

**IN THE HIGH COURT OF SWAZILAND**

**HELD AT MBABANE                      REVIEW CASE NO. 134/2007**

**In the matter between:**

**REX**

**VS**

**AUGOSI AFONSO FULANE**

**CORAM**

**MAPHALALA J**

**MAMBA J**

**JUDGEMENT**

**6<sup>th</sup> DECEMBER, 2007**

MAMBA J ,

[1] The accused, who was unrepresented appeared before a Magistrate in Manzini on two counts. He pleaded guilty on both counts and was found guilty on his plea and accordingly sentenced.

[2] The first count was under the Immigration Act and it read as follows;

"The accused is charged with the offence of contravening section 14 (c) of the Immigration Act.

In that upon or about the 21<sup>st</sup> February, 2007 at about 1800 hours, and at or near Matsapha area in the Manzini District, the said accused not being a holder of a license or permit did wrongfully, unlawfully and intentionally remained [sic] in Swaziland without a valid license or permit."

[3] The second count was one of Common assault.

[4] The charge on the first count is badly drafted. For one, the full citation of the Act is not given. It is the Immigration Act No. 17 of 1982. There is further no section 14 (c) in that Act. The Act however, has sections 14 (1) (c) and 14 (2) (c).

[5] Section 14 (1) (c) of the Act prohibits the altering and defacing of "any entry permit, pass, written authority, consent or approval, or any entry or endorsement in any passport, issued, granted or made under the act or" its predecessor.

[6] The charge sheet did not complain of any of these transgressions. It charged that the accused had "remained in Swaziland without a valid license or permit." This falls under section 14 (2) (c) of the Act which forbids any person from unlawfully entering or unlawfully being present in Swaziland without the necessary permission or authorization.

[7] Though the appropriate subsection of section 14 was not cited in the charge sheet, the accused was told in the charge sheet that he was being charged of having "remained in Swaziland without a valid license or permit."

That is the substance of the charge under section 14 (2) (c) of the Act. He was therefore not prejudiced by these imperfections of the charge sheet.

[8] The learned Magistrate sentenced the Accused to pay a fine of E1000.00 failing which to undergo a term of imprisonment for a period of 10 months and the "sentence treated as one for both counts."

[9] This sentence is yet another example of how not to sentence an accused on several counts. It is always desirable that there should be a separate and distinct sentence on each count. A global sentence is problematic

inasmuch as one of such counts may be set aside on appeal and review and the appeal or review court may not know what sentence remains of the composite sentence that was imposed by the trial court. This court has had occasion to refer to this issue in the past in the following cases: **REX vs SEBENELE SISHAYI BHEMBE & ANOTHER (REVIEW CASE NO. 21/06) AND REX VS MDUDUZI DLAMINI (REVIEW CASE NO. 52/07)**

[10] The Registrar of this court is directed to forward copies of these judgements to the learned Magistrate.

[11] In the present case the penalty for a contravention of section 14 (2) (c) is "a fine not exceeding Five Hundred Emalangenani or imprisonment for a term not exceeding six months, or to both such fine and imprisonment."

[12] The learned Magistrate was in error in imposing a fine of E1000.00 or a term of imprisonment for a period of ten (10) months on a Contravention of section 14 (2) (c) of the Act. This is over the maximum stipulated in the Act.

[13] In the result, I make the following order:-

1. The conviction of the Accused on both counts is confirmed.

2. The sentence meted out by the learned Magistrate is set aside and the matter is remitted to the learned trial Magistrate to impose sentence anew on both counts.

**M B A 3**

I concur.

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**M A P H T C L A L A J**