

IN THE COURT OF APPEAL OF SWAZILAND

Cri. Appeal No. 41/1996

In the matter between:

Mbongwa Dube

vs

Rex

Coram

Kotze, JP  
Tebbutt, JA  
Browde, JA

For Appellant  
For Crown

In Person  
Mr. D. Wachira

JUDGMENT

(23/09/97)

BROWDE, JA

The appellant was charged in the Court below for the following counts, namely,

Count 1 - He was charged with contravening section 11(1) read with Section 8 of the Arms and Ammunition Act 1964 as amended. The Crown alleged that on or about 21st November, 1993 and at or near Lomahasha area in the Lubombo District the accused not being a holder of a current permit or licence to possess a firearm unlawfully possessed the following firearms:- 12 AK 47 riffles, 15 7.62 mm sterling submachine guns and 3 Commando Submachine guns.

The effect of count 2 was that he is alleged to have imported into Swaziland those arms.

Count 3 was the unlawful possession of over 500 live rounds of ammunition made for the use of the submachine guns and the pistol. Not to mention nearly two and a half thousand live rounds of ammunition for the AK 47s.

Count 4 - He also possessed magazines, riffles and to all the charges the accused pleaded not guilty but was found guilty of all the counts. It does not appear against the verdict of the finding of guilty by the learned Judge.

For the purpose of sentence Counts 1, 2 and 4 were taken together and he was

sentenced to 10 years imprisonment of which 3 years was suspended for 3 years on condition that he is has not committed an offence involving the unlawful possession or importation into Swaziland of arms. On count 3 he was sentenced to 3 years imprisonment which was ordered to run concurrently with the periods imposed in respect of the other counts. In addition the vehicles which was the motor vehicle and the tailer which were used in connection with the transporting of the arms and ammunition were ordered to be confiscated to the state as were all the arms and ammunition involved in the matter.

As I have said the appellant has confined his submissions to us to the question of sentence and has asked that the attachment of the motor vehicle be set aside and because he is a first offender a further period should be suspended apart from that which has already been suspended by the learned Acting Chief Justice. As far as the sentence is concerned the learned Judge found that the appellant was a gunrunner and that the firearms were probably on route to South Africa in order to be used to terrorise and attack innocent people. He remarked that these weapons were being used not only in what is referred to as the war which is then being carried on in Natal but also by gangsters in Swaziland itself. I agree completely with the learned Judge that that situation requires routing out. And that the sentence is necessary in order to warn people like the appellant who contemplate at gunrunning that it is not profitable to do so.

The sentence is entirely one from the discretion of the trial Judge and in the present matter there is no reason whatsoever for interfering with the discretion exercise by the learned Acting Chief Justice. In fact if he erred at all it was on the side of leniency. Consequently in my judgment the appeal against the sentence must be dismissed. In passing the sentence the learned Acting Chief Justice took into account that the vehicle in which the arms and ammunition were found as well as the vehicle which was used to draw that trailer should be confiscated. That may well account for the fact that I consider the period of imprisonment to be too short for the offences that have been committed, but of course the learned Judge in taking into account the confiscation was fully justified in coming to the conclusion that he did. The tailer as was said by the learned Judge is obviously reconstructed for the purpose of smuggling and the motor vehicle was used in the smuggling and therefore was properly confiscated.

In my opinion therefore there is no substance in the submissions made by the

appellant and the sentence on confiscation imposed by the learned Judge should be confirmed.

J. BROWDE, JA

I AGREE

G.P.C. KOTZE, JP

AND SO DO I

P.H. TEBBUTT, JA