

IN THE COURT OF APPEAL OF SWAZILAND

CASE NO. 30/1997

In the matter between:

Armando Moses Lekule Appellant

vs

Rex Respondent

Coram

Kotze', JP

Tebbutt, JA

Browde, JAA

For Appellant In person

For Crown Mr. M. Nxibande

JUDGMENT

(23/9/97)

BROWDE, JA

This matter came before us on appeal after a most unfortunate history involving the appellant which has gone on since 1988 to this day. It appears that in 1988 the appellant was sentenced to imprisonment for 21 years which was reduced on appeal

2

to 14 years. That record is not before us nor is there any point made in regard to that appeal with regard to that sentence and the case itself since we were informed that the appellant has now completed his term of imprisonment in regard to that matter. In 1989 the appellant escaped from custody and as a result of stealing a firearm and robbing a man of his car he was sentenced to 5 years imprisonment. That matter came on review in 1989 and proceedings were set aside and referred back to the Magistrate. The appellant was retried but in that case he refused to cooperate and he said that he had already been dealt with by the Magistrate. He refused to plead and was sentenced to 7 years which was in the judgment of the Magistrate ordered to run consecutively after the 14 years.

However in that regard in 1991 he appeared before Mr. Justice Dunn who altered that and made the 7 years to run concurrently with the 14 years. When I say that there was an unfortunate history it seems that since 1989 the appellant has attempted to draw attention to the fact that he wished to appeal against his conviction and has in that regard written numerous letters over the whole period starting from 1988 to 1997 which have apparently fallen on deaf ears. He has written to the Registrar of the High Court of Swaziland in Mbabane on several occasions and there appears at least on our records to be no reply and as I have said the letters were completely ignored and let the appellant languish in jail without any apparent notice being had of his pleas for an appeal to be heard. It says very little for

the administration of the Registrar's office in this town that all these letters were merely filed if they were filed at all but certainly they were not dealt with in any way to satisfy the dictates of justice in this matter. Consequently it seems that if there wasn't a grave injustice done to the appellant there may well have been one and whether that was or not the fact of the matter is that today before us Mr. Sibandze who appears for the crown has in his usual professional approach to matters and very properly

3

considered that the proper order to make is for the appellant to be discharged forthwith from custody.

In making that order I would like to express the feelings of this court that a very serious effort must be made in order to investigate how it came about that letters from the Matsapha Correctional Institution addressed to the Registrar over a period of nearly 10 years were completely ignored and the appellant was left without any apparent redress in Matsapha Central Prison. It is a matter which is of great concern in this Court and we trust that this request at least for an urgent investigation will be dealt with and not be ignored as were the letters of the appellant.

Our judgment therefore on the appeal of the appellant is that it should be upheld but in any event the appellant should be discharged immediately today from prison and be allowed to go free.

J. BROWDE, JA

I AGREE

G.P.C. KOTZE, JP

AND SO DO I

P.H. TEBBUTT, JA