

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 315/84

In the matter of:

THE QUEEN

VS

JONATHAN MAGAGULA AND

2 OTHERS

CORAM:	J. A.	HASSANALI
FOR CROWN:	MR.	THWALA
FOR 1ST ACC:	MR.	PUPUMA
FOR 2ND ACC:	MR.	EARNSHAW
FDR 3RD ACC:	MR.	PUPUMA
CHARGE:		THEFT

JUDGMENT

(Delivered on 15-07-1985)

HASSANALI, J

The three accused were charged with 3 counts of theft. They pleaded not guilty.

During the course of the trial, the Crown sought to add in the confession of the 3rd Accused. This was objected to by the 3rd Accused on the ground that it was not freely and voluntarily made. A trial within a trial then took place with regards to the admissibility of the confession. At the end I ordered that the statement should be admitted.

At the conclusion of the Crown Case, Counsel for the three (3) Accused applied for their discharge on the ground

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that no sufficient case had been made out against them. After having heard the submissions by the Counsel for the defence and the Crown, I made the following order-

- Count I - application for discharge allowed in respect of all three accused.
- Count II - application for discharge allowed in respect of all three accused.
- Count III - application for discharge allowed in respect of 1st and 2nd accused only.

The Counsel for the 3rd accused then closed his case without calling any evidence.

During the relevant period the 3rd accused worked in the Bank with specific duties to answer audit

queries.

By arrangements with the Standard Banks of Barberton and Piet Retief, the Standard Bank of Swaziland received consignments of money monthly. When such consignment was received at the Post Office, it was collected jointly by the Treasury Cash Custodian and a Senior teller. The routine was to hand over the consignment to the Chief Teller It was then opened by the Treasury Cash Custodian in the presence of the teller who held the consignment, The money was counted and the consignment note signed and returned to the forwarding Bank.

A consignment containing a sum of E22,506.00 was received at the Mbabane Post Office from the Piet Retief Branch of the Standard Bank. This was signed for and taken delivery of by the 2nd and 3rd Accused an 12th May, 1984.

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Mvubu in his evidence stated that he had this consignment with him until it was removed by the 2nd Accused at a later date. There is also evidence that one Pat Saulus, the Chief Teller had also received a consignment of money from the 2nd and 3rd Accused an 12/5/84. But Mr. Dlamini the Post Master who gave evidence for the Crown said that he delivered only one consignment on the day to the 2nd and 3rd Accused. Therefore it appears to me that there is some confusion as regards this consignment. However in view of the accused's own confession I have no doubts that either of his own accord or jointly with some other bank officials, he collected this money.

The Accused's confession is the only evidence that links him with the crime.

In his confession he described the manner by which he and two others made use of each monthly consignment of money. This was then replaced by the consignment received the following month. This system he stated continued until May, 1984, when the bank officials became suspicious and started investigation.

According to the accused the May consignment of E22,506.00 was taken to replace April consignment of E16,000.00. In all he had taken a sum of E6,500.00 belonging to the Bank.

On his own confession, I am satisfied that the accused was a party to the theft of E22,506.00, and I accordingly find him guilty under Count 3

J. A. HASSANALI

JUDGE