

IN THE HIGH COURT OF SWAZILAND

IN THE MATTER BETWEEN

: CRIM. CASE NO. 6/99

THE KING

APPLICANT

VS

1. KELECH ACHIKE UBA-JAMES MNADI

1st RESPONDENT

2. MAGISTRATE NKONYANE - N.O.

2ND RESPONDENT

CORAM

: MATSEBULA J

FOR THE CROWN

: MRS. DLAMINI

FOR THE ACCUSED

: MR. MDLADLA

JUDGEMENT ON REVIEW

This matter came on a certificate of urgency with the following prayers:-

1. Dispensing with the time limits and forms of service prescribed by the rules of this Court and hearing it as an urgent application.
2. Reviewing and/or setting aside the ruling by 2nd Respondent under Case No. 16/99.
3. Further and/or alternative relief.
4. One Mumsy Dlamini filed the founding affidavit accompanying the application.

On 11th March 1999 the matter was heard by Maphalala J, who granted the application i.e. application for review proceedings and ordered the Respondent to file their opposing papers within 7 days and thereafter Applicant, if necessary, to file a reply within two (2)

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days of receipt of opposing papers. The matter was then to be set down on the next contested court for full arguments.

The next contested roll was on the 16th April 1999. On this day I presided over the proceedings and there was no opposing affidavit filed by any of the two Respondents.

In view of the nature of proceedings and the fact that the criminal proceedings at the Magistrate's court had stalled, whereas the First Respondent was in custody. I ruled that prima facie the computer print out was admissible. I indicated that written judgement on review would follow.

I have since read through annexure "A" - the recording of proceedings by the learned Magistrate and also had a look at the sections 244 and 245 of the CRIMINAL PROCEDURE AND EVIDENCE ACT 67/1938.

Section 244 deals with banker's books admissible in evidence in certain cases and Section 245 deals with copies of entries as mentioned under Section 244 are admissible after due notice.

Both the above Sections do not attempt to deal with the nature of annexure "B" i.e. the computer print out. Any attempt to bring a computer print out under the auspices of Section 244 and 245 can never be successful. The computer by its very nature is a device or apparatus which is capable of receiving or absorbing data instructions by electronic, electro-mechanical, mechanical or other means supplied to it.

Computer print out is the documentary form in which information is produced by a computer. From what has been said above a print out is of a hearsay nature and on that basis it is inadmissible. But as Mrs. Dlamini has deposed in her affidavit and also in fact when she submitted before the learned Magistrate, the rule against hearsay evidence is to some extent relaxed in bail application proceedings.

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The learned Magistrate misdirected himself in ruling that the computer print out because of its hearsay nature and therefore violating the rule against hearsay was inadmissible in bail applications.

Perhaps it is high time the office of the Attorney General considered drafting an Act which will deal specifically with the computer or any device or apparatus connected with computers. This, in my opinion has become long overdue.

J. M MATSEBULA

JUDGE

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