

IN THE COURT COURT OF SWAZILAND

In the appeal of: APP. NO. 8/81

DOCTOR T. DLAMINI

vs.

REGEM

CORAM: MAISELS P. ,

ISAACS J. A. ,

VAN WINSEN J.A.

FOR APPELLANT: IN PERSON.

FOR CROWN: MR. MASINA.

JUDGMENT

(Delivered on the 3rd June, 1981)

Maisels, P.:

The Appellant was charged with house breaking with intent to steal and theft. It was alleged that on about 25th December, 1980, at or near the Happy Valley Hotel, he wrongfully and unlawfully broke and entered the house of Mr. Benny Law with intent to steal certain goods and that he did steal a radio , jacket and towel, the property of Mr. Law. The value of property was alleged to be E245-00.

Mr. Law gave evidence that he left his house at about the 25th December at 12.00 midnight. When he left the doors were all locked, but he was not sure about the windows. When he left the house everything inside was intact. He came back about an hour later. He found his room in disorder, his radio missing and he found certain trousers lying outside. He also found a jacket missing and a towel marked 'Happy Valley Hotel'.

In addition there was a red striped shirt which had gone. He "said that nobody was allowed to take these articles and he subsequently identified them in the presence of the Appellant and the police. When the Appellant came with the police he was wearing Mr. Law's jacket.

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On Christmas day according to the evidence of Vangile Nkwanyana, the Appellant came to his house early in the morning at about 10.00a.m. He had a radio with him and a small bag. He drank some beer and then he said he was selling the radio for E60-00. Mr. Nkwanyana said, he would pay him E30-00 as a deposit and pay him the balance when he brought, documents for the radio which the Appellant said he would get for him. He left the towel with Mr. Nkwanyana. He was wearing a striped shirt which he took off, washed and hang on the line and left. He did not come back to fetch the balance of his money with the documents for the radio.

The next time he came back to Mr. Nkwanyana he was accompanied by the police. The Appellant's evidence given to the Magistrate and given to this Court was that he happened to find all these articles in the bush. He was asked in the Magistrate's Court that when he found these articles did he not realise they were valuable. His answer was in the affirmative. He was asked why he didn't take them to the police. He said he was happy to find them and had no money to buy them. He said he decided to sell the radio because he needed the money. The Magistrate not surprisingly rejected the story of Appellant as false.

He was found in possession of articles that had been stolen a few hours before. The inference is irresistible that the Appellant broke into Mr. Law's house and stole the articles in question. The Magistrate found the Appellant guilty and I have no doubt that he was correct in so doing.

Because of the Appellant's previous record, the Magistrate was of the opinion that the sentence which he should impose was beyond his Jurisdiction. He consequently committed the Appellant to the High Court for sentence.

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The Appellant came before the learned Chief Justice who also entertained no doubt as to the Appellant's guilt. He considered the Appellant's previous record. It is quite appalling. The first one was in 1967 which was for house breaking. The last one was on the 3rd May, 1978, when he was sentenced to 18 months imprisonment for house breaking with intent to steal and theft. He appealed against this sentence to the High Court and as a result thereof the sentence was increased from 18 months to 4 years imprisonment. In addition he was given a warning that he would be declared a habitual criminal in the event of another conviction. If one looks through this previous records one comes to conclusion that since 1967 he had done nothing else but breaking into houses and stealing. He was barely released from jail for his last conviction for house breaking and theft when he committed the present crime. The learned Chief Justice came to conclusion that the Appellant should be declared a habitual criminal .

In my judgment the learned Chief Justice could hardly do anything else having regard to the Appellants record. In my judgment this appeal should be dismissed.

(Signed)

(LA. MAISELS. )

PRESIDENT JUDGE.

I agree :

(Signed)

( I. ISAACS. )

JUDGE OF APPEAL.

I agree :

(Signed)

( L. de V. van WINSEN.)

JUDGE OF APPEAL.