

IN THE HIGH COURT OF ESWATINI

JUDGMENT

HELD AT MBABANE

CASE NO. 213/21

In the matter of:

THE KING

VS

- 1. MDUDUZI BACEDE MABUZA**
- 2. MTHANDENI DUBE**

Neutral Citation: *The King vs Mduuzi Bacede Mabuza & Another (213/2021) [2021] SZHC 40 (15th July, 2024)*

Coram: M. DLAMINI J

Heard: 30th April, 2024

Delivered: 15th July, 2024

JUDGMENT ON SENTENCING

Sentencing - principles

[1] It is now over five decades that Professor Strauss *et al'* expressed on the subject matter, of which holds true even today, "*Determining a suitable sentence is one of the most difficult tasks a judicial officer has to face.*"² The learned authors then espoused, "*The*

¹ Criminal Procedure, University of South Africa, Pretoria, 1973 with Professor J.H. van Rooyen and Adv. J.J. Joubert

² Note¹ at page 226

science of Sentencing is closely related to Penology³, which covers the entire field of post-conviction treatment of the offender, taking into account the demands of retribution, general and special deterrence, incapacitation, and rehabilitation.”⁴ C. W.H. Lansdown *et al*⁵, cited R v Nassette⁶ expressed three questions which in my view, a judicial officer ought to avoid a positive answer once the sentence is passed. These questions are; i) *Is the sentence so severe as to be unjust?* ii) *Does it cause a sense of shock?* iii) *Is such punishment unreasonable or grossly excessive in the circumstances and one which a proper judicial discretion would not dictate?*⁷ It is trite law that the court in considering the appropriate sentence after the conviction of an accused person ought to engage the triad approach, namely, the interest of society, the personal circumstance of the accused and the circumstance of the crime.

Accused No. 1’s testimony on sentencing

- [2] Accused No.1 did not testify under oath. He chose to give an unsworn testimony from the criminal dock. He gave a very lengthy testimony. Due to the nature of the offences, it is my considered view that I quote verbatim Accused No.1 testimony in mitigation. It is as follows:

“I thank your Lordship for giving us the opportunity – no matter what it calls for in my life. I will first explain who I am, i.e. Bacede Mduuzi Mabuza. I was born under a Royal Kraal where there is a chief, in 1980 (2nd August) born by Jackson Madweba Mabuza and Esther Cikiza Mabuza in a large family. I am the 16th out of 21 and I grew up there and educated at school. I went to Dwaleni in the Shiselweni Region. My father brought me up. He taught me to be independent and fend for myself. He raised me with truth and to stand for the truth. He had no shame to stand for the truth even if he would stand for the truth all by himself. I know how to struggle. I would walk about 15KM to school. There were no public transport and roads. That made me strong and made me stand for the truth. My father was a businessman. He did subsistence farming. He taught me that would help me stand for yourself, by your mind and your strength.

In 2001, I was out of my father and started working very hard where I was carrying bags of cement and earned a meagre salary of E400.00. What hurt me most, is that I had a hard time going to school and now had to struggle during work. I found that no one in this country looked at the rights

³ Study of punishment for crime and prison management as an endeavour to suppress crime in society and appease the public of an appropriate punishment

⁴ Note¹ and ², *supra*

⁵ Gardiner and Lansdown, South African Criminal Law and Procedure, Vol 1, 1957 Juta & Co.

⁶ 1951 PH, H 83(T)

⁷ Note⁵ at page 671

and welfare of the Swazis who work in smaller businesses. I worked until 2006 where I realized that working under another man would not take me further in life. In November, 2006 I resigned and I started life with my family. It was very difficult when I started business during 2007, the business Baceth (Pty) Ltd. No help or assistance you get in this country when you start a business.

I found the government of Swazis oppressing you by imposing high taxes. It pained me to see government promoting businesses of foreigners than Swazis. In 2008, the people of Hosea where I grew up came to ask me to go and represent them in Parliament. I agreed. They had told me that Members of Parliament are able to work independently, able to make laws which change the life of Swazis. I was shocked when I reached Parliament. When I reached parliament, it was not what Swazis said. I tried to work patiently but realized I would not be honest to EmaSwati people. I noted it could happen that the chosen Swazis would go to Parliament and agree in one goal. What shocked me is that while these Swazis would agree there would be one LiSwati who would change what had been agreed by all the Swazis, i.e. both Houses of Parliament, where we would be told by His Majesty, the King Mswati III that we should change the decision. He would send messengers whom you cannot go against. This pained me. I asked saying, 'We 99 men and 99 women cannot realise what is good for EmaSwati.' I tried to sit down with the Speaker of that time as to what is the procedure and how we will run the business of the House. In a twinkle of an eye, I realized that is the way to work. In that term of 2008 – 2013 the Minister started doing illegal business by selling land to each other by overcharging. Instead of charging E12 million they charged E31 Million. This included Prime Minister Barnabas Sibusiso Dlamini. The members stood up to raise a motion that the money belonging to EmaSwati must be reversed and be given to EmaSwati. We met up with victimisation all of us who were involved such that Charles Myeza was arrested for crimes he committed ten years ago. That motion was never respected. This made me realise that Parliament was useless. In 2012, October 3, Thandi Nxumalo of Manzini South and was seconded by MP of Nkhaba Enock, introduced a no vote of confidence in the government. That motion passed by 42 MPs. 6 voted against and I abstained. Our law says once the motion has passed, the Ingwenyama King Mswati III must assent within 48 hours. What broke my heart is that 48 hours lapsed and it was up to 12 days without hearing if the King had assented. The law does not allow that the King may object but he must bless it. On the 12th day we were called to caucus where the media and the public are excused. We were told that the Ingwenyama said no we must take the motion back to Parliament. I did not take that lightly. I stood up even though I was told we should not ask but I raised the question. What followed is that I was victimized businesswise. I was scrutinised about my lifestyle of which I had gone to Parliament with that lifestyle. I was told that I owe government taxes of E4.8 million in my personal capacity. I fought until it decreased to E1.2 million for having stood up for the truth. By then no one was made to pay taxes for a home on Swazi Nation Land but I paid.

In 2013, elections year, the whole Government of Deputy Prime Minister stood up. Themba Masuku was Deputy Prime Minister. During my election he brought 200 bags of rice and beans to de-campaign me but I beat him still. They thereafter added 200 votes to outvote me after failing to out vote me by the food parcels. They said if I had a query about the votes, I should go to court. In that year, I had only nine shops as I went to Parliament having them. I decided not to waste my time and go to court.

I went to my businesses and I worked. In 2014, my businesses grew into 14 shops. In 2018, people of Hosea came to me saying come to Parliament and that it had hurt them deeply. They did not know how Government would sabotage them this time around. I won the election by majority as it earned 4000 and behind me a 1000. I went to Parliament and members had to choose the Speaker. We fought on day one as I did not take orders which were contrary to the law saying we should choose the Speaker. Government gave us Themba Msibi who was said was chosen by Ingwenyama. I lobbied and I chose Petros Mavimbela who was elected by us. We worked and while working we found ourselves having to pass laws which do not come from EmaSwati. This included POCA which came to oppress and make EmaSwati poor. We were shocked that there was a law in this Government which allowed the taking of property from Swazi Nation Land and it drops off children from the beds because the Government says that home was built by corruption money. It pained me a lot as I was the person I am. I remembered my past as I grow up a poor man and I noted this abomination done to Swazis. I sat down and asked God for intervention; to give me strength to stand for the truth as it was now the time. God heard my prayers. As when I entered the House as before I lobbied the House. I introduced a motion, and all the House supported me. It was not easy to the Attorney General and the Deputy Prime Minister who was acting Prime Minister Themba Masuku. Attorney General was Sifiso Mashampu. He called me a person who does not know the law. He said the motion should not come in. Luckily, the Members of Parliament stood by me. This caused problems and was the start of the situation which was to be very strained, i.e. the relationship between me and Themba Masuku. What I can say, the motion passed with over 40 Members of Parliament.

Another motion came saying dagga which would assist in health should be passed. That we should pass a law legalizing dagga. What was difficult in that motion was it was now killing the way of life of EmaSwati. I said I would stand for the truth. I stood for the truth of cannabis which is being cultivated even though I do not cultivate it. The reason it was that it was achieving or going back to POCA laws which killed the life of EmaSwati. At that time, we were prepared to include members of the House who would cultivate the dagga. The penalty for being found in possession was E240,000 or 20 years imprisonment without fine. In my life I do not support dagga and one who smokes but I cannot sit and not support one who lives through it. I asked God to assist me to give me strength to stand in the House. I did stand up. This was not easy to DPM as though he was told, 'Go and tell him.' He always found resistance and I was leading the resistance. That motion passed. We stopped that law up until today. I was told by the senior police officers that we are told to go and look for you and arrest you. They say we should look for any crime we would charge you with. The election came which replaced a Senate. I came with a candidate who was a favourite among the MPs. It was clear, he would win the election. That candidate was oppressed in all manner as they came all out trying to intimidate that candidate. I said, 'Come I will ensure you win. I will lobby for you.' What shocked me on 5th August when I came out of the gate, I found a battalion of police led by Clement Sihlongonyane who said I had broken the law by speaking to the candidate to go to stand for the elections. I was arrested and tortured. They returned saying, 'Mr. Mabuza you are a businessman.' I should leave politics. They know there is no offence. 'You are unable to work with in Parliament because you were challenging the things you ought not.' There were many of the police who came to me saying the very same story. I said, 'It is true

and I hear and can see how worried you are about me. But it was difficult for me to refuse the Swazis who sent me and trusted me. I believed that it was God who sent them to send me.' I said whatever I was saying I was saying so sent by the people of Hosea. As I am a businessperson, I go around the country and by luck the people do bring their grievances and I represent them. That is why even today I am standing before court and coming from prison because I agreed when the people sent me.

In 2021 where there were many incidents in Parliament which were raised for the attention of Parliament. But the kind of Government is one which does not listen to EmaSwati. There came a stage where people were killed negligently by the police. It came a time whereby the killing of EmaSwati in the hands of police was unlawful. While that had happened, we had COVID 19 laws where there were prohibitions for the livelihood and business of EmaSwati. It was painful as Swazis lamented and complained to us as MPs. When we raised that the prohibitions were constraining Swazis, the response would be that Ingwenyama does not agree to that. We fought for that. It was not easy. I was vocal on that as I was on anything that pertained to the life of EmaSwati. We raised the motion on the killing of the people. By the end, no one would be arrested. I say everything we are facing today emanated from the above. I mean the offences upon me saying I am a terrorist, murderer and the alternatives. On the 5th March, 2021 when we debated the COVID 19 condition, that is where I stood up and asked that the entire Parliament must consider the way the Prime Minister comes into the House. I said this because the PM who is there by means of appointment does not hold the interest of EmaSwati at heart. He does not listen to the cries of the people. He does not care what they would eat when going to sleep. He does not care how they manage to pay school fees and university tuitions. He does not care about the life of sisters who work in factories and many others. What he cares about is what the Ingwenyama wants us to do, i.e. projects. Some of the projects are very expensive and costly, consuming money for the people. They are used for corruption (including ICC which started as E83 million but today it is up to E 7 billion, yet it is still incomplete). Parliament was refused to a chance to see and monitor. We are told Ingwenyama says we should not monitor it as it he has interest in it. All these we got from the messengers who told us that they were sent from Ingwenyama. I then agreed with the Swazis that want to elect PM as I was a witness to the fact that where I am, there is nothing we can do about it. This is a good idea that EmaSwati must elect their own government. I am sure that government can deliver as I am in that government but I was arrested by that government.

When Thabo Nkomonye had died, I got an invitation saying I should go to Sigodweni Police Station where a petition would be delivered for his death. The students invited me. I did not agree to go but I said I agree with their grievances. They should deliver the petition themselves. Unfortunately, I was invited to the memorial service. I got a call from Honourable DPM who said the memorial service was unlawful. Fortunately, I responded saying, 'Hon. DPM where I am going is where I am invited by EmaSwati and not the organizer and I cannot refuse to attend.' In that memorial service, OSSU Police were sent. There were gun opening, tears gas, rubber bullets and chaos. In less than days, we were summoned immediately to Parliament where I, my accomplice and Magawugawu were attacked saying we allowed delivery of petitions. I also stood up and told them that the petition that the people are delivering is supported by the Constitution of this country. I never feared standing for the truth during

that time. On 21st June, 2021 we were summoned to Parliament again. It was still the petition delivery matter where the people in the whole country wanted the right to amend the Constitution. Even then I stood up and expressed that it was the right of the Swazis to demand an amendment of the Constitution. They threatened me with arrest by DPM and Pholile Shakantu. Even there, I answered saying it is my right to call for a difference in political opinion. If it calls for my arrest, I would rather be arrested even to death. There was tension and fight in that caucus such that unpalatable words were exchanged among us including Mabulala and Phila Buthelezi who today are Ministers, Honourable DPM supporting them who was Acting PM. In my view they were rewarded for standing against what the people wanted. What pleased me in the caucus was that it was agreed that the petitions would continue to be delivered.

As I approached the end, this is my opinion and not what Parliament viewed. I stand saying the country of EmaSwati needs to amend the Constitution and be political reforms, of which I was arrested for. I stay in custody and I am unable to meet the people of Eswatini and I stand for that as I was sent by them. I am unable to see EmaSwati. This will not depart from my heart that if I hold a different view, it calls for me to stay in custody. I would rather stay I jail and forego my family or die in jail. I would rather die in jail but Swazis, the truth that there be democracy. They do not need to be deceived by Taiwan's rice. However, they need change in the monarchy and government be separated, continuing to respect the monarchy, but should not mix with government. I will not agree with what happened 29 June, 2021 where over 100 EmaSwati were killed by forces. Let the death ends with them. From now onwards let there be a change. They were killed for their right to elect a government by themselves. What pained me is that the killing of people by the forces is still proceedings without accounting. The forces have taken the law into themselves. Once they kill someone, they say, 'These are some of the terrorists.' What is more painful is when people die for asking for their right to elect a government. I see the forces seating down not arresting anyone. As when I stand before court my attorney whom I started the matter with was painfully killed and no one was arrested while on the other side people are arrested, i.e. Thulani Rudolph Maseko who was killed for standing for the right of those people just like I am standing for those rights.

What I stand for I do not stand for one sided part but for all parties involved and the truth. This involves all the parties of Government which performs work and where there is no working of any part of Government independently. As of today, those police who are shooting people are doing so under the circumstances they are in. They do not kill because they like but are told that if they do not kill, they will lose their jobs. That is when they end up killing their children and some of their children were killed by some of the police. We have or are living with Swazis who were disabled by forces on 29 June. They have bullets in their bodies as they are threatened that if they ever mention such they would be in trouble. Even the work of the judiciary, we have observed that there is a challenge. I wish the court would work independently and not be given directions. It pains me to see that matters of persons called terrorists are channeled to certain judges. If you can ask me today if someone could be arrested as terrorist, I can tell you who would be assigned that matter. What is painful about that is that those people would never be granted bail. They would be taken to Matsapha Maximum Prison where it is not a remand centre but for convicted criminals. Those people would live a painful life, a life that would render them mentally

unstable or paralysed upon release. The one who does not know such things would say I am speaking on my behalf, yet I said I would speak the truth and nothing but the truth. I, in my personal capacity, say that whoever has a hand in my persecution be it in the police, court or correctional, I forgive him. For the reason that I know deep in their heart, it is not what they were to do but due to the situation they are living under in the kingdom. They have caused my life to be difficult. They made me lose things that I worked for. But I say, 'Let us face one enemy.' The Swazis need to be free.

I am standing before you as a family man. In the prison where I am incarcerated, I am not allowed to be visited by my wives, children, mother and EmaSwati because I am charged with terrorism. All people who are not charged under terrorism are given the rights or benefits while those charged with terrorism are given the right to be visited only by 4 visitors per month. If you are lucky to sit with someone who is in authority in prison, he would simply tell you that we feel pain about your family or living conditions and if it were in our powers we would grant you all the rights the other prisoners have. We have to go and a special request which could be granted or refused but in most instances it is declined. They also tell us that even if you can go to court you must forget about them because those courts are controlled where we are also controlled. I can be victimized back in prison by what I am saying in court.

Now I would talk as if I am asking a question. Those people who are kept in prison they are fed soup and porridge day and night, i.e. morning, lunch and supper. This has been donated by Taiwan. When they stand up and speak or say their grievances, they are assaulted just like Swazis out there who, too are assaulted when speaking out their grievances. Many people entered prison without disability but now they are disabled due to prison batons or sticks. Because the fear that they instilled in me through incarceration is the same fear that has been extended to those prisoners who cannot speak for themselves due to the way I stood up again and spoke of the things that are not going well. But I met up with what they met. I was beaten, stripped naked, threatened with everything but I still speak on behalf of EmaSwati as they need freedom.

As I sum up, I would ask the court if it wants to pass the sentence, it should think deeply whether we should be kept into custody for having spoken on behalf of EmaSwati even beyond the three years I have already spent in prison. I say this because in the past, the king summoned the people's parliament where Swazis were heard expressing what we are saying. They want to elect their own person even though some met resistance. Some stood and asked that, 'Please release Bacede and Mthandeni as they committed no crime' and they said what we said was something they had sent us to present. I also ask the court to pay attention to what the people submitted. The sentence should not be harsh. Because if our sentence is harsh, it can render the current Parliament not to stand up for EmaSwati which is already shocked.

May I lastly say this, which is the personal life. As I have mentioned, I am a family man. I have wives as I believe I have chosen very well. I have children. Many of them. They are 16 of them who are alive. They range from the age of 2 years to 22 years old. They are wondering where their father went to as they are unable to see me in prison. I love them a lot. That is why I woke up even at night to ensure their welfare that they never go hungry. These wives I am referring to, today are widows yet their

husband is still alive as he is arrested. The businesses I mentioned prior having set 14 shops, today there is not even one. The business had employed Swazis which were about 500. Today, they are jobless. I am still incarcerated as per court orders. They went and burnt my shop with a stock of E10 million inside. Nothing was salvaged. All this is the pain I have been subjected to and the truth I still stand up for. What makes painful is that all the shops were insured so that when something like this happen, I would be paid. I was up to date with my payment, i.e. Lidwala Insurance. They did all the paperwork to be paid out. They came back saying I should not be paid. All these things I speak for the reason that what is happening to me should stop with me and not happened to any other LiSwati. Since I started the business in 2006 to 2021, I had never been sued in court for any debt. But today as I was in prison, I would see in the newspaper with my name tarnished that I have failed to pay. So that I can never rise up again. Most things I worked for have been repossessed but still I will not change my mindset that EmaSwati need freedom. It catered for orphans and educating them or assisting them with school fees. Today those children are out of school due to my fight for EmaSwati. I identified people who were disable and provided stipend monthly. Those stipends disappeared which they would get over the years. All this I was not doing for fame but because it was not easy for me to see another Swazi suffering as I did when I grew up. All this I say so that the court can see the pain I have subjected to but what I cannot compromise is that God is still alive.

I ask the court that even if the court finds us guilty, but it must in its heart consider that in all the charges, it is not according to law. We are only facing the charges as there are people out there who are out to serve their interest. I ask the court that I may be out of jail to look at my wives who do not have a husband and my children and my mother who is disabled and has not been able to come to see me in prison ever since I was arrested. Coming to my submissions, I asked God, 'What I should do Lord? Should I first consider me and my family or the Swazis that are suffering?' God declined or did not allow me to sell the truth. He called me to stand for the truth that the King should hear the grievance of EmaSwati and allow them. What I may not hide is that even if it is so much difficult, I believe God will use his people to fight for me. I ask all Swazis to pray to God and seek for the truth and not sell it.

I thank you for what has happened in this journey, as I have been advised by my attorneys that you can give me the days or release me. I ask God to descend upon you as you take the decision. I thank you and the Advocate and Attorneys who represented us. May I thank you. I want to thank the family, i.e. Mabuza family and Hosea members. I humbly and respectfully say I am not guilty in all this. God bless! Thank you!"

Accused No. 1 personal circumstances as adduced in mitigation

- [3] Accused No. 1, as evident from his unsworn evidence, took much time testifying under mitigation. From his evidence, this court shall endeavour to pick up what constitutes mitigation.

- [4] The court however, notes that accused No. 1 lambasted the government firstly that it chose to support foreigners over Emaswati in businesses. It further imposed high taxes. He testified that he was shocked when he first went to Parliament to learn that one man, and he mentioned the name of the King, controlled decisions taken by both Houses. He highlighted a motion raised and passed for a vote of no confidence against the then Prime Minister Dr. Barnabas Dlamini following that cabinet Ministers *“started doing illegal business by selling land to each other by overcharging.”* He explained the *‘overcharging’* as rather than sell the land for E12 million, the said land would be sold for E31 million. That motion, accused testified, was never respected and it is then that he *“realized that Parliament was useless.”* He decried the Kings failure to not assent to such motion as, *“the law does not allow that the King may object but he must bless it,”* so testified accused No. 1. With forty-eight hours having passed without any assent and on the twelfth day, they were advised that, *“The King had said they should take the motion back to Parliament.”* It was accused No. 1’s testimony that he did not take that *“lightly.”* He did raise questions despite that he was warned not to. As a result he was, *“victimized”* in that he was subjected to a lifestyle auditing where he was told that he owed government E4.8 million. He fought that until it was reduced to E1.2 million. He was the only person made to pay for a home on Swazi nation land.
- [5] 2013 was an election year. The Deputy Prime Minister, Themba Masuku went to his constituency to outvote him by delivering to the people two hundred bags of rice and beans. He however, was able to out beat him and his next move was to add two hundred ballot votes. That is how he could not succeed in the elections. He raised a complaint and was advised to go to court. He decided, *“not to waste his time and go to court.”* In 2018 however, he won the election by a whooping majority of four thousand as his opponent trailed behind him with one thousand votes. In Parliament, Government imposed Themba Msibi of whom they were told was *“Ingwenyama’s”* choice as the Speaker but they were able to elect Petros Mavimbela. In the performance of their duties in Parliament, they found themselves, *“promulgating laws which were not wanted by Emaswati.”* Accused No. 1 gave an example of POCA (Prevention of Corruption Act) of which, *“oppresses and make Emaswati poor.”* Accused No. 1 lamented, *“We were shocked to learn that there was a law in this Government which allowed the taking of property from Swazi nation land and it drops off children from the beds because the Government says the home was built with corruption money.”* It

is then that he lobbied and gained support of forty members of Parliament. The motion passed much against the wishes of the Deputy Prime Minister Themba Masuku and the Attorney General, Sifiso Mashapu, according to accused No. 1. This was the beginning of his woes at the hands of the Deputy Prime Minister, Themba Masuku, retorted accused No. 1. A motion in support of the Ministry of Health was introduced. It was on legalizing dagga. Its purpose was to destroy Emaswati in that once found in illegal possession of dagga, a person could face a twenty year imprisonment without a fine or E240 000. In as much as he does not support consumption or smoking of dagga, he supports those who thrive through dagga. This law was taking Emaswati back to POCA. He led a resistance group against that motion. Even though the motion passed, they were able to stop that law. It is then that he was informed by the police that they had been instructed to arrest him on trumped up charges.

- [6] On the 5th August, when it was election for Senate, he came up with a certain candidate whom he lobbied and it was apparent that the candidate was everyone's favourite. The candidate was however, *"oppressed in all manner as they all came to intimidate him."* As he came out of Parliament's gate, he met Clememt Sihlongonyane who had come to arrest him for inviting the candidate to stand for elections. He was arrested and tortured. The police informed him to quit politics and concentrate on his business as he was saying things he ought not to in politics. He refused, telling them that the people entrusted him and they believed in him. He further testified, *"As a businessman, I go around the country and by luck, the people do bring their grievances and represent them. That is why even today I am standing before court and coming from prison because I agreed when the people sent me."*
- [7] In 202, owing to the Government which, *"does not listen to Emaswati, there came a stage where people were killed negligently by the police."* As they were killed, they had to debate COVID 19 prohibition regulations. The people complained to them as members of Parliament. They raised that the regulations were oppressing the people. They were told that the *"Ingwenyama"* does not agree to that. They raised a motion on the killing of the people. All that resulted in the offences he is facing today which classify him as a terrorist, a murderer and the *'alternatives'*.
- [9] On the 5th March, 2021 during the COVID 19 debate, he stood up and requested the entire House to consider the manner the Prime Minister came to parliament. Accused

No.1 testified, *"I said this because the Prime Minister who is there by means of appointment does not hold the interest of Emaswati at heart. He does not listen to the cries of the people. He does not care what they would eat when going to sleep. He does not care how they manage to pay school fees and university tuition. He does not care about the life of sisters who work in the factory and many others. What he cares about is what the Ingwenyama wants us to do and that is projects. Some of the projects are very expensive and costly, consuming money for the people. They are used for corruption such as the ICC which started as E83 million but today is E7 billion yet it is still incomplete. Parliament was refused a chance to see and monitor it. We are told Ingwenyama says we should not monitor it because he has an interest in it."* He pointed out that he learnt all this from the messengers who were sent by Ingwenyama. He then agreed with Emaswati who wanted an elected Prime Minister. It was a good idea that Emaswati must elect their own Government following that he was a witness that he was in that Government but he *"was arrested by that Government."*

- [8] Upon the death of Thabo Nkonyane, he was invited to Sigodvweni to deliver a petition. He declined. He accepted one for his memorial service. He also received a call from the Deputy Prime Minister advising him that the memorial service gathering was unlawful. He responded that he was going to attend where Emaswati had invited him. Police from OSSU were present and there was chaos and opening of rubber bullets and tear gas. Few days later they were summoned to Parliament where Magwawugagu, accused No. 2 and himself were attacked and it was said that they allowed the delivery of petitions. He informed Parliament that the petitions that the people were delivering were permitted by the Constitution.
- [9] On 21st June, 2021, they were again summoned to Parliament on the same issue on delivery of petitions where the people wanted to amend the Constitution. Even then, he stood up and said that it was the right of the people to amend the Constitution. *"Shankatu and the Deputy Prime Minister threatened"* him with arrest. He informed them that it was his right to call for a different opinion on politics and that he was prepared for the arrest even to death. Unpalatable words were exchanged with Phila Buthelezi and Mabulala who were supporting the acting Prime Minister. They were then rewarded by being made Ministers for standing against what the people wanted. He was pleased by the caucus as it was agreed that petition delivery should continue.

- [10] Accused then testified while in the criminal dock, *“As I approach the end, this is my opinion and not of Parliament. I stand saying the country of Emaswati need to amend the constitution and have political reforms which I was arrested for. I stay in custody and I am unable to meet the people of Eswatini and I stand for that as I sent them. I am unable to see Emaswati. This will not depart from me that if I stand for a different opinion, it calls for me to stay in custody, I would rather stay in jail and forego my family or die in jail. I would rather die in jail but Swazis, the truth that, there be democracy. They do not need to be deceived by Taiwan’s rice. However, they need change in the monarchy and government must be separated – continuing to respect the monarchy but he should not mix with government.”*
- [11] He lamented, saying over one hundred Emaswati died in the hands of the armed forces. He testified, *“They were killed for their right to elect a government by themselves.”* What saddened him, so he said, was that the killing still continues as the forces have become a law unto themselves. When they kill someone they say that person was a terrorist. They die for their right to elect a government. Thulani Rudolph Maseko was killed for standing for the right of those people just like him as he stands for their right.
- [12] He stood for all parties and he was aware that even the police who shoot people do so under compulsion. There was no independence in performance of duties as they were told that if they fail to do so, they would lose their jobs. They end up killing their very own children. In June 29, forces disabled Swazis. They live with bullets in their bodies and are warned not to divulge such as they would be in trouble.
- [13] The judiciary had its share as well as it is not independent. It is always given directions. Cases of terrorists are assigned to specific judges. He can easily predict who would be assigned a terrorist case before hand. All terrorists accused persons are never granted bail. They would be taken to Matsapha Maximum Prison, which is not a remand centre where they lead a painful life as they become mentally unstable upon their release. He forgives every role player in his *“persecution’, be it the police, court or correctional services,”* accused No. 1. testified. He then expressed, *“For I know it is not what they were to do but it is due to the situation they are living under in the Kingdom. They have caused my life to be difficult. They made me lose things that I have worked for. But I say to them, let us face one enemy. The Swazis need to be free.”* He proceeded to testify that if the Correctional officers could be asked, they would say that what they are doing

upon him was contrary to their wishes. That was because he was denied visitation rights like all other inmates. He was only allowed four visitors per month. He then said of inmates, *“These people who are kept in prison are fed soup and porridge day and night, that is morning, lunch and supper. This has been donated by Taiwan.”* He pointed out that when they complain, they are assaulted just like those Swazis who are out of prison. He said he too has been *‘beaten, stripped naked, threatened with everything, but I still speak on behalf of Emaswati as they need freedom.’* Accused No. 1 mentioned that the King had summoned the People’s Parliament where it was submitted that they (accused No. 1 and accused No. 2) must be released as they committed no offence and that they had spoken what they sent them to say. The court ought to pay heed to the submissions by the people. He then lamented Lidwala Insurers for refusing to pay for the loss he suffered as a result of his fourteen shops burnt during his incarceration. Having thanked the court, his defence Counsel, Mabuza family and Hosea members of the community, he then expressed to the court, *“I humbly and respectfully say I am not guilty in all this.”* He had earlier testified, *“My attorneys having advised me that you may release or incarcerate me, I pray to God to descend upon you as you take the decision.”*

Mitigating circumstances by accused No. 1

[14] Out of abundance of caution, I shall judiciously decipher from the lengthy testimony of accused No. 1 mitigating factors. I am very much alive to the fact that accused No.1 in his unsworn evidence, took much time delving in matters which did not form part of mitigation as demonstrated in the preceding paragraphs. I am not clear as to why, as he was represented by two senior Counsel of high caliber and vast experience together with three assistance. He stood guided in that regard. That as it may, I shall scan for mitigation factors from his lengthy evidence and proceed to consider them in passing of sentence.

[15] I consider that accused No. 1 is the first offender. As a man of forty four or forty one years during the commission of the offences convicted with, he had had no brush with the law. This comes from his evidence that he was born on the 5th August, 1980. He had been a good citizen of this country. This is fortified by the people of his constituency, Hosea, as they entrusted him with representing their interest in Parliament. I note further in this regard that he had been in Parliament previously,

through the same process in the 2008 Parliament as it came out in his testimony and this is common knowledge. He was therefore a good and honourable member of society before then. This is a credit to him in considering sentence.

[16] I consider as well, as he so testified, that he is a family man who has wives. He did not however, mention how many they were. I take into account that he has sixteen children in total. Some are as young as two years old while those older, were twenty-two years in age. His wives and children look up to him for their living. Not only did he, according to his testimony, look after the members of his family but that he ran a charity organization which contributed towards the payment of school fees for orphans and vulnerable children. He also provided monthly stipend for the physically handicapped.

[17] Another point that counts to his credit in sentencing is that he has been a business man who has built his business empire from a humble beginning as he testified that he was born from a family of twenty-one children while he was the sixteenth child. His family was not affluent. He began his career by carrying bags of cement and worked up his way until he acquired fourteen shops, spread throughout the Kingdom. From these set of given circumstances, this court considers that he nevertheless climbed the echelons of life and became an honourable member of society.

[18] This court further considers that he had, before his arrest, employed about five hundred people. In other words, he was responsible for the livelihood of a significant number of homesteads. He deserves applause in this regard and in this matter it shall come by means of reduction to his sentence. He has lost virtually everything, that is, businesses as they were burned while in custody, possessions, repossessed and is facing law suits as a result of his incarceration. He did testify that he did go through school, although he was not clear as to his level of education. It is safe to conclude from his manner of expression though that he was a man of moderate education. He had compassion as he did not want to see others suffering the same fate of poverty which he experienced while growing up. Many of the members of his community who depended upon him were left destitute following that he was then unable to pay their stipends.

Accused No. 2's evidence in mitigation

[19] Accused No.2, Mthandeni Dube, testified under oath in mitigation. His evidence was brief. He testified that he was born in the Shiselweni region, at Hlathi area. He grew

up in his maternal homestead. He first attended school at Dwaleni Primary School and proceeded to Cana High School to complete his education. In terms of his tertiary qualifications, he is a diploma holder in Accounting and Finances. He served under chief Masiphula Fakudze. His constituency was Ngwempisi under Manzini region.

- [20] He took care and was guardian of five children who belonged to his two deceased brothers. His seventy-five year old and hypertension ailing mother was also under his care. Two of his brother's children were at tertiary while two at high school including his own child. One child for his brother was at primary school. He also provided for one hundred and fifty children from his community with sanitary towels, toothpastes and toothbrushes and school shoes. He extended such help using his meagre earnings.
- [21] He was also a business man who thrived from breeding cattle and goats. His business was suffering due to his incarceration. In as much as he respected the verdict, he was innocent of all the charges. The court should consider that his continuous incarceration shall cause poverty to his children and negatively impact her mother's condition.
- [22] He decried the death of many people who were killed during the unrest and the destruction of property. His prayers were that they should all heal and find peace in their lives. He did speak about the finances of the country and his intention was to help his community. He was a Member of Parliament before his arrest. Prison life was not easy. He has however learnt something from his incarceration as he has met people of different mindsets. Nevertheless, he did not wish to see his child or relative in prison.
- [23] He was asked under cross-examination if he accepted the consequences of his speech in June, 2021. He responded: "*As I pointed out, I respect the verdict of the court, but believe I will succeed in my appeal. I have seen criminal activities of stealing and burning while I was incarcerated.*" He was asked if he understood the question. He responded in the affirmative. He was asked to give an answer to it. He responded, "*That is the answer.*" It was posed to accused No.2, as a follow up to his response, "*Should I accept that you accept no remorse for the consequences of your speech?*" He pointed out that he was not fond of sedition and that it pained him to learn that

businesses were burnt by people who had their motives. The cross-examination proceeded as follows:

- Advocate Leppan : *“You did understand the question?”*
- Accused No.2 : *“Yes.”*
- Advocate Leppan : *“Is that your answer?”*
- Accused No.2 : *“Yes.”*
- Advocate Leppan : *“Did you hear and understand the speech by accused No.1 yesterday?”*
- Accused No.2 : *“I heard even though I might not remember everything he said.”*
- Advocate Leppan : *“Was there anything in particular that you disagree with?”*
- Accused No.2 : *“I was a member of Parliament of Ngwemphisi. My job is over. The accountability belongs to the current Parliament. What remains with me is developing my community so we can fight poverty.”*
- Advocate Leppan : *“You have ignored completely the questions. Was there anything accused No.1 said which you disagreed with?”*
- Accused No.2 : *“Accused No.1 delivered his testimony on his own capacity, but what I said in my speeches, I did as Member of Parliament.”*

Mitigating circumstances by accused No. 2

- [24] I take into account in mitigation that accused No. 2 grew under the care of his maternal relatives. He completed school. Although he qualified in the accounting and financial profession, he decided to do animal husbandry and thereby becoming a business man.
- [25] He has a number of children depending upon him for a livelihood. These are his own children and those of his two deceased brothers. He also looks after his sickly mother

who is a senior citizen. Above that, he has committed himself to catering for the members of his community by providing sanitary needs. He also buys school shoes for them. The number of the community members who rely on him for such basic and necessities are one hundred and fifty. These is a significant number.

[26] I consider that accused No. 2 is also a first offender. He has had a clean record until his present conviction. He was also an honourable member of society and the people of Ngwempisi constituency bore testimony to that as they elected him to Parliament.

Circumstances of the case

[27] It is apt to repeat in summary the offences the duo have been convicted of. The main count under count 1 is for contravention of section 5(1) read with section 2(2)(a) to (d) of the Suppression of Terrorism Act 2008 as amended. They have been found to have by their public statements, encouraged the people to disobey a lawful ban by the Acting Prime Minister which resulted in the death and injury of persons, damages to property and other serious incidents.

[28] The accused persons have also been found guilty on the alternative charges. The defence has raised an issue that once the court found them guilty on the main count, it ought to have not convicted them on the alternative counts. This was contrary to law, according to the defence Counsel. I must hasten to point out that 1) the principle of the law submitted by defence Counsel is provided for under the South African legislation, section 83 of the Criminal Procedure Act No. 51 of 1977. We do not have a corresponding section in our own Criminal Procedure and Evidence Act No. 38 of 1967. On the contrary, in our jurisdiction, every accused person who has pleaded to a charge is entitled to a verdict.⁸ The two accused herein pleaded to the alternative counts as well. They were therefore entitled to a verdict of either an acquittal or conviction by virtue of section 155(5) of the Criminal Procedure and Evidence Act No. 38 of 1938 as amended (CP&E). Our CP&E does not provide that once a verdict is entered on the main charge, there ought to be no verdict in the alternative counts. Our procedure guides against multiplicity or duplicity of offences. Even here, the CP&E provides that an accused person should take an objection before a plea. 2) In order to ensure that the

⁸ Section 155(5) of the Criminal Procedure and Evidence Act No. 67 of 1938 – “Any person who has once been called upon to plead to an indictment or summons shall, save as being provided in this Act or any other law, be entitled to demand that he be either acquitted or found guilty.”

accused is not prejudiced in alternative counts, the practice in our jurisdiction is that in sentencing, the sentences are made to run concurrently with the main count. 3) At any rate, the conviction on alternative charges even in South African jurisprudence has not resulted in an acquittal even on the main charge. In *R v Mhlophe*⁹ where the court explained section 83, the court set aside the conviction based only on the premise that the record of proceedings in the court *a quo* could not be reconstructed following that it was missing and not that the court *a quo* had convicted the accused contrary to section 83.

- [29] Having considered the personal circumstances of each of the convicted persons herein, it is imperative that I also look at the seriousness of the crimes. In as much as the court is called upon to consider the nature of the crime, what informs the court is the manner in which the offence was committed and the outcome of the prohibited conduct. What was the impact of the offences herein? About thirty one witnesses were paraded by the Crown in asserting the gravity of the offences. I now capture their evidence which was not disputed by the defence as they were not cross-examined, more particularly on the manner of their execution and outcome.
- [30] PW1, 5492 Detective-Sergeant Colile Dlamini having taken the oath, testified that her work covered the Hhohho region. She was a photographer in the Eswatini Royal Police Service. She photographed various scenes reflecting damages caused during the unrest in June 2021. First scene was Buy Cash Hardware. The shop was vandalized and goods looted. Photographs No.1 to 26 depicted the damages with the exception of photograph 17 which showed some of the items recovered. These were mainly few corrugated iron sheets, planks, about 130 bags of cement, about 4 or 5 rolls of irrigation pipes, 7 water tanks, less than 30 Langa bricks, about 18 rolls of wire fence and 4 wheel barrows. The second area photographed was Woodlands Kitchen. The Kitchen (Restaurant) was constructed out of glass panels. She presented 3 photographs depicting three glass panels shattered and destroyed. Two of the glass panels had large openings from the breakings. The third set of photographs was evidence of Woodlands Swazi mobile. The inside showed empty shelves with the cash machines and documents lying on the floor in a haphazard manner. Two photographs reflected various documents, including

⁹ Review No. 245/2015

receipt books lying on the floor. The fourth set of photographs showed Woodland Sidwashini MTN. A number of documents laid on the floor in a chaotic manner.

- [31] PW1 continued to testify on damages occasioned at Shoprite, Sidwashini. Its corrugated massive door had been interfered with. Eight photographs, showing the interior for different areas depicted empty shelves. The cash tills were thrown into disarray. The refrigerators were emptied. The bakery and the kitchen looted. The strong room and the store room together with the cold room were not spared. Not a single stock was left behind. The office was also attacked as documents and connected electric gadgets were pulled to the floor. The next stop by PW1 was Woodlands Pharmacy. The exterior of the shop showed debris and so was the interior. Smashed boxes laid on the ground. The shelves were empty. Then there was Sidwashini Liquor Shop. Its glass panels were shattered and broken with a big opening from the top to the bottom. The shelves were emptied. Electric gadgets were pulled from the counter and some laid on the ground. Woodland First National Bank was not spared from vandalism. The ATM was interfered with. The officer did not testify that cash was removed. Similarly, Woodlands Building Society. A large opening was made on the wall with the entire ATM removed and was nowhere to be seen. The interior electric cables were pulled and left hanging from the wall. Again none of the Crown's witnesses testified on the sum of cash looted. The next photographs handed to court were for Engen Filling Station, Sidwashini. Two of its glass panels forming the wall were smashed. The interior shop emptied. The wooden door leading to the office was left with a large opening as though cut with a sharp object. Items at the back room were looted from their shelves.
- [32] Sidwashini V Best Liquor Wholesalers' photographs show that it was not spared. Looters pounced on it and looted every stock. Then sealed their attack by bringing the wholesale into ashes. The interior photograph showed only ashes and debris. The roof wall was left black due to the fire.
- [33] PW1 also testified about Sidwashini Industrial Complex. A shop under the name Gazi mini-Supermarket was vandalised and its contents emptied. Only a fire extinguisher was left standing idle with few pieces of objects lying haphazardly on the floor as indication of chaotic encounter.

- [34] Thirteen photographs were taken at Mbabane Bandag premises. An air drone photograph reflects the entire massive building with its boundary wall as having been gutted with fire. The front view of the building was in black with opening showing that there were once upon a time windows. The upper floor or level of the building was left in black with the roof shattered through combustion. One photograph shows the upper floor without the roofing and windows. The interior of the building speaks volumes on the intensity of the fire. Nothing is evident except steel objects gutted by fire standing on piles of black and white ashes. So intense was the fire such that the concrete floor was left broken into pieces as if miners were on site performing their duties. In another angle of the building, from its exterior, the corrugated iron sheet or IBR as it were, were gutted down by fire and left to fall on the ground with the doors and window frames dislocated and shapeless. A portion of the building collapsed from the flames. There was a further photograph reflecting another interior. There, the steel frames and objects that survived the fire were left in a chaotic positions. It was as though a tornado had passed by. In another photograph, what appeared to be a car port was then a former ghost of itself as only the steel frames were visible with some on the ground and piles of black ashes evident. PW1 did not testify on the date of capturing the photographs more particularly with regard to Bandag Building. However, the last photograph depicts smoke still rising to the atmosphere, reflecting that the fire had not completely died down at the time of photographing.
- [35] PW1 proceeded to testify about Standard Bank ATM at the Industrial Site. Four photographs spoke one language, "Combustion, combustion!" The ATM was burned and only an intense black object left of what was once a screen of the ATM. The fire extended to the interior strong room of the Bank as the smoke seeped through what appeared to be a sealed window of the strong room. Black smoke remains also appear in the interior upper roof of the Bank's strong room.
- [36] Then there was Extension 3 Complex. The burglar doors were ripped open. Although there were four photographs taken from that business area, there were all a reflection of the exterior. Except for the damaged burglar doors, nothing further was depicted from that area.
- [37] Siphocosii Supermarkert also felt the blunt. It too was ravaged and its shelves left completely empty. The only valuable item left behind was one big freezer. The bar

- refrigerator, although left behind, was vandalized. Similarly with Siphocosini Best Choice Butchery. Its freezer was left behind, with the furniture broken. It was completely emptied of its contents.
- [38] The next photographs were those showing the residence of a Councilor. The glassy sliding door was broken into small pieces as though smashed with a hammer. The interior reflected no furniture. There were further photographs reflecting a different homestead belonging to another Councilor. Here the motor vehicle was set on fire and was completely burned. Only the shell of the motor-vehicle was visible with its rims.
- [39] The next photographs represented goods recovered. These were insignificant in terms of quantity. From Sidwashini area a chest of steel drawers, a store cool drink refrigerator, an office desk and its cabin were recovered from different homes. Also recovered were few sunshine hats, mugs, exercise books and other stationary wares, a father Christmas shop window doll, mattresses and base beds and a butchery table. Those items were recovered from various homes at Sidwashini. There were items retrieved from the various forests in the same area. Those included blankets, toiletries and baking flour. Other items recovered were a washing machine, disposable nappies, cooler boxes, snacks such as nick-necks, packs of sugar, 10kg rice, processed meat, a number of living room couches in different sets, kitchen refrigerators.
- [40] At Ngwenya Village, the police recovered from different homesteads bed mattresses, living room couches of different sets and colours, white freezer, black electric four plate stove, corrugated iron sheet, roll of barbed wire, bags and buckets of paints, bags of cement, roofing planks, corrugated and plain iron sheets, aluminum windows, door frames, brick laying machine, wheel barrows. From the forest, they recovered mash wires, black rolls of water pipes, bags of cement, roofing planks, and window frames.
- [41] PW2 was 6628 Detective Constable Hlelizwe Dlamini who was instructed to take photographs of the damage occasioned at Lubombo region. She was stationed at Siphofaneni Police Station. At Siphofaneni, Manzana area, she captured a lorry carrying an excavator machinery. Both the lorry and the excavator were burned down. Photo three was taken at a close range. It depicted an utterly burned portion of the truck and the excavator. Both burned objects were without form and in ashes.

- [42] The next sets of photographs showed a number of burned motor vehicles. These were said to belong to ESWADE. They were burned while stationed at the offices of ESWADE. The burned motor vehicles were white van double cab motor vehicles. One Isuzu and a Toyota, both double cabs, white in colour. They both had their windscreens smashed. The other had the driver's window completely shattered. There was a different set of photographs presented by PW2. They represented a number of burned motor vehicles at Water Corporation Services according to PW2's evidence. These included a truck.
- [43] A goods carrier truck inscribed 'Chechers' was lit on fire. Its head was completely burned. The carrier as well was burned while in the road. The truck had a foreign registration reading, ND 688-788. There were no goods inside the truck, according to PW2.
- [44] Photographs marked 26 to 32 depicted Government offices at Siphofaneni. These were Revenue and Births, Marriage and Death Certificates' offices. The evidence by PW2 was that some of the offices were burned down. The photographs corroborated her evidence as the window pales were broken and evidence of ashes seen on the interior floor.
- [45] The last set of photographs captured by PW2 showed a building used as a garment factory. It was ran by Asiatic people. PW2 testified that there was an attempt to burn it but the arsonists were unsuccessful.
- [46] The photo-album was marked and admitted as exhibit B. There was no cross examination of this witness.
- [47] PW3, Detective Constable Mandla Motsa, 4932, stationed at Nhlanguano under the Royal Eswatini Police Service testified that he was tasked with taking photographs of damages in the Shiselweni region. On the 30th of June, 2021, in the company of his colleagues, set out to photograph scenes where damage had been occasioned the previous day, namely 29th June, 2021.
- [48] The first photograph was of OBC business entity complex. He captured it while the air conditioners were still on fire. The photograph showed a dark structure with windows and doors invisible from the intensity of the smoke.

- [49] Photographs two and three depicted the business Style and Beaver Canoe which consisted of many shops. His evidence was that it had been vandalized, looted and set ablaze. From the photographs, it was completely burned as its massive glass doors, covering a large area were utterly broken. The interior of that massive building was a ghost as evident photograph 7. Debris were on the floor and a large area of the roof gutted by fire. The entire building was just in black from the combustion.
- [50] On the wall moving towards Beaver Canoe there were two ATMs belonging to First National Bank and Standard Bank. They were both vandalized and protestors attempted to remove cash from them, according to PW3's evidence. They were left in total black from the fire.
- [51] Photographs marked 11 and 12 reflected Medium Shop which was within Beaver and Canoe Complex. All the goods were looted and set on fire. The interior photograph spoke of debris in the form of steel wires and the roof having partially collapsed.
- [52] Photographs 13 and 14 demonstrated the litter of goods that were falling along the way as the looters were dashing away. They are evident from the front of the complex, according to PW3.
- [53] OBC complex had about sixteen to seventeen butcheries. They were all left without any wares as the cold rooms were empty. The photographs showed that they were also burned down. The store rooms of the shops in the complex were left with empty shelves only. They were resistant to the flames of fire owing to their metal material.
- [54] The last two photographs depicted the safe where money was kept. According to PW3, the safe were tempered with as an endeavour to retrieve its contents.
- [55] PW3 concluded his evidence by applying to hand the photograph album. It was admitted by consent and marked exhibit C. He was not cross-examined.
- [56] The next witness was PW4, 5380 Detective Constable Thulani Israel Gama. Following the unrest of 29th June, 2021, on the next day he was directed to take photograph of the scenes. He too was based at Nhlanguano regional police headquarters.
- [57] His first stop was at the Regional Health Offices. The first two photographs showed the road leading to the regional government offices. It reflected stones and rocks on the road. Photographs three and four demonstrated three motor vehicles belonging to the

government which were burned. There were also photographs five and six showing government offices that were set on fire and the flames were still visible at the time of photographing. Photograph marked 7 and 8 reflected a government truck that was burned, particularly on its head. Photograph 7 also shows the government offices exterior. It had a black wall from the combustion. Photographs 9 and 10 reflected smoke seeping through the roofs of the government offices. Photographs 11 and 12 were make-shift office structures. They were vandalized, according to PW4. Photograph 14 was a government motor vehicle that had been parked near the entrance. Its windscreen was broken. Photographs 14, 15 and 16 were a repetition of photographs 2, 3 and 4 at a close range. They showed that the motor vehicles were burned beyond redemption. Similarly, with photograph 17, it was a privately owned motor-vehicle which was burned beyond identification.

- [58] PW4 then proceeded to RSG Complex at Nhlngano, Shiselweni region. The first two photographs indicated the view of the complex which comprised of shops and other businesses. Photograph 3 was for a shop ran by Asiatic national. It was burned down with its items and goods. A liquor outlet was also not spared from the flames of fire. The same building was a store room for Russels and Sleep-Masters' goods. Photograph 5 was captured as the interior of the store room. It was black through the fire. However, the goods had been looted before it was burned down. This was evident from the floor which did not show piles of ashes. Photographs 6 and 7 was a reflection of the interior of the liquor store. There were very few cases of liquor of which some were empty. It had been looted. Photographs marked 8, 9 and 10 were captured from Diesel Electric. It too was looted and later burned. Its glass doors were smashed. All goods were taken away as evident from photograph 10 and 11. Photographs 12 and 13 depicted Eswatini Electricity Company (EEC) houses. They were set lit. Photograph 14 was a safety box belonging to EEC. It had been removed from the offices of EEC and left next to the Metro or DP Bar. It was completely burned and dis-shaped. Photograph 15 was a complex comprising of small businesses such as salons, game rooms and dry cleaners. It was ran by locals. Photographs 16 showed the exterior with its glass door broken. Photograph 17 reflected the interior which was virtually empty except for litter on the floor. Photograph 18 was a laundry and a dry cleaner. It was vandalized and items removed. The game room was looted and burned.

- [59] PW4 proceeded to Nhlanguano Bus Rank. He testified further that photographs marked 1, 2, 3, 4, 5 and 6 were of a number of containers placed at the bus rank. They were used by hawkers to keep their wares. PW4 testified that before they were set on fire, the containers had been some of its goods looted. From the photographs presented of the containers, some were completely destroyed. There were some containers which were somewhere distant from the containers viewed under photographs 1-6. These were smaller, according to PW4. They were looted.
- [60] PW4 then visited Mathendele Township. Photographs 1 and 2 were of a shop ran by an Asiatic origin national and known as Kamalume. Photographs 3 and 4 reflected the interior. The goods inside were burned. Photographs 5 and 6 reflected the exterior of Mathendele Supermarket. It too was ran by an Asiatic national. Goods were burned, according to PW4's evidence. Photographs 10, 11 and 12 showed a grocery shop ran by Asiatic origin. All the goods were looted.
- [61] The next port of call was the town of Nhlanguano. Photographs 1 and 2 were of a complex, Boxer, consisting a number of shops. Photographs 3 and 4 were the front of the Boxer complex. Stones were visible on the parking lot. It was vandalized according to PW4. Photograph 4 showed the exterior of the receiving port which was burned. Photograph 5 reflected the interior which was looted and burned as evident from the photograph. Photograph 6 speaks to the rear side of Boxer. An attempt to burn it was made. Photographs 7 and 8 reflected the interior of Boxer supermarket. These photographs were blur. It is therefore not clear as to what happened there. Photographs 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19 were shops within Boxer complex. These ranged from Pep Stores, Ware House, Mr. Price, Gallitos and other shops selling cellular phones ran by Asiatic nationals. All the shops were vandalised and looted of their goods according to PW4.
- [62] PW4 testified on Nhlanguano Library. About seven photographs were captured of the national library. The library was according to the photographs left as rubbles. The roof top of heavy tiles with its entire contents were gutted down by fire. Massive damage was evident from the photographs submitted as evidence.
- [63] PW4 referred the court to photographs depicting a building named Nhlanguano Tobacco Building. It was a complex in that it housed government offices and shops. Photographs 1, 2 and 3 showed the building. Photograph 4 depicted a bottle of beer. PW4 testified

that he seized the bottle and handed it to forensic for figure print analysis. It was seized from one of the offices as per photograph 4 and 5. Photographs 6 and 7 showed a burned office. Photographs 8 and 9 show the building again with a number of businesses, including Wozani Warehouse. Photographs 10, 11 and 12 showed the interior and exterior of the warehouse which was burned down with its window broken. Photographs 13 and 14 also reflected the interior of the warehouse. It was rampaged and left in a sore sight state.

[64] PW4 handed the photo-album as exhibit C1, C2, C3, C4, C5, C6, C7 and C8 respectively. They were admitted with consent of the parties. PW4 was not cross-examined.

[65] PW5 was Detective Constable Mazwi Fakudze under force number 8098. He was based at Hlatikhulu. He attended to a factory which manufactured cartoons at Hlatikhulu and photographed the scene. This was on the 4th July, 2021. Photograph 1 and 2 was the front view while photograph 5, 6 and 7 the rear view of the factory. Photograph 8 demonstrated the burned factory. That photograph showed that the roofing had collapsed over the wall which was damaged as it slanted inward the building. Photograph 9 showed a truck that was parked near the collapsed roofing of the factory. The said truck was set on fire. Photo 10 depicted the front wall view of the factory which was intact. However, photographs marked 11 and 12 testified as the front view of the factory reflected a completely shattered structure in terms of roofing and the wall. Photograph 13 showed the interior view of the factory and the photograph was blur. PW5's testimony was that photograph 14 showed burned bags of cotton belonging to the factory. They were inside the factory. Photographs 15, 16, 17 18 and 18 were of the rear view of the factory which was burned and the wall and roof had collapsed. Photographs 20, 22, and 23 demonstrated two motor-vehicles of different shapes which was parked next to the factory. They were burned beyond recognition. Photographs 24, 25 and 26 reflected a truck and a sedan motor vehicles. The truck was burned on the rear while the sedan was vandalised. Photograph 28 was for an office which according to PW5 was damaged. It indicated that a window had been broken. Photograph 28 showed a motor vehicle which had its windscreen smashed.

[66] PW5 turned to photographs taken at Sandleni Constituency. He had captured ten photographs of the constituency. He testified of the building, "*The building was burned*

into ashes.” The court’s observation was that the building was still visible from the photographs handed. Part of the roof however was damaged and photograph 4 indicated a partial opening. Photographs 7, 8, 9 do show intense interior damage by fire. The building therefore could be revived. It was not completely gutted by fire. The court cannot accept therefore that the constituency building was “*burned into ashes,*” in as much as there was extensive damage to it.

- [67] PW5 testified about Mashayekhatsi Buy Cash. Although the photographs submitted as having been captured at Mashayekhatsi Buy Cash show that an extensive damage by means of rampage and looting was done on this shop, PW5 chose to testify, “*No products were left in the shops.*” Photograph 5 reflected that the roof had completely collapse and the wall invisible. There were burned debris and ashes in photograph 6. Photograph 8 showed a rampage of objects that survived only in distorted form fire and rampage. Photographs 9 and 10 testify of combustion set on the building and could be said it was gutted down with fire.
- [68] Methula constituency was said to have been damaged and completely burned down. The photographs showed that the tent was pulled down and the building of the constituency ravaged. The windows appeared to have been knocked with hard objects. There were a number of stones and bricks on the ground underneath the broken window. Photograph 9 reflected a burned room. There was a building structure that was burned as seen from the photographs 3, 5, 6 and 9. PW5 testified that there was bashing and burning.
- [69] There was also evidence on Sidzandlala area. PW5 testified on make shift houses made of corrugated iron sheet which were damaged. Photographs 2, 3, 4, 5, 6, showed the shuttered shack houses. Photograph 10 showed a burned caravan. It was completely burned down and only debris were visible.
- [70] PW5 then testified on Ngudzeni constituency. Ten photographs were captured of the building. Photograph 1 and 2 depicted a burned government house in the constituency. Photographs 3, 4, 5, 6, 7, 8, 9 and 10 showed the constituency’s building. It was gutted by fire. Photograph 3 showed part of the wall by the side exterior which indicated black from the smoke. Similar observations were by the front window of the structure. Photographs 7 and 8 showed that the roof of the constituency structure was completely

burned with an opening on top. Photographs 9 and 10 indicated piles of sporadic ashes, apparently from the roof top, and debris in the interior of the building.

- [71] PW6 was 5440 Detective Constable Bongiwe Candy Simelane. She was based in Manzini Regional Headquarters as a scenes of crime officer. Her first photographs were captured at Matsapha Logoba in a business known as Motor Centre. Photographs marked 1 and 2 were of the premises, including the building. Photographs 3, 4, 5, 6, 7, 8, 9, 11 and 12 depicted various motor vehicles parked at the business's display car port. All the motor vehicles were gutted down with fire and they were beyond recognition. Photograph 10 was according to PW6 the building which was the garage for some of the motor vehicles. It too was not spared from the flames of fire that consumed virtually everything of the business. Her photo-album was marked as exhibit E1 and there was no cross examination.
- [72] PW7 was 7584 Detective Constable Hloniphile Shabangu. She was based at Malkerns as a scenes of crime officer. She attended a business centre, Save Mart supermarket. The first photograph reflected it. The shop was ransacked and looted. That was evident from photographs 2, 7 and 11 depicting empty refrigerators, photograph 3, 4, 18, 19 and 27 showing litter on the floor, photograph 6, 12, 13, 14 and 15, empty cool drinks refrigerators and photographs 10, 12, 15 and 16, empty shelves in the interior of the shop. Photographs 4, 9, 20, 22, 23, 24, 25 and 27 were of electric gadgets pulled and destroyed. She handed the photo album as exhibit E2 with consent and she was not subjected to cross examination.
- [73] PW8, 5908 Detective Constable Sanele Malindzisa. He was stationed at Manzini regional headquarters as a scenes of crime officer and photographer. On 4th of July, 2021 he was directed to attend a scene of crime at Fairview North. He obliged. He first photographed the exterior of the complex as can be seen from photographs 1 and 2. Photographs 3, 4, 5 and 6 showed the interior of a bottle store, general dealer shop and a restaurant. Those three shops were looted and burned down. He handed his photographs as exhibit E3 by consent.
- [74] On 30th June, 2021 he had been under the same instructions when he proceeded to Logoba area. He photographed a blue truck belonging to the Government under Matsapha Police Academy. It had been burned while along Manzini-Mbabane highway, according to his report submitted with Exhibit E4. Photographs 1, 2, 3 and 4

showed the said truck burned beyond repairs. Photographs 6, 7 and 8, although testified as the burnt truck, appeared to be piles of useless steel parts seating deep into ashes.

- [75] On 2nd July, 2021 he was directed to KaKhoza area at HP Motors, a place near Kukhanyokuhle Church in Zion. He took twenty nine photographs which were collectively presented as exhibit E5 with consent. The large fleet of cars which was in the business premises was entirely gutted down by fire. Close range shorts reflected that the cars were burned beyond recognition as they laid in ashes after ashes. The building used for the business was also engulfed by fire. Not a single item survived the rages of fire. The business was turned into a ghost place as can be gleaned from the photographs presented. Both the exterior and the interior of the building showed the very intensity of the fire that engulfed the business HP.
- [76] On 30th June, 2021, he had gone to Ndlunganye area where he took photographs of a truck. The truck had been consumed by flames of fire and left to stand in the road as shaped ashes. The 9 photographs taken were collectively submitted as exhibit E6 by consent. PW8 was not cross examined.
- [77] 5540 Detective Constable Philile Mavimbela of Manzini Regional Headquarters was PW9. On 30th June, 2021, she proceeded to Mhlaleni area as a scene of crime officer and photographer. She took six photographs depicting a burnt truck. Photograph 5 reflected a portion of remains of the burnt truck standing in piles of ashes and debris. That was one of the long horse and trailer truck as evident from the photograph captured at Mhlaleni by the Mbabane-Manzini highway. The photographs were marked as exhibit E7
- [78] From Mhlaleni, on the same day, she moved to Ludzeludze area. A building structure stood by vandalized and burned as seen from photographs 1, 2, 3 and 4. PW9 testified that there was a Standard Bank ATM. It was burned to ashes. Only her evidence informed the court as the photographs taken reflected burned objects of which it was difficult to see what they were before. The photographs were admitted without objection as exhibit E8.
- [79] Exhibit 9 were photographs handed by PW9 without an objection of Fair View area. She captured two complex buildings and a police post. Photograph 1 and 2 show two building as former ghost of themselves through combustion. There were no doors or

windows as can be seen from photograph 3. The interior speaks of debris and unrecognizable objects in steel material and piles of ashes. So were photographs 4, 5, 6, 7 and 8. Photographs 9, 10, 11 and more particularly photograph 12 vouch literally to a tornado that was merciless as the door and window frames, roof and other parts of the massive building were left in a pandemonium state. The Swaziland Building Society's ATM was also damaged according to PW9 and photograph 15 corroborated her evidence in that regard.

- [80] On the 30th June, 2021, PW9 also went to Ludzeludze area where the Government kept its motor vehicles including heavy plants. She captured a number of photographs which were collectively admitted by consent and marked as exhibit 10. Photograph 1 was a guard house for the Government's security officers. The guard house was vandalized as its windows were broken. Photograph 2 reflected a Government's truck with a heavy plant. It too was vandalised in a similar fashion as the guard house according to PW9. Similarly with the Government's van. It was ripped off as per photograph 3. Photographs 4 and 5 depicted the Government's building whose interior was attacked by arsonists. At the back yard a number of Government's trucks were gutted down with fire. They were left for the scrape yard.
- [81] PW9 turned to photo album marked as exhibit E11 by consent. They were for shot ranges at Matsapha Government 'sweigh-bridge. A bus, a sedan and a mini-bus were burned and only black body shells were left.
- [82] PW9's next stop was at Ngwane Park. Photo album marked as exhibit E12 corroborated her testimony. Photograph 1 was for the exterior of Ekuphumuleni Supermarket. It was vandalised and looted according to her evidence and photographs 2, 3, 4, 5, 6, 7 and 8 which reflected different scene of the market. PW9 was cross examined as to when she took the pictures. She responded that it was on 30th June, 2021.
- [83] PW10, 5571 Detective Constable Ronney Dumsane Mavuso of Manzini Regional Headquarters. As a scenes of crime officer and a photographer, on 29th June, 2021, he proceeded to Mathangeni area and took forty three photographs. Photographs 1, 2, 3, 4 and 5 show the exterior of the complex comprising of OK Foods, First National Bank ATM and Sipehele Investment. They were all ravaged as evident further from photographs 6, 7, 8, 9, 10, 11, 12 and 13. OK Foods was burned into ashes as photograph 14. There was an attempt to interfere with the strong room. Photographs

17, 18, 19, 20, 21, 22, 23, 24, 24, 26, 27, 28, 29 30, 31, 32 and 33 showed the interior of where vegetables were kept. The places were vandalised, looted and burned beyond redemption.as per the photographs. Photographs 34, 35 and 36 depicted Khapela shop. It was vandalized with its stock emptied. Photographs 37 and 38 where captured from the liquor shop which was vandalized and looted. Its shelves were empty as seen from photographs 41 and 42. Photograph 43 was the exterior of the liquor shop showing a very filthy condition. The photo album was admitted without any objection and marked exhibit E13. He was not cross examined.

[84] PW11 was 6698 Detective Constable Mpendulo Babongile Dlamini, a scene of crime officer and a photographer based at Malkerns Police Station. On 30th June, 2021 he went to Malkerns Shoprite where protesters had gathered and broken into the supermarket. He captured nineteen photographs. Photograph 1 showed the exterior of Shoprite retail shop. Photograph 2 depicted a portion of the interior of the supermarket. Some goods were seen in the shelves but the floor was evidence of chaos in the shop as some goods were lying disorderly on the floor. Photographs 3, 4, 5, 6, 7, 8, 9, 10, 1, 12, 13, 14, 15, 16, 17 and 18 were evidence of looting and vandalism. Photograph 18 was the back yard. It was not spared. The rear fence leading to the supermarket had been torn apart as evident from photograph 19 and as so testified by PW11. The photo album was marked exhibit E14 by consent.

[85] PW11 then went to Malkerns Square, a newly built complex comprising of shopping centre and residences. Construction was still in progression at that time. Heavy plants were therefore present in that area. Photograph 1 reflected the front view of the area. Photographs 2, 3, 4, 5 , 6, 7, 8, 9, 10, 11, 12 13, 14, 15, 16, 17, 18, 19 and 20 depicted a number of the heavy plants, mainly excavators, both at long range and close range. The close range photographs showed that the plants were totally wrecked by flames of fire. Photographs 21 and 22 were described by PW11 as a concrete mixer. It too was damaged. Photographs 24, 25 and 26 were for water containers which were damaged through arson. Photographs 27 and 28 were said to be the exterior and the interior of the control room where the plants were directed from. It too was gutted down with fire. Photographs 29 and 30 was a water bell tanker. Its front head was totally burned. The photographs were marked exhibit E15 by consent and so admitted.

- [86] PW11 drove to Malkerns Liquor Complex. It housed restaurants, liquor and grocery supermarkets and electrical shops. Fire was lit in the bottle store after the stock was taken by the protesters. Photograph 1 showed the portion of the building that was burned. Photographs 2, 3, 4, 5, 6, 7 and 8 were the exterior and interior of the building at a close range shot. There was evidence of vandalism as well. Some of the shops were spared from combustion but not from looting as seen from photographs 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20. They were however wrecked and plundered. PW11 handed the photo album as exhibit E16 without an objection.
- [87] PW11 later, on the same day of 30th June, 2021, went to Luyengo Savemore Supermarket. He captured six photographs. Photographs 1 and 2 were a short and long range of the exterior. It was a totally wrecked structure with a portion having collapsed. The corrugated iron sheet or roofing top were damaged and on the ground. It was just havoc according to the captured photographs from photograph 1, 2, 3, 4, 5 and 6. PW11 testified that there was no stock found on site. PW11 handed the photo album and it was admitted by consent as exhibit E17.
- [88] PW11's last visit was Ntondozi Constituency. He captured sixteen photographs. Photograph 1 was the exterior front boundary of the constituency. Photograph 2 was the building structure of the constituency at a long range. The building was set on fire as so testified by PW11 and corroborated by photographs 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 taken at a close range both of the exterior and interior. The windows were broken. The interior was black from the flames. PW11 handed the photo album as exhibit E18 by consent. There were no questions for him from the defence Counsel.
- [89] PW12 was 4961 Detective Constable Anthony Mbhazo Mamba based at Hluthi Police Station. He was a scenes of crime officer and photographer. On the 3rd July, 2021 he proceeded to Ndunazithini High School where he found a security guard. Photographs 1, 2 and 3 showed the different structures that were there. The first structure according to PW12's handed report was a guard house. It had been burned and evidence of combustion appeared at the exterior window which was turned black from the flames. The second structure as evident by photograph 2 was the school staff room. It was totally burned. Photograph 3 was a massive structure consisting of class rooms. Its windows were vandalized. Six teachers' houses had their doors destroyed. Twelve photographs were handed reflecting such evidence and were marked as exhibit F1.

- [90] On the same day, PW12 went to three places, mainly, Huthi Town, Hosea Inkhundla and Lulakeni High School. He captured a number of photographs of various scenes. At Hluti Town, he observed that a number of shops were vandalised, spoils plundered and then set on fire. Photograph 4 showed the interior of one of the shops. The floor was occupied by ashes and fallen objects which could not be consumed by the fire owing to their metal nature. An ATM was burned as per photograph 6. Glass panel doors were shattered as evident from photograph 13. Photographs 15 and 16 were long and short range shots and a reflection of Pep Stores that was left in its former ghost of self after it was gutted down by fire. There was a ploughing tractor which was not spared by the rioters. In one building the electric gadgets were ripped off as per photograph 24. The collection of the photographs herein were handed as exhibit F2 with consent.
- [91] PW13 was 6648 Detective Constable Thokozani Mhlanga. He was a scenes of crime officer and photographer based at Lavumisa police station. On the 1st July, 2021 he proceeded to Matsenjeni Constituency. He took a close range of the building as per photographs 1, 3, 6 and 8. All the photographs corroborated his observation that the structure was burned. Photographs 2, 4, 5 and 9 were a close range of the windows which were broken from the fury of the flames of fire. Photographs 11, 12, 13, 14, 15 and 16 were taken from the interior. The furniture, more particularly the chairs were burned beyond identification as they were left in black piles. Photograph 18 was of a house at Matsanjeni Inkhundla. It too was set on fire. The shot range of the interior showed that the contents of the house were burned into total ashes in terms of photographs 19, 20 and 21. All the photographs herein were marked exhibit F3 by consent.
- [92] PW13 proceeded to Somtongo Constituency and captured 4 photographs of the building from different angles. They all reflected that the structure was set on fire. Photograph 5 showed that it was also ravaged as the corrugated iron sheet were dislocated and the gate removed and laid haphazardly. Photograph 6 was that of the guard house. It too was burned. World Vision had its structure too in the premises of the constituency as per photographs 7 and 8. They were wrecked from the rages of fire. The collection of photographs at Somtongo Constituency was admitted and marked by consent as exhibit F4.

- [93] Six photographs were captured by PW13 on the 1st July, 2021 at Tibiyo TakaNgwane. They were marked by consent as exhibit F5. Photographs 1, 3, 4 and 5 depicted three different buildings. They were all gutted down with fire. Photograph 6 was of the interior which showed objects burned beyond recognition. Photograph two was a tractor pulling a water tank. It was utterly burned down.
- [94] The last scene visited by PW13 was at Qomintaba area of Gasa waNgwane. Photographs 1, 4, 5, 6, 7, 8, 9, 10 and 11 were a reflection of the long and shot ranges of the Royal Kraal. From the photographs presented, it would be best to say, "There once upon a time stood a Royal Kraal." Every hut was gutted down into utter ashes. Photographs 2, 3, 4, 5, 11, 12, 13, 14, 15, 16, 17, 22 and 23 demonstrated about two large and one small residential buildings of bricks and molt as it were. They were all under the siege of arsonists. Despite roofing by tiles, they were left topless and in total wretch. Photographs 18, 19, 20 and 21, the interior of the said buildings depicted rubbles after rubbles lying in ashes. Photograph 24 which depicted the only room which survived the fire was however ransacked. The album was handed by consent and marked exhibit F5. He was not cross examined.
- [95] PW37 was Detective Constable 4875, Zakhele Kunene stationed at Matsapha police station under the scenes of crime department. According to his report containing his findings and photographs which were admitted by consent and marked exhibit J and his oral evidence, he went to the Eswatini Beverage (EB) or the Brewery, Matsapha on 7th July, 2021 and photographed a number of scenes. The photographs therein were testified upon by PW30, Nkululeko John Dlamini, the security guard at EB. He described photographs 1 and 2 as the main gate and the board at the entrance showing the company's name of EB respectively. Photographs 3, 4, 5 and 6 were, in their sequence, the check point, credit department and the perimetre fence at EB. Photographs 7, 8, 9 and 10 reflected the burned items by protesters. Those were cans and carry cases thrown into disarray in the huge yard at EB. Photographs 11 and 12 was of the production area while 13 and 14 reflected the recyclable material which was burned. The area where storage fuel tanks were stored was also set ablaze as evident under photographs 15, 16 and 17. The combination of lit matches with fuel stored in that department left an unprecedented devastated state at EB. Photograph 18 showed burned glasses. Photograph 19 depicted a large number of crates that were emptied of its contents by the looters, lying near the production area. Photograph 20 was a pack

bag, Scottish in colour, left by protesters as they dashed away. Photograph 21 showed a window that was broken of the laboratory while 22, the wide door leading into the production department and the products littered all over the place. Photographs 23 and 24 were of the sellers' room with a broken window through which a bottle containing a strange substance was thrown in by the protesters. Photograph 25 was that of the import warehouse. It was ravaged. Photograph 26 was the local ware house and the protesters threw fuel on the floor. Photograph 27 depicted conveyers in the production department. It was vandalized. Photographs 28 and 29 was that of the main entrance to the production department. It was littered with crates and bottles of liquor as the main entrance was broken. Photograph 30 reflected pallets where stock was piled up. They were looted. Photograph 31 was evidence of the warehouse. The stock was taken away and the floor left wet. Photograph 32 demonstrated the packing area. Piles of bottles were burned down into ashes. Photograph 33 was evidence of the department that repaired pallets. The pallets were gutted down with fire. Photographs 34, 35, 37, 38, 39 and 40 were all evidence of piles of ashes following the combustion at the hands of the protesters. The EB compressor together with caustic materials were destroyed as a result of the flames of fire.

- [96] PW26, Themba Vilane was the owner of the excavator testified upon by PW 2. He testified under oath that on the 26th June, 2021 at about 2000 hours his son called him, advising him that his excavator was attacked by arsonists while at Siphofaneni. He called the station commander at Siphofaneni police station and reported his ordeal. Mr. Motsa, the Station Commander advised him that they too as police officers were running helter skitter in the bushes following that the protesters were attacking them with stones. He advised him not to come therefore. He confirmed that exhibit B1 reflected his excavator as carried by the low belt truck. The purchase value of the excavator was E600 000. He could not insure for such loss. He was not cross examined.
- [97] PW27 was Sunnyboy Khalelwako Dlamini who was in charge of the Shoprite supermarket at Woodlands, Mbabane. On oath, he testified that he received a call from his area manager that they should be cautious as there had been reports of riots in town. He decided to request the customers to excuse them. They closed the door and remained inside with the other employees in order to monitor the situation. A van came by loaded with people who shouted that they would return. When it had left, they decided to lock the shop and go to their respective homes. At about 1730 to 1800 hours, he received a

call from his supervisor that the liquor shop was invaded. He later received another call that the supermarket was vandalized. On the following day, his supervisor advised him that he was heading for the shop to assess the damage. He did again call telling him that he was at the supermarket. It did not look like a supermarket again. It was as if pigs were let loose into the shop. They attended to the supermarket the following day. The loss suffered by all the Shoprite supermarkets in the kingdom, mainly, eBuka, Malkerns, Zulwini and Woodlands, was totaling to about E3m. He was not cross examined.

- [98] PW28, Patrick Dumisani Maseko, took the oath and testified that on 29th June, 2021 at around 1800 hours while on guard of the Bandag Tyres premises, he noticed a group of people gathered around the parking lot. They were singing political songs while carrying sticks and stones. They then made fire, blocking the road near Bandag. They were pacing up and down. A police van came by. The protesters ran away. They returned when the police had left. They broke down the fence into Bandag. They entered the premises and took some tyres from the premises and made a fire, blocking the road. The police returned and they retreated. The police left. They returned and were violent. They broke the door and lit the factory. It was burned down. He identified exhibit A as evidence of the combustion. He was not cross examined.
- [99] PW29, Khanyisile Dumsile Matsebula was employed in the civil registry at Siphofaneni under Home Affairs. On 26th June, 2021, around 2200 hours, she received a call advising her that one of the government offices was burning. She quickly called the Station Commander, Mr. Motsa who told her that he was already in the premises and putting out the fire. She confirmed that the structure was burned on the next Monday.
- [100] PW30, Nkululeko John Dlamini on oath testified that he was a security guard at by Steel Security. He was stationed at HB Motors. He arrived at 1700 hours on 28th June 2021, and found the motor vehicles' windscreens already damaged as they had been smashed. By means of a short message service, he informed his employer. In turn he received a call advising him to take cover as he might be in danger. At about 1900 hours a large group of people, all unknown to him arrived. From a steel box they were carrying, they removed electric cables and connected them to a roller and tyres which they produced. They rolled them towards the gate. They approached the gate and shook it until it fell down. They entered and set the motor vehicles on fire. The group then

went at the backyard and took both new and second hand tyres. He called the owner of the business. As he spoke to him, they noticed him. One of them approached him and demanded the cellphone. He gave him. He took it and crushed it on the ground. Another suggested that he wanted to photograph them and give their photographs to the owner of the shop. Another suggested that he be thrown into the burning motor vehicles. At that moment, he decided to dash away. He ran towards the traffic lights and into a bush. The group chased him and went past him as he laid prostrate on the ground. He remained there until the early hours of the morning. PW30 was not cross examined.

- [101] PW31, Sifiso Ntsetselelo Simelane took oath and stated that on 27th June, 2021 he was an employee of Eswatini Breweries as the Risks Manager. He testified of the company's delivery truck that was detained by a group of people at Ruchi, Matsapha. They negotiated for its release until the following day. He had received a call from one of the employees that a group of people were attacking them. He proceeded to Ruchi and found the employees standing at a distance away from the truck while the group was helping itself on their products, beer (castle and milk stout). As they were scavenging the beer, the truck was titling and about to collapse. He spoke to the group, alerting it that it was in danger as the truck was about to collapse. The group moved a little distance but still close to the truck until the arrival of the police. The police and his staff was able to off-load what remained.
- [102] On 29th June, 2021, he received a call from the security guard that there was a bottle that was thrown at the back of the plant. It had a strange scent. He went and reported the matter to the police and they arranged that the police would brief up security. He proceeded to work until he knocked off. When he was at home, he received another call informing him that there was a group of unknown persons who had gained entry through the back yard and were burning the crates at the company. He rushed there and found the group which was pelting the employees with stones and some were carrying axes and bush knives. He called the employees to a place of safety. The fire personnel were also called. They arrived. The group attacked them. They drove off leaving the place in flames of fire. He proceeded to the gate where he met the police and the army. He briefed them on the structure of the company. They decided to enter in groups. He turned to the fire personnel and pleaded with them to go back and extinguish the fire as the police and the army were present. They obliged but after a long time. It took the

fire personnel four days to extinguish the fire. He had difficulty in trying to find means to evacuate the workers who had been working for twenty-four hours as the attackers waylaid them. They had to use the patrol vehicles and were taken home in groups. Each department's manager had to compile a report of the assessment of damage caused. The total damaged summed to E38.5 million. One of his employees sustained a serious injury as he stepped on one of the burned plastic crates. There were other employees who sustained injuries as one was hit by a wooden plank and another by a bottle that fell due to the havoc caused. PW31 was then shown exhibit J and he corroborated PW1 on the photographs. He was cross-examined. He was asked on the number of people who looted the truck and he said he did not count them. He was asked if they were carrying guns and he gave a negative response. He was asked if police dispersed and shot at the people. He said that the people dispersed as soon as they saw the police approaching and that there was no shooting. He clarified that trouble started at the plant on the 29th June, 2021 at the evening. He was asked if he saw people coming to cause damage and he agreed saying that he actually saw them when causing the damage. He was asked if the police and the army were armed with fire arms and he said, 'yes'. Asked if people were shot, he said he did not witness anyone injured through shooting in as much as he heard sounds of shots. He was asked if during the cleaning of the plant, human bodies were found there and he answered in the negative. He confirmed that he was present during the entire cleaning period.

[103] PW33, Majaha Hebert Ngwenya, the constituency headman at Ngwempisi. On oath, he told the court that he was asleep on 30th June, 2021 when he received a call informing him that the constituency building was on fire. He took his motor vehicle and proceeded to the constituency. He found the police and other residents. Simo Mabuza, bucopho, also arrived. They observed that the security guard house was burned and so was the constituency structure which had offices and the conference room together with the hall and two rooms. It was in ashes. The Commercial Amadoda building, although lit with fire, was not burned. Its windows however were smashed. At the hall there were chairs and a community tent purchased through the Regional Development Fund and used by the community to generate money through rentals. Those were burned into ashes. The administration block was the secretary's office. Everything, mainly computers and five printers, was burned. In the headman's office there were two laptops and E14000 kept for the youth. There were also pipes used by the youth in

training as electricians which cost E3000. All the contents were burned into ashes. The loss was estimated to E3.2m. He did not go to the constituency on the 26th June, 2021 as the Acting Prime Minister had banned delivery of petitions. He was asked if anybody was arrested and he said he was aware of four persons and he confirmed that everything was burned down.

- [104] PW35 was Philile Nkambule. On oath, he identified himself as the owner of the fan belt truck which pulled a trailer that ferried the excavator. He referred to exhibit B1-4 and stated that its value was E560 000. It was not insured. Its registration was BSD 226 BH while the trailer's was ISD 851 BH. He was not cross examined.
- [105] PW38, Mpumelelo Magagula, the Manager of Buy Cash at Luvatsi. On 30th June, 2021, at about 1900 hours, he heard some noise. Suddenly, there entered the security guard and reported that there was a group of people. He responded by going to where the crowd was. He found it looting the goods from the shop. The said crowd targeted Buy Cash shop only. The total loss incurred was E1.5m. There were no questions posed to this witness by the defence.
- [106] PW49 was Senzo Andrea Nhlabatsi who testified under oath that he was the General Manager of the Buy Cash Hardware in the Kingdom. On 29th and 30 June, 2021, there was an unrest in all the regions. Buy Cash Hardware shops which were spread in the country were not spared. Those were at Pigg's Peak, kaNcesi, Mellet, Siphocosini, Sithobela and Luvatsi, Mashayekhatsi at New Heaven, Nkhungwini and Hluti. They were burned and some looted. The total loss incurred was about E174m. He was not cross examined.
- [107] PW50 was Sarah Zanele Gcinile Dlamini who testified under oath. She was employed by Chiye Papers, an Asiatic owned company. It was attacked on 29th June, 2021 and also burned down. The value of the business was E53m. She was not subjected to cross-examination.
- [108] PW51, Lindiwe Xolile Fortunate Buthelezi on oath told the court that she was the branch Manager of Shoprite Supermarket at Ezulwini. On 29th June, 2021 the said shop, including the liquor store was attacked and damaged. The total loss was E3m. The attack was as a result of a protest action. She was given photographs and she identified them as those taken from the shop. She was not cross examined.

[109] PW55 was 4627 Sergeant Sipho Ndzinisa. On oath he testified that on 29th June, 2021 he was stationed at St. Phillips Police Post. He was on duty around Mahlabaneni area. They were attending to protesters who were burning tyres and toy-toying on the road. He then received a call that protesters were blocking the road at Phumlamcashi area. They were pelting motor vehicles with stones. They tried leaving for Phumlamcashi area but it was very difficult as they reach there at about 2200 hours. The protesters had blocked the roads. He also received information that the police post and a nearby shop had been looted before setting them on fire. He did go to the police post and found that the roof had collapsed and everything in ashes. He pointed at exhibit P as evidence of the gutted down police posts. The value of the property destroyed at the police posts was estimated at E500 000. Similarly, the supermarket was gutted down with fire into ashes. The witness was not cross examined.

[110] PW58, 3941 Detective Sergeant Thabo Hlophe, on oath testified on the unrest at the Manzini region. He said that following the social media statement by the accused that the people should come in their numbers to deliver their petition in violation of a banning order by the Acting Prime Minister which prohibited people delivering petition in person¹⁰ as such was also in violation of COVID 19 Regulations, on 29th June, there was a spate of riots in the Kingdom. Protesters were extremely unruly and violent. They blocked the road by burning tyres. They caused motorists to pay certain amounts of money in order to pass through. They vandalized, looted and burned some shops. The police were overstretched and whenever they tried to control the situation, they were pelted with stones by the rioters. Civilian motor vehicles were not spared from the protesters, smashing them with stones. The infrastructure was damaged by fire and the Government structures as well. Manzini region had eight police stations. One hundred and fifty-eight (158) cases of violence were reported at Matsapha police station, twenty-nine (28) at Malkerns, seven (7) at Mafutseni, eight (8) at Bhunya, ten (10) at Mankayane and thirty-four (34) at Mliba and Sidvokodvo. The total loss incurred in the Manzini region was about E17 813 819.86. He handed exhibit R by consent after testifying that he compiled a report of the damage caused. There was no

¹⁰ As the Acting Prime Minister had provided other means of delivering petition, i.e. through a Government website provided.

bone of contention with regard to the damage caused and the value of the loss incurred from the questions posed under cross-examination.

[111] Similarly, PW 59, 3024 Detective Assistant Superintendent Sibusiso Dlamini who was in charge of the Shiselweni region as the Regional Crime Branch Officer testified on oath that the loss incurred under similar *modus operandi* at the hands of the protesters summed to about E171 504 273.00.

[112] PW60, 2944 Detective Assistant Superintendent Justice Mabuza on oath said that he was the Regional Crime Branch Officer in the Lubombo Region. He estimated the loss through the violation by the rioters to be estimated at E156 700 000.00.

[113] 3527 Assistant Superintendent Jabulane Madlopha identified himself under oath as the Regional Crime Branch Officer in the Hhohho region. Testifying on the violence incurred and the damaged caused in the region was estimated at E26m.

Summary on the damage caused

[114] *“Even so the tongue is a little member, and it can boast of great things. See how much wood or how great a forest a tiny spark can set ablaze. And the tongue is a fire.”*¹¹ The words of the great Apostle of Christ came true in the aftermath of 24th June, 2021 as, no doubt, the evidence of the various witnesses points in that direction. On the 24th June, 2021, the Acting Prime Minister had earlier expressed partly, *“It is disheartening to observe the flagrant disregard of the rule of law, the result of which has been the breach of the Constitution, Public Order Act 2017 and the COVID 19 Regulations as varied from time to time.”* “He then ordered, *“In light of the above, Government has reached the decision to stop with immediate effect the delivery of petitions to Tinkhundla Centres.”*

[115] On the very same day, in response to the above Banning Order, the accused No.1, by the use of his tongue, uttered, *“As a Member of the Constituency of Eswatini, let me directly address the matter we have just received, spoken by the Prime Minister. I am saying may we please tell you without fear or favour, what is being said by the Honourable Prime Minister, using Parliamentary language, we would say, ‘he is out of order.’ Let me say this Swazis, you do have to deliver petitions. It is constitutional.*

¹¹ St James 3⁵⁻⁶ Amplified Bible

It is a right of the Swazis. It is in the constitution. No one can have the power to tell you to stop. The only thing he can do is to deploy the police, as he always does, to assault you if that is what they want to do. He later resorted, "because the government that is saying what is saying today is the same government that is coming down like rain. Government that is coming down like rain, the one we are saying we no longer need. Is the one we no longer want. Delivering a petition is a constitutional right." He continued, *"I pity him who is the Honourable Acting Prime Minister that indeed he finds himself carrying the power of God where he can just wake up in the morning, wash his face and say 'my children, now you stop; my children, now you do not go to school; my children you see and not go anywhere.'"* He also stated, *"We will never entertain what Government has said on Monday. .. We did not go to request permission from Government to deliver petitions. You cannot stop something you have not launched. You cannot come and say you are stopping a petition when he did not launch the petition, when he now says he wants to stop the petitions. When did he tell us that go and submit petitions? Does he know the message of the petitions? Does he know the issuing of the petitions? Does he know the theme of the petitions? So, wonderful Swazis, let us not be intimidated by this Government."* He did also utter, *"We do not want to be headed by someone who comes down like rain. It is only rain that is brought down by God but we appreciate it because it rains in due season. But we do not want people who came like God."* He then retorted, *"I am sorry to say, 'To hell with our Government.'"* These and many other utterances were to counter the Order of the Acting Prime Minister and they were so uttered in a social media platform.

- [116] Accused No. 2, although a man of limited words but great actions, so to speak, he too had made the utterances at a time when COVID 19 Regulations were in place, *"So what we are saying, fellow Swazis, do not fear. If you want to speak for your rights come out and fill the roads. Yes, indeed this is your right. From the ancient times it is not just beginning with you. The kings of those times and the leadership, when we look at history of the rights of the people even in America, all over the world, yes all over, the government only heeds when there are demonstrations at ground level. But those demonstrations that you know should not have noise. The woman who are vendors should not have their properties stolen and those small businesses. There should be no vandalizing of buildings. That is when we would see how a police officer assault*

someone who is speaking for his right.”¹² He continued, “We have seen in other countries even in the curfew that is shutting down everything in India. They packed the roads. Even with COVID that was present, farmers took tractors to the streets and they stayed for some weeks in the streets. Why? Even with COVID curfew, it was clear that the laws that were enacted in Parliament that was to govern the lives of the farmers they were not happy about them. They took to the streets.” He then announced, “So COVID should not hold us back so that we can be suppressed.” He lived up to his words as on 26th June, 2021, after the Banning Order of 24th June, 2021, he went past the road block manned by police and despite the police orders not to proceed to go and accept a petition as there was a Banning Order. Few minutes later, after having forced his way through, stating that he would not be prevented from going to his constituency to accept a petition, his constituency building was set ablaze.

[117] Having recounted the damages experienced by this country as a result of the utterances and action of the accused persons herein, it is apposite to conclude that the days succeeding the 24th June, 2021 were dooms days in this country. Every region was pounced upon by unknown¹³ plunderers and arsonists. Both Government’s and civilians’ properties were marauded, vandalized and set ablaze. Only a few buildings survived masticate of the fire. Sadly, even those buildings whose walls were left standing were nothing else but former ghosts of themselves. No doubt, those days shall go down into the echelons of history as the days when a dark cloud covered the Kingdom. Business persons and employees alike who were law abiding citizens were left hopeless and helpless, wrecked and in despair as their hard toil labour was reduced into rubbles of ashes within a short space of time and some, right before their eyes. The total estimated value of the loss of properties was said to be almost a quarter of a billion Emalangeni excluding cash lost in the process. More pathetically, that was not the only disaster that befell the country. Many lives were lost in the process of which no monetary value could be placed. Moreover, no amount of agony could ever resuscitate the lost souls in order to recompense loved ones. Why? The tongue, a fire. In civil law, a tongue that cannot be controlled leads to a suit of defamation. In criminal law,

¹²I must point out that there was nothing wrong with the statement if only it was uttered at a time when the COVID pandemic was absent. What turns the statement to be a contravention of the Counts faced by accused before court is that the people were called to take to the streets at a time when the Government had passed COVID Regulations and further the evidence of violence that was witnessed as so testified by the Crown’s witnesses

¹³ As most witnesses stated so in evidence

it results to an indictment such as presented by the Director of Public Prosecutions herein.

Sentence – by legislation

Suppression of Terrorism Act – Count 1

[118] Section 5(1) of the Suppression of Terrorism Act reads:

“A person who commits a terrorist act, subject to any other specific penalty provided in this Act for that offence, shall be guilty of an offence and, on conviction, shall be sentenced to any period of imprisonment not exceeding twenty-five (25) years or to such number of life sentences as the court may impose.”

[119] Section 15(3) of Act No. 001 of 2005 (The Constitution) provides:

“A sentence of life imprisonment shall not be less than twenty-five years.”

Sedition and Subversive Activities Act – Alternative 1 to Count 1

[120] Section 4(a) reads, *Any person who*

(a) does or attempts to do, or makes any preparation to do or conspires with any person to do, any act with a seditious intention;

shall be guilty of an offence and liable on conviction to imprisonment not exceeding twenty years or a fine not exceeding E20 000 and any seditious publication relating to an offence under this section shall be forfeited to the Government.

Sedition and Subversive Activities Act - Alternative 2 to Count 1

[121] The sentence reads similarly as Alternative to Count 1

Murder – Counts 2 and 3

[122] The accused herein have been convicted of murder with *dolus eventualis* and not *dolus directus*. As it was well propounded by Holmes JA¹⁴ that, *“Trial Courts, in their conspectus of possible extenuating circumstances, should not overlook the fact (if it be such) that it is a case of dolus eventuality,”*¹⁵ I consider that such is an extenuating

¹⁴ S v Sigwahla 1967 (4) SA 566

¹⁵ *Supra* at page 571

circumstance in both counts of murder. They therefore deserve to escape the jaws of a death penalty.

Conclusion

[123] With regard to Accused No. 1, I must highlight that the consideration of his mitigation factors does not carry as much weight as that of accused No. 2. The reason is obvious. Accused No. 1 did not make a sworn statement. He testified from the dock. For that reason, his evidence could not be tested. This court was denied the opportunity to assess his remorsefulness in that regard. I do however, take into consideration the circumstances as mentioned in paragraphs 15 to 18 of this judgment in passing sentence. These all weigh in his favour. I also consider the factor mentioned in paragraph 122 herein to his credit. I do also consider the aggravating circumstances as pointed out by the various witnesses on the consequences of their utterances.

[124] Turning to Accused No. 2, I do consider his mitigation evidence which was adduced under oath and I do so with a higher degree of weight. I take into account his personal circumstances as summarized under paragraphs 19 to 26 herein. I however, consider that accused No. 2 was not forthcoming on answering questions put to him by the Crown. That spoke to the degree of his remorsefulness. Like his accomplice, I consider the impact of the speeches made which led to the devastating situation as testified by the Crown's witnesses of which resulted in a highly significant loss of both lives and properties. Like in his accomplice, accused No. 1, I consider in his favour also that counts 2 and 3 are attended by extenuating circumstances in a form of *dolus eventualis*.

Sentence

[125] 1. **Count 1**

Accused No. 1 : 25 (twenty-five) years imprisonment without an option of a fine.

Accused No. 2 : 18 (eighteen) years imprisonment without an option of a fine.

2. **First alternative to Count 1**

Accused No. 1 : 15 (fifteen) years imprisonment without an option of a fine.

Accused No. 2 : 10 (ten) years imprisonment without an option of a fine.

3. Second alternative to Count 1

Accused No. 1 : 15 (fifteen) years imprisonment without an option of a fine.

Accused No. 2 : 10 (ten) years imprisonment without an option of a fine.

4. Count 2

Accused No. 1 : 15 (fifteen) years imprisonment without an option of a fine.

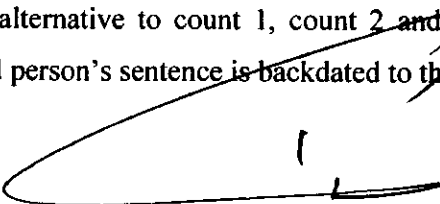
Accused No. 2 : 10 (ten) years imprisonment without an option of a fine.

5. Count 3

Accused No. 1 : 15 (fifteen) years imprisonment without an option of a fine.

Accused No.2 : 10 (ten) years imprisonment without an option of a fine.

First alternative to count 1, Second alternative to count 1, count 2 and count 3 shall run concurrently to count 1. Each accused person's sentence is backdated to the date of his arrest.



A handwritten signature in black ink, consisting of a large, sweeping loop followed by a horizontal line and a small vertical tick at the end. The signature is positioned above a dashed horizontal line.

M. DLAMINI J

For the Crown : Advocate G.J. Leppan, instructed by Director of Public Prosecutions and assisted by T. Dlamini from the Director of Public Prosecutions Chambers

For the Defence : Advocate J.L.C. van Vuuran SC and M. Dewrance SC instructed by Ben J Simelane assisted by Ben J. Simelane and M. Mabuza of Ben J Simelane