

IN THE HIGH COURT OF SWAZILAND

In the matter between:

REX

vs.

JACKSON HATHUNJWA & ANOTHER

Review Order No.7/80

District of HHOHHO (Mbabane)

Mbabane of 1st February, 1980

Review Case No. 19/80

JUDGMENT ON REVIEW

Lukele, J.:

In this case the two (2) Accused were summoned to appear in Court on a charge of contravening Section 27 (6) of the Road Transportation Act, 1963 in that "upon or about the 15/9/79 each or both of them together being the driver and conductor of a Public Service Vehicle to wit M/Benz SD28899 which is authorised to carry twenty five (25) passengers wrongfully and unlawfully carry 41 passengers on the said public service vehicle these sixteen (16) passengers being in excess of the number of passengers to carry".

On the 6/11/79 one of the Accused signed and delivered to a designated officer an Admission of Guilt admitting that he is guilty of such offence and deposited with such officer one hundred and sixty Emalangeni (E160) which had been fixed by the officer as the fine. This amount is in excess of the amount of money namely sixty Emalangeni (E60) stipulated in Section 312(1) of the Criminal Procedure and Evidence Act, 1938; but is lower than the maximum fine prescribed in Section 27(1) of the Road Transportation Act 1963 for such offence.

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Section 27(6) of the Road Transportation Act 1963 makes it abundantly clear that the offence with which the two (2) accused were charged can be committed by a conductor and that a driver of a public service vehicle which has been overloaded can commit the offence only if there is no conductor of such vehicle. In the aforesaid charge the two (2) accused are described as the driver and conductor, which, in my opinion, can only mean that one of them was the driver and the other was the conductor of such vehicle. The Admission of Guilt form does not show whether the accused who signed it was the driver or the conductor. If it was signed by the driver, a wrong person has been convicted and sentenced. If it was signed by the conductor the correct person has been convicted and sentenced. In the former case the conviction and sentence should be set aside. In the latter case the conviction should be confirmed but the sentence may be altered according to the circumstances pertaining thereto.

In the circumstances the case is remitted to the Magistrate who should deal therewith according to law.

D. LUKELE

JUDGE