



**IN THE SUPREME COURT OF SWAZILAND**

HELD AT MBABANE

CRIM. APPEAL CASE NO. 18/2014

In the matter between:

**JUDGMENT**

**BHEKI MAKHUBU**

**1<sup>ST</sup> APPELLANT**

**THULANI RUDOLP MASEKO**

**2<sup>ND</sup> APPELLANT**

and

**THE KING**

**RESPONDENT**

***Neutral citation:*** *Bheki Makhubu & Thulani Rudolph Maseko and The King (18/2014) [2014] SZSC20 (30 May 2014)*

**Coram:** S.A. MOORE J.A., DR. S. TWUM J.A., DR. B.J.  
ODOKI J.A.

**Heard:** 14 MAY 2014

**Delivered:** 30 MAY 2014

**Summary:** Immediately before the scheduled time enrolled for the hearing of the instant appeal, counsel for the parties approached this Bench in chambers – Counsel for the Appellants disclosed their instructions to seek the recusal of the members of this Bench on the ground that they were serving under the Honourable Chief Justice who was the head of the Judiciary and the functional President

**of the Supreme Court – In Open Court, counsel for the Appellants sought an adjournment in order to make applications for the recusal of the members of this court – Adjournment granted – Appeal to be enrolled for hearing in the November session of this Court – Question of costs for the day to be determined at an appropriate stage.**

## **JUDGMENT**

### **MOORE JA**

[1] This appeal is against the orders of the High Court that:

- 2<sup>nd</sup> and 4<sup>th</sup> Accused be remanded in custody till Tuesday the 1<sup>st</sup> April 2014.
- 2<sup>nd</sup> and 4<sup>th</sup> Accused be remanded in custody till Wednesday the 9<sup>th</sup> April 2014.

These grounds of appeal were set out in the Notice of appeal.

[2] The Roll of cases set down for hearing in the May session of this Court was first published on the 8<sup>th</sup> day of April 2014. The instant case was set down for hearing on the 14 May 2014. The published Roll was circulated, inter alia, to The Law Society of Swaziland, Legal Practitioners, and to

Litigants in Person. The published Roll also gave notice that: ‘There will be a roll call on Friday 2 May 2014 at 9:00 a.m.’

[3] Shortly before the sitting of this Court was about to commence on the morning of Wednesday 14<sup>th</sup> May 2014, Mr. Z. Mkhwanazi for the 1<sup>st</sup> Appellant, Advocate L. Maziya for the 2<sup>nd</sup> Appellant, and Mr. N. Maseko for the Respondent, approached this Court in chambers. Counsel for the parties correctly adopted this process: for it soon emerged that counsel for the Appellants had been instructed to apply for the recusal of the members of this Court on the ground that the Honourable Chief Justice, was both the Head of the Judiciary, and also the functional President of the Supreme Court.

[4] It was the unanimous consensus of all the lawyers concerned that the Appellants were fully entitled to apply for the recusal of the members of this bench: but that their intention to make their applications should be signified in open court. It was also agreed that Counsel for the Respondent was equally entitled to oppose any applications for this Bench’s recusal if so advised and instructed.

[5] When the matter was called in open court, Advocate Maziya, who was clearly spearheading the team representing the Appellants, conceded that

what he was seeking, in essence, was an adjournment of the hearing of this appeal, previously enrolled for hearing as he stood on his feet, so that the Appellants could make such applications as were warranted by their instructions, and that any applications made would take their normal courses.

[6] Counsel for the Respondent did not offer vigorous objections to the applications for an adjournment; but telegraphed his intention to raise the question of costs for the day at the appropriate time.

[7] In all the circumstances of the case, this Court acceded to the applications for an adjournment leaving the question of costs for the day to be determined at an appropriate stage.

## **ORDER**

[8] It is the order of this Court that:

1. The matter be and is hereby adjourned to the November 2014 sitting of this Court.
2. The question of costs for the day is to be determined at an appropriate stage.

**S.A.MOORE**  
**JUSTICE OF APPEAL**

I agree

**DR. S. TWUM**  
**JUSTICE OF APPEAL**

I agree

**DR. B.J. ODOKI**  
**JUSTICE OF APPEAL**

For the 1<sup>st</sup> Appellant : Mr. M.Z. Mkhwanazi  
For the 2<sup>nd</sup> Appellant : Mr. L. Maziya  
For the Respondent : Mr. N. Maseko