKELELA MYENI

Neutral Citation: *Rex v Sikelela Myeni (1188/2017) [2017] SZHC 135 (03 July 2017)*

CORAM: **MAMBA J.**

CONSIDERED: **03 JULY 2017**

DELIVERED: **03 JULY 2017**

[1] *Criminal law and Procedure - sentence - general rule is that sentence is predominantly a matter for the discretion of the trial court. However, where sentence is stipulated by statute, the court has to follow the dictates thereof.*

[2] *Criminal law - sentence - Contravention of section 81 of the Crimes Act 6 of 1889. Court imposing a sentence of E500-00 in default of which imprisonment for five months. Such*

sentence set aside as being in excess of the maximum sentence of E100-00 or 3 months imprisonment for a first offender.

- [1] This matter comes before me on automatic review following the conviction and sentence of the accused by the Manzini Magistrate's Court on 14 August 2016.
- [2] The accused appeared before the said court on 14 August 2016 facing 2 counts. The first count alleged a contravention of section 122 (1) and 122 (7) of the Road Traffic Act 6 of 2007 (as amended). It was alleged that the accused had, on the said date and at or near Fairview on a public road, whilst being a pedestrian, unlawfully and intentionally conducted himself in a dangerous manner by breaking beer bottles on the roadway and blocking the said road.
- [3] On the second count he was charged with a contravention of section 81 of the Crimes Act 6 of 1889 (as amended) in that he had resisted a lawful arrest by a member of the Royal Swaziland Police Service. This offence was also allegedly committed on the same date and place as in first count.

[4] After being apprised of his rights to legal representation, he opted to conduct his own defence and on being arraigned, he pleaded guilty to both counts. His pleas were accepted by the Crown and he was, I think, properly found guilty as charged on his own pleas. He had no previous convictions, the Crown submitted.

[5] After mitigation he was sentenced to pay a fine of E700-00 or undergo a custodial sentence of 5 months on the first count. He was again ordered to pay a fine of E500-00 and failing which to serve a period of 5 months of imprisonment on the second count.

[6] The sentence on the first count seems to be in order. This cannot, however, be said of the sentence in respect of the second count, i.e. that of resisting arrest in contravention of section 81 of the Crimes Act 6 of 1889. The said section states as follows:

'81. Any person who assaults or resists or wilfully obstructs a police officer in the execution of his duty shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred Emalangeni, or in default of payment thereof imprisonment not exceeding three months or to be imprisoned without the option of a fine for a period not

exceeding three months; and in the case of a subsequent conviction for any such offence within the space of two years, he shall be liable to imprisonment not exceeding six months without the option of a fine’.

Clearly therefore, the sentence imposed by the learned trial Magistrate was in excess of that stipulated in the relevant section of the law. It was incompetent and stands to be set aside and is hereby set aside.

- [7] Whilst it is true that the Crimes Act is a very old piece of legislation and does not appear to have been revised or amended after 1993, and that the maximum sanction of contravening section 81 thereof seems rather too low, or insignificant, the courts have no power to go beyond that which is stated or provided therein. It is the duty of the legislature, in its wisdom to review it and increase the sanction stipulated – if this be its opinion. It is at the same time the duty of a court to point out any short-comings in any piece of legislation it considers merits or warrants a re-look by parliament and make or pronounce its opinion or view on it. In the present matter, this court views the act of resisting arrest or obstructing a police officer in the execution of his duties, a serious infraction. The maximum sentence of E100-00 is minuscule for such a contravention. It may have been sufficient in 1993 when the Act was last amended. Not anymore.

Besides, the value of the Lilangeni has significantly decreased since then. This is so, in my view, on any school of thought or view that one may have or harbour as being as the primary object or reason or reasons upon which penology may be based.

[8] For the above reasons, I make the following order:

8.1 The convictions of the accused on both counts are hereby confirmed or upheld.

8.2 The sentence imposed on the first count is also upheld.

8.3 The sentence meted out by the court on the second count is hereby set aside and substituted with the following sentence:

The accused is sentenced to pay a fine of E100-00; failing which to undergo imprisonment for a period of three months.

8.4 A sum of E400-00; being the difference between the amount of E500-00 paid by the accused and that ordered by this court in 8.3 hereof, is to be refunded to the accused person forthwith.

[9] This order is to be explained to the accused by the court below as soon as possible.



MAMBA J