



## SWAZILAND HIGH COURT

REX

v

**SIBANDZE, Benedict**

*Cri. Trial No. 37/1999*

Coram

SAPIRE, CJ

For Crown  
For Defence

Mr. L. Ngarua  
Mr. C. Ntiwane

### JUDGMENT

*5<sup>th</sup> March 2001*

The accused is indicted on three counts of theft. An amended indictment was put to him and he pleaded not guilty on all three charges. The indictment was further amended late in the trial and the date of the commission of the offence in count two was changed from the 8<sup>th</sup> July 1998 to the 27<sup>th</sup> January 1998. As this amendment was in accordance with the evidence, which was largely common cause, the amendment was granted without opposition.

The three counts each arise in circumstances similar to the other two. It is alleged that on the three occasions the accused received large amounts of money from one Ben Engel who was the agent for a company carrying on aviation business. The amounts were tendered as payment of the prescribed fees payable for registration of aircraft for landing at Matsapha and for certificates of airworthiness, which were issued in connection therewith.

It is the crown's case that the three amounts of E5 000.00, (Count 1), E41 600.00 (count 2) and E8 800.00 (Count 3), were paid by Engel to the accused and indeed there is no dispute as to this.

Engel told the court that he had regularly dealt with the accused, and only the accused, in connection with the registration of aircraft on behalf of his principals, and that on the occasions, which are the subject matter of the charges, he had dealt with the accused in regard thereto.

He described how he came on each occasion to Swaziland carrying sufficient money in cash to pay whatever the charge would be. He saw the accused in his office the accused occupied in the premises used by the Department of Civil Aviation. The accused worked out the charges and the amounts to be paid. Engel then counted out the money, in cash, being South African notes of high denomination, and handed them to the accused.

The accused version, which was not put to Engel, was that it was purely fortuitous that Engel called at his office on all three occasions because he, Engel, was unable to find someone to deal with, and to assist him at the offices of the Civil Aviation Department. The accused was at pains to emphasise that it was neither his function to accept monies from the public, nor to calculate the amount payable in respect of aircraft registrations. The accused maintained that he was merely doing Engel a favour, as the proper official was not immediately available. The coincidence that this should have happened on three separate occasions is remarkable. As this was never put to Engel, the court may, especially in the light of the evidence as a whole, come to the conclusion that Engel's version is to be preferred.

It is also common cause that on each occasion the accused, with the money tendered by Engel in his hand, left his office on the fifth floor of Swazi Bank House, in which he had accepted the money from Engel, and went to another office on the sixth floor of the same building, to hand the money over to the employee who issued receipts. The person who had custody of the receipt book was Joyce Ncane Dlamini then employed in the accounts department of the Ministry of Works and Transport which occupied that office. It was her duty receive monies tendered by members of the public, (mainly taxi owners or drivers), in payment of Road Transportation licence fees and the like, issue receipts in respect thereof, and to bank all amounts so collected.

There is evidence that payments to the Department of Civil Aviation in respect of aircraft registrations were processed in the accounts office of the Ministry of Works and Transport. Road transportation fees and payments made up the bulk of the transactions handled in that office, so that Ms Dlamini was familiar with the particulars, which were to be filled in on receipts relating there to. Aircraft registrations and the receipt of payments made in connection therewith were far less usual. The calculations of the amounts to be received were in accordance with formulae based on technical aspects of each aircraft. Only officials of the Department of Civil Aviation were able to do this, and only they possessed the detailed information, which was required to fill in the receipt forms. The practice, then current at the time of the events which give rise to this prosecution, was for the official of the D C A dealing with the registration, himself to accept the money tendered, take it to the accounts office, where he would himself fill in the narrative details on the receipt. The receipts clerk who was responsible for issuing the receipt would then sign such receipt. After the amount was checked, the original torn was from the book to be handed to the party from whom payment had been received.

The accused claims that on each occasion he handed to Ms Dlamini, the amount that he had just received from Engel. He does not claim to have checked or counted the amount at any time, but states that he gave the money to Ms Dlamini and requested her to prepare the receipt, the details of which were on a slip of paper which he had prepared in, and brought with him from, his office. He claims that on each occasion, while still in his office on the fifth floor he prepared a note of the particulars to appear on the receipt, which he handed to Dlamini to enable her to fill out the receipt. He says that while she was preparing the receipt of each occasion he was engaged conversation with members of the public who were in the office awaiting to transact whatever business they had there, and he states that he also may even left the room itself.

Because his attention turned to conversation with members of the public, both inside and outside the office, he is unable to say that he saw Dlamini fill out the receipt. He cannot say that the handwriting in the body of the receipts is hers, and he suggests, as a conjecture, that another employee who also occupied the same office may have filled in the details and narration.

On the other hand Dlamini positively states that she was unable to fill out the body of the receipt, as she had no knowledge of the transaction, which was to be recorded. She also

denied in cross-examination that she was given a piece of paper whereon the particulars of the transaction were written to enable her to fill in the receipt. She says and she is adamant on this that it was the accused himself who filled in the receipts on each occasion.

The receipt forms are bound in books, numerically serially consecutive. They are prepared in the case of the original to be torn out of the book and handed presumably to the person who pays the money. There are also duplicates and triplicates of the original in the same book. All three are completed at the same time through the medium of carbon paper.

Dlamini described graphically how she received the money from the accused. As the notes were South African, she checked them to the light in order to detect any false currency. She insists that the only amounts she received were the amounts appearing in the carbon duplicates and triplicates of the receipts.

The receipts in each case were written in such a way so as to facilitate the alterations, which were later, detected when comparing the original receipt with the duplicate and triplicate.

Although the original receipt for the amount of E41 600, was not produced in evidence, from a photocopy thereof, Exhibit "C", it appears that it reflected the amount of E41 600 as having been received. The carbon duplicate and triplicate still in the receipt book refer to an amount of E4 600. The difference is accounted for by the insertion of the cipher "1" in a space designedly left to accommodate the change. The amount in words has also been altered by the insertion of the word "one" between the four and the six. At a later stage in this judgment I will deal with the question of the admissibility of the copy and the extent to which it may be relied on.

The original General Receipt issued in respect of the amount of E8 800.00, which is exhibit B1 reflects that amount as having been received, while the duplicate and triplicate show E880.00 having been received. The change was clearly affected by the addition of an extra "0" in the column provided for the amount and by adding an extra "Zero" where the amount is stated in words.

The original receipt for the amount of E5 000 reflects that amount as having been received, but the amount appearing on the duplicate and triplicate carbon copies is E500.

Again the difference was made by the addition of a “0” to the figures and the word “zero” where the amount is stated in words.

In each case only the lesser amount was banked, and the substance of the prosecution case is that the accused stole the money represented by the difference.

Dlamini says she put her signature to the receipts after the accused had completed the body thereof. On her evidence, sometime between the completion of the receipts and before the original was handed to Mr. Engel, the alteration to the originals was made. In the case of count two, Engel did not see the original or receive a copy thereof from the accused before the matter was under investigation

In the case of count 2 the original receipt was not produced and the admissibility of the copy tendered was contested. Evidence of any search made for the original is sketchy and incomplete but the evidence does disclose that when the transactions came to be questioned doctor Tambi called for this particular receipt and the accused produced a copy thereof. This took place in the presence of Engel, who testified to the occasion and he states that the accused actually produced the original from which he himself was able to make his own copy.

The accused in giving evidence, denies that he produced the copy or the original, but concedes that the copy, Exh. C correctly reflects what appeared in the original

This is not a case where the document is the original document necessary as the best evidence of the transaction reflected therein. The copy is acceptable as evidence of what the original looked like and how it deferred from the carbon copies. As, on the evidence it was produced by, and was last seen in possession of the accused himself, (who was able to produce either the original as stated by Engel or copy as stated by Tambi) reliance can be placed on the copy which is exhibit “C” only for the purposes of comparing the original with the duplicate and triplicate.

The offences were committed on the three occasions in the same manner and involve the same people. It is clear that the accused received the full amount paid reflected in the original receipts, and left the office in which he was interviewing Engel to take the money to be receipted and banked. In each case he dealt with Ms Dlamini who is in charge of the

receipt book. The Receipt book itself we know never left the office where it was kept. On each occasion the body of the receipt was completed in what appears to be the same handwriting which Ms Dlamini denies to be hers.

On the one hand we have the account given by Miss Dlamini that she did not have the details to fill in the body of the receipt and that it was the accused himself who filled in the receipts in the receipt book at the relevant time of each alleged offence. She having counted the money and seen that it accorded with what appeared on the original receipt at the time completed the receipt with her signature, took the money into her custody, which was banked in due course. The originals of the receipts were then removed from the receipt book and in each case handed to the accused. Miss Dlamini said that when she handed the receipts they were exactly as they appeared on the duplicates and triplicates.

The accused on the other hand claims not to have either counted the money at any stage, or to have looked to see what was written on the original receipts. He claims that on each occasion he handed the amount received from Engel, to Miss Dlamini and immediately engaged himself in conversation with others during the time that the receipt was completed so that he did not see the money being counted and did not see Ms Dlamini filling in the receipt. So far removed was he from the transaction, and disinterested or uninterested therein, that he did not on any of the occasions even look to see whether the receipt was correctly made out, even as far as the amount was concerned. He cannot say that it was Ms Dlamini who wrote out the body of the receipts because he did not see her doing so.

The decision of this case therefore depends on whether it is Dlamini's version or that of the accused, which is to be accepted. Before a conviction can result the accused's version has to be rejected as being incapable of reasonably possibly being true.

Against the acceptance of the accused's version is the following:

1. The body of the receipts is not in the handwriting of Miss Dlamini. I find this because she has expressly denied it. There has been no effective challenge to her denial and it is not shown that the handwriting in the receipts in anyway resembles her handwriting. In this connection it was not for the

prosecution to prove that the handwriting on the receipts was not hers as she has denied this and the duty to produce evidence is not on the one who denies but on the party which asserts. The accused does not claim to have seen her writing out the receipts, which as I have observed, is, in itself is a strange aspect of this case.

2. The body of the receipt could only have been written out in the circumstances of the case either by Miss Dlamini or the accused. The accused has raised a third possibility that an assistant or other employee who worked in the same office as MS Dlamini may have written out the receipt for her. Why this should have been so is difficult to tell. I also find it strange beyond belief that on the three separate occasions Ms Dlamini could have followed the exact same procedure of having the receipt filled out by a third person if she in fact have been a thief. It must be borne in mind that the accused arrived on each occasion unannounced and without any prior notice to Ms Dlamini. She would then, in order to have effected the theft, to have made out the receipt, for the smaller amount (or, is even more incredible requested the other person in the room to have written it out for her.) She would then have had to have counted and peeled off the exact number of notes, from the money handed to her to divide the amount reflected on the duplicates and triplicates of the original receipts from the amount she intended to retain for herself. She would then have had to either remove the receipt from the receipt book or remove the carbons, and alter the original to reflect the amount received as being that handed to her by the accused. All this she would have had to have done while the accused was at least in the immediate vicinity, if not in actual view. She could not have known when his attention would have again focused on her. In these circumstances she could have been discovered in flagrante delicto.
3. While she says he was present at all time and in fact wrote up the receipts, he claims to have left the office to engage in conversations with persons outside. How this could have happened in exactly the same manner on each of the three occasions is unbelievable. Miss Dlamini must have been aware that

even if he was not concentrating on what she was doing for any particular period, he was in the vicinity awaiting the original receipt and could have seen her manipulating the money and the receipt book at any time.

4. Not only does Miss Dlamini say that she actually saw the accused writing out the bodies of the receipts but the handwriting on the receipts is recognized by at least two witnesses as being that of the accused. These two were Evart Madlopha Principal Secretary of the Ministry of Public Works and Transport and Dr. John Tambi who was at one time Acting Director of Civil Aviation. Both these witnesses claim that by reason of their association with the accused and the work that they did together they recognized the accused's handwriting. Each of the witnesses was in turn subjected to lengthy cross-examination on the opportunity they had of recognizing the accused's handwriting.

In the case of Evart Madlopha, he claimed as instances of when he had seen the accused's handwriting, occasions when they were together in Parliament and the accused would send him notes in connection with the business there being transacted. The cross examination was directly to show that the accused and the Principal Secretary were not in parliament together at a particular time. On the other hand the evidence is quite clear that they were in parliament together from time to time if not at the time stated by the Principal Secretary I have no reason to believe that the Principal Secretary is deliberately lying even if he is mistaken as to the exact time, that he and the accused were together in parliament.

As far as Dr. John Tambi is concerned there is evidence that they worked closely together in the Department of Civil Aviation and although the accused both in evidence and in cross examination suggested that there was no opportunity for Dr. Tambi to have become acquainted with his handwriting the evidence is quite clear that in fact they worked together closely, even sharing an office for a short period, and that there must have been opportunities and occasions on which the witness saw the accused's handwriting. Again there is no reason for Tambi to lie, only to implicate the accused.



This evidence is also to be seen in the light of the evidence of one Esterhuizen who gave his opinion on several specimens of handwritings submitted to him. Although counsel for the accused argued that it had not been proved that Esterhuizen was an “expert”, I am satisfied that the witness is a *bona fide* employee in the South African Police Forensic Laboratories in Pretoria and that he has for a considerable period devoted his time and professional skills to the matter of questioned documents including comparative handwriting analysis.. He is not some impostor who has travelled to the country merely to give false or incompetent evidence to the detriment of the accused.

The basis of Mr. Ntiwane’s criticism was that his appointment to the South African Police was not proved. Against this we have his statement that he is a policeman and he offered to produce, if necessary, his certificate of appointment. The second basis of the criticism was that a certificate he produced showing that he had done an advanced course in the field in which he practiced was in Afrikaans. I am satisfied that this by no means a valid criticism. In any event whether or not he passed the advanced course is not essential to his qualification. He has experience to which he testified and could not be challenged. On the basis of such experience I am prepared to entertain his opinions on the handwriting.

He was instructed by the Royal Swaziland Police to compare several handwriting specimens. He received copies of the originals of the two receipts relating to the E8 800.00 and E5 000.00. He was also given specimens of what was said to be the accused’s handwriting. Of these he selected one and made his comparisons on that with the two receipts. He also received what was referred to as “D” on a chart prepared by him and which was part of a series of documents, which are exhibit “J”. This was described on the chart, which is exhibit “M” as “requested specimen handwriting”. The panel “C” on the chart was referred to as “collective specimen writing”. “A” and “B” were the disputed writings being the originals of the receipts 439454 and 433500 respectively.

The witness explained that his first step was to provisionally compare the handwritings, as any layman would do, to see whether the handwritings corresponded or appeared to be similar. He would then, in accordance with usual procedure apply certain tests. The tests he applied were to look for idiosyncratic or repeated patterns of writing in each of the specimens. He was able to point out 18 correspondences in exhibit “B1” and “A1” with

exhibit “H” and exhibit “J”. These are demonstrated on the chart, which is exhibit “M”. The conclusion to which he came was that the same person wrote all four specimens.

There are certain criticisms of the way in which this evidence was presented. The criticism is not of Mr. Esterhuizen but of the detective Magagula who collected the evidence, which was dispatched, to Pretoria. In the first place exhibit “H” which is in panel “C” was not proved conclusively to be the undisputed handwriting of the accused. It was identified by recognition thereof by Dr. Tambi. His identification does not take the matter any further because Dr. Tambi and the Principal Secretary claimed to be able to identify the handwriting on the disputed documents. What was required, was that specimens of the accused’s handwriting, which could be shown by independent evidence to have been written by the accused, should have been collected and sent for examination. This defect detracts from the value of the report in linking the handwriting with the accused with that appearing on Exh.A, and B. It does not detract from the opinion that all four documents on Exh. M were written by the same person.

On the other hand the requested specimen handwriting, which is in panel “D” and was referred to as exhibit “J” is an original general receipt, which was written out by the accused person at the request of Detective Magagula. Detective Magagula claims to have dictated the wording of the document, which had to be copied while the accused says that he was given a considerable number of copies of original general receipts to fill in copying what appeared in the disputed original receipt. The point of the matter is that the accused although he claims weakly not to be certain on the matter was unable to deny that exhibit “J” was written by him.

Esterhuizen’s opinion was that all four documents written by the same person and it would follow then that if the accused wrote exhibit “J”, he also wrote exhibit “H”, “B1” and “A1”.

There is a further feature of exhibit “A1” which indicates that it was not Miss Dlamini who filled in the original receipt but somebody at least who was aware of the details. Exhibit

“A1” which is General Receipt 433500 was originally made out to reflect monies received from “Airline Marketing”. This was crossed out on the original but not on the duplicate and triplicate, and the words TAC Services inserted in what appears to be the same handwriting as the deleted name. What is important is that this was a change made to the original after it had been removed from the receipt book or after the carbon had been removed. Only somebody who knew that the original name was an incorrect name could have made the change. This could only be the accused.

There is a signature next to the alteration, which does not appear on the duplicate and triplicate. Miss Dlamini said that it was not her signature but appeared to be an attempt to imitate it. The prosecution attempted to demonstrate that the signature was that of the accused by comparing it with his signature in his passport. I am satisfied that whoever placed the signature there did not attempt to forge the accused’s signature and if it were the accused he may have attempted to copy the signature of Miss Dlamini. But the evidence is unclear on this point and no inference can be drawn therefrom.

The accused had attempted to explain this anomaly by saying that he may have put the wrong name on the piece of paper which he claims to have given to Miss Dlamini and have crossed it out and put the correct name above it. All this before he handed the slip of paper to Ms Dlamini. He suggests that Ms Dlamini must have copied not only the incorrect name but also the alteration from the piece of paper onto the receipt. This he claimed might explain the change. This explanation holds no water whatsoever. There is no reason why Ms Dlamini should have inserted a name, which had been crossed out or deleted. If she had it would have appeared on the duplicate and triplicate as well. The only inference I can draw is that the accused himself altered the name after the receipt had been removed from the receipt book. It is only he who would have become aware of the error after the receipt had been issued.

In regard to exhibit “J” the accused claimed that the correspondence of the handwriting thereon with the handwriting on “B1” was because he had been told to imitate the handwriting appearing on “B1”. This I find extraordinary and unbelievable. That he had been called upon to imitate handwriting was never put to Detective Magagula. That he knowing that the matter was under investigation would have spent hours trying to make his handwriting look like the handwriting of the person who had committed the offence is beyond any belief whatsoever.

Having regard to all the foregoing, I am satisfied that it was the accused who received the money from Engel and who on each occasion before handing any money to Miss Dlamini peeled off the exact number of notes which is the amount stolen and handed her the balance. I am satisfied, beyond any reasonable doubt, that he then wrote out the body of the receipts himself and in so doing, by leaving convenient gaps, facilitated the alteration which he intended making so that the originals would reflect the amount he had actually received. The accused received the money on behalf of the government, when he appropriated a portion thereof to himself and handed in only the balance in the accounts office he committed theft from the government

On an overall view of the evidence, it is only the accused who had the opportunity to commit the offence. Ms Dlamini, had she been inclined to do so would have been at risk of immediate discovery. The offender could only be one of two persons, either Ms Dlamini or the Accused. All the evidence, and close examination of the circumstances, point to the accused and only the accused, as the culprit. This being so there can be no reasonable doubt that the accused is guilty of theft as charged.

He is found guilty on all three counts.

### **SENTENCING**

You have been found guilty of 3 counts of theft and it is my duty now to impose an appropriate sentence on you. A punishment in all cases must fit not only the crime but the person who has committed this crime. You, I have been told, have been a Government Servant for many years. You have faithfully served the Government and rose to elevated position in the Government Service. You were at one time Acting Director, Civil Aviation.

You are also a family man presently, I understand, 55 years of age with children still at school. You are a very personable individual and it is painful to come across you in these circumstances.

But the crime has also to be considered. The offence is one which involves dishonesty and the betrayal of trust vested in you by the Government which was your employer. The seriousness with which such conduct is to be considered is reflected by the provisions of the Theft and Kindred Offences by Government Officials Order. The Kindred Offences by

Public Officials Order, King's –Order-in-Council No. 22/1975. This places a Government Service Public Officer in a different category from other citizens who commit the same offences and in terms of that legislation a minimum sentence of imprisonment is prescribed. Recognizing that inflexibility in these matters is undesirable and may lead to injustice the legislation vests the court with a discretion which has to be exercised in accordance with the principles laid down therein.

One such principle is that one may look to extenuating circumstances, which if found would justify punishment other than a custodial sentence. Extenuation implies factual circumstances which lessen the moral culpability of the commission of the offence. In this case I can find none.

I am also vested with the discretion, having regard to your age and other factors to impose a sentence other than an unsuspended prison sentence. The question arises whether such discretion can be exercised in your favour on the grounds solely because that you are a man with no known no previous transgression and who has lead an life free of brushes with the law.

But there is a very serious consideration in this matter and that is the question of contrition, an appreciation of what you have done and sincere regret therefore. This could demonstrate to me that there is no need to further punish you in order to achieve reformation. If you had come to terms with your offences, shown an appreciation of how seriously you have transgressed, made a clean breast of it at the earliest opportunity, and had offered and taken steps to make restitution for what you have done, it would be possible to infer contrition on your part.

Your approach in these proceedings has made that impossible. You have maintained in the face of what I have found to be overwhelming evidence to the contrary that you were not guilty. When time came for your counsel to argue in mitigation, it was still not possible to acknowledge the correctness of the judgment and to express any contrition for what you have done. Your approach is to preserve whatever prospects of success you may consider yourself to have on appeal, by refusing to acknowledge your guilt and to express your contrition therefore. This of course you are entitled to do. You may be successful, there is this possibility, but now the evidence is overwhelming. You are the person who took the money and you are the person who tampered with the receipts in order to cover your theft.

Your counsel has said that you were sorry that you were charged, I am prepared to accept that, but it is not at all the same thing. Your defence involved the attacking of a person who I find to be innocent, that is Miss Dlamini. She was attacked on the basis that she, being paid a poor salary had greater motive than you to commit this offence.

It was also pointed out to me by your counsel that because of the procedures adopted and in place in the department for the receipt of money, you were tempted to take the cash. It is not correct to say that you were tempted, you maintain that you did not commit the offence. There is nothing to suggest that you were tempted.

But even that argument cannot hold water because if you had seen a loophole in the procedures, you should not have taken advantage of that. You should have seen to it that these procedures were corrected as was done when Dr. Tambi took control.

I cannot find in the whole conduct of this case that you appreciated what you have done and you regret it and that you have resolved never to do it again. This I cannot find and accordingly I cannot exercise a discretion in your favour to avoid a custodial sentence. I therefore impose the following sentences on the three counts:-

**Count 1** – You are sentenced to 2 years imprisonment and an order is made in terms of Section 5(1) of the **Theft and Kindred Offences by Public Officers Order** (King's Order in Council 22/1975), requiring you to pay compensation to the Government (DCA) in an amount of E4 500.00.

**Count 2** - You are sentenced to 3 years imprisonment. Again an order is made in terms of Section 5(1) of the **Theft and Kindred Offences by Public Officers Order**(King's Order in Council 22/1975), requiring you are to pay compensation to the Government (DCA) in an amount of E37 000.00.

A further 2 years of imprisonment is imposed suspended for a period of three years on condition that:-

- a. You are not hereafter found guilty of theft punishable in terms of the Order committed within the period of suspension, and

- b. You are not in wilful breach of the compensation order for payment of E37 000.00.

**Count 3** - You are sentenced to 2 years imprisonment. A further order in terms of Section 5(1) of the **Theft and Kindred Offences by Public Officers Order** (King's Order in Council 22/1975), is made requiring you to pay compensation to the Government (DCA) in an amount of E7 920.00.

### **Concurrence**

The sentences of 2 years, 3 years and 2 years on counts 1,2 and 3 are to run concurrently, and that excludes the sentence of 2 years which is suspended and these sentences shall be deemed to have commenced to be served on the date the bail lapsed when you pleaded not guilty to the charges on the 8<sup>th</sup> November, 2000.

The compensation orders are to be paid as follows:-

1. Amounts of E7 920.00 and E4 500.00 to be appropriated from monies deposited as bail, and applied in full payment of the compensation orders made on Counts 1 and 3.
2. The balance of the bail money is to be applied to reduction of the E37 000.00 and the amount outstanding after such reduction shall be paid in instalments upon the terms and conditions as stated below. The provisions for instalments will only apply in the event of you being unable to pay the balance of the compensation order forthwith and if it is not possible by the levying of execution on a civil judgment in accordance with the rules of Court.
  - a. the instalments shall each be in an amount of E1 000.00;
  - b. the first instalment shall be paid on 7<sup>th</sup> April 2001 and subsequent instalments on the same day of each succeeding calendar month thereafter until the compensation order shall have been paid in full;
  - c. payments shall be made at the treasury in Mbabane;

- d. in the event of the accused defaulting in any one payment, and remaining in default for three days,
- The government may levy execution for recovery of the full amount then outstanding as provided for in respect of civil judgments in the rules of Court, and
  - If such default be wilful the court on application by the Director of Public Prosecutions and not less than three days notice to the accused, may bring into effect the whole or such part of the suspended sentence of imprisonment imposed on count 2 as the court may deem fit.

**SAPIRE, CJ**