IN THE HIGH COURT OF SWAZILAND

In the matter of: Criminal Appeal No. T45/83

REGEM

VS

BHI ZENI TSABEDZE

CORAH: NATHAN C.J.,

HASSANALI J.

FOR CROWN: MR. DONKOH

FOR DEFENCE: MR. SHILUBANE

JUDGMENT

(Delivered on 11th May, 1983)

NATHAN C.J.

The Appellant was convicted of contravening Section 118 bis (2) of the Road Traffic Act 1965, as amended by Act 4/1982 and was sentenced to a fine of E200 or 200 days imprisonment. He appeals against the conviction and also against the severity of the sentence.

It is common cause that Section 118 bis, which is entitled "Misuse of Government Vehicles" was introduced into the Road Traffic Act in order to curb the widespread misuse and abuse of Government vehicles in Swaziland which results in considerable waste and unnecessary expenditure of public funds.

It is apparent from a perusal of the legislation that the legislature has produced an enactment which is virtually unworkable.

Subsection (1) of Section 118 bis defines a "proper officer" in relation to Government Ministries, Departments or Divisions thereof and the Prime Minister's Office, the Swaziland Defence Force, Royal Swaziland Police Force, Prisons Department, and in relation to a Permanent Secretary or the Secretary to the Cabinet. In relation to a Government Ministry, Department or Division thereof, the proper officer is the Permanent Secretary.

Subsection (2) (a) provides that no person shall, without the written authority of a proper officer drive a Government vehicle. Subsection (3) provides the penalty for a contravention of the section. This is a fine of E400 or 1 year's imprisonment or both.

It is to be noted that the section does not make any provision for the delegation by a proper officer to any other person of the power to give a written authority to drive a Government vehicle. The literal effect of the legislation as it stands is that if, as happened in the present case, a Government vehicle in the field sustains a puncture and it is necessary to send another Government vehicle to Manzini to obtain a new tyre, one would first have to journey to Mbabane to seek the Permanent Secretary and obtain from him the necessary authority to drive to Manzini. The Permanent Secretary may well not be in Mbabane and may accordingly not be available to give the necessary authority and the whole exercise in such circumstances would be fruitless and would result in a complete negation of the considerations prompting the legislation, which I have mentioned.

I have so far referred only to the prime and obvious defect in the legislation. But there are other defects, of almost like importance, which become apparent on a consideration of the facts of the present case.

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The Appellant, who is employed by the Ministry of Agriculture, received a message that a Government tractor engaged in ploughing had sustained a puncture in the field and that it would be necessary to send in to Manzini to get a new tyre. The Appellant said in evidence that normally he used to get the travel authority from David Dlamini the project manager. He radio telephoned Ludzeludze to find out whether the project manager was there or not, and he found that the manager was away at Lobamba. He asked whether there was a driver whom he could authorise to drive to Manzini as the Appellant himself drove to Manzini. On the return journey he was stopped and given a ticket at a road block because he had no authority.

In a letter signed by the Mechanisation officer which was placed before the Court by way of mitigation, it is stated that there was an emergency situation and that because the project manager the only officer on site with powers to sign travel authorities, was otherwise engaged at Lozitha the Appellant decided to travel to Manzini to get a retrospective travel authority and to obtain the badly needed spares.

The comment which must necessarily be made in regard to the Appellant's evidence and the mechanisation officer's letter is that there is no provision in the section for the issue of travel authorities by anybody other than the "proper officer", that is to say, the Permanent Secretary in the present instance. Nor is there any provision for the issue of a retrospective authority as suggested by the mechanisation officer. It follows that neither the project manager nor the Appellant himself can be a "proper officer", although apparently this was not realised by those of his superiors who purported to empower him to issue authorities.

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The permanent secretary Mr. A. R. V. Khoza stated in a letter which was placed before the Court, again presumably intended to operate in mitigation of the Appellant's conduct, but actually having the reverse effect, that the Appellant could have asked a colleague at Ludze-ludze to drive him to Manzini, or he could have telephoned a colleague in Manzini to collect the materials required. If, as I think must be assumed,the colleagues referred to by Mr. Khoza were driving Government vehicles, neither of Mr. Khoza's suggestions would have solved the difficulty, because there would have been nobody who could authorize either the colleague at Ludzeludze to drive the Appellant into Manzini or the colleague in Manzini to collect the materials required and drive them out. If the colleague was driving a private car one wonders whether he would ever have been recouped for the expense involved.

The Magistrate in his reasons for judgment refers to the fact that the Appellant had stated that the Minister of Agriculture was himself present in the fields at the relevant time; and he castigates the Appellant for not having sought the Minister's advice. It is idle to speculate as to what the Minister's advice would have been; it is sufficient to point out that on the section as it stands the Minister would have had no power to authorise the journey.

I should mention that the Magistrate appears to have had some doubts as to whether the journey to Manzini was really made in order to pick up a new tyre. In my view these doubts are not justified on the evidence. He also appears to have attached undue importance to the fact that the Accused knew that he was disregarding the Act's requirements when he made the journey.

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It is in the light of the considerations which I have canvassed at some length that I say that the new provision is virtually unworkable. It appears to me, however, that Mr. Donkoh who argued the case on behalf of the 'Crown, is correct in submitting that this Court cannot simply disregard the legislation in toto.

The circumstances in which a Court may refuse to give effect to the clear wording of a statute are discussed in the well known decisions of, inter alia, R v Venter, 1907 TS 915; Barkett v S.A. National Trust and Assurance Co. Ltd., 1951 (2) SA 353 (AD) at p. 562-5; and Savage v C. I. R., 1951 (4) SA 400 at p.408. The rule is that where the language of a statute is unambiguous and its meaning is clear, the court may only depart from such meaning if it leads to absurdity so glaring that it could never have been contemplated by the legislature, or if it leads to a result contrary to the intention of Parliament as shown by the context or by such other considerations as the Court is justified in taking into account. It is further pointed out that it is dangerous to speculate as to the intention of the legislature, and that what seems an absurdity to one man does not seem absurd to another.

In the present instance the legislation is perfectly clear and unambiguous and it is certainly possible - albeit with extreme inconvenience and unnecessary expense to everybody concerned - to give effect to it. At the same time it appears to me that it cannot be gainsaid that the Legislature has failed to realise the effects that its enactment will have in practice. I have no doubt that this hastily drafted legislation should be amended so as to remove the undoubted hardships and

anomalies "that arise as it stands.

I would suggest that the Permanent Secretary in each Ministry should appoint senior officials in each division or department to be proper officers and that there should be a written authority for each journey signed by a proper officer and countersigned by another proper officer. I can see no objection to a proper officer himself being one of the signatories if he is making the journey. The best means of achieving a speedy amendment will be, in my view, by finding the Appellant only technically guilty of contravention of the section.

The convictions will be confirmed but the sentence will be altered to a caution and discharge.

C. J. M. NATHAN

CHIEF JUSTICE

I agree

J. A. HASSANSLI

JUDGE