

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

LABOUR COMMISSIONER

Appellant

V

ISMAEL CASSIM ZACHURA

Respondent

J U D G M E N T

Delivered by the Hon. Acting Mr. Justice
J.L. Kheola on the 19th October, 1984.

The Respondent is one of the four directors of a company called Zachura Brothers Company which is incorporated according to the Company Laws of Lesotho. Fast Foods Cafe is one of the business enterprises run by Zachura Brothers Co. On the 24th August, 1983 the Respondent appeared before the Mafeteng Magistrate's Court charged with twelve counts of contravening various sections of the Employment Act No. 22 of 1967. He was charged in his capacity as a director of Mafeteng Fast Foods.

The Respondent pleaded guilty to all the charges. The public prosecutor accepted the pleas of guilty in terms of section 240 of the Criminal Procedure and Evidence Act 1981. The learned Magistrate immediately drew the attention of the public prosecutor to the fact that 'where the Director of a company is charged in Criminal matters there must be a written authority from the company. She referred to R. v. Allson, 1949 (2) S.A.

469 (T.P.D.). Miss Fanana for the Crown asked the Court to order the accused person to produce the written authority since he was the one pleading guilty.

Mr. Nthethe for the Respondent opposed the application on the ground that an accused person cannot be compelled to bring evidence against himself and applied for the acquittal of the Respondent. The learned magistrate, relying on the decision in Allsop's case, supra, held that the plea was invalid; she also agreed with Mr. Nthethe that the accused person could not be ordered to bring evidence that would implicate him in the case. She acquitted the accused.

The Labour Commissioner is now appealing against the judgment of the learned magistrate on the following grounds:

- (a) The learned magistrate erred in not ascertaining whether the accused had the requisite authority to tender a plea of guilty and that it was the Court's duty to satisfy itself as to the validity of the plea before entering it.
- (b) That it was a cardinal error on the part of the learned magistrate to shift the onus of establishing the validity of such plea on the prosecution.

Section 338(2) (a) of the Criminal Procedure and Evidence Act 1981 reads as follows:

- (2) In any criminal proceedings referred to in sub-section (1), a director or servant of a corporate body shall be cited as a representative of that corporate body, as the offender and thereupon, the person so cited may, as such a representative, be dealt with as if he were the person accused of having committed the offence in question;

Provided that -

(a)

- (a) if that person pleads guilty, the plea shall not be valid unless the corporate body authorized him to plead guilty."

It is common cause that the Respondent did not have any authority from Zakhura Brothers Company to plead guilty to the charges. The plea was therefore not valid. But the question is whether the Respondent was entitled to an acquittal on that ground alone. Was the learned magistrate correct to hold that the Prosecution had to establish the validity of the plea? The learned magistrate was obviously wrong because the authority had to be made by a resolution of the board of directors of the corporate body and the Crown has no power to compel the directors of such a body to convene a meeting and to pass a resolution authorizing one of the directors of such body to plead guilty to a charge. In other words, the passing of such a resolution is an internal affair of the company which cannot be put into motion by the Crown. The onus was on the Respondent to show that his plea was valid by producing an authority from his company. I totally disagree with Mr. Nthethe that the production of the authority by the Respondent amounted to compelling the accused person to bring evidence against himself. I do not see how the authority can be regarded as evidence against the director. By pleading guilty the Respondent unequivocally admitted all the allegations in the charges. The next step was for the public prosecutor to give a summary of the evidence she had in her possession. But before such a summary was given the accused person had to convince the Court that his plea was valid.

/The next

The next question is: What would the court do if the Respondent failed to produce evidence that he had been authorized by the company to plead guilty to the charges. In my opinion the proper procedure is to take the plea of guilty as invalid and to enter a plea of not guilty. This procedure would not have prejudiced the Respondent in any way; but it was a serious prejudice to the Crown and a gross irregularity to shift the onus of proving the authority to the Crown and then acquitting the accused person when the Crown failed to do so.

The learned magistrate is of the opinion that because the public prosecutor accepted the invalid plea the court could no longer demand the authority from the accused. The validity of the plea ought to have been raised by the court immediately after the accused pleaded and before the public prosecutor accepted it. The Court raised the issue of the validity after the Crown had accepted the plea. Miss Fanana asked the Court to order the accused to produce the authority at that stage of the proceedings. There was nothing wrong to change the plea at that stage because there was no prejudice to the accused. A plea of not guilty can seldom be regarded as prejudice to the accused. (See section 165 of the Criminal Procedure and Evidence Act 1981). Failure to substantiate his plea with an authority from the company would entitle the Court to treat the accused as if he had refused to plead and to enter a plea of not guilty.

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The proceedings before the learned magistrate are set aside. In terms of section 8(c) of the High Court Act 1978 the case is sent back to the Mafeteng Subordinate court for re-trial before another magistrate. There will be no order as to costs.

 F. H. K. L. L.
Acting Judge.

19th October, 1984.

For the Appellant : Mr. Seholoholo
For the Crown : Mr. Nthethe.