



IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 19/2012

In the matter between:

REX

and

CHARLES JELE

**Neutral Citation : Rex vs Charles Jele (19/2012) [2018]
SZHC 200 (11 SEPTEMBER 2018)**

Coram : MABUZA – PJ

Heard : 30 JULY 2018; 31 JULY 2018

Delivered : 11 SEPTEMBER 2018

SUMMARY

Criminal Law: Sentence – Accused convicted of four counts of theft of money from his employer totaling E414,78.84 to which he pleaded guilty and convicted accordingly.

JUDGMENT

MABUZA -PJ

[1] On the 30th July 2018, the Accused, Charles Jele, was indicted as follows:

Count 1

The Accused is charged with the crime of theft, in that, the said accused person was employed as the General Manager of Swaziland Royal National Airways Corporation and was as such a servant or an agent of the said Swaziland Royal National Airways Corporation and was entrusted, inter-alia, with the custody and care of money belonging to his said employer, the said accused did on or about the 16th May 2009 and at or near Matsapha area in the Manzini Region, unlawfully and intentionally steal the sum of US\$4,000.00 an equivalent of E34,080.00 and (Thirty four thousand and eighty Emalangen) thereby creating a general deficiency of US\$4,000.00 (Four thousand US\$) an equivalent of E34,080.00 and thus did thereby commit the said offence.

Count 2

The Accused is charged with the crime of Theft in that, the said accused person was employed as the General Manager of Swaziland Royal National Airways and was as such a servant or an agent of the said Swaziland royal National airways Corporation and was entrusted, inter alia, with the custody

and care of money belonging to his said employer, the said Accused did on or about November 2009 and at or near Matsapha area in the Manzini Region, unlawfully and intentionally steal the sum of E45,000.00 (Forty five thousand Emalangeni) thereby creating a general deficiency of E45,000.00 (Forty five Thousand Emalangeni); and thus did thereby commit the said offence.

Count 3

The Accused is charged of the crime of Theft in that, whereas at all relevant times, the said accused person was employed as the General Manager of Swaziland Royal National Airways Corporation and was as such a servant or an agent of the said Swaziland Royal National Airways Corporation and was entrusted, inter-alia, with the custody and care of money belonging to his said employer, the said Accused did on or about the 10th December 2009 and at or near Matsapha area in the Manzini Region, did unlawfully and intentionally steal the sum of E13,736.74 (Thirteen thousand seven hundred and thirty six Emalangeni seventy four cents) thereby creating a general deficiency of E13,736.74 (Thirteen thousand seven hundred and thirty six Emalangeni seventy four cents); and thus did thereby commit the said offence.

Count 4

The Accused is charged of the crime of Theft, in that, the said accused person was employed as the General Manager of Swaziland royal National Airways Corporation and was as such a servant or an agent of the said Swaziland royal National Airways Corporation and was entrusted, inter alia, with the custody and care of money belonging to his said employer, the said Accused did on or about September 2006 and at or near Matsapha area in the Manzini Region, unlawfully and intentionally steal the sum of US\$41 920.00 (Forty one thousand nine hundred and twenty US\$) an equivalent of E314,400.00 (Three hundred and fourteen thousand four hundred Emalangeni) and E7,565.10 (Seven thousand five hundred and sixty five Emalangeni ten cents) thereby

creating a total general deficiency of E321,965.10 (Three hundred and twenty one thousand nine hundred and sixty five Emalangen ten cents); and thus did thereby commit the said offence.

[2] The total amounts in respect of all four counts is as follows:

Count 1	-	E34,080.00
Count 2	-	E45,000.00
Count 3	-	E13,736.74
Count 4	-	<u>E321,965.10</u>
Total		<u>E414,781.84</u>

[3] He pleaded guilty to all four counts and his counsel Mr. Simelane confirmed the pleas as being consistent with his instructions from the Accused.

[4] Mr. T. Dlamini for the Crown accepted all the pleas of guilty and elected not to lead any evidence in regard to the charges.

[5] The Court convicted the Accused in accordance with his pleas of guilty.

[6] Mr. Dlamini advised the Court that the Accused had no previous convictions and that he was a first offender.

Mitigation (personal circumstances)

- [7] In mitigation Mr. Simelane stated that the Accused was forthright with the Court about his involvement in the matter and that he did not waste the court's time with a protracted trial. That the Accused was remorseful. That during police investigations he recorded a statement wherein he admitted having taken the money. That he spent one day in custody after his arrest.
- [8] That he appended his signature to the receipts as he intended to repay the money. That after he was charged, he wrote to his boss requesting payment arrangements but did not receive any response from his boss.
- [9] After he lost his job, he became a self-employed farmer in piggery as he could no longer be employed as his dishonesty was widely published. Now that he is self-employed his income is E200,000.00 (Two hundred thousand Emalangeni) per annum. Otherwise he became unemployable from 2012.
- [10] That the Accused is sixty (60) years old. He is married. He has one minor child who is two years old. The other children are major adults. He is diabetic (since 2008).

- [11] That he is desirous of repairing the damage to his erstwhile employer and requests the Court to mete out a sentence ordering him to repay some of these moneys.
- [12] That the amount of E30,000.00 (Thirty thousand Emalangeni) that he paid on admission to bail be converted into a fine.
- [13] That at 60 years he is first offender and has led a blameless life; the Court should avoid a lengthy prison sentence.
- [14] That the Court also take into account that the Accused went through a disciplinary process after which he lost his job. Now he is before the Court in respect of the same matter and that the Court should take into account that he was being punished twice for the same transgression.
- [15] That a jail sentence would be hard on the Accused and the Court should consider a suspended sentence and order repayment and that the Court should follow the sentencing in the **R v Makhubu** matter.

[16] I have perused the judgment on sentence in the Makhubu matter. Mr. Makhubu was found guilty on 79 counts under the Prevention of Corruption Act 3 of 2006 (as amended) plus one count of theft or fraud.

[17] The total fine amounted to E474,000.00 or 19 years and 9 months imprisonment.

[18] Counsel for Mr. Makhubu applied that his client be allowed to pay the fine in instalments and as there was no objection to this request by the Crown, the Court agreed. The Court being mindful of section 314 (1) of the Criminal Procedure and Evidence Act to grant such an application, so long as the period of payment did not exceed twelve (12) months from the date of such order. The Court made an order that Mr. Makhubu pay the fine in instalments within a period of six (6) months from the date of the order.

[19] Mr. Makhubu was not ordered to pay compensation.

[20] Mr. Dlamini on the other hand stated that it was common cause that the Accused had committed a dishonesty against his employer and that the courts frowned on such behavior and treated such strictly. Mr. Dlamini

prayed for a custodial sentence and further applied for a compensation order. Mr. Dlamini suggested that the Court use the case of **R v Mpofu** 1985 (4) SA 322 as a guide in sentencing the Accused.

[21] In that case of Mpofu the amount involved was \$48,714.00 (Forty eight dollars seven one four) and he was sentenced as follows:

“Nine years imprisonment with labour of which –

(a) Two years’ imprisonment with labour will be suspended for three years on condition that the accused does not commit any offence of which dishonesty is an element within that period for which a sentence of imprisonment without the option of a fine is imposed;

(b) A further three years is suspended on condition that the accused repays to the complainant company, through the Registrar, the sum of \$24,375 on or before 31 December 1985. If within that period the accused has not repaid this amount in full, but has paid a portion of it, then that portion of the suspended sentence which the accused will serve will be in proportion to the amount that the accused has actually paid.”

The crime

[22] The with which the Accused is charged has become steadily prevalent, that is, in stealing from an employer. The Accused in this case abused the position of trust that he occupied.

[23] The amount of E414,781.84 (Four hundred and fourteen thousand seven hundred and eighty one Emalangeneni eighty four cents) may seem small but the complainant suffered prejudice as a result of the Accused's theft.

[24] What is most disturbing is that he was the Chief Executive Officer at his place of employment, which meant that because of his senior position he was completely trusted when entrusted with the custody and care of his employer's money.

[25] The Accused was placed in a position of trust by his employers and it is an aggravating fact that these offences disclose repeated breaches of that trust. In the case of **Colisile Mkhonta**; High Court Appeal case no. 86/2011 (unreported) Hlophe J. citing Reynolds J in **S v Mpofo** 1985 (4) SA 322 stated:

“Positions of trust are not normally given to individuals unless they have unblemished references, and so the offence may be seen as a betrayal of those very characteristics. Society operates in certain spheres largely on the basis of trust, and one of the burdens of a position of trust is an undertaking of incorruptibility. The individual who puts himself forward as trustworthy, is trusted by the others and if he then takes advantage of this power for his own personal ends, he can be said to offend in two ways; not only does he commit

the crime charged, (be it theft, false accounting or sexual offence), but in addition he breaches the trust placed in him by society and the victims of the particular offence". In my respectful opinion this passage sums up the position most aptly and contain the essential reason why the courts will normally feel bound to pass a sentence of imprisonment and in some cases very long sentences of imprisonment."

[26] I have not been told why it took so long to detect the theft particularly the 2006 theft. Were there poor accounting processes in place or was the Accused adept at concealing his culpability? Whatever the reason, I find myself having to impose a global sentence with regard to all four counts as they are similar in nature.

[27] The Accused previously enjoyed a position of respect and esteem in the community as the Chief Executive Officer of Royal Eswatini National Airways. However, high standards of behavior are expected of those who hold responsible positions.

The interests of society

[28] Society expects protection of the courts against criminals. The public expects and requires that proper sentences are passed by courts as an expression of its disapproval and to deter would be criminals. Society's

denunciation of the offence and its “demand for justice” becomes more vociferous when a particular crime has become prevalent. (**S v Mpofu** supra page 328 B.)

The sentence

[29] In passing sentence I take into account all the mitigation factors that have been submitted on the Accused behalf. In addition to the two cases referred to in *casu*, I have also looked at some of the sentences in similar cases in this jurisdiction namely:

- (a) **R v Thembela Simelane**, criminal case no. 01/2010. He stole the sum of E600,000.00 (trust money). He was sentenced to an effective term of 5 years imprisonment. On appeal the sentence was increased to a further fine of E50,000.00 or 12 months imprisonment because the Supreme Court considered that the sentence of 5 years imprisonment was inadequate.
- (b) In **R v Charles Myeza**, the amount involved was the sum of E661,043.13 he was sentenced to 5 years imprisonment.
- (c) In **R v Polycarp Dlamini**, he was sentenced to 9 years imprisonment, (in respect of Counts 1 – 9 which were taken as one for the purposes of sentence), three years of which were suspended for a period of three years.
- (d) In **R v Qhawe Mamba**, he was sentenced to 8 years imprisonment; four years of which were suspended for 3 years. The amount of money involved was E11 million. The Supreme Court felt that this sentence was too low and stated

“that a mere condign punishment will be to quash the order for suspension of half the 8 year sentence”. Because Mr. Mamba had not been invited to comment on the possible escalation of his sentence, this did not happen, the sentence was reluctantly confirmed.

[30] The Supreme Court in Mamba’s case lamented the lack of uniformity in sentencing in similar circumstanced cases. It said:

“If ever there was evidence of lack of a measure of uniformity in sentencing, these case-scenarios exemplify it. I know that sentencing is pre-eminently within the discretion of the trial court but after a very careful and anxious consideration of the three cases, I am driven to the irresistible conclusion that the sentence imposed by the court *a quo* in this appeal was overly on the low side. It almost amounts to a failure of justice by non-exercise of a judicial discretion; particularly the suspension of half of the 8 years sentence. In my view, it is for such situations that the two statutory provisions mentioned above were enacted. The courts must aim at imposing possible parity of effective sentences so as not to create manifest feelings of outrage and injustice which could be felt by right-minded members of this country, when all the facts and circumstances of the cases are taken into account. As Lord Coulsfield J.A. put it in the Botswana case of *Ntesong v The State* (2007) 1 BLR 387 at 390:

“It has always been recognized that it is salutary for the courts to aim at a measure of uniformity in sentencing whenever this can reasonably be done.”

[31] In the circumstances I make the following order:

(a) The Accused is sentenced to 5 years imprisonment without an option of a fine; two years of which are suspended for two years on condition that


he repays the sum of E414,781.84 (Four hundred and fourteen thousand seven hundred and eighty one Emalangenis eighty four cents) to the complainant through the Registrar of the High Court.

(b) Should he fail to repay the aforesaid money by the 12th September 2021, he is to be arrested and placed in custody in order to serve the suspended two years. If by that time he has not repaid this amount in full, but has repaid a portion of it, that portion of the suspended sentence which the Accused will serve will be in proportion to the amount that the Accused has actually paid.

(c) The bail money is ordered to be released to Accused.

AT MBABANE

Crim. Case No. 252



Q. M. MABUZA
PRINCIPAL JUDGE

For the Crown : Mr. T. Dlamini

For the Accused : Mr. B.J. Simelane