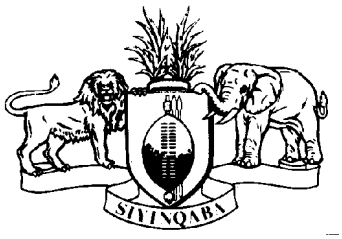

IN THE COURT OF APPEAL OF SWAZILAND

APPEAL CASE NO.2_/97

REX

v

PIUS SIMELANE

MUZI NGWENYA
FIRSTBORN SHONGWE
PETER MASHABA

CORAM	:	SCHREINER, AJP
	:	LEON, JA
	:	TEBBUTT, JA

FOR THE CROWN	:	MS. M. DLAMINI
FOR THE 1st APPELLANT	:	MR. L. MAZIYA
FOR THE 2ND APPELLANT	:	MR. Z. MAGAGULA
FOR THE 3RD APPELLANT	:	MR. C. NTIWANE
FOR THE 4TH APPELLANT	:	MR. BEN SIMELANE

JUDGMENT

Tebbutt JA:

Three accused persons, no's 1, 2 and 3 at the trial, were convicted in the High Court by

Matsebula J on three counts of armed robbery, which were counts 1, 3 and 4 of the indictment before the trial court. A fourth accused, viz no.4, was convicted on count 1 of receiving stolen property knowing it to be stolen. Accused no.3 was also convicted of unlawfully possessing a firearm, which was count 6 of the indictment, and accused no.2 was convicted of unlawful possession of a firearm and of certain ammunition, being counts 7 and 8 of the indictment.

All four accused have come on appeal to this Court against their convictions and sentences.

For reasons which need not now be set out the appeals of all four appellants, with the concurrence of this Court and by agreement between the appellants and the Crown, are to be postponed to the next session of this Court. Counsel for the appellants and the Crown have however, requested that this Court should interpret whether the sentences passed on the appellants, save that on appellant no.4 who was sentenced to a fine of E3,000.00 or in default of payment 18 months' imprisonment for his conviction for receiving stolen property, are to run consecutively or concurrently.

The need for such an interpretation, so all counsel have agreed, arises from the wording of the sentences. I quote what they are, as set out in the record of the proceedings in the ***court a quo*****:**

"Count one:

Accused no. 1, 2, and 3 are each sentenced to an imprisonment for 5 years which is backdated to the 18th January 1996.

Count three:

Accused no.1, 2, and 3 are involved, each accused is sentenced to an imprisonment for 5 years which will be backdated to the 18th January 1996.

Count four:

Accused no.1, 2 and 3, each accused is sentenced to an imprisonment for 5 years backdated to the 18th January 1996.

Count six:

Accused no.3 will be fined a sum of E5,000.00 or in default of payment to undergo an imprisonment for 5 years which will be backdated to 18th January 1996.

Count seven:

Accused no.2 is fined E2,000.00 or in default of payment to undergo an imprisonment for 2 years which will be backdated to the 18th January 1996.

Count eight:

Accused no.2 is sentenced to a fine of E5,000.00 or in default of payment to undergo an imprisonment of 5 years backdated to the 18th January 1996.

The sentences on count six in respect of accused no.3 to run concurrently with sentences on counts one, three and four. Similarly sentences on counts seven and eight in respect of accused no.2 will concurrently with sentences on counts one, three and four."

Counsel for the Crown submits that the sentences on counts 1, 3 and 4 are to run consecutively referring to the fact that the learned trial Judge would not have specifically stated that the sentences on counts 6, 7, and 8 are to run concurrently with the sentences on counts 1, 3 and 4 if he had also wanted those to run concurrently with each other. Counsel for 1st, 2nd and 3rd appellants challenge this, submitting that by backdating each of the sentences on counts 1, 3, and 4 to the same date viz 18th January 1996, the trial Court clearly intended them to run concurrently.

It was suggested that the trial Court should be consulted as to what he intended by his sentences. We do not consider that we should do so. We should, we feel, arrive at an interpretation from the sentences as they are worded.

In our view it would make no sense to hold that the sentences should run consecutively i.e. be served the one following upon the other if each one is to commence to be served on the same day which is, of course, the effect of backdating them to the same day viz

18th January 1996. By referring specifically to the sentences on counts 6, 7 and 8 to run concurrently with the sentences on counts 1, 3 and 4 the trial Court was in our view wishing to make it clear that the sentence on count 6 which applied only to accused no.3 was not be treated differently to those on counts 1, 3 and 4, which applied to all the accused but was also to run concurrently with them. The same applies to the sentences on counts, 7 and 8 which apply only to accused no.2. Indeed his so doing lends support to the view that he also intended the sentences on counts 1, 3 and 4 to run concurrently with one another. We would remark for future reference that imposing fines of E5 000.00, E2 000.00 and E5 000.00 and then making the periods of default imprisonment of five, two and five years concurrent with the other sentences of five years would present little incentive to the appellants concerned to pay those fines.

In the result therefore we come to the conclusion that the sentences on the three appellants viz no's 1, 2 and 3 on counts 1, 3 and 4 are to run concurrently and the sentences on counts 6 on appellant no.3 and on counts 7 and 8 on appellant no.2 are to run concurrently with their sentences on counts 1, 3 and 4, as ordered by the trial Court. We order accordingly.

P.H. TEBBUTT JA

I AGREE : W.H.R. SCHREINER AJP

I AGREE : R.N. LEON JA

Delivered in open Court on the 10th June 1999.