

~~CF 10. GI~~

26, 1951

31427

IN THE PRIVY COUNCIL

No. 16 of 1951

ON APPEAL FROM THE HIGH COURT OF SWAZILAND

B E T W E E N: VELABANTU NGCAMPALALA,
LOCELA NGCAMPALALA,
MKAKWA SIKONDE, and
MAGABELA SIKONDE

UNIVERSITY OF SWAZILAND
WOLU
21 JUL 1951
Appellants
(Defendants)
LEGAL SERVICES

- and -

THE KING

Respondent
(Plaintiff)

CASE FOR THE RESPONDENT

- | | | |
|----|---|-----------------------------------|
| | | <u>Record</u> |
| | 1. This is an appeal from a judgment of the High Court of Swaziland dated the 12th October, 1950 whereby the appellants were convicted of the murder in January 1948 of one Magongo Ngcam Ngcampalala the mentally backward son of the appellants Locela Ngcampalala and Magabela Sikonde, and sentenced to death, two other persons charged with them being convicted as accessories after the fact. | pp.353-366 |
| 10 | 2. The trial was held before Sir Walter Harrigin, Chief Justice, and four assessors, two of whom were natives, and all of whom agreed with the judgment. | p.1 11.3-6
p.365 1.22 |
| | 3. There was abundant evidence to establish (if accepted) the guilt of the accused. This included the evidence of Mbalekelwa Ngcampalala which was treated as that of an accomplice, and the unsworn evidence of four children, Doyika, Mfanyana, Kontile and Ngogola. | p.77
pp.140, 170,
187, 197. |
| 20 | 4. In Swaziland there is no statutory provision that the unsworn evidence of a child must be corroborated. Such evidence is admissible under section 214 of the Criminal Procedure and Evidence Proclamation, which is as follows: | |
| | 214. Any person produced for the purpose of giving evidence who, from ignorance arising from youth, defective education, or other cause, is found not to understand the nature, or to recognise the religious obligations, of an oath or affirmation, may be admitted to give evidence in any court or on a preparatory examination without being sworn or being upon oath or affirmation: | |
| 30 | Provided that before any such person proceeds to give evidence the presiding officer before whom he is called as a witness shall admonish him to speak the truth, the | |

whole truth, and nothing but the truth, and shall further administer or cause to be administered to him any form of admonition which appears, either from his own statement or other source of information, to be calculated to impress his mind and bind his conscience, and which is not, as being of an inhuman, immoral, or religious nature, obviously unfit to be administered:

Provided further that any such person who wilfully and falsely states anything which, if sworn, would have amounted to the crime of perjury, or any offence declared by any statute to be equivalent to perjury, or punishable as perjury, shall be deemed to have committed that crime or offence, and shall upon conviction, be liable to such punishment as is by law provided as a punishment for that crime or offence. 10

5. The record shows merely that each child was cautioned to speak the truth. As a result of inquiries further information has been obtained, and is set out in a supplemental record in the form of (a) a joint statement signed by the Attorney General, who appeared for the Crown, and by the attorney who appeared for the appellants; (b) an extract in the case of each child of the electrical recording of the proceedings; (c) a report by the Chief Justice; (d) a further report by the Chief Justice after he had seen these extracts; (e) a further statement by the Attorney General; (f) an affidavit by Archibald George Dovey a retired sworn interpreter in native languages in the Supreme Court of South Africa and (g) an affidavit of Johannes Cleophas Misi an Official sworn interpreter in the English and Swazi languages in the High Court of Swaziland. 20 30

6. The respondent submits that this further information shows that section 214 was duly complied with, that the Crown was therefore entitled to hear and to act upon the unsworn evidence, and that on the whole of the evidence the Chief Justice rightly convicted each of the appellants. 40

7. The respondent therefore submits that this appeal should be dismissed for the following amongst other

R E A S O N S

1. BECAUSE the unsworn evidence of children was properly admitted in accordance with section 214 of the Criminal Procedure and Evidence Proclamation. 50
2. BECAUSE the trial was in all respects proper and regular, and there was ample evidence of the guilt of each appellant
3. BECAUSE there has been no substantial mis-carriage of justice.

