

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

REVIEW CASE NO.27/93

In the matter of:

R E X

vs

JABULANE MATHABELA

**ORDER ON REVIEW**

2nd June 1993

DUNN J.

In this case which came before me on automatic review the accused was convicted by the Magistrate, Manzini on a charge sheet of two counts. Three other persons with whom the accused was jointly charged were acquitted and discharged. On count 1 the accused was charged with the offence of malicious injury to property. The particulars to this charge were that on the 1st October 1992 and at the Manzini Remand Centre the accused "wrongfully and maliciously and with intent to escape did cut one dormitory window burglar bar with the intention of injuring the Swaziland Government."

The charge on count 2 was as follows -

The accused are guilty of the offence of contravening section 48(1)(A)(C)(D)(E) of Act 40 of 1964 in that upon or about the 1st October, 1992 and at or near Manzini Remand Centre the accused each one, the other or all of them did wrongfully and intentionally attempt to escape, assist mates or conspire to escape.

The accused was sentenced to a fine of E100.00 in

/default...

/2 ... ..

default of which 100 days imprisonment on count 1. On count 2 he was sentenced to 12 months imprisonment 3 months of which were conditionally suspended for 2 years. The sentences on the two counts were ordered to run concurrently.

I will deal first with the charge under count 2. Section 48(1) of the Prisons Act No. 40 of 1964 (The Act) provides -

A prisoner shall be guilty of an offence and liable, on conviction, to imprisonment not exceeding two years which shall commence after the expiry of any other sentence which he was serving at the time of his offence if he -

- (a) escapes, or attempts to escape from prison or other lawful custody;
- (b) mutinies or incites any other person to mutiny;
- (c) conspires with any other person to procure the escape of a prisoner from prison or other lawful custody;
- (d) assists, or incites, any other prisoner to escape from prison or other lawful custody;  
or
- (e) is in possession of anything with the intention of using it to procure his own escape or that of any other person.

Subsections 1(a) through to 1(e) create separate offences

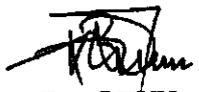
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which must be particularised as separate counts depending on the evidence available to the crown. An accused **person** is entitled to know which of the various offences created by the section, he is charged with. He is further entitled to particulars of the offence with which he is charged. The Magistrate should not have allowed the prosecution to, as it were, throw the whole section at the accused. The accused was unrepresented at the trial and must obviously have been prejudiced by the blanket charge preferred against him on count 2.

Turning to count 1 the allegation of both the intent to escape and the intent to injure the Swaziland Government in its property in one count can only serve to cloud the real charge which the crown intended proving against the accused. The magistrate should have directed the prosecution to particularise the charge of malicious injury to property so as to ensure that the accused understood clearly what charge he was faced with. The accused who pleaded guilty on this count may well have been pleading guilty to attempting to escape from lawful custody. The Magistrate should have ensured that such a situation did not arise by deleting the reference to the intent to escape on the charge of malicious injury to property.

The irregularity in calling on the accused to plead to the charges as framed amounted in my view to a failure of justice. The accused cannot be said to have had a fair trial. The fact that he pleaded guilty did not lessen the duty of the Magistrate to ensure that the charges were properly framed and that the accused understood clearly what the case against him was on each count.

The conviction and sentence are in the circumstances set aside.

  
**B. DUNN**  
JUDGE