



**IN THE HIGH COURT OF SWAZILAND**  
**JUDGMENT**

Criminal Case No. 45/10

**THE KING**

**V**

**SIFISO MABUZA**

**ACCUSED**

**Neutral citation:** *The King vs Sifiso Mabuza (45/10)* 15 October 2013  
[2013]SZHC 226

**Coram:** OTA J.

**Heard:** 10 October 2013

**Delivered:** 15 October 2013

**Summary:** **Criminal procedure: aggravated rape; victims two female minors aged 2 years and 4 years respectively; accused convicted and sentenced to 20 years on each count; sentences to run concurrently.**

## **OTA J.**

- [1] The Accused was convicted on two counts of aggravated rape on the 10<sup>th</sup> of October 2013. Thereafter, I called upon the Accused to mitigate before sentence. In spite of the fact that the essence of such mitigation was duly and repeatedly explained to the Accused, he however urged no facts in mitigation other than to state that he does not know what happened on the day he committed the offences.
  
- [2] Out of the abundance of caution, I posed certain questions to the Accused, from which I was able to gather that the Accused is not married and does not have children. Learned Principal Crown Counsel Ms Hlophe, also informed the Court that the Accused has no previous convictions.
  
- [3] Now, the task of sentencing is a very serious one. The law thus requires the sentencer to weigh in the balance the triad of circumstances, which consists of the circumstances of offender, the public interest and the peculiar circumstances of the offence, which include the mitigating and aggravating factors.

- [4] Sifiso Mabuza, in passing sentence on you I have thus considered the fact that you are a first offender. You are thus not a habitual criminal, which fact most certainly weighs in your favour.
- [5] Having stated as above, I cannot however lose sight of the fact that the offence you committed is a very serious one which the entire society condemns. The activities of pedophiles like you in this Kingdom has reached such a dimension which if not curbed, has the potential of unleashing total chaos and anarchy in the beautiful and peaceful Kingdom of Swaziland.
- [6] It was in obvious recognition of this fact and of the drastic and dehumanizing effect of rape in general, that parliament through s185 bis of the CP&E, prescribed a minimum sentence of 9 years for this offence, where it is accompanied by aggravating factors. The Courts have also persistently shown their abhorrence for this offence by imposing appropriately stiff sentences. It was to further the bid of the Courts in this venture and also to strike some form of uniformity for punishment in aggravated rape cases, that the Supreme Court in the case of **Mgubane Magagula vs The King Criminal Appeal No. 32/2010** evolved the approximate range of sentence

for this offence to be between 11 to 18 years to serve as a guide in sentencing. In paragraph 20 of that decision, the Supreme Court recommended that the rape of a child should be treated as a particularly serious aggravating factor warranting a sentence at or even above the upper echelons of the range. It is imperative that I note here, that in **Mgubane Magagula (Supra)**, the aggravating factors were that the victim was a child of 10 years and the Accused had not used a condom. The trial Court imposed a sentence of 18 years, which was confirmed on appeal.

[7] Similarly, in the case of **Sam Dupont v Rex, Criminal Appeal Case No. 4/08, at para 15, Ramodibedi JA** (as he then was), made the following apposite remarks:-

**“It remains for me to emphasise that the Courts have a fundamental duty to protect society against the scourge of sexual assaults perpetrated against young children in particular. As this Court pointed out in Makwakwa’s case (Supra) the Courts should mark their abhorrence of the prevalent sexual attacks of young children, as a deterrent. This, they can do by imposing appropriately stiff sentences. Indeed in Moses Gija Dlamini v Rex (Supra), this Court had no difficulty in confirming a sentence of 20 years imprisonment for the rape of a nine (9) year old girl. Sexual offender against young girls have therefore, sufficiently been warned.”**

See **Moses Gija Dlamini v Rex Criminal Appeal No. 4/2007.**

[8] *In casu*, Sifiso Mabuza your victims were 2 and 4 years respectively when you raped them. Two innocent and unsuspecting children who were going about their play in their grandmother's homestead. You plundered their womanhood with impunity and I have seen no remorse in you even all through this trial.

[9] By your invidious conduct you debased their selfworth, taking away their most prized treasure, their virginity, upon your own whim and caprice. You gave them no choice to elect who to surrender it to. I hold the firm view that every woman must be accorded the dignity, honor and respect of making a choice in this regard. You deprived these two innocent children of this choice of a life time. You did not do well at all.

[10] To compound your gross act of indiscretion you failed to employ the aid of a condom in this whole sordid saga, thereby irresponsibly exposing the

complainants to sexually transmitted diseases and infections, such as HIV/AIDS.

[11] I shudder to think of the physical, mental and psychological damage your unsavory act of dehumanization may have occasioned the complainants in this very delicate formative period of their life.

[12] All in all your conduct is reprehensible. It is a carnage that is deserving of this Court's show of disapprobation by a sentence which must express the natural indignation of all interested persons and the public at large.

[13] Sifiso Mabuza, having carefully considered the triad, I find that your personal interest must submit to the interest of the society. In my view a sentence of 20 years on each count is condign of the offences you committed. This will serve as a deterrent to other would be pedophiles. These sentences are ordered to run concurrently and are accordingly backdated to the date of Accused's arrest and incarceration. It is so ordered.

[14] Right of appeal and review explained.

**DELIVERED IN OPEN COURT IN MBABANE ON THIS**

**THE .....DAY OF .....2013**

**OTA J.**

**JUDGE OF THE HIGH COURT**

**For the Crown:**

**Ms L. Hlophe**

**(Principal Crown Counsel)**

**The Accused in person**