



IN THE HIGH COURT OF THE KINGDOM OF ESWATINI

JUDGEMENT

Case No:

262/13

HELD AT MBABANE

In the matter between

REX

V

MLONDI MDLOVU

Neutral citation : *Rex vs Mlondi Mndlovu (262/13) [2019] SZHC 236*
(5th
December, 2019)

CORAM : FAKUDZE J

DATE OF HEARD : 20th November, 2019

DATE OF DELIVERY : 5th December, 2019

Summary: *Criminal Law - Accused charged with four (4) offences: theft, possession of a firearm, possession of Rounds of ammunition and attempted murder - Accused does not dispute charge of theft, disputes the possession of the gun, ammunition and the attempted murder - Crown brings witness who witnessed the event corroborated the evidence of the Complainant - Crown proves case beyond reasonable doubt and accused guilty as charged.*

JUDGMENT

[1] The accused was charged with four (4) counts: count 1 relates to the charge of Attempted Murder in that on about the 16th December 2012 at or near Siyeni area in the Manzini region accused person did unlawfully and with intent to kill shoot Njabulo Khumalo with a firearm. Count 2 relates to the possession of a firearm in that on or about the 16th December, 2012 and at or near Siyeni area in the Manzini Region, the accused person not being a holder of a licence or permit to possess a firearm did unlawfully possess a 9mm pistol. With respect to count 3, it is alleged that on the 16th December, 2012, at or near Siyeni area, the accused not being a holder of a licence or permit to possess six (6) Rounds of ammunitions did

unlawfully possess the rounds of ammunition. On the charge of theft, it is alleged that on or about the 28th November, 2012 at or near Siyeni area in the Manzini Region, the accused person did unlawfully and intentionally steal a pair of sandals, valued at E30.00, the property or in the lawful possession of Njabulo Khumalo.

[2] The accused has pleaded not guilty to all the four (4) counts.

[3] In its quest to prove its case, the Crown has paraded five (5) witnesses.

PW1 - NJABULO KHUMALO

[4] This witness stated that on the 28th November, 2012, he discovered that his sandals were missing from the door of his flat at Siyeni. He had left them there the previous day. After making enquiries from some of the tenants, he gathered information to the effect that the accused was seen wearing them. On the 16th December, 2012, the witness came across the accused person wearing the sandals that had gone missing. The witness confronted him and a fight ensued between the two. The accused further threatened to shoot the complainant with a gun. The accused assaulted the complainant with an open hand on

the face. He then produced a firearm, shot at him but missed him. The witness dispossessed the accused of the firearm and also raised an alarm. Nkosingizwile Mazibuko (PW 2) arrived at the scene. He was able to dispossess the accused of the firearm and the accused ran away. PW 2 shot in the air to scare the accused; the accused continued running away. They immediately called the police.

- [5] When the accused was cross examining the witness, he tried to establish that the firearm was owned by PW 1 and that it was PW 1 who shot at the accused. There was no re - examination.

PW2 - NKOSINGIZWILE MAZIBUKO

- [6] This witness stated that he was staying at Siyeni area in the same compound with the accused and the complainant. He was from work on the 16th December, 2012; he saw the accused putting on the sandals. He arranged a meeting between the complainant and the accused to have the matter settled and a scuffle ensued between the two. He then heard a gun shot and Njabulo raised an alarm. The witness came and took the firearm and the accused then ran away. The witness shot in the air but that did not intimidate the accused. The police were then called and were given the firearm after statements had been recorded.

The witness stated that he saw the accused shot at P W1 although he did not see where the accused retrieved the gun from. He was about 25 yards from the scene of the crime.

- [7] When cross examining the witness, the accused put it to him that the witness was the one who shot at the accused. He further put it to this witness that he does not know the firearm. There was no re - examination.

PW3- CONSTABLE THEMBA TSELA

- [8] This witness is a police officer based at Manzini Police Station. He received a report regarding the incident. He, together with other officers, proceeded to the scene. They found PW 1 and PW 2 who handed to him the firearm. The firearm was then handed over to the PW 5 who was the Investigating Officer. There was no cross examination.

PW4 - INSPECTOR MARVIN MBINGO

- [9] This witness is a ballistics expert. He analyzed the firearm so as to determine its serviceability. He also examined the six rounds of live ammunition. He then prepared a report which detailed his findings. He concluded that the firearm was serviceable. No empty cartridges were brought to him for examination since same were never found at the scene of the crime. He also

observed that the firearm had recently fired a shot although it did not show how many shots were fired. The accused did not cross examine this witness.

PW5 - CONSTABLE WELILE SIMELANE

[10] This witness gave details of how he carried out his investigations which led to the arrest of the accused. He stated how he met the accused near Liqhaga where the accused was working at a car wash. He introduced himself and cautioned the accused according to the Judges' Rules that he was not obliged to say anything and whatever he says will be used as evidence against him. He then went with the accused to Siyeni where he met PW 1 and PW 2 who confirmed the identity of the accused.

[11] He was accordingly charged after being further cautioned according to the Judges' Rules. When, asked about the alleged injuries on the accused body, the witness said that the accused talked about them. He then showed him some bruises or abrasion on the shoulder. There was no wound indicative of being shot at. The abrasion did not entail that the accused be taken to hospital. Nothing much came out of the cross examination and the Crown closed its case.

[12] The accused was given an opportunity to state his case. The court explained to the accused his rights bearing in mind that he was not represented.

[13] In defence, the accused stated that he does not know why he was before court. He does not know the charges that have been laid against him. He was never found in possession of the firearm and the ammunition. As far as the Attempted Murder charge is concerned, he was the victim. He was alone and the Crown witness were many. That is why the Crown won. The sandals were never brought to court as an exhibit. When the police officer arrested him he was not at work, he was walking around town. When the police arrested him and later recorded a statement, he had a broken jaw resulting from being bitten by PW 1 and PW 2. He could not speak. On cross examination, he was asked why he did not put to PW 5 that he was arrested around Manzini and not at the place of work at Liqhaga. The response was that this was an oversight on his part. It was further put to the accused that the issue of a broken jaw bone was an afterthought since same was never put to any witness. The only injury the accused told the court related to the shoulder. As proof that the accused was never injured, he never went to hospital nor reported same to the police. If it was so

reported, the police would have furnished him with R.S.P 88 which would have enabled the accused to be treated in hospital free of charge.

[14] On the issue of the possession of the firearm, it was put to the accused that if the firearm belonged to PW 1 and PW 2, they would not have reported same to the police. The same applies to the possession of the ammunition. It was further put it to him that he fired the gun at PW1 with a view to killing him but missed him. The defence then closed its case.

[15] The Crown submits that it has proven its case beyond reasonable doubt. The accused was seen wearing the sandals belonging to the complainant by both the complainant and PW 2. On the day of the confrontation between the complainant and the accused, he was still putting on them. The accused's version is that he also had bought the sandals which were similar to those of the complainants.

[16] On the issue of the attempted murder, the complainant stated that the accused drew the revolver, shot at the complainant, but missed him. PW 2 corroborated the complainant's version when he stated that he was about 25 yards from the scene of the

crime. He saw the accused point the revolver at the complainant. He also heard the gunshot and also witnessed the accused and the complainant fighting on the ground over the gun. When he intervened, the accused rose up and ran away. He chased him and shot in the air trying to scare the accused, but the accused out ran him. The accused's defence is that he does not know anything about the gun. He also stated that he was the one who was shot at by the complainant and later by PW 2.

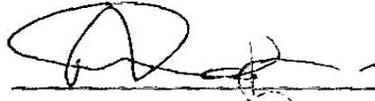
[17] On the issue of the possession of the firearm and ammunition without a licence, the Crown states that, the accused was in possession of the firearm. He was seen by both the complainant and PW 2. The complainant states that before the accused drew the gun and fired it, he threatened the complainant that he would shoot him. He then went ahead and shot him but missed him. The Crown further submits that the only thing the accused did was to dispute owning the firearm. He did not dispute the possession of the ammunition. The accused therefore failed to challenge the evidence of the Crown. There was further evidence that the firearm was serviceable and it discharged two bullets although the empty cartridges could not be found.

[18] The defence's submission is that he does not know why he was brought to court because he was the victim of circumstances. He was the one the complainant and PW 2 attempted shooting. As far as the possession of the firearm is concerned, he does not know who the owner is. The same applies to the ammunition. As far as the theft of sandals is concerned, the accused never stole them. They belonged to him.

[19] The court's view on whether or not the Crown has proved its case beyond reasonable doubt is that it has proven it. On the issue of the theft of sandals, the accused has failed to challenge the evidence presented by the Crown. All that the accused said is that he brought his own sandals. He did not steal those belonging to the complainant. On the issue of the attempted murder, not only did the accused threaten to shoot the complainant when confronted about the sandals he was putting on, he went further to attempt to shoot the complainant and missed him by inches. PW 2 stated that he was about 25 yards from the scene when he saw the accused shoot the complainant. He did not see where the accused retrieved the firearm from. He also witnessed the battle between the accused and the complainant before the attempted shooting took place. He heard the gun shot. There is no doubt that the accused was in

possession of the gun and the six live rounds of ammunition.

The accused is therefore guilty as charged.

A handwritten signature in black ink, consisting of a large, stylized initial 'F' followed by a cursive name, written over a horizontal line.

FAKUDZE J.

JUDGE OF THE HIGH COURT

Rex: N. Mhlanga
Accused: In person.