IN THE HIGH COURT OF SWAZILAND

APP. CASE NO.59/87

In the matter of

PAUL BLAIKNER

vs

THE KING

CORAM: HANNAH, C.J.

FOR THE APPELLANT: MR. P. FLYNN

FOR THE CROWN: MR. N.S. DLAMINI

JUDGMENT

(9/9/87)

Hannah, C.J.

This is an appeal against conviction of attempting to defeat the course of justice and the sentence imposed of three and a half years imprisonment.

The brief facts as found by the learned magistrate were as follows. While standing trial before the Mbabane Magistrates Court on certain charges the appellant made the acquaintanceship of Moses Dlamini who claimed to be a newspaper reporter and to be related to His Majesty, the King. Dlamini and the appellant discussed the case against the appellant and Dlamini intimated to the appellant that he could use his relationship with His Majesty to have the case against the appellant withdrawn. This was, of course, found to be complete nonsense but the appellant apparently, and naively, believed what he had been told and went along with Dlamini's suggestion even to the point of handing over to Dlamini documents connected with his case and driving Dlamini to Ludzidzini Royal Residence. Dlamini did not see the King nor did he attempt to do so although he falsely

reported back to the appellant that he had. These activities finally came to the attention of the authorities and the appellant was charged with defeating or obstructing the course of justice and was convicted of an attempt to commit this crime.

With all due respect to Mr. Flynn's eloquent submissions attacking the magistrate's findings of fact the only point which has given me any real cause for concern is whether, on the foregoing facts as found by the learned magistrate, an attempt to defeat the course of justice was made out. Is it an offence to attempt to persuade the Head of State to intervene in criminal proceedings?

In S v Viljoen 1970 (1) S.A. 14 the Court had to consider what constitutes the offence of defeating the ends of justice. According to the English headnote the Court held that:

"Any tampering with a Court case with the intent that the administration of justice should not take its normal course, amounts to an attempt to defeat the ends of justice."

Refering to this case in their judgment in Incorporated Law Society, Transvaal v Meyer and Another 1981 (3) S.A. 962 the learned judges said at page 988:

"There is an unlawful interference with a criminal case where a person improperly and with the intention of bringing about that result so acts as to prevent the case taking its normal course."

There are, of course, circumstances in which a person may act quite lawfully in attempting to have a criminal case withdrawn as where, for example, honest and open representations are made to the Director of Public Prosecutions who is charged with the duty and responsibility of conducting prosecutions. The emphasis in the decisions just cited is on taking improper steps and, in my opinion, when an independent

prosecuting authority exists, as it does here in Swaziland, it is an improper step to attempt to persuade any other authority, be it the Head of State, the Prime Minister or any other member of the Executive to intervene in the matter. Such cases are, of course, necessarily rare as it would take a very foolish person to think that such action might bear any fruit but where they do occur an attempt to defeat the course of justice is, in my opinion, made out. That there is really no possibility of the ends of justice in fact being defeated is a matter which affects the question of sentence alone.

Turning to that question, I have to say at once that having regard to the circumstances of this case I find a sentence of three and a half years imprisonment quite startling. While it is perfectly true that, in general, attempts to defeat the course of justice should be dealt with severely the sentence must fit the circumstances of each individual case. The appellant's conduct in this case discloses an arrogant sense of self-importance on his part and an insulting personal view of the Monarchy but, so far as the offence of which he was convicted is concerned, that, in itself, was little less than farcical. In my view, it could properly have been dealt with by way of a financial penalty and I propose to vary the sentence to one of a fine. As to the extent of the fine, Mr. Flynn suggests that a very small fine would be appropriate as the appellant's conduct was more misguided than criminal. However, I entertain strong doubts about that assessment of the appellant's conduct. That he did what he did indicates to me that he must have thought there was a fair prospect of achieving results although any reasonable person with respect for this country's institutions would have realised that there was none. In my judgment, his behaviour must be marked by more than a nominal fine though sight cannot be lost of the fact that at present his financial position is most insecure,

that he has a family to support and that he has at present no income. I am told that he wishes to stay in this country and find work but whether those responsible for work permits and immigration will regard his continued presence here desirable in view of his conduct is, I think, very much open to question.

In all the circumstances the appeal against conviction is dismissed but the appeal against sentence is allowed in that the sentence of imprisonment is varied to one of a fine of E500 or 6 months imprisonment in default of payment.

N.R. HANNAH

CHIEF JUSTICE