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**IN THE SUPREME COURT OF SWAZILAND**

HELD AT MBABANE

CASE NO. 26.../10

In the matter between:

THULANI RUDOLF MASEKO 8 AUG 2014

Appellant

And

THE DIRECTOR OF PUBLIC PROSECUTION

Respondent

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**NOTICE OF APPEAL**

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**BE PLEASED TO TAKE NOTICE THAT** the above named Appellant hereby appeals both against the verdict and the sentence handed down by the High Court, on the following grounds;

1. The conviction and sentence imposed by the Court a quo were contrary to law and the weight of the evidence, in the respects set out below.
2. The Court a quo failed to give adequate regard to the protection under the Constitution and common law of Swaziland of the rights and duties of counsel and their related rights of freedom of expression.
3. The Court a quo erred in law and in fact in convicting (and thereafter sentencing) the Appellant on count one. He was not charged with count one. A fundamental failure of justice has resulted from such irregularity or defect; the said conviction and sentence were not competent in law, and cannot stand.
4. The sentence imposed on the Appellant is in all the circumstances of the matter is disproportionate to the offence, so severe that no reasonable court would have imposed it, and induces a sense of shock.



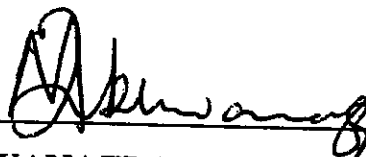
5. The Court a quo erred in law and in fact misdirected itself by taking judicial notice of a disputable fact as regards which no evidence was led, regarding what transpired in the Chief Justice's Chambers on Bhantshana Gwebu's first remand.
6. The Court a quo erred in law and in fact in holding that the Crown had established beyond a reasonable doubt the existence of common purpose amongst the Appellants.
7. The Court a quo erred in law and in fact in ordering the trial to proceed without first determining the plea of *lis pendens* that was entered by the Appellant.
8. The Court a quo erred in law and in fact in holding that the Chief Justice was exercising a judicial function when he issued the warrant of arrest against Vincent Bhantshana Gwebu.
9. The Court a quo erred in law and in fact in holding that the Appellant's statement from the dock was wholly irrelevant, to be disregarded, and presented no defence to the charge Appellant was facing.
10. The Court a quo erred in law and in fact in taking into account the Appellant's outbursts in Court during the trial for purposes of sentencing given the tender of an apology by the Appellant and acceptance of the apology tendered by the Court.
11. The Court a quo erred in law and in fact in holding that the Appellant's understanding of the charge sheet was that he should have been charged with scandalizing the Court and not contempt of Court.
12. The Court a quo erred in law and in fact in not having proper regard to the evidence of DW2 Quinton Dlamini, and in particular rejecting it as hearsay evidence.
13. The Court a quo erred in law and in fact in holding that there were (material) contradictions in the evidence of DW1 Bhantshana Gwebu and DW3 Maqhawe Sithole, and on this basis rejecting same.
14. The Court a quo erred in law and in fact in holding that the arrest and subsequent trial of the Appellant was lawful given that the Appellant was arrested to be investigated, not to be brought before a court of law to answer to any criminal charge.

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15. The conviction was against the weight of the evidence and vitiated by the failure of justice and irregularities set out above.

**WHEREFORE** the Appellant prays that his Appeal, based on the above-mentioned grounds, succeeds.

**DATED AT MBABANE ON THIS THE 8<sup>th</sup> DAY OF AUGUST 2014**



**MKHWANAZI ATTORNEYS**

**Appellant Attorneys**

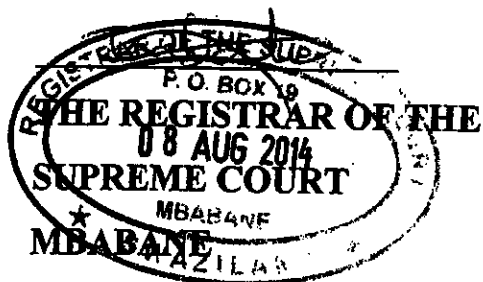
**Mphikwa Chambers**

**Malunge Township, Portion 296 of**

**Portion 279 of Farm 2**

**Mcitfo Road Mbabane**

**(MZM/kz/M807/3)**

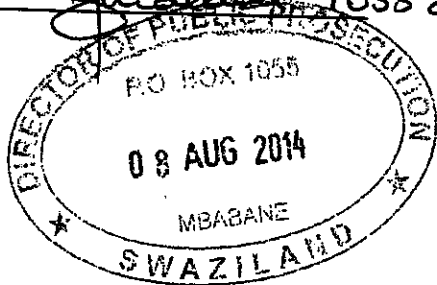


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And To: **THE DIRECTOR OF PUBLIC PROSECUTIONS**  
**RESPONDENTS ATTORNEYS**  
**4<sup>th</sup> FLOOR, JUSTICE BUILDING**  
**USUTHU LINK ROAD**  
**MBABANE**

Received copy hereof on this 8<sup>th</sup> day of  
August 2014

*[Signature]* 1055 am



DIRECTOR OF PUBLIC PROSECUTION  
PO BOX 1055  
08 AUG 2014  
MBABANE  
SWAZILAND