

IN THE HIGH COURT OF SWAZILAND

In the matter between

Case No. 585/81

REX

vs

Gugu Machubane Mdluli

Review Order No. 16/81

District of Hhohho (Pigg's Peak)

Mbabane 11.12.1981

Review Case No. 307/81

JUDGMENT ON REVIEW

NATHAN C.J.

The Accused was convicted of the theft of E480 from George Dlamini and was sentenced to a fine of E300 or 300 days imprisonment of which half was suspended on condition that the Accused is not convicted of any offence of which theft is an element committed during the period of suspension.

It appeared at the trial that the Complainant recovered the amount of E40. The Prosecutor, on behalf of the Complainant, applied for compensation in the sum of E440; and this the Accused offered to pay in instalments of E50 per month. But the Magistrate declined to order compensation, on the ground, so he said, that the claim for compensation was in excess of the Court's jurisdiction in terms of the proviso to Section 321 (1) of the Criminal Procedure Act.

The Magistrate completely misdirected himself. He overlooked that the proviso to Section 321 (1) had been amended by Kings - Order - in - Counsel No. 19/1975 and now provides that the amount of compensation shall not exceed the civil jurisdiction of the Court. Consequently the Magistrate could and should have granted the requested order for compensation.

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It appears to me that this is par excellence a case where payment of compensation should be a condition of the suspension of the sentence. I suggest that compensation in the sum of E440 should be awarded, and that it be a further condition of the suspension of the sentence that this be paid at the rate of E50 per month as from 1st February, 1982.

The conviction is confirmed. The sentence is set aside and the case is remitted for the Magistrate to award compensation and to pass sentence afresh, in the presence of the Complainant and the Accused, in accordance with this judgment.

C. J. M. NATHAN

CHIEF JUSTICE.

WILL A.J.:

I agree.