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Sachs 7/4/11

*Defence Copy
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Case No. 2204/58.

REGINA

versus

SOLOMON NONO

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Certified a true copy

P. Dvan Hill

KLERK VAN DIE HOF
CLERK OF THE COURT

ORDINARY JURISDICTION.

NO. 2204/1958.

IN THE COURT OF THE NATIVE COMMISSIONER

for the District of the Cape Peninsula holden at LANGA before A.R. HUTCHISON Esquire, Native Commissioner for the said District, on the 10th day of March, 1958.

REGINA versus

SOLOMON NONO NIN.2754269

LANGA

(hereinafter referred to as the accused), charged with the offence of contravening Section 10(4) read with Sections 10(1) and 44 of Act No.25 of 1945, all as amended.

In that upon or about the 7th day of March 1958

and at or near Langa in the said District, the Accused, being a Native, did wrongfully and unlawfully and without permission remain for more than seventy-two hours in the Proclaimed Area of the Cape Peninsula, in respect of which the Council of the City of Cape Town, an urban local authority, exercises the powers referred to in sub-section (1) of Section 23 of Act 25 of 1945, as amended.

ALTERNATIVELY

That accused contravened Section 43 bis of Act 25 of 1945 read with Sections 10(1)(d) and 44 of Act 25 of 1945, all as amended:

In that upon or about the date and at the place abovementioned, the said accused, being a Native, did wrongfully and unlawfully fail or refuse to produce on demand to an authorised officer his permission in terms of Section 10(1)(d) of Act 25 of 1945, to be in the Proclaimed Area of the Cape Peninsula in the main charge described, which permission he is required under the said Section 10(1)(d) to hold or possess.

On 27.3.58

The Accused, being arraigned,

PLEADED : NOT GUILTY / ~~GUILTY~~ to the main charge.

JUDGMENT : ~~NOT/GUILTY~~ / GUILTY on the main charge.

SENTENCE : ~~DISCHARGED~~ / ~~FINED~~ // ~~£~~ // ~~or~~ // ~~days~~ // ~~V.C.V.~~
Cautioned and Discharged.

A.R.Hutchison.
ASST.NATIVE COMMISSIONER : LANGA.
2/4/58.

R. to 27/3/58 at request of defence.

D.B.Maytham.
ASST. NATIVE COMMISSIONER.
10/3/58.

On 27.3. 58.

Mr. Froneman for Crown.
Mr. Adv. Sacks, instructed by Snitcher & Cohen, for Accs.
Mr. Tshabangu interpreting.

Marthinus Christian Joubert, ^{E/M} sworn states:-

I am an authorised officer appointed in terms of Section 1 of Act No.25 of 1945 and am an Inspector of Natives employed by the City Council of Cape Town. *I know the accused who is a native male*

On 7.3.58 at Langa which is in the Proclaimed Area of the Cape Peninsula, I demanded from the accused production of a document showing that he was authorised in terms of Section 10 of Act No.25 of 1945, to be within the Proclaimed Area of the Cape Peninsula.

The accused had no valid document to be in the Cape Peninsula Proclaimed Area. Accused produced his Reference Book to me which reflects that on 15.11.57 he was registered at Registering Office and was instructed to return to report to Registering Officer on 20.11.57. Accused did not report to Registering Officer. I hand in Reference Book of accused. Exhibit "A".

By Mr. Sacks: I did not know accused before he was arrested. I do not know when Accused came to Cape Town but records will reveal this.

CROWN CASE.

Solomon NonQ,N/M. S/S: I am Accused and elect to give evidence on oath.

I first came to Cape Town in June 1935. Since then I have lived in Cape Town. I worked for Express Steam Laundry for 8 years. I then went to Lawson & Kirk and worked there for 4 years. I then worked for Same Day Service for 3 years. I then returned to Lawson & Kirk for 2 years. I left Lawson & Kirk in 1951. Since then I have sold milk on a commission basis. I sold milk for several dairies. I am still selling milk for Queens Dairy.

In 1942 I married and have two children by this marriage. One is 14 years and the other child 12 years.

By P.P.:- I went to Attorney Kahn to apply for exemption from Section 10 in 1954. I told Mr. Kahn that I came to Cape Town in 1935. In 1936 I came to Langa for first time to get a permit. In 1939 I became a registered voter. This was first time people of my race could register. In 1954 I came to get a pass ~~book~~ as I had not had a pass before. In 1954 I was convicted of not having a pass. I was selling milk for Queens Dairy on commission. I was not employed by this Dairy. I was not employed by any particular employer since 1951. When I applied for an exemption in terms of Section 10(1)(b) Mr. Rogers told me that I qualified/ ...

qualified for an exemption and sent me to one of the windows where I was given a pass.

By Court: I have never been out of Peninsula since 1935. I am not a registered voter now. I have not read the entries in my reference book.

On 15.11.57 I took a medical certificate to Langa as I had broken my leg.

In 1954 when I applied for an exemption I was given a permit to go and seek work. I did not know it was not an exemption. I found out in 1956 when I got a reference book that I had no exemption. I went to Mr. Rogers about it then but he was too busy and I left it at that.

On 15.11.57 I came to Langa to get my papers in order so I could apply for a dairy at Nyanga. At Langa I was told to get a fresh certificate and return. I was told to come back on 20.11.57 but I came back before that day. I came back several times after 20.11.57 but there were many people at the window and I was told to wait on each occasion.

DEFENCE CASE.

Court calls

Llewellyn Lazarus, E/M, S.S.:- I am an assistant to the Registering Officer at Langa. I am in charge of individual records at Langa. According to accused's personal file he first reported himself to Langa on 2.11.36. He produced Tax Identity paper 116/10/224. Accused had a steady record from then until 31.3.1939. There is then no further record of Accused until 21.6.1954. From 1954 to date we have a record of his presence in the Area. In 1954 Accused applied for permission to trade but this was refused. In 1954 he applied for permission to sell milk on a commission basis. This was refused and Accused was told to take up employment with an employer. In November 1957 Accused reported that he had had an accident and he was told to produce a medical certificate within 5 days. He has not done this.

By Mr. Sacks: No questions.

By P.P.: According to my records Accused was registered as a voter in 1951 but this has not been renewed according to my records.

P.P. addresses Court.

Mr. Sacks replies.

Judgment reserved to 2.4.58. Bail to stand.

27.3.58.

A.R. Hutchison
ASST. NATIVE COMMISSIONER.

Exhibit "A" returned to Accused on 27.3.58.

A.R.Hutchison.
ASST. NATIVE COMMISSIONER.

Reference Book reflects that during September 1956 he was permitted to remain in Proclaimed Area while in the employ of Queens Dairy, Retreat, as a Delivery Boy.

Portion B of Book, which should be completed monthly by employer, is not signed at all.

Reference Book (Part A) also reflects that Accused reported to Registering Officer, Langa on 15.11.57 and was instructed to report back on 20.11.57. No record in Book that he reported back.

A.R.Hutchison.
ASST. NATIVE COMMISSIONER.
27.3.58.

Resumed on 2/4/58 for Judgment.

CERTIFICATE OF RECORD.

I hereby certify that the foregoing notes are a true record of the proceedings in the case of Reg. vs. Solomon Nono, heard this 2nd day of April, 1958, before me

A.R.HUTCHISON.
ASST. NATIVE COMMISSIONER :
LANGA.

REG. vs. SOLOMON NONO charged with contravening Section 10(4) r/w Section 10(1) and 44 of Act No. 25 of 1945, as amended.

FACTS FOUND PROVED AND REASONS FOR JUDGMENT.

A. FACTS FOUND PROVED:

1. That on 7th March, 1958 the Accused was found at Langa within the Proclaimed Area of the Cape Peninsula.
2. That Accused is a Native.
3. That Accused had no permission in terms of Section 10(1) of Act No. 25 of 1945, as amended, to remain within the Proclaimed Area of the Cape Peninsula for more than seventy-two hours.

B. REASONS FOR JUDGMENT:

It is common cause that the Accused reported to the Registering Officer at Langa on the 15th November 1957. On this date his Reference Book was endorsed to the effect that Accused had to report back to the Registering Officer on the 20th November, 1957. This was tantamount to the Accused having been granted permission to remain within the Area from the 15th to the 20th November, 1957.

On the 7th March, 1958 the Accused was called upon by a Municipal Inspector of Natives to produce his permit to be within the Proclaimed Area of the Cape Peninsula. Accused produced his Reference Book and, as no further endorsement had been made therein by the Registering Officer or his authorised deputy after 20th November, 1957, he was arrested by the Inspector for being within the Proclaimed Area without permission. The Inspector also alleges that Accused failed to report to the Registering Officer at Langa on the 20th November, 1957. Evidence to this effect having been led the Crown closed its case.

In his defence the Accused claims that he is exempted from the restrictions imposed on Natives in terms of Section 10(1) of the Act. In claiming exemption he relies on the provisions of Section 10(1)(b) of the Act.

The Accused, in his evidence, alleges that he arrived in Cape Town in 1935 and that he has lived here continuously since then. He details various firms by whom he alleges he was employed over a period of 17 years. He was employed by none of these firms for a continuous period

of/ ...

of 10 years.

He also alleges that he married in 1942 and has two children aged 14 and 12 years respectively.

The Accused states that in 1939 he became a registered voter and that he is now no longer on the voters' roll.

He alleges that in 1954 he visited the Registering Officer for the purpose of obtaining a pass as he had not had one before. He admits that during 1954 he was convicted of not being in possession of a pass. He states that he was informed by the Registering Officer that he qualified for an exemption in terms of Section 10(1)(b) but adds that he was never supplied with a formal certificate to this effect.

On obtaining his Reference Book during 1956 he became aware of the fact that he had not been given a formal certificate of exemption but he admits that he took no further steps to remedy the position.

In an endeavour to establish more firmly the facts testified to by the Accused the Court called the assistant to the Registering Officer at Langa to furnish details of the Accused's employment record while in Cape Town. From the details furnished it appears that there is no record of Accused's presence in the Proclaimed Area from 31.3.1939 to 21.6.1954 although an entry to the effect that Accused was a registered voter during 1951 does appear.

If the Accused was in fact a registered voter during the period 31.3.1939 to October 1952, then, in terms of the exemption contained in Section 23(2)(b) of Act No.25 of 1945, he was not required to have his contract of service registered in terms of Section 23(1) of the Act. From 31.10.1952, however, despite the fact that he may have been a registered voter, the Accused was required to register himself as a workseeker with the District Labour Bureau in terms of Government Notice No.2495 of 1952.

But, if what the Accused alleges is correct, then, by 1952, he had already qualified for exemption from the restrictions imposed under Section 10(1) of the Act, by virtue of the provisions of Section 10(1)(b).

Section 10(5) of the Act places on Accused the onus of establishing that either (1) he has remained within the Proclaimed Area for a period of less than 72 hours; or (2) that he falls within one of the exempted classes mentioned in sub-section/ ...

sub-sections (a),(b),(c) or (d) of Section 10(1).
(See R.vs. NGOTYANA 1956(4) S.A.550).

In the case of R. vs. Thelingoana 1954(4) S.A. at p.55, the learned Judge, quoting from Rex vs. Soni,1948(1) S.A.1132, states "it is not sufficient for an accused on whom the onus rests to advance an explanation which merely raises or may raise a doubt in the mind of the Court; unless, on a balance of probabilities, he can dispel that doubt, he has not discharged the onus resting on him. "

The difficulty in the instant case is the gap between 1939 and 1954 in the Municipal record of Accused's "Cape Town history". To complete this gap the Court has before it only the bare word of the Accused that he was resident and employed in Cape Town during that period and that because he was a registered voter in 1939 his service contracts did not require registration. The Accused's Municipal record does not reflect that he was a registered voter in 1939, it only reflects that in 1951 his name appeared on the Roll of registered parliamentary voters. The Accused himself admits that his name does not appear on the current Voters Roll.

The Accused has not produced proof of his registration as a voter at any time during the vital period, neither has he produced proof by way of testimonials or certificates from any of the employers whom he alleges he was employed by during this period, that he was in fact so employed.

It also appears from the evidence that during 1954 the Accused did attempt to obtain a certificate of exemption in terms of Section 10(1)(b) from the Registering Officer at Langa. Accused himself states that he discovered in 1956 that he had not in fact been granted an exemption and that he did not pursue the matter further. The evidence of the Registering Officer's assistant is also silent on this very important point.

It is respectfully submitted that the Court may not lightly accept the bare word of an accused person to the effect that he falls within one of the exempted classes mentioned in Section 10(1). The Court feels that, in order to create a preponderance of probabilities in his favour, it is incumbent upon the Accused to produce some tangible

form/ ...

form of evidence to support his allegations. In the present case the Accused has produced nothing in support of his statements.

In order to qualify for exemption in terms of Section 10(1)(b) of the Act, the accused must, inter alia, establish that he has not during the periods mentioned in the sub-section or thereafter been sentenced to a fine exceeding fifty pounds or to imprisonment for a period exceeding six months. In this case the Accused has failed to touch on this aspect of the qualification required by law.

Taking all the evidence into consideration the Court was satisfied that the Accused had failed to discharge the onus resting upon him and convicted him of the offence charged.

LANGA.

9. 4. 1958.

(A.R.Hutchison).

ASST. NATIVE COMMISSIONER.

(10)

IN THE NATIVE COMMISSIONER'S COURT, LANGA

REGINA

vs.

SOLOMON NONO.

NOTICE OF APPEAL.

Be pleased to take notice that an appeal is hereby lodged against the conviction by the Native Commissioner of the accused in the abovementioned matter on the 2nd day of April, 1958, on the following grounds:

The Native Commissioner erred in finding that the Accused had not proved on a balance of probabilities that he had qualified to remain in the Proclaimed Area without a permit.

A.L. SACKS

(Counsel for Accused).

Instructed by Snitcher, Cohen & Co.

To: The Clerk of the Court,
Native Commissioner's Court,
L A N G A.