IN THE COURT OF APPEAL OF SWAZILAND

CRIMINAL APPEAL NO.38/97

In the matter between:

SABELO ELMON SIFUNDZA

VS

REX

CORAM : SCHREINER J A

: LEON J A

: STEYN J A

FOR THE APPELLANT :

FOR THE CROWN :

JUDGEMENT

Steyn J A:

The appellant was convicted on two charges one of murder with extenuating circumstances, one of common assault. He was sentenced to undergo 8 years' imprisonment on the murder charge and two months on the common assault charge, the two sentences to run concurrently. He noted an appeal both against his conviction and his sentence.

When he appeared before us today however he confined his address to us to the issue of the sentence which was imposed upon him. I must say that he presented a very well reasoned argument concerning the propriety of the sentence. He struck me as an intelligent young man and it is indeed a great pity that he had to be sentenced to such a lengthy period of imprisonment. However, I am obliged to point out to him that if it had not been for his youth he may well have been sentenced to death on this count. This was a senseless, gratuitous crime committed on a police officer without any reason or cause.

As the learned Judge in the court below pointed out, it was his duty to hold the scale in balance between the interests of this young man and the community as a whole. We have examined the

reasons of the Judge for imposing the sentence that he did very carefully. That judgement is free of any misdirection and it is our view that it would be inappropriate for us in these circumstances to interfere with the exercise of his discretion.

I therefore think that the best that the appellant can to do is to try to manage to serve his sentence as best he can and when he comes out of prison - hopefully with appropriate remission as a first offender - that he will be able to return to society and live a law abiding life. I repeat

again, that he is a young man but that due weight had been given to his youth. The offence which he has committed was so serious that to our opinion the sentence of 8 years' imprisonment was entirely appropriate.
The appeal is dismissed and the sentences are confirmed.

J. H. STEYN J A

I agree:

W. H. R. SCHREINER J A

I agree:

R. N. LEON J A

Delivered on 22nd April 1998.

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IN THE COURT OF APPEAL OF SWAZILAND

CIVIL CASE NO.18/96

In the matter between:

THEMBA MDLULI AND SEVEN OTHERS 1ST APPELLANT

and

JABULANE DLAMINI AND SIXTY OTHERS 2ND APPELLANT

and

EMASWATT COAL (PTY) LTD RESPONDENT

CORAM : SCHREINER J A

: LEON J A

: STEYN J A

FOR THE APPLICANT : MR. A.S. SHABANGU

FOR THE RESPONDENT :

JUDGEMENT

Schreiner J A:

The appellants in this matter have caused certain papers to be filed with this Court. There is no

formal application. In a letter to the Registrar from the appellants' attorney it would seem that a difference of opinion between the appellants and the respondent has arisen as to the meaning of the Order made by this Court.

The Order followed an appeal concerning the entitlement of the appellants to payment of wages when the relationship of employee and employer was coming to an end. The Court made the following Order:

"1. The appellants, in addition to the amounts awarded to them in terms of the judgement of Hull CJ dated the 4th May 1994 are entitled to payment of wages from the 1st February 1991 to the 31st August 1992 together with any severance allowance to which they may be entitled in respect of that period.

2. .....

3. The matters are referred back to the High Court for the determination of the amounts due to each of the appellants save for Majunzile Ndwandwa in respect of whom no payment is due.

4. .....

5. ....."

There is no procedure laid down in the Rules whereby a party to an appeal before this Court may obtain clarification its Order merely upon writing to the Registrar requesting it. Though an appeal Court has got power to do so is apparent from FIRESTONE SA VS GENTIRUCO A.G. 1977(4) SA 298(A) a decision in the Republic of South Africa. This must be done by way of a formal application where the portion of the judgement which is said to be ambiguous or unclear is accurately identified and the interpretation sought by the applicant to be placed upon the allegedly ambiguous or unclear part of the Order is properly set out.

The other party or parties to the appeal must be served with a copy of the application and any affidavits or other documents filed in support of the application and given an opportunity of filing an affidavit in reply. The issue, if any, between the parties will then become clear and capable of resolution by the Court on a formal hearing. In the present case this was not done and it follows that no Order will be made in respect of the papers which were filed.

The matter was placed upon the roll for hearing at a session of the Appeal Court. It was removed from its original place on the roll to a lower position. When the matter was called there was no appearance for either of the parties. The matter was stood down in order to enable the Assistant Registrar to find out what had happened. Counsel for the respondent, Mr. Flynn, told her that he had no instructions to appear. Mr. Shabangu did appear and gave some account of his discussions with the Registrar of this Court. He did not explain why he had not been present when the session opened or when the matter was called on the morning of the 22nd April. He gave the Court the impression that he was merely relying upon the Court to issue direction as to how he should proceed to obtain clarification of the judgement. This is a most unsatisfactory approach. The Appeal Court is not there to give advice to practitioners as to how they are to proceed. It would be a very bad precedent if the Court were to do so in the present case. Suffice it to say that it would prima facie appear that what may be the issue sought to be raised by Mr.

Shabangu should, in terms of the order of this Court, be decided by the High Court to which the issues not decided by the Court were referred.

W. H. R. SCHREINER J A

I agree:

R.N. LEON J A

I agree:

J. H. STEYN J A

Delivered on.....April 1998.