



## IN THE HIGH COURT OF SWAZILAND

HOLDEN BEFORE THE HON. DAVID HULL/CHIEF JUSTICE, ON  
FRIDAY 5TH FEBRUARY, 1993

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No. 17/93

In the matter of :

HARRY SIBHAHA DLAMINI  
AND  
BAKHOMBISILE R. MKHWANAZI

EX PARTE : THE ACTING DIRECTOR OF PUBLIC PROSECUTIONS

### O R D E R

This is an application brought ex parte by the Acting Director of Public Prosecutions under Section 88 bis of the Criminal Procedure and Evidence Act 1938 for an order that I direct that Harry Sibhaha Dlamini and Bakhombisile R. Mkhwanazi be tried summarily on three criminal charges in the High Court.

Two of the proposed charges relate to allegations of fraud. The third, which is intended as an alternative to the second one, alleges a contravention of regulation 20 of the Civil Service Board (General) Regulations.

By lodging the application, the Acting Director has indicated his wish to prosecute the charges in the High Court instead of a Magistrate's Court. That is a matter for his own judgment.

What I have to decide is whether I am satisfied that it is in the interest of the administration of justice that, in these circumstances, the charges should proceed summarily in the High Court without a preparatory examination first having been held before a magistrate. It is the mode of trial and not the weighing of the strength of the evidence in support of the application which has to be considered: See section 88 bis (1) and Dlamini and others v. Minister for Justice and Director of Public Prosecutions 1982-6 (11) SLR 367. I am satisfied that it is in the interests of justice to so direct.

In the first place, where the Director of public Prosecutions proceeds on a charge in the High Court, it is now almost invariably the practice here for him to apply for summary trial. There are cogent practical reasons, in the circumstances currently prevailing in Swaziland, for granting such applications in cases that are to be tried in the High Court. That mode, for the time being, is undoubtedly the more efficient way of proceeding. In present circumstances, preparatory examinations will in practice strain the resources of the lower courts and delay cases. (In expressing this view, I would not wish, however, to be taken as indicating that I think that preparatory examinations are obsolete).

In the present case there are other compelling reasons for summary trial. The second accused is the Deputy Registrar of the High Court. It is proposed to charge both accused jointly.

The allegations relate to events that are said to have happened in May of last year. Although the allegations against the Deputy Registrar were made at the beginning of November, 1992, this application was not filed until 5th February this year.

In a very immediate sense, it is in the wider interests of the administration of justice that criminal allegations against a person holding such a post should be disposed of without delay. This is not a matter of personalities but one of obvious common sense.

I grant the application and direct that the counts in the indictment shall be tried as promptly as possible.

There is one other matter that has to be considered. The Deputy Registrar is a person who has worked closely with and is known to the present members of the High Court. In these circumstances, the Judicial Service Commission will be asked to advise that an acting judge be appointed to try the case.

I have considered whether on this application I should exceptionally, allow the accused to make representations, but take the view that it is unnecessary to do so. I do, however, direct that this order, made in chambers, should be made available to the Bar.



DAVID HULL  
CHIEF JUSTICE