

IN THE HIGH COURT OF SWAZILAND.

In the matter of Case No. B.210/1981

REX

vs.

DOUGLAS JABULANI SIBANDZE

CORAM: NATHAN C.J.

FOR CROWN: THWALA

FOR DEFENCE: SHILUBANE

JUDGMENT

(Delivered on 11th December, 1981)

NATHAN C. J.

The Accused is charged with contravening Section 4(1) (b) of Act 46 of 1938, that is to say uttering the allegedly seditious words set out in the indictment.

It is as well to preface this judgment by pointing out the "seditious words" in terms of Section 2 of the Act means "words having a seditious intention".

A "seditious intention" in terms of Section 3 (1) of the Act is an intention to -

- (a) bring into hatred or contempt or to excite disaffection against the person of His Majesty the King, His Heirs or successors, or the Government of Swaziland as by law established; or
- (b) excite His Majesty's subjects or inhabitants of Swaziland to attempt to procure the alteration, otherwise than by lawful means, of any matter in Swaziland as by law established; or
- (c) bring into hatred or contempt or to excite disaffection against the administration of justice in Swaziland; or
- (d) raise discontent or disaffection amongst His Majesty's subjects or the inhabitants of Swaziland; or
- (e) promote feelings of ill-will and hostility between different classes of the population of Swaziland.

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It is provided in Section 3 (2) of the Act that

- (2) Notwithstanding subsection (1), an act, speech or publication shall not be seditious by reason only that it intends to -
 - (a) show that His Majesty has been misled or mistaken in any of His measures; or
 - (b) point out errors or defects in the government or constitution of Swaziland as by law established or in legislation or in the administration of Justice with a view to the remedying of such errors or defects; or
 - (c) persuade His Majesty's subjects or the inhabitants of Swaziland to attempt to procure by lawful

means the alteration of any matter in Swaziland as by law established; or

(d) point out, with a view to their removal, any matters which are producing or have a tendency to produce feelings of ill-will and enmity between different classes of the population of Swaziland.

(Amended L.4/1967) Section 3 (3) of the Act provides:

(3) In determining whether the intention with which any act was done, any words were spoken, or any document was published, was or was not seditious, every person shall be deemed to intend the consequences which would naturally follow from his conduct at the time and under the circumstances in which he so conducted himself.

The first, and chief, Crown witness was a young woman, Mavis Mafu. She said she worked at a store in Nhlanguano. On the day in question the Accused, whom she had not known before, came to the store and enquired about a kitchen cupboard which was for sale. He then asked her about another store and she indicated to him where it was. He looked in that direction and on the verandah there was a policeman who had his arms akimbo, talking to somebody. The Accused remarked to Mavis about the police officer standing with his hands on his hips and said that in the Accused's district a police officer who did such a thing would have been "put down" already. According to Mavis the Accused meant that the police officer would have been assaulted, but she said the Accused did not specify. She said the Accused did not mean that the police officer would have been demoted, which I should have thought was the more probable.

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She said the Accused told her he was in the Army. It appears that he is not in fact a soldier. She said she asked the Accused whether soldiers and police were not doing similar duties, and he said No, but perhaps now that Prince Mabandla was in charge that might be so; in Col. Maphevu's time such a thing did not happen. This she explained as meaning that soldiers did not get arrested.

Mavis said that the Accused then said that when Prince Mabandla took over he ordered soldiers to be arrested when they were found doing wrong and that he had also decreased their salaries in order to increase the police salaries as he loves the police.

The Accused said Prince Mabandla only allows senior soldiers to march at the Stadium; but police are allowed to march and get paid for doing so. Under Prince Mabandla a soldier is punished if he has one bullet short, but under Colo Maphevu soldiers would not be docked in pay even if they were twenty-four bullets short. I am paraphrasing the exact words attributed to the Accused.

According to Mavis the Accused said "they" (whoever that might be) had discussed the matter and were going to ask His Majesty to give them somebody who would be in charge of the Army, as they did not want Prince Mabandla. That if the King did not do this, they would go to various station-Commanders and tell them that the King had not responded, and that if the police failed to respond the soldiers would shoot the Prime Minister or get somebody from the Transvaal to do this for them.

Mavis said she asked the Accused whether his fellow soldiers would not punish him if they heard him say such a thing to her. Under cross-examination she endeavoured to explain that the Accused might be punished if he went about saying things like this in public; but her understanding was that the soldiers might punish him for divulging their plans. This appears to me to be less probable than if the authorities were to prosecute him for saying such things; but Mavis did not put the matter on this latter basis.

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Mavis said that parts of the conversation were overheard by one Stoffels who at the time was working in the store, and by some policemen in plain clothes who only arrived after the Accused had started talking.

Mavis said she regarded what the Accused had said as being serious because he was talking of killing

and had said the Prime Minister hated the soldiers. She said, however, that she had not reported the matter to anybody.

Some rather inconclusive evidence was given by Assistant Superintendent Msibi who investigated the case. The Accused apparently told him he did not know why he had uttered these words, but the following day told him he had got the idea from a soldier called Sithube. Apparently the Accused is not a soldier, but only a labourer. When asked whether the Accused associated himself with the words, Superintendent Msibi first said yes, but then added "He did not say those were his sentiments." As I say, his evidence is inconclusive.

Stoffels in evidence said that he had heard portions of the conversation between the Accused and Mavis. He recited various of these but in cross-examination he said that the evidence he had given was what Mavis had told him the Accused had said. He adhered to this in re-examination; but when asked exactly how much he had heard himself, he said he heard the Accused say that he and other soldiers would try to shoot Prince Mabandla.

This concluded the Crown case. Mr. Shilubane who appears for the Accused has asked for his discharge on the ground that an insufficient case has been made out to put the Accused on his defence.

His first submission was that there was no corroboration as required by Section 7 of the Act, which provides, "No person shall be convicted of an offence under Section 4 on the uncorroborated testimony of one witness".

It appears to me that for purposes of the present application I must accept that Stoffels heard the Accused say that he and other soldiers would shoot Prince Mabandla; and it must be held that to this extent at least there is the required corroboration. The application for discharge 'accordingly

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cannot succeed on this ground.

But whether the statement about shooting Prince Mabandla or indeed any of the other conversation deposed to "by Mavis amounts to the uttering of seditious words as contemplated "by the Act is quite another matter, which I now proceed to consider.

Mr. Thwala for the Crown submitted that what the Accused said to Mavis fell within the provisions of Section 3 (1)(b) (c) or. (e) of the Act.

So far as Section 3 (1)(b) is concerned, there must, in terms of the Section, be an exciting of His Majesty's subjects or the inhabitants of Swaziland to attempt to procure the alteration, otherwise than by lawful means, of any matter in Swaziland as by law established.

Two matters arise in regard to this. In the first place I do not consider that the Accused's conversation with Mavis, even if portions of it were heard by Stoffels and the plain-clothes policemen, can be said to amount to an "exciting" or an intention to excite., Mr. Thwala submitted in this connection that you do not have to hold a meeting before you can be brought within the ambit of Section 3 (1). But at least in regard to sub-paragraph (b) there must be an intention to excite His Majesty's subjects or the inhabitants to something and of this I can find no evidence whatsoever.

The second point to note is that the sub-paragraph is concerned with an intention to excite the subjects or inhabitants to attempt to procure an alteration otherwise than by lawful means. Here the Accused was, in my opinion, not advocating that anything should be done by unlawful means. He was saying that His Majesty should be asked to change the Prime Minister., That is perfectly lawful ; and he went on to say what was likely to happen if this was not done. But that does not amount to an exciting or inciting which is what the sub-paragraph requires.

In regard to Section 3(1)(c) - bringing into hatred or exciting disaffection against the administration of justice in Swaziland - in my opinion the words uttered by the Accused cannot by any stretch of imagination be brought within sub-paragraph (c). They have nothing to do with the administration of

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they merely point out the partial treatment now accorded to the police, in the opinion of the Accused, as opposed to that accorded to the soldiers.

Section 3 (1)(e) - promoting feelings of ill-will and hostility between different classes of the population of Swaziland - might conceivably apply; but in my opinion the evidence falls short of rendering it applicable. Here was a conversation between the Accused and a shop assistant prompted by what the Accused apparently considered to be unbecoming behaviour on the part of a policeman. I fail to see how this conversation can be said to promote feelings of hostility or ill-will between different classes of the population. The remarks must in my view at least be addressed to one or other, if not to both, of the different classes.

On the above analysis it does not appear that the remarks of the accused contravene any one of sub-paragraphs (b)(c) or (e) of Section 3 (1). But, as was pointed out by Mr. Shilubane, Section 3 (2)(d) would in any event come into play. This specifically provides that notwithstanding Section 3 (1), an act, speech or publication shall not be seditious by reason only that it intends (I am not sure that this should not read "tends") to point out, with a view to their removal, any matters which are producing or have a tendency to produce feelings of ill-will and enmity between different classes of the population of Swaziland.

In my opinion this covers the present case. The Accused was pointing out, with a view to a remedying of the position, the partial treatment accorded to the police, to which I referred earlier.

Reference may also be made to Section 3(2)(c), which provides that an act, etc., shall not be seditious by reason only that it intends to persuade His Majesty's subjects or the inhabitants of Swaziland to procure by lawful means the alteration of any matter in Swaziland as by law established. This would cover the reference to asking His Majesty to change the Prime Minister so as to remove the partiality to which I have referred.

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The only portion of the Accused's remarks that is not directly covered by Section 3(2)(c) and (d) is the statement that if the King and the police failed to respond the soldiers would shoot the Prime Minister or get somebody else to do this for them. But it does not appear to me that this is an actual threat to shoot the Prime Minister. I do not think it is any more than an statement of what the Accused considered was likely to happen if the attempts to remove the Prime Minister failed. If it amounts to any more than this, then I think it would fall within Section 5 (1) (doing or uttering of words with a subversive intention) the effect of which I considered in R v. J.L. Snyman, Case S.102/79, 28th November, 1979. But the Accused is not charged under this section.

Mr. Twala sought to counter any reliance on Section 3 (2) by reference to Section 3 (3), the subsection dealing with deemed intention of the consequences that would naturally follow from the uttering of the words in question. I do not consider that this section assists the Crown. The statements to Mavis would not be likely to produce any results so far as she is concerned. They might conceivably anger any policeman who overheard them and this might conceivably lead to a breach of the peace; but this does not necessarily connote sedition.

I should make it clear that this Court disapproves of the strong and unbridled language which the Accused is said to have used in this case. But this does not mean that the Accused can be found guilty under the section with which he has been charged.

In my opinion the Crown has not established a sufficient case to require the Accused to make a defence.

The Accused is found not guilty and is discharged.

C. J. M. NATHAN

CHIEF JUSTICE.