

IN THE COURT OF APPEAL OF SWAZILAND

HELD AT MBABANE
Criminal Appeal No. 2/2003

In the matter between

PAULOS NDLANGAMANDLA Appellant

and

THE KING Respondent

Coram LEON, UP

BECK, JA

ZIETSMAN, JA

JUDGMENT

LEON, JP

The appellant was accused No. 1 in the Court a quo. He was charged with accused Nos. 2 and 3. All the accused were charged on Count 1 (Robbery) while the appellant alone was charged on three counts under the Arms and Ammunitions Act.

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Count 2 alleged the unlawful possession of a Makarov pistol on or about 16 February, 2001. Count 3 alleged the unlawful possession of an Astra pistol on the same date while Count 4 alleged the unlawful possession of four live rounds of ammunition in the Astra pistol.

To return to count 1: that count alleged that on or about 16 February 2001 all the accused, acting in furtherance of a common purpose robbed one Joel Kheswa of a total of E53 962.93 comprising cash to the value of E51 501.80 and cheques to the value of R2 461.73 the property of the Swaziland United Bakeries.

The appellant was acquitted on Count 1 while his co-accused were found not guilty of robbery but guilty of theft. The appellant was acquitted on Count 2 but convicted on Counts 3 and 4. One count 1 accused Nos 2 and 3 were each sentenced to four years' of which two years were conditionally suspended. The appellant was sentenced on each of Counts 3 and 4 to three years' imprisonment of which one year was conditionally suspended. The sentences were ordered to run concurrently and were deemed to have commenced on 16 February 2001.

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The reason why accused Nos 2 and 3 were acquitted of robbery on Count 1 was that the Court found that violence was not proved but that the theft at the Swaziland United Bakeries clearly was. The evidence implicating the appellant on that count was that he had supplied two pistols, which he took from his house in a white plastic bag, for the purpose of intimidating anyone who would attempt to resist the unlawful actions of accused Nos 2 and 3. I shall refer to the evidence in greater detail presently. However, it is convenient at this stage to refer to the evidence against the appellant on Counts 3 and 4. On about 16 February 2001 (about two days after the theft) the police called upon the house of the appellant. According to his evidence (which was not disputed) he shared that house with others but he alone occupied

his bedroom. The police entered his bedroom. Underneath the wardrobe in that room they found the Astra pistol (Count 3) with the live rounds of ammunition in it (Count 4). The Court also relied upon the Crown evidence on Count 1 that the appellant had supplied two pistols obtained from his house for the purpose of the offence on Count 1 being committed. These pistols were never identified and the evidence does not by itself prove that the appellant unlawfully possessed the Astra pistol on 16 February 2001. But in my view the evidence can nevertheless be relied upon as being inconsistent with the

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defence of the appellant that at no time did he ever possess any pistols at his home.

For the sake of completeness at this stage I should mention that the appellant was acquitted on Count 2 because the Makarov pistol was not found in his house but in the grounds a distance away and was not pointed out by him but by his son. It was found in a white plastic bag.

With that prelude I turn now to consider the evidence in greater detail.

Justice Fana Zwane was an accomplice. He testified, inter alia, that on a date which he could not remember the appellant, in the presence of Musa Gulwako arranged to give them firearms which were to be used, if necessary, in the planned robbery at Swaziland United Bakeries. Later that day they met the appellant again who was driving his employer's car. The appellant stopped, got out of the car and went to his house. He returned from the house carrying a white plastic bag which contained the firearms but the appellant warned them not to be negligent in using the firearms as he worked for the Government. (The evidence disclosed that the appellant was a police officer.) That evidence was supported in all material respects by another accomplice Musa Gulwako, a taxi driver. He was employed by Swaziland United Bakeries. He was party to the

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planned robbery. He had been advised that the appellant would be able to give them something to use "in scaring the people". He confirmed the evidence of Zwane that they met the appellant who went to his house at the Police College. He returned from his house carrying a white plastic bag in which were two firearms the names of which he did not know. This event occurred in the presence of accused No. 2. Zwane had given the same evidence.

In cross-examination it was put to the Crown witnesses that the appellant would deny having at any time handed over a white plastic bag and would deny further any involvement whatsoever in the planned robbery. The Crown witnesses rejected that suggestion. The trial Judge found these witnesses to be satisfactory witnesses and he rejected the appellant's version (to which I shall later refer) as false.

Police Inspector M. Dlamint was PW10. On 14 February 2001 he received a report that a robbery had been committed at the Swaziland United Bakeries.

During the course of his investigations he went to the house of the appellant. The house was locked. He found the appellant and one of his sons and returned to the house which was opened by the appellant's son.

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Outside the house he found a Makarov pistol buried in the grounds inside a white plastic bag.

In the bedroom of the appellant he found the Astra pistol containing live rounds of ammunition. He found it under a wardrobe and it was pointed out by the appellant. He also found some money there. In cross-examination it was suggested to him that he had told the

appellant to tilt the wardrobe so that he could bend down and look underneath it. The appellant complied (so it was suggested) and the witness emerged with the firearm which he placed on the bed. In short, the suggestion was that the police had planted the firearm. That suggestion was rejected out of hand as the learned Judge regarded that version as highly unlikely.

Detective Constable Mabuza testified as PW7. He is a police photographer and was present when the firearms were found. He said that the house was opened by the appellant's son. They entered the bedroom of the appellant. The appellant informed the police that there was a firearm under the wardrobe. The appellant pointed out the firearm which is in accordance with the evidence of the previous witness. The witness placed the firearm on the bed. The other pistol was found in the garden after the appellant's son had dug and retrieved a plastic bag containing the pistol. He, too, rejected the defence version.

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The appellant gave evidence under oath part of which has regrettably not been transcribed but that does not prevent the Court, in all the circumstances, from dealing with this appeal. The appellant agreed that we could do so. His evidence amounted to a bare denial. He denied being involved in the planned robbery at all. He denied the whole of the Crown evidence implicating him in supplying the pistols and he denied the whole of the police evidence.

The appellant appeared in person at the hearing of the appeal and advanced various reasons which he claimed justified the setting aside of his convictions.

The appellant suggested that the pistol was possessed not by him but by his son who had the keys to the house, but that defence was never advanced in the Court a quo and was, in any event quite inconsistent with the police evidence. In any event, so the appellant contended, it was the police who had planted the gun.

The defence of the appellant was, as I have said, rejected as false. It involves the hypothesis that the accomplice witnesses, had implicated the appellant for no good reason. It also involves the hypothesis that the

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police had deliberately planted the gun and conspired to give false evidence against the appellant. I have already indicated that the learned Judge a quo regarded this as highly unlikely and I fully agree.

In my judgment the learned Judge was fully justified in accepting the Crown evidence and rejecting that of the appellant as false. The Crown witnesses were credible witnesses and the trial Judge did not misdirect himself in any way. Their evidence reads well and it was consistent and clear. As against that the appellant's version was rightly found to be highly unlikely and false. I am unable to find any basis for disagreeing with the findings of the trial Judge.

The appeal against the convictions is without merit and there is no appeal against the sentences.

The appeal is dismissed and the convictions and sentences are confirmed.

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DELIVERED IN OPEN COURT THIS... DAY OF NOVEMBER 2004

R.N. LEON, JP

I AGREE

C.E.L. BECK, JA

I AGREE

N.W. ZIETSMAN, JA