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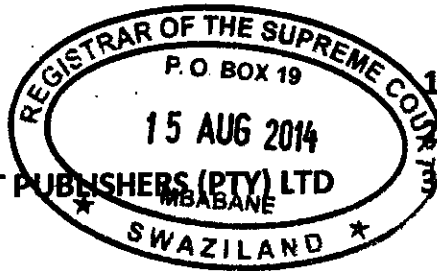
IN THE SUPREME COURT OF SWAZILAND

HELD AT MBABANE

CRIM APPEAL NO. 28/2014

In the matter between

THE NATION MAGAZINE
BHEKI MAKHUBU
SWAZILAND INDEPENDENT PUBLISHERS (PTY) LTD



1ST APPELLANT
2ND APPELLANT
3RD APPELLANT

AND

THE KING

RESPONDENT

NOTICE OF APPEAL

BE PLEASED TO TAKE NOTICE THAT the Appellants (who were accused 1, 2; 3 respectively in the court a quo) being dissatisfied with the judgment handed down by SIMELANE, J. in the High Court on the 25th July, 2014, hereby note an appeal against the said judgment on the following grounds:

1. The learned **judge a quo** erred in law and committed a gross irregularity by displaying an attitude of hostility towards the defence and one of partiality in favour of the prosecution throughout the proceedings.
2. The learned **judge a quo** erred in law and in fact by distorting the doctrine of judicial notice in that he used his peculiar private knowledge and his position as a judicial officer to reject the evidence of DW1 (Bhantshana Gwebu) on what transpired in the Chief Justice's chambers despite the fact that DW1's sworn evidence was not challenged in all material respects.

3. The learned judge a quo erred in law and in fact in rejecting the sworn evidence of the Appellants on his mistaken view that the February and March 2014 publications had alleged that the Chief Justice had locked out DW1'S lawyer when the said DW1 appeared in the Chief Justice's Chambers.
4. The learned judge a quo erred in law and in fact in labeling DW2 (Quinton Dlamini's) sworn evidence as hearsay notwithstanding the fact that such evidence was corroborated by Gwebu's sworn testimony which went unchallenged in all material respects.
5. The learned judge a quo erred in law and in fact in placing undue reliance on the issue of whether there was any connection between Gwebu (DWI) and the trade union (NAPSAWU) in as much as that issue was irrelevant regarding whether or not the Appellants had committed the crime of Contempt of Court.
6. The learned judge a quo erred in law and in fact and completely misconceived both the evidence and the submissions on the relevance of the American case of BRIDGES VS CALIFORNIA 314 US 252 (1941)
7. The learned judge a quo erred in law and in fact and completely misconceived the defence's submission on the Crown's propriety of placing reliance on the South African case of S.VS. MAMABOLO which dealt with that species of contempt of court known as "scandalizing the court" yet the appellants had pleaded to a charge of Contempt of Court in the form of breaching the "sub judge" rule which is a totally different species of Contempt of Court.
8. The learned judge a quo erred in law and in fact in convicting the appellants despite the fact that there was no evidence led by the Crown suggesting that in writing and publishing the articles complained of the Appellants intended to act unlawfully.


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9. The learned **judge a quo** erred in law and in fact in ignoring the sworn version of the Appellants in as much as it could reasonably possibly be true.
10. The learned **judge a quo** erred in law and in fact in ignoring the sworn evidence of PW1 (**MSEBE MALINGA**) and DW5 (**BHEKI MAKHUBU**) that only the 3rd Appellant (Swaziland Independent Publishers (Pty) Ltd has legal personality and not the 1st Appellant (**The Nation Magazine**).
11. The learned **judge a quo** erred in law and in fact in ignoring the defence submission that the limitation of the enjoyment of the freedom of expression can only be justified upon proof of the jurisdictional facts that the judiciary of Swaziland does indeed have **authority and independence** especially having regard to the notorious fact that to date the courts of this country have done nothing to the executive arm of government despite the fact that the latter has flatly refused to comply with judgments in the **Macetjeni and kaMkhweli** evictions. Neither is there anything in the learned **judge a quo's** judgment showing that he ever considered the defence submissions supported by authority and local publications showing that comments made by the Chief Justice of this county leave one with the reasonable conclusion that the independence of this country's judiciary has been severely compromised.
12. The learned **judge a quo** erred in law and in fact in not holding that the evidence presented before court, in its totality, does not show that the Crown proved its case beyond all reasonable doubt.
13. The learned **judge a quo** erred in law and in fact in not demonstrating by his treatment the evidence presented, how the newspaper articles complained of had the potential of influencing the outcome of the pending criminal trial of DW1 (**Gwebu**).

AD SENTENCE

14. The learned **judge a quo** erred in law and in fact in meting out a sentence which in all respects and on the peculiar facts of this particular case, induces a sense of shock.
15. The learned **judge a quo** erred in law and fact in not considering the fact that the 1st Appellant is not a legal entity.
16. The learned **judge a quo** misdirected himself in meting out a sentence that was clearly motivated by anger and emotion.
17. The learned judge erred in law and misdirected himself in treating the Appellants as repeat offenders notwithstanding the fact that the present offence was allegedly committed at the time when the previous conviction had been suspended by the then pending appeal and the judgment on appeal expressly provides that it takes effect from the 31st May, 2014, i.e. well after the alleged commission of the present offence.
18. The learned **judge a quo** misdirected himself in meting out a sentence that is so harsh that it has the effect of discouraging critical and vibrant journalism in this country.

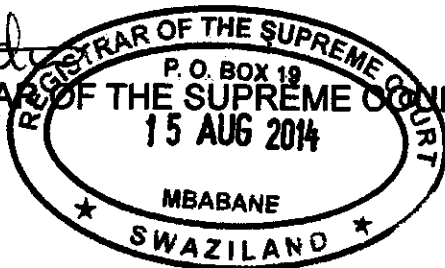
WHEREFORE it may please this Honourable Court to uphold the appeal on both conviction and sentence.



SIGWANE & PARTNERS
(1ST, 2ND, 3RD APPELLANTS ATTORNEYS)
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MSAKATO STREET
MBABANE

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TO: *Kabedi*
THE REGISTRAR OF THE SUPREME COURT
MBABANE



AND TO: DIRECTOR OF PUBLIC PROSECUTIONS
(RESPONDENT'S ATTORNEYS)
4TH FLOOR, JUSTICE BUILDING
USUTHU LINK ROAD
MBABANE

Received copy hereof this 15th day of August, 2014.



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