IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE CASE NO. 153/79

In the matter of:

THE KING

vs.

REV. T. J. NDABA

CORAM: NATHAN C.J.,

FOR CROWN: MR. THWALA

FOR DEFENCE: MR. EARNSHAW AND MR. MATHSE

JUDGMENT

Ruling on Language in which Proceedings to be conducted

Delivered on 2 February '81

NATHAN C.J.,

The accused, who at the relevant time was an Accountant in the employ of the Tisuka Taka Ngwane Fund, is charged with Theft from the Fund of sums totalling E79,178-81, alternatively with fraud in respect of that amount.

As appears from the summary of Evidence that has been prepared and handed to the Court, and supplied to the accused and his legal advisers Messrs. Earnshaw and Matse. The case is likely to be a protracted one requiring evidence from at least 12 Crown witnesses including auditors and officials of various banks in Swaziland, and reference to various Auditors' and Police Reports, ledgers, bank statements, cash books, deposit slips, invoices and the like. All this documentation is in the English Language. The Accused has been granted leave to be seated next to his Counsel during the trial.

As is customary in cases of this nature - indeed in all criminal trials, Mr. Thwala who appears for the Crown, commenced the trial with an explanation of the nature of the Crown case and the evidence which the Crown proposes to adduce. One of the first documents to which Mr. Thwala referred is a police report which lists some 32

cheques which go to make up the E79, 178-81 which is the subject matter of the charges against the accused. After commencing to explain this Report, Mr. Thwala, broke off in order that what he was saying could be translated from English to SiSwati. I querried whether this was necessary or indeed called for at all in terms of the existing legislation. Mr. Earnshaw stated on behalf of the Accused that so far as he was concerned he did not require the Crown's opening address to be translated. He was inclined to agree with my prima facie view that the legislation has provided that English shall be the language of the Courts.

Mr. Thwala submitted that criminal trials take place in open court and that there may be members of the public or other persons connected with the case who are unfamiliar with the English Language but are nevertheless interested in the proceedings and that it is for this reason that interpreters are provided.

As the matter is obviously one of importance I decided to give a written ruling which will regulate the

procedure to be followed in the present trial and in other cases.
Section 8 of the High Court Act No. 20/1954 provides:-

(1) Save as otherwise provided in this Act, the pleading and the proceedings of the High Court shall be carried on and the sentences, decrees, judgments and orders thereof pronounced and declared in open Court and not otherwise:

Provided, that at any time during a trial the Judge may order that the court be cleared or that any person or class of persons leave the court.

(2) The pleadings and proceedings of the Court shall be in the English language.

It may be noted that Section 7(1) of the Magistrates Court Act No. 66 of 1938 is to a similar effect.

It appears to me to be clear that in each of these enectments the legislature has provided that the proceedings of the Court shall be in the English Language.

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The Legislature has not provided that addresses or argument or even the evidence shall be led or recorded in both siSwati and English and the reference to the proceedings taking place in open court cannot be interpreted as having such an effect as Mr. Thwala contends for. The provision that the proceedings shall be conducted in open court is in my view to be confined to a requirement that the Accused shall receive a fair trial. It is only for this reason that addresses and evidence, both in defended and undefended trials are commonly translated from one language into the other. But It is the interests of the Accused that are of paramount importance; and the interests of the public are merely of secondary importance. There is no valid reason, in my opinion why the accused should not, as he had done in the present case, waive the benefit of translation. That this is so is demonstrated by the fact that the practice, within my experience, has not been to translate the evidence of the Accused if he has elected to give his evidence in English and not in siSwati. It may, no doubt occur that a complainant and in a theft case or a rape or assault case, or even the family of a deceased in a murder or culpable homicide case are interested in the outcome of the trial and in such a case the Court might direct in its discretion, that the appropriate portion of the proceedings be translated. But this is not the situation in the present case. In the present case, involving complicated questions of accountancy the only person apart from the Court itself who can have the slightest interest in the details of what the court will be seeking to establish is the accused. And as I have said the Accused has waived the requirement of translation of Mr. Thwala's opening address.

It is to be borne in mind that the Courts are working under presure and it is of more improtance that there should be expedition in the administration of justice than that there should be a translation of technical matter in an opening address which is not even evidence.

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When it comes to the evidence itself the Court will retain its discretion to direct that this, or portions of it, are to be translated.

I may mention that I have discussed this matter with my brother Cohen J., who is in agreement with the views here expressed.

I consequently rule that Mr. Twala's opening address shall not be translated.

C. J. M. NATHAN

CHIEF JUSTICE