

IN THE HIGH COURT OF SWAZILAND

JUDGMENT ON TRIAL WITHIN A TRIAL

HELD AT MBABANE

Case No. 1163/19

In the matter between:

THE KING

VERSUS

ZOLANE ANDY MTHIYANE

**Neutral Citation : The King Vs Zolane Andy Mthiyane (277/21)
[2023] SZHC (2nd August 2023)**

Coram : J.S Magagula J
Date Heard : 21st June and 5th July 2023
Delivered : 2nd August 2023

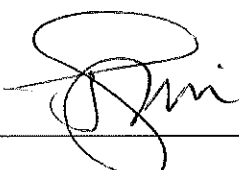
[1] When this matter was called for continuation of trial on the 21st June 2023, Mr S. Mdluli who appeared for the crown

indicated that he wishes to hand in to court a confession statement made by the accused before a Judicial Officer. He however pointed out that the statement was being challenged by the defence. He therefore applied for a trial within a trial to be conducted by the court to prove that the statement was freely and voluntarily made.

- [2] The court directed that such trial be conducted. The crown then led three witnesses in this regard. These were Senior Magistrate Sifiso Vilakati who recorded the statement and appeared as PW7, the Interepreter Phumlani Khumalo who appeared as PW8, and 7194 Constable Celani Hlophe who appeared as PW9.
- [3] Mr Vilakati first explained the procedure he normally adopts when recording confessions and stated that he followed the same procedure even in this case. He explained that there is a standard form that he completes which contains the questions that has to be put to a suspect before he/she makes a confession statement. The purpose of such questionnaire is to ensure that all relevant questions are asked to ensure that the suspect freely and voluntarily intends to make a confession statement. Once the Judicial Officer is satisfied that the suspect has not been coerced or induced to make the statement, he then gives an opportunity to the suspect to make the confession statement.

- [4] The Judicial Officer then went on to read the statement he recorded in this case and handed it into court. He stated that the statement was signed by himself, the interpreter and the accused person. The statement does appear to contain the said three signatures. Annexed to the statement is the form containing questions posed to the accused by the Judicial Officer before recording the statement and the responses thereto.
- [5] During cross – examination PW7 (the Magistrate), was asked only three questions. The purpose of the questions was to demonstrate that the Magistrate did not explain to the accused his rights to legal representation. The Magistrate maintained that he did and went on to state that had the accused stated that he needed legal representation he would have suspended the proceedings and gave the accused an opportunity to obtain a legal representative. When I perused the document containing questions that were put to the accused, I could not find anything said by the Judicial Officer relating to rights to legal representation. Neither is anything said by the accused on legal representation.
- [6] However, be that as it may, a perusal of Section 226 of the Criminal Procedure and Evidence Act, 1938, which is the section dealing with confessions reveals no requirement that the judicial officer recording a confession must explain to the accused his rights to legal representation.

- [7] In any event, considering the questions put to the accused person by the Magistrate before recording the statement, I am satisfied that the confession was freely and voluntarily made. I also note that the questionnaire and its contents are not disputed. The accused's responses to the questions put to him by the Magistrate indicate that he was neither coerced nor enticed to make the statement.
- [8] The only other challenge by the defence related to the identity of the Police Officer who presented the accused to the Magistrate. 7194 constable Celani Hlophe told the court that he is the one who accompanied the accused and presented him at the Magistrate's court. On the other hand the accused says he never saw this officer on this day. It does not seem to matter to me who accompanied the accused to the Magistrate's court. Such has no bearing on whether or not he freely and voluntarily made the confession.
- [9] For the foregoing reasons the court holds as follows:-
- 9.1 The confession was freely and voluntarily made.
- 9.2 The confession is admitted as part of the evidence in this matter.



J.S MAGAGULA J
JUDGE OF THE HIGH COURT