

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CIVIL CASE NO.1217/93

In the matter between:

JOHN HAYTER	Applicant
and	
TONKWANE ESTATES LIMITED	1st Respondent
ROBERT ASHWORTH CRABTREE	2nd Respondent
DAVID ASHWORTH CRABTREE	3rd Respondent

C O R A M : DUNN J.  
FOR THE APPLICANT : MR P.W. KEYTER  
FOR THE 1ST RESPONDENT : MR J.G. VILAKAZI  
FOR THE 2ND RESPONDENT : IN PERSON  
FOR THE 3RD RESPONDENT : IN PERSON

RULING ON APPLICATION

24th August 1993

The applicant approached the court on Notice of Motion seeking an order in the following terms -

2. That the 1st, 2nd and 3rd respondents be and are hereby interdicted and restrained from interfering with or attempting to obstruct the course of justice in relation to the conduct of case no. 681/90 before this Honourable Court by way of the delivery of letters to the Honourable Chief Justice or otherwise howsoever.
3. That the 1st, 2nd and 3rd respondents be and are hereby interdicted and restrained from defaming the applicant.
4. That the 2nd and 3rd respondents be and are hereby

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committed to prison for contempt of this Honourable Court and that an appropriate penalty be imposed upon the 1st respondent in respect thereof,

Alternatively

That the papers in this matter be referred to the Director of Public Prosecutions to take such actions as he may deem proper.

5. That the 1st, 2nd and 3rd respondents be ordered jointly and severally to pay the costs of this application on the scale as between an attorney and his client scale.

The application was served on the respondents in the afternoon of the 19th August 1993 and was set down for hearing at 9.30 a.m. Friday 20th August.

The circumstances leading to the application are clearly set out in the applicant's founding affidavit and centre upon a letter which was written by the 3rd respondent to the Chief Justice on the 24th July 1993. The letter was addressed to the Chief Justice in his personal capacity, through the British High Commission, Mbabane. The letter dealt, in the main, with the need as seen by the 3rd respondent for the Chief Justice to remove the applicant as the liquidator of Tonkwane Sawmills Company Limited (in liquidation). A scathing, scurrilous and clearly defamatory attack was made on the applicant in the letter, in support of the plea for his removal as liquidator. The letter was written by the 3rd respondent with the full knowledge that there was a pending case before the Chief Justice involving the 1st respondent and the applicant (civil case No.681/90).

/The case...

/3 ... ..

The case has apparently been set to continue on the 26th August 1993. The 3rd respondent explained in the letter that he was not a litigant in the afore-mentioned case but that he had a personal interest in the proceedings.

On the instructions of the Chief Justice and through the office of the acting deputy registrar, copies of the 3rd respondent's letter were forwarded to attorneys P.W. Keyter and J. Vilakazi who represent the respective parties in case no. 681/90. The covering letter by the acting deputy registrar is dated 29th July 1993 and reads -

**RE: TONKWANE ESTATES LIMITED v. HAYTER**

The Chief Justice has directed me to bring to your attention immediately a letter dated 24th July 1993 which has been addressed to him personally and signed by David Crabtree. This letter was brought to the High Court yesterday afternoon.

Thereafter and on the 14th August 1993 a letter was addressed to the Registrar by the 2nd respondent for and on behalf of the 1st respondent in the following terms -

**RE: COMMENTS REQUESTED BY THE  
CHIEF JUSTICE ON THE LETTER OF  
DAVID CRABTREE TO MR D. HULL  
IN RE CASE 681/90 TONKWANE ESTATES V. J. HAYTER N.O.**

You the Registrar informed our attorney that the Honourable Chief Justice had asked for comments from both Tonkwane Estates Limited and Mr J. Hayter on the contents of the letter written by one David Crabtree to Mr D. Hull.

/You gave...

You gave our attorney a copy of a letter with annexures dated 24th July 1993. We herewith enclose a copy of Tonkwane Estates Limited's comments on the letter of David Crabtree dated 24th July 1993 as requested by you.

The "comments" referred to run into 7 typed pages and are a scurrilous abuse of the Chief Justice and constitute, without any doubt, a clear contempt of court. Counsel for the applicant quite properly kept the 3rd respondent's letter and the comments thereon separate from the notice of motion in order to avoid their further publication. It is not necessary nor desirable to traverse the contents of the documents which I direct should continue to be kept separately from the other papers in the application.

Sapire A.J. before whom the application was brought issued the following order on the 20th August -

- 2 Interdicts are granted in terms of prayers 2 and 3.
3. 2nd and 3rd respondents are to show cause on Monday 23rd August why they should not be committed for contempt, and why first respondent should not be appropriately punished thereof.
4. Costs of the day to be paid by the respondents jointly and severally. The court hearing the matter on the 23rd may determine whether any special order as to the scale of the costs should not be made.

The matter is before me purely for purposes of dealing with order no.3. The three respondents filed answering

/affidavits...

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affidavits on the morning of the 23rd August and as I required time to read the papers, I stood the matter down to 2.30 p.m. When the matter was called Mr Keyter indicated that the applicant would proceed with the application without filing replying affidavits.

The affidavit of the 2nd respondent whose contents are adopted by the 1st and 3rd respondents deals at some length with the proceedings before Sapire A.J. leading to the interdicts issued under order no.2 and the order calling on the respondents to show cause why they should not be committed for contempt. Sapire A.J. found that prima facie, the documents constituted a contempt of court and it was on that basis that order no.3 was issued. The respondents have raised the point that they have not had enough time within which to obtain legal advice. The urgency and serious nature of the complaint against the respondents cannot be over-emphasised. The two documents in question were made available to Mr Vilakazi and I would be most surprised if the respondents remained totally ignorant of the effect of those documents prior to this application. The fact that Saturday 21st August was a public holiday does not assist the respondents. The application was brought about by the conduct of the respondents and the duty fell on them to obtain whatever advice they sought, within the time ordered by Sapire A.J. I have little sympathy for the submissions that the respondents required legal advice from South Africa. No reasons were advanced why legal advice could not be obtained in Swaziland over the week-end, in what appears to be a straight forward matter.

The 1st and 2nd respondents advanced the obviously unsatisfactory explanation that they understood that the comments they made had been requested by the Chief Justice. The 3rd respondent who had not signed or appeared as a party

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to the comments, associated himself with the comments by incorporating them in his affidavit. The respondents make no attempt to show what led them to believe that they were called upon to comment on the letter of the 24th July. The self-explanatory letter from the acting deputy registrar and addressed to the mentioned attorneys did not invite any comments from the respondents. If the respondents were in any doubt they should have consulted the attorneys to whom the letter had been addressed.

An attempt was made by the 2nd and 3rd respondents to give statements and explanations from the bar in support of their understanding of the acting deputy registrar's letter, and the law dealing with contempt of court. I refused to allow these explanations as they did not constitute evidence, the respondents having elected not to go into the witness box. The respondents have failed to show cause why they should not be committed. The letter and comments constitute a clear contempt of court for which the respondents have given no explanation.

I will proceed to hear any submissions the respondents may wish to make relevant to the question of sentence.

#### SENTENCE

This is a serious case of contempt of court. The respondents are no strangers to litigation in the High Court and have always had the benefit of counsel. They should have known better. They chose to persist in the attack on the Chief Justice with no reference to their legal advisers. This case calls for a severe punishment which will serve as a deterrent not only to the respondent but to other litigants who might decide to adopt the tactics of the respondents to achieve their own ends.

The 1st respondent is sentenced to a fine of E1,000.00.

The 2nd and 3rd respondents are each sentenced as follows -

6 months imprisonment. The whole of the sentence is suspended for 2 years on condition that the respondent is not convicted of contempt of court, for which he is sentenced to a term of imprisonment without the option of a fine, committed during the period of suspension.

I have considered the submissions made on behalf of the applicant for an order as to costs on the attorney and client scale. I am not inclined to make such an order in the circumstances of the application. I order that the costs of the application from Monday 23rd August 1993 be paid by the respondents jointly and severally.



B. DINN

JUDGE