

**IN THE HIGH COURT OF ESWATINI**

**JUDGMENT ON SENTENCE**

**HELD AT MBABANE**

**CASE NO. 211/14**

In the matter between:

**REX**

Versus

**LUCKY MAGAGULA**

**FIRST ACCUSED**

**MPENDULO MOTSA**

**SECOND ACCUSED**

Neutral Citation: *Rex v Lucky Magagula & Another (211/14) [2020] SZHC 147 [2020] (4 August 2020).*

Heard: 2 March 2020; 3 March 2020; 6 April 2020; 9 April 2020; 2 July 2020; 3 August 2020.

Delivered: 4 August 2020.

Summary: *Criminal Procedure-both accused convicted of attempted murder-application of the 'triad of Zinn'-accused persons each sentenced to five years imprisonment-sentences backdated to the date they were each taken into custody-sentence to take into account period both accused spent in pre-trial incarceration.*

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## JUDGMENT ON SENTENCE

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- [1] On 3 August 2020 I found both accused guilty of the crime of attempted murder. I now have to sentence the accused.
- [2] The Court submitted that both accused persons are first offenders. That means for the better part of their lives they have been good law abiding citizens until they committed the offence charged.
- [3] Prior to the commission of the offence the first accused was a community police and was employed as a security guard. He is unmarried and is forty-six years of age. At the time he committed the offence he was thirty-nine years old. He has one child who is nineteen years of age.
- [4] A weighty consideration in favour of the first accused is that he was arrested on 14 August 2012 and was released on bail on 8 June 2017. Effectively, he spent four years and ten months in pre-trial incarceration before the matter was heard in Court. That this matter took eight years before it was concluded is through no fault of the accused persons.
- [5] The first accused cooperated with the police in their investigations. He is currently unemployed and this matter has weighed heavily on him for the past eight years.
- [6] The second accused is forty-four years of age. In 2012 he was thirty-seven years of age. He is unmarried and has one child who is twenty years of age. The second accused effectively spent seven years and six months in custody before he was released on bail in February 2020. Before he committed the offence charged, the second accused worked as a painter.

[7] I acknowledge and accept the favourable circumstances of the accused persons.

[8] Having said this, there is nothing to gainsay the fact that attempted murder is a serious offence. The crime is made more reprehensible by the fact that the accused persons, without provocation, attacked and visited violence on an innocent woman whose sin was not to have money to buy them traditional brew. Such conduct cannot go unpunished.


[9] After assaulting the complainant, both accused did nothing to help her.

[10] It must be said that society must be reminded that visiting violence on another person without lawful cause is no light matter and will not be treated kindly by the courts. The courts must show their commitment in discouraging violence-especially- violence against vulnerable members of society by the physically strong. The courts must also show their abhorrence to such behaviour by meting out what it considers an appropriate sentence.

[11] Accordingly the following sentence is appropriate in the circumstances:

The first accused is sentenced to five years imprisonment without the option of a fine. The sentence will take into account the period of four years, ten months that the first accused spent in pre-trial incarceration.

[12] The second accused is sentenced to five years imprisonment without the option of a fine. The sentence will take into account the period of seven years, six months spent by the second accused in pre-trial incarceration.



**M LANGWENYA**  
**JUDGE OF THE HIGH COURT**

For the Crown: Mr M. S. Dlamini

For the Defence: Both accused in person.