

IN THE SUPREME COURT OF SWAZILAND

**Held at Mbabane
No.44/2009**

Appeal Case

In the matter between:

SIPHO MARCO GAMA

APPELLANT

AND

REX

RESPONDENT

CORAM J.G. FOXCROFT JA

A.M. EBRAHIM JA

DR. S. TWUM JA

FOR THE APPELLANTS IN PERSON

FOR THE RESPONDENT MR. M. MATHUNJWA

JUDGMENT

Appeal against sentence - fraudulent misrepresentation to insurance company that children, wife and mother had died in order to obtain financial benefits - provisions of Section 16/9 of Constitution re backdating of sentence - seven day delay did not warrant backdating.

FOXCROFT JA

[1] This appeal was directed only to sentence. The appellant, who was a police officer at the time of the offences with which he was charged, pleaded not guilty to eight counts of fraud, but was duly convicted on overwhelming evidence. Over a period of almost two years he had falsely misrepresented to the Swaziland Royal Insurance Corporation that a number of his children, wife and mother had died. He produced false death certificates to secure benefits under funeral assurance and endowment assurance policies.

[2] In his remarks sentence, the learned Judge *a quo* noted at the outset that the fraudulently obtained proceeds of the fraud amounting to E30 000.00 had been repaid to the insurance company. He nevertheless decided that the seriousness of the offences “committed with premeditation and calculation” warranted a custodial sentence despite certain mitigating factors which he had taken into account. An effective sentence of six years imprisonment was imposed to commence on 23rd February 2009, the date of sentence.

[3] The appellant asked this court to take into account the fact that all his ill-gotten gains had been repaid, but was reminded that the Court *a quo* had already taken this into account. He also pleaded for leniency, stating that sending him to prison would “do nobody any good”. Again, the Court *a quo* properly balanced his personal circumstances against the demands of society for proper retribution, and the need for a message to be sent to people with like minds who might be tempted to commit similar offences.

[4] In this Heads for the Crown, Mr. Mathunjwa has submitted that since there was nothing on record “to reflect that the trial court took into account the provisions of Section 16(9) of the Constitution” the

Court might be minded to allow the appeal to the extent that the sentence be backdated to 16 February 2009.

[5] It is so that the appellant's bail bond was cancelled upon conviction on 16th February 2009 and that he was incarcerated until sentence was passed upon him on 23rd February 2009, seven days later. When it was pointed out to Mr. Mathunjwa that there was nothing on record to suggest that the learned Chief Justice Banda had failed to take the short period of incarceration while awaiting sentence into consideration, he withdrew the apparent concession. In my view he was correct to do so.

[6] Section 16(9) of the Constitution does not require a backdating of sentences to date of arrest or any other date. All that is required is that the sentencing court takes any period in lawful custody into account in imposing imprisonment. Any judge taking into account the facts of this matter would, in my view, not have deducted seven days from the sentence imposed. Seven days between conviction and sentence represent a perfectly reasonable period of time to enable proper judicial procedures to be carried out. A delay of weeks or months might have caused the Court in this matter to have effectively reduced the sentence, but the minimal delay in this case did not justify any reduction or backdating of sentence.

[7] There is, in my view, no merit in this appeal and it is accordingly dismissed.

J.G. FOXCROFT

JUSTICE OF APPEAL

I AGREE _____

A.M. EBRAHIM

JUSTICE OF APPEAL

I AGREE _____

DR. S. TWUM

JUSTICE OF APPEAL

Delivered in open court on the 27th May 2010.