

IN THE COURT OF APPEAL OF SWAZILAND

CRIMINAL APPEAL CASE NO. 18/98

IN THE MATTER BETWEEN

COUNTRY MFANA SITHOLE VUSI MAYIZA

VS

REX

CORAM : SCHREINER, A J P

VAN DEN HEEVER, A J A

SHEARER, A J A

FOR THE APPELANT : IN PERSON

FOR THE CROWN : MR. M.T. NSIBANDE

REASONS FOR ORDER AND RULING

Van den Heever. A. J. A.

Both the above men were present in court when the matter was called before us. On what basis Sithole was brought to court we do not know, save that he had been accused No. 1 in a matter in which he and Mayiza were charged with and convicted of robbery. Mayiza applied for leave to appeal against that conviction and consequent sentence, as confirmed on appeal by the High Court, which refused to enable the two a third bite at the cherry.

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The Crown wisely conceded that the conviction of the former accused No. 2, Mayiza, could not be supported. According to the complainant, there had been two robbers who invaded his house. Goods taken had, on undisputed Crown evidence, been dealt with by Sithole as though it were his own. By his cross-examination Sithole elicited evidence not only of his own complicity, but implicating a certain Langa in the matter; and absolving his cousin Mayisa. The latter had been asked by Sithole to help transport goods that Mayisa was told belonged to Langa, and given articles as a reward for his assistance; which were part of the goods stolen from the complainant.

Neither the Magistrate nor the High Court distinguished between the evidence against Sithole, which appears prima facie to have been overwhelming, and that against Mayiza. It is unnecessary in view of the Crown's attitude to analyse misdirections in the approach to the evidence relating to the latter. Mayiza explained how he came to be linked to only two minor stolen items: they had been given to him by Sithole as stated above. No reasons were given why that evidence was, or should be, rejected as false. Having found Sithole to be a liar, the Magistrate without proper consideration tarred Mayiza with the same brush. The High Court on appeal fell into the same error.

In the light of the above, the applicant Mayiza was granted leave to appeal, the appeal itself being allowed and his conviction and sentence being set aside.

Sithole's conviction and sentence were not considered by this court. There was no valid

reason why Sithole should have been brought to court. He had not applied to the court for leave to appeal as Mayiza had done.

I understand him to say that he did have a paper or papers, which were at the prison but had not been sent to the court; which of course cannot constitute an application to the court. The purpose of these reasons, for allowing the appeal of his co-accused but refusing to consider Sithole's situation, is that the latter should understand why there is differentiation in the treatment meted out to them by this court. It was explained orally to him at the hearing but we are not confident that he appreciated the content of

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that explanation. The Registrar is asked to ensure that a copy of these reasons is made available to the person in charge of the prison where Sithole is serving his sentence, under cover of a letter conveying the request by this court that Sithole be informed that-

1. if he wishes his matter to be heard by this Court, he is obliged to ask for permission for that to occur as Mayiza did, by means of a document sent to the Registrar;
2. in that application he is obliged to set out why he thinks that there is a chance that this Court may differ from both the Magistrate and the High Court;
3. unless he is able to advance valid grounds for the view referred to in para 2 -if indeed he holds that view - his application for leave must be refused and no (further) appeal against his conviction and sentence will follow.

LVD. HEEVER, A. J. A.

I agree

W. H. R. SCHREINER, A. J. P.

I agree

DLL. SHEARER, A. J. A.

Delivered in open court on the 8th June 1999