

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

782/14

In the matter between:

MAXWELL MANQOBA

THANDUKUKHANYA DLAMINI

1st Applicant

MFANA WENKHOSI MBHUNU

MNTSHALI

2nd Applicant

DERRICK DICKSON

NKAMBULE

3rd Applicant

And

THE PRIME MINISTER

OF SWAZILAND

1st Respondent

MINISTER OF JUSTICE AND

CONSTITUTIONAL AFFAIRS

2nd Respondent

THE DIRECTOR OF PUBLIC

PROSECUTIONS

3rd Respondent

THE ATTORNEY GENERAL

4th Respondent

RESPONDENTS ANSWERING AFFIDAVIT

I, the undersigned;

JAMES MAJAHENKHABA DLAMINI

Do hereby make Oath and state that;

1.

I am the Attorney General and the 4th Respondent herein. I am duly authorized to depose to this affidavit by virtue of my position as aforesaid.

2.

The facts to which I depose are within my personal knowledge and are true and correct and or are derived from documents to which I am privy.

3.

AD POINTS OF LAW

The citation of the 1st and 2nd Respondents is objected to. In terms of the Government Liabilities Act, 1967, Section 3 thereof, proceedings against the Swaziland Government are to be taken against the Attorney General. The citation of the Attorney General suffices. Legal argument in this regard shall be advanced at the hearing of the matter. Wherefore I pray that the *point in limine* be upheld.

I turn to plead over to the merits.

4.

AD PARAGRAPHS 1-2

I deny that the facts deposed to by Applicants are true and correct.

5.

AD PARAGRAPHS 3 AND 4

I admit the contents of these paragraphs

6.

AD PARAGRAPH 5

I admit the identity of the 2nd Applicant and that he is from Gobholo area under Chief Mabhedla in the Hhohho Region. I do not admit the rest of the contents herein.

7.

AD PARAGRAPH 6

I admit the identity of the 3rd Applicant and that he is from Mgababa under Chief Mabhedla. I deny the rest of the contents in this paragraph.

8.

AD PARAGRAPH 7

I admit the contents of this paragraph.

9.

AD PARAGRAPH 8

Save to deny that the Applicants have to bring this Application in the public interest, the rest of the contents herein are not in issue.

10.

AD PARAGRAPHS 9-10

The citation of the 1st and 2nd Respondents is objected to. I state that it is unnecessary and unduly politicizes these proceedings.

11.

AD PARAGRAPH 11-12

I admit the contents of these paragraphs.

12.

AD PARAGRAPH 13

I deny that the 4th Respondent is ultimately responsible for the charges brought against applicants.

13.

AD PARAGRAPH 14-15

I admit the contents of these paragraphs.

14.

AD PARAGRAPH 16

1. I admit that "participation in a rally and possessing a banner" are not in themselves criminal activities that should be prosecuted. However, I state that

participation in a rally where the attendees excite disaffection against the person of His Majesty the King or the Government of Swaziland is a seditious activity that should be criminally prosecuted. The supporting Affidavit of the 3rd Respondent will more fully point out.

2. I deny that the Sedition Act is unconstitutional as demonstrated or at all.

15.

AD PARAGRAPHS 17- 22

I admit the contents of these paragraphs. However, I state that that the criminal charges preferred against Applicants may or may not stand the test of trial. But that has nothing to do with the constitutionality or otherwise of the sections of the Act impugned.

16.

AD PARAGRAPH 23

I admit that the Applicant wants to strike down sections 3(1), but deny that these impugned provisions are unconstitutional. The order sought by the Applicants shall be resisted as unjustified.

17.

AD PARAGRAPH 24

I deny that the definition of seditious intention is "overbroad" and that it "encompasses a wide range of non-seditious conduct". Applicants are put to strict proof of their assertions.

18.

AD PARAGRAPHS 25, 26 &27

1. I deny that the definition of seditious intention has the effects that the Applicants attribute to it. Legal argument in support of this denial will be advanced in the Respondents heads of argument and at the hearing.
2. The State has every right to criminalise certain acts or activities considered prejudicial to the welfare or public order of the state.

3. It is sufficient to point out that the determination sought by Applicants cannot be made in a vacuum but the specific act(s) charged. If need be Respondents shall plead their defence (s) in terms of Sections 23(3), 24(3) and 25(3) of the Constitution.

19.

AD PARAGRAPH 28- 29

1. The contents of these paragraphs are submissions of law which will be contradicted in the Respondents Heads of argument and in oral argument at the hearing of the matter.
2. In the context in which the words alleged to be "vague" or "open-ended", appear, their meanings are clear beyond cavil.
3. We accept the content of paragraph 29 as a common law principle.

20.

AD PARAGRAPH 30

I deny that citizens of the Kingdom of Swaziland are denied the freedom to hold or consider a fact or a view point that is in conflict with the viewpoints of the head of state of Government of the day. I state that any freedom of expression, e.t.c is limited by the Constitution. In any event the assertion contained in this paragraph is irrelevant to the issue of the constitutionality or otherwise of the provisions impugned.

21.

AD PARAGRAPH 31

I deny each and every allegation in this paragraph. "Participating in rallies and demonstrations" is not prohibited by the Act so long as the participants do not thereby contravene the limits of their freedoms in terms of the Constitution. Applicants must show that "this limitation is neither proportional to its objectives nor justifiable" in the circumstances.

22.


AD PARAGRAPHS 32 and 33

Contents of these paragraphs are opposed.

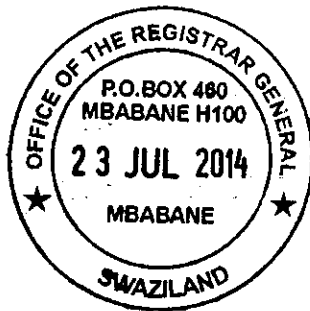
AD CONFIRMATORY AFFIDAVITS

I reiterate the contents of paragraph 3 herein.

WHEREFORE I PRAY THAT THE APPLICATION BE DISMISSED WITH COSTS.


DEPONENT

THUS DONE AND SWORN TO BEFORE ME AT MBABANE, ON THIS THE 23rd DAY OF JULY, THE DEPONENT HAVING ACKNOWLEDGED THAT HE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT.



Neko
COMMISSIONER OF OATHS

Name: *Nompumelelo P. Sibeko*

Designation: *Registrar General*