

**THE HIGH COURT OF SWAZILAND**

**REX**

**Vs**

**FIKILE SAMARIA MABUZA**

1<sup>st</sup> Accused

**NOMSA MATSEBULA**

2<sup>nd</sup> Accused

**ZWELI MALOYI SANGWENI**

3<sup>rd</sup> Accused

**COLANI S. SANGWENI**

4<sup>th</sup> Accused

Criminal Case No. 200/2005

**Coram: S.B. MAPHALALA – J**

**For the Crown: MR. T. MASINA**

**For the Accused: MR. MADZINANE**

**RULING**

**(24<sup>th</sup> November 2006)**

[1] During the cross-examination of Elizabeth Sangweni who testified for the Defence the Crown sought to enter a previous statement made to the police by the said witness as part of the record, but the defence objected.

[2] The basis of the defence's objection is that the cross-examination by the Crown on the previous statement made by the witness is not allowed.

[3] The Crown on the other hand advanced arguments against the objection. Firstly, that this witness under cross-examination admitted that she had freely and voluntarily made a statement at Mankayane Police Station on the 23<sup>rd</sup> September 2004. The Crown sought to enter this statement by her. Secondly, under cross-examination and without referring to the statement, she stated to the court 90% of its contents, yet in her evidence in-chief she had given a completely different and minimal version of the events of that day. Thirdly, that the Crown can cross-examine and put in previous inconsistent statements made to the police. For this proposition the court was referred to the Appellate decision case of *R vs Pillay and others 1945 A.D.* at page 657 where Watermeyer CJ stated the following:

**"During the cross-examination of No. 2 by the Crown Prosecutor, reference was made to the sworn statement made by No. 2 at Durban and he was asked whether he had made a statement and was questioned as to its contents.**

**Objection was taken to these questions by the attorney appearing for the accused, but the Magistrate overruled the objection and allowed the questions to be put. The statement which had been made by No. 2 was then proved and put in by the Prosecutor".**

[4] Further at page 669 the learned Chief Justice stated as follows:

**"Now, in the present case, accused No. 2 had given an account of what had occurred at Tongaat. In that evidence he stated that he had been assaulted by the police, but the details of his evidence differed in some respects from the statement which he made to the police at Durban. Consequently, the Prosecutor wished, in cross examination, to compare the details given in his evidence in court with the details contained in his statement made at Durban ... There was no confidential relationship between himself and the Crown and no reason existed why his identity should be revealed. The Crown did not desire to keep it secret and no did he, the only reason why objection to the disclosure of the contents of**

**his statement was taken on his behalf was because his attorney suspected or knew that it differed in some respects from his evidence in court".**

[5] In regard to the above-cited legal authorities by the Crown I have come to the considered view that the objection by the defence in *casu* ought to fail. I also find that the cases cited by the Crown that of *S vs Gquma and others 1994 (2) S.A. 187* and that of *S v Xaba 1983 (3) S.A. 717 (AD)* are apposite to the facts of the objection raised.

[6] In the result, for the afore-mentioned reasons the objection is overruled.

**S.B. MAPHALALA**

**JUDGE**