

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. S 343/1983

In the matter of:

THE QUEEN

VS.

1. ALFRED NDZINISA

2. MARY SUKATI

CORAM: DUNN, A.J.

FOR DEFENCE: MR P SHILUBANE

JUDGMENT

(Delivered 3rd August, 1984)

The two Accusen are charged with theft in the following terms -

"In that whereas at all relevant times the said accused were in the employ of the Swaziland Government as Accounts Officers in the Ministry of works Power and Communications and as such servants of the Swaziland Government and entrusted with the custody care and administration of Government money, the said accused each or both of them did during the period of January 1981 to December 1981 both months included and at or near Matsapha Airport in the Manzini District unlawfully the property of or in the lawful possession of the

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Swaziland Government."

The accused pleaded not guilty to the charge.

The Crown's case is that the two accused together with the accomplice witness Lungile Sihlongonyane were responsible for making monthly requisitions for cash from the Treasury for the payment of wages to daily paid employees at Matsapha Airport. The accused and Lungile set about on a scheme which was suggested by Accused No. 1 (A) whereby fictitious paysheets were drawn up, after payment to the employees, reflecting payments to fictitious employees and payments for overtime pretendedly due to some of the employees. In this manner the accused and the accomplice made away with portions of surplus cash which should have been retired to the Treasury after payment to the employees. The original paysheets reflecting the actual amounts paid out to genuine employees were destroyed by the accused. The fictitious paysheets were signed by the accused and the accomplice so as to appear that the employees had received the overtime payments and that the fictitious employees had received the wages. "The fictitious paysheets were then submitted to the Treasury together with whatever surplus XXX remained after the thefts.

According to the accomplice the scheme. XXX commenced in March 1981 and stopped with the XXX for December 1981. This is not consistent XXX

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paysheets which were handed into court and which the defence formally admitted were fictitious. These are paysheets for January 1981 through to December 1981. Lungile did not clarify the position with regard to the commencement of the scheme and it can only mean that it was commenced at the end of March 1981 when she states accused No.1 suggested the scheme. Lungile was shown the paysheets for January to December 1981 (Exhibits A to L). She stated that part of the scheme entailed signing the paysheets on the space provided for the Airport Manager who was required to sign certifying that payments had been made to the employees as reflected on the paysheets.

The defence admitted that the Airport Manager Mr King and his predecessor Mr Frances had not signed the fictitious paysheets. It was in the circumstances not necessary to call Mr King and Mr Frances to give evidence of their signatures on the paysheets.

The defence further admitted that the employees did not receive the amounts reflected on the fictitious paysheets. This admission, dispensed with the need to call all the employees to give evidence that they did not receive the amounts reflected in exhibits A to L.

Lungile together with superintendent Jele who investigated this case prepared a schedule from the time books which were kept by Lungile over the period

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in question. The schedules A, B and C which were handed into court as exhibits show the true extent of overtime worked by the employees and the false overtime for which payment is reflected in the paysheets.

The schedules give a break down of the individual amounts purportedly paid out to the employees over the period in question. The total figure of payments not paid to the employees is reflected in schedule D as E12,847.99. This is the amount which is the subject of the charge.

Lungile told the court that the scheme was continued until December 1981. Accused No 1 was transferred to headquarters in December 1981. He was not at the Airport when the December paysheet was prepared. Lungile stated that there was a cash surplus after the December payments which was put in the safe. Accused Number 2 who kept the key reported to Lungile that the safe key was missing. When the key was found and the safe opened, it was found that there was a shortage in the cash which was to be deposited at the District Revenue office. Accused No 2 suggested that they should prepare a new paysheet to cover up the shortage. Accused No 1 was contacted and he together with Accused No 2 and Lungile prepared the fictitious paysheet exhibit L.

Joanna Magwaza who had replaced Accused No 1 at the Airport saw the fictitious paysheet before it could be forwarded to the Treasury. She had assisted Accused No 2 and Lungile in the preparation of the original

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paysheet for December 1981. Joanna further discovered that only E166.89 of the surplus of E1,000 + after the December payments had been deposited with the Revenue office. She made a report to the Airport Manager who started an inquiry. It is not necessary to continue further with Joanna's evidence save to say that she fully corroborated Lungile's evidence with regard to the December paysheet:

To continue with Lungile's evidence, she stated that when the report was made to the Airport Manager in January 1982 Accused No 2 suggested that they should look for accused No 1 and inform him of what had happened. Accused No 1 was found and he suggested that the accused and Lungile should approach the airport Manager to apologise and offer to repay the money which they had taken. The Airport Manager gave evidence and handed into court, a letter which was signed by the accused and the accomplice. In the letter the accused explained how the surplus cash went missing from the safe.

Paragraph 3 of the letter reads.

"Sir, through fear and ignorance we decided to re-adjust the December paysheets, that is by increasing the overtime of which was the safest way to cover up the loss though irregular," The accused and the accomplice could give no explanation to Mr King for the fictitious paysheets exhibits A to K.

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Evidence of the procedure followed in requisitioning and retiring money for wages was given by Mr Mahlalela who was the Principal Accountant at the Public Works Department during 1981.

The defence closed its case without leading any evidence.

It is clear that the Crown has proved its case against the accused beyond all reasonable doubt. The accomplice witness made a good impression on me as an honest and reliable witness. Her evidence is fully corroborated by the evidence of the paysheets and Joanna Magwaza. The defence admitted that the pay-sheets were fictitious and that the employees did not receive the wages reflected. It was not challenged that the pay sheets were drawn up by the accused and the accomplice. The accomplice's evidence was not challenged by the defence and it was in fact put to her that the amounts on the pay sheets were false and had been made to cover up for the money which had been stolen. Lungile agreed that that was so.

Lungile was hard placed to explain how much had been requisitioned from the Treasury for the months of January to December 1981. It was from Lungile's failure to give the exact figures, that Mr Shilubane submitted that the court could not convict the accused as it had not been shown how much had been sent by the treasury to the airport. Mr Shilubane is not correct in his submission as there is evidence of how much was

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actually taken by the accused. The time books kept by Lungile show that the employees were not entitled to overtime payments. The pay sheets reflect that the employees were in fact paid overtime payments. The defence admits that the employees never received the overtime payments. The accomplice states that the entry of overtime payments on the pay sheets was made in order to cover up for money which had been taken by her and the accused. Whatever the amount sent by the treasury was, it is clear that the amounts reflected in schedule D should have been retired to the Treasury. The amounts were not retired and were misappropriated by the accused.

I have carefully considered Lungile's evidence and have warned myself of the danger of convicting on the evidence of an accomplice. I find that Lungile's evidence is credible and amply corroborated. The defence has not challenged her evidence in any material respect.

I find the two accused guilty as charged.

B. DUNN

ACTING JUDGE