

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

In the matter between

MAQHAWE MAVUSO

And

REX

Criminal Case No. 10/2007

Coram

MAPHALALA - J et

MAMBA-J

For the Crown

MR. N MASEKO

For the Appellant

MR. M. SIMELANE

JUDGMENT

Maphalala J:

[1] On the 24th January 2007, criminal charges of fraud were put to the Appellant together with two co-accused persons who have not appeared at this stage. They appeared before the Principal Magistrate in Manzini. When the criminal charges were put to the Appellant he pleaded not guilty and also raised the special plea that the Principal Magistrate in Manzini had no jurisdiction to try the matter.

[2] The Crown then applied that a trial within a trial be conducted in order for the court to determine whether it had jurisdiction to hear the matter or not. The Crown

led PW1 Andreas Mathabela to prove that the matter commenced in the Manzini Region, overlapping to the Hhohho Region and was completed in Manzini upon delivery of certain goods which are exhibits in the main trial. The Crown closed its case and the Appellant also closed his case without calling witnesses. Submissions by both the Crown and the Appellant were made and the court eventually made a finding that it had jurisdiction to hear and determine the matter. The Appellant then appealed hence the present proceedings before this court.

[3] The Appellant has filed a Notice of Appeal to this court on the following grounds:

1. The learned Principal Magistrate erred in law and in fact that a Principal Magistrate has got jurisdiction to hear matters within his seat yet the alleged crime occurred in another magisterial jurisdiction.
2. Alternatively the learned Principal Magistrate erred in law and in fact by holding that Principal Magistrates jurisdiction to hear matters is equated to the of a Judge of the High Court.
3. The learned Principal Magistrate erred in law by hearing the matter yet he constitutes a set of (4) four Principal Magistrates which have not been provided for in terms of the law.
4. The learned Principal Magistrate erred in law and in fact by not taking into account evidence led by Andreas Mathabela that relate to the elements of the charge that the 3rd accused is charged with.

[4] In argument before us the Appellant abandoned the third ground because it has transpired that in fact Principal Magistrate Dumisane Magagula who heard the matter is the lawfully appointed Principal Magistrate as shown in the schedule in

the Appellant's Heads of Arguments.

[5] On the remaining grounds regarding the power of Principal Magistrate to hear a matter like a Judge of the High Court we were referred to Section 2 of the High Court Act 20 of 1954 which grants the High Court unlimited jurisdiction to hear matters within the four borders of Swaziland. However, the Constitution of Swaziland at Section 151 limits the matters that ought not to be heard by the High Court. That the Magistrates Court in terms of the Magistrates Court Act, No. 66 of 1938 in particular Section 4 the jurisdiction of a court is limited to the particular district the court is situate. It is this Section that the position of **Principal Magistrate** is created. The words "**have jurisdiction within every district**" in Section 4 (1) did not import that a Principal Magistrate can hear any matter that did not occur within his seat. Section 71 (1) of the Magistrate Court Act clearly limits the territorial jurisdiction of a court which are demarcated by the General Administration Act of 1908. A court is not the Magistrate but the hall that houses the magistrate and the staff. For this proposition the court was referred to the Interpretation Clause at Section 2 read with Section 3, 7 and 8 and all other sections that have words, "court".

[6] The Appellant further contends that the charges that the Appellant is facing does not stem from the requisition of the material that have been alleged to have been not delivered. It is clear that upon the evidence of PW1, the said Fortunate Ginindza had no role that would have caused the fund to suffer any prejudice thus the proper order should have been to refer the matter to the Hhohho District because that is where the alleged crime occurred. The court came to a wrong conclusion on the facts or law by holding that a Principal Magistrate can hear any matter anywhere though it did not happen within its jurisdiction.

[7] The Crown on the other hand has taken the position that the provisions of Section 4 (1) of Act No. 66 of 1938 as amended is apposite where it states the following:

"Subject to subsection (2) a Magistrate or a Magistrate court shall have jurisdiction over such area as the Minister may, by Notice in the gazette, determine and a Magistrate above the rank of Senior Magistrate or a Magistrate's Court presided over by him shall, unless otherwise stated in any Notice under this subsection, have jurisdiction within every district in Swaziland".

[8] On the basis of the above-cited Section the Crown contends that the Principal Magistrate has jurisdiction to preside over cases in every district in Swaziland. This Section puts the matter to rest according to the Crown. Further that Section 70 (1) of Act No. 66 of 1938 as amended deals with the jurisdiction of the Principal Magistrate's Courts with respect to classes of crimes and offences. Principal Magistrates have jurisdiction to preside over all criminal case except murder, sedition and treason and any conspiracy or attempt to commit any of these offences. The Crown contends therefore that by virtue of Section 4 (1) of the Principal Magistrate does not have to be gazetted in order to perform his or her duties in any district in Swaziland.

[9] Having considered all the arguments by the parties in this matter it appears to me that the position adopted by the Respondent is correct on the basis of Section 4 (1) of Act No. 66 of 1938 as amended. This Section puts the matter beyond any doubt that **a Magistrate above the rank of Senior Magistrate or Magistrate's court presided over by him shall, unless otherwise stated in any notice under this subsection have jurisdiction within every district in Swaziland.** In the circumstances I would return an order that the special plea by the Appellant has no

merit and refer the matter to the court *a quo* to resume on the merits of the case.

On the issue of costs that costs to follow the event.

S.B. MAPHALALA-J

I agree

M.D. MAMBA-J

Delivered on 6th March 2008 at Mbabane