

Two-year prison sentence for Swazi lawyer

There has been an uproar since July regarding the conviction and sentencing of Swazi human rights lawyer, Thulani Maseko and the editor of monthly publication, *The Nation* magazine, Bheki Makhubu, for articles published in the February and March editions of the magazine.

The articles were critical of Swaziland's governance and judicial system as they criticised the arrest of the country's chief vehicle inspector for executing his duties. Criticism was directed mainly at the country's Chief Justice Michael Ramodibedi for issuing a warrant of arrest for the inspector on the basis that he had given a ticket to the driver of a government vehicle who was transporting a judge without the required authorisation (see 2014 (May) *DR* 15).

The pair was found guilty of contempt of court by Swaziland High Court Judge Mpendulo Simelane on 17 July. They were sentenced to a two-year prison term on 25 July without the option of a fine. The sentence was backdated to 17 and 18 March 2014, the dates that they were taken into custody. The court also fined *The Nation* and Independent Publishers E50 000 each, payable within one month from the date of the sentencing.

The Southern African Development Community Lawyers' Association (SADC LA) immediately issued a media statement in which its president, Kondwa Sakala-Chibiya, says that SADC LA is appalled by the sentence. She also states that SADC LA believes that the sentence is contrary to Swazi case precedent, that it is not commensurate with the nature of the offence they were convicted of, and that it is also incompatible with international law.

Ms Sakala-Chibiya added that SADC LA finds the sentence repressive and a deliberate limitation on the exercise of fundamental rights and freedoms not only by the accused, but by the Swazi people as a whole. 'So while the judgment purports to protect the dignity of the Swazi courts and stability of the country, it instead appears to be a crackdown on dissent,' she states. Ms Sakala-Chibiya highlights the fact that freedom of expression is a fundamental human right guaranteed in Article 24 of the Constitution of Swaziland Act 001 of 2005 as well as in major international human rights instruments to which Swaziland is a party, and in customary international law.

According to Ms Sakala-Chibiya, in his judgment, Simelane J justified the sentence as a means of deterring the 'unacceptable unfortunate and increasing trend of the accused persons writing scurrilous articles that have the propensity of tarnishing the reputation, authority and dignity of the courts ... The courts have an obligation to discourage such conduct in the interest of the stability of our country.'

Ms Sakala-Chibiya states: 'Also of concern is that a 30 May 2014 Supreme Court of Swaziland decision in *Swaziland Independent Publishers (Pty) Ltd & Another v King [2014] SZSC 29* set aside a High Court sentence for a contempt of court conviction, which had imposed a E 400 000 fine suspended over a five year period if the appellants paid E 200 000 within three days, failure of which the 2nd appellant, namely Bheki Makhubu, would be imprisoned for a two-year term. Instead, the Supreme Court ordered that the appellant be sentenced to a term of only three months' imprisonment, which would be suspended for three years on condition that the appellant is not convicted for the same offence during that period.'

Ms Sakala-Chibiya adds that contempt of court is a common law offence in Swaziland; that the Supreme Court of Swaziland is the final court of appeal and exercises appellate, supervisory and review jurisdiction over all subordinate courts, including the High Court in terms of articles 146, 147, 148 and 149 of the Swaziland Constitution. She noted that, in view of the above-cited decision of the Supreme Court, it would logically follow that the maximum sentence that the High Court should have imposed on Mr Maseko and Mr Makhubu for the conviction should have been three months' imprisonment. 'In this regard, the two-year sentence without an option of a fine is a departure from what is binding case precedent in Swaziland,' she states.

Ms Sakala-Chibiya also called on Swazi authorities to afford the pair a speedy appeal and the right to be released on their own recognisance should they appeal their conviction and sentence.

Meanwhile, the Right2Know Campaign held a protest picket outside the High Commission of Swaziland in Pretoria on 30 July. The protest was held to voice the Campaign's 'outrage at the blatant attacks on freedom of expression and a free press in Swaziland.'

The Campaign's media freedom and diversity spokesperson, Julie Reid told *De Rebus* that the aim of the protest was to plead with the South African government and all Chapter Nine institutions to put pressure on the Swaziland government to drop the charges.

The director of the Centre for Human Rights at the Faculty of Law of the University of Pretoria (UP), Professor Frans Viljoen, also called on the South African government to take suitable measures to exert pressure on the Swaziland government to ensure that Mr Maseko, who is a UP graduate, be released from prison.

In a media statement, Prof Viljoen pointed out that Mr Maseko had graduated with a Master's degree in Human Rights from the University of Pretoria in December 2005. After graduation, he returned to Swaziland to work as a lawyer and human rights activist. In 2011 Mr Maseko received the Vera Chirwa Award from the Centre awarded to a graduate who has made a significant difference to the protection of human rights in his or her home country.

Mary da Silva from Lawyers for Human Rights Swaziland (LHRS) has told *De Rebus* that the sentencing was 'bitter sweet'. She said that the LHRS has always known what they were up against and that the sentence was a pronouncement of their fears and a vindication of their views that the Swazi government is out to clamp down on human right lawyers in that country.

Ms da Silva said that Mr Maseko had been smiling the whole way through the sentencing and that those present – especially the attorneys – drew strength from him. She added that Mr Makhubu's family had some hope that the pair would not go back behind bars as they were not aware of the political affiliation of the case. Their worst case scenario was that they expected that the pair would be found guilty and sentenced to a few months in jail, backdated to March, which would mean no further jail time. Ms da Silva said that it had been heart-breaking to see Mr Makhubu's wife break down after the sentencing. 'His family was shattered,' she said.

'The conviction has helped make the world take notice of what is going on in Swaziland. It has opened people's eyes, even the citizens of this country. People used to think that to be in a "war" there must be violence, but now they realise that we have been in a "war" for a while,' said Ms da Silva.

When asked about the state of the legal profession generally in Swaziland, Ms da Silva said that attorneys are worried about the profession. 'They realise that the justice system can be manipulated easily. There is too much uncertainty. They are asking themselves what they are doing and if they even still have a profession. It is unfair on the other judges to be painted with the same brush. There is just so much uncertainty on the outcome of even the simplest of matters because you do not know which way it will go or which judge will preside over your matter,' she said.

According to Ms da Silva, because there is no parole system in Swaziland, the pair will serve two thirds of their two-year sentence, as eight months in prison is viewed as a year in that country. She added that they were given until 8 August to appeal the sentence, which they have done.

Mr Maseko has also written a letter from his prison cell to President Barack Obama appealing for support from the American government. In the letter, he asks the United States (US) to put pressure on Swaziland's King Mswati III to agree to constitutional talks. He also pleads with the US to target sanctions against the King.

Ms da Silva said that they had not received a formal response to the letter from President Obama but added that the letter was a topical issue among delegates at the US-Africa leaders summit in August. 'The secretary of the LHRS, Sipho Gumede was there. We will have to wait and see what comes of the letter,' she said.

Tanele Maseko, Thulani Maseko's wife, has told *De Rebus* that the biggest difficulty that her family has faced since March is financial. She added that Mr Maseko is the sole bread winner and having him in jail for so long has been extremely difficult. Ms Maseko added, however, that her family has been receiving remarkably overwhelming support from all corners, adding that she thought that after the sentencing of her husband, people would give up and the case would lose momentum. 'I was so wrong. People want to assist further. I get a lot of phone calls daily asking what kind of support I need and how they can assist. The people in Swaziland are living in fear though and do not want to be seen to be helping us,' she said.

Ms Maseko said that she felt bad for the legal profession and for the Swazi media. She stated that the verdict has sent a message that Swazi citizens should not express how they feel. 'I particularly feel sorry for students studying law and journalism. Where will they work? In Swaziland you cannot express how you feel because you never know who will come knocking on your door and take you to jail. I feel sorry for our children because our justice system is such a circus,' she said.

Mr Maseko has been moved from the Sidwashini Prison in Swaziland's capital, Mbabane, to Big Bend Prison, in the East of the country. Ms Maseko believes that he was moved because of the letter to President Obama. 'The people in power thought that the officers at Sidwashini Prison helped him smuggle the letter out. They also moved him to frustrate him and break his spirit by isolating him from his family and friends. Big Bend Prison is about 150 to 200 kilometers away from home and I can no longer visit him every day,' she said.

Ms Maseko is hoping that world leaders and influential people raise the alarm and put pressure on Swaziland to release the pair and to put an end to the situation. 'Thulani is not phased about being in jail. All he wants is that, when he comes out, things would have changed. The fight is not about him, it is much bigger than him; it is about the rights of Swazi citizens and them being able to express themselves fully and freely without landing in jail. He is a man of justice and he has always believed that in the end, good will overcome bad. It is only a matter of time,' she said.

- See 2014 (May) *DR* 15 and 2014 (Aug) *DR* 16.

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