

In the Supreme Court of South Africa  
In die Hooggeregshof van Suid-Afrika

Appellate

DIVISION).  
AFDELING).

APPEAL IN CRIMINAL CASE.  
APPEL IN STRAFSAAK.

Attorney-Genl, E.C.D.

Appellant.

versus/teen

E. HEYNS & ANDR.

Respondent.

Whitson Smith & Rank.

Appellant's Attorney  
Prokureur van Appellant

Grahamson

Respondent's Attorney  
Prokureur van Respondent

Webster & Son

Appellant's Advocate  
Advokaat van Appellant

J.E. Nöthling

Respondent's Advocate  
Advokaat van Respondent

M.T. Steyn

(E.C.D.)

Set down for hearing on:  
Op die rol geplaas vir verhoor op:

Thursday, 18<sup>th</sup> June 1959.

(A)

9.45 - 12.15

2.3.4 5.11.

Appeal dismissed with  
Costs. (Reasons later).

Coram: Schreiner, Stoeter, de Beer, Malan et Rumpff (Actg.)

J.J.A.

Alvares Thompson

REGISTRAR  
18/6/59

In the Court of the Magistrate for the district of Port Elizabeth, held at Port Elizabeth. Criminal case C.3789/1957.

In the matter of Regina versus E. Heyns and Others.

Facts found proved and reasons for Judgment.

This is an appeal from the judgment pronounced on the 24th April, wherein the accused were convicted for holding a meeting at which more than ten (10) natives were present.

The history of the case is that the accused were acquitted by the court on a point of law at the close of the Crown case, and thereafter convicted on retrial, after a successful appeal by the Attorney-General, and after evidence for the defence had been led.

Few new facts emerged from the evidence led by the defence.

Facts now found proved :

1. The accused were charged with contravening regulation 1 (1)(a) approved by the Governor-General under and by virtue of the powers vested in him by section 27 of the Native Administration Act No. 38 of 1927, as amended and promulgated under Govt. Notice No. 2017 dated the 18th September, 1953, read with Govt. Notice 354 dated the 2nd March, 1956:-

In that on the 26th. June, 1957, and at or near to Korsten, Port Elizabeth, in the district of Port Elizabeth, the accused did wrongfully and unlawfully without the approval in writing of the Native Commissioner, hold, preside at, or address a meeting, gathering or assembly at which more than ten natives were present at one time.

2. The relevant Regulations read as follows :-

G.N. dd. 18.9.1953.

Sec. 1 (1)(a) ".....holds, presides at, or addresses any meeting, gathering or assembly at which more than 10 natives are present at any one time, shall be guilty of

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of an offence."

G.N. dd. 2.3.1956.

"....Control of meetings, gatherings, assemblies - application of regulations.

It is hereby notified for general information that His Excellency the Governor-General has been pleased, in terms of regulation 3 of the regulations published under G.N. No. 2017 of 1953 as amended, to determine that, from date of publication thereof, the said regulations shall come into operation in the districts of Port Elizabeth/ Humansdorp."

3. Two of the accused are European male adults. Three of the accused are Coloured male adults. One accused is a Native male adult.

4. On the 26th. June, 1957, a political meeting for Coloured persons was convened by the South African Coloured Persons Organisation in the Jarman Hall, which is a hall situate in a coloured area (Schauder Township) used almost exclusively by Coloured persons.

5. Copies of pamphlets concerning the meeting were freely distributed at the doors of the hall, and were headed thus "South African Coloured People's Organization". Public Meeting, Jarman Hall, Schauder Township, Wednesday 26th June, 1957. "

6. These pamphlets contained a number of topical political subjects affecting Coloured persons, and an invitation to "come and listen to your M.P.C. and Ministers speak on the following :-

1. The Group Areas Act.
2. The Nursing Apartheid Bill.
3. The Church Clause.
4. The Coloured Franchise Act."

7. The names of speakers were not advertised in the

pamphlets, but all the accused took up positions as speakers at the hall, and all addressed the meeting and dealt with a variety of subjects most of which concerned the subjects advertised.

8. Most of the speeches were in Afrikaans, a language understood and used by coloured persons. One speaker spoke in English. None of the speakers used any native language as a medium of speech and no Native interpreter was used.

9. The meeting was attended by at least 100 coloured persons and not less than 16 natives.

10. No permission from the Native Commissioner to hold the meeting had been obtained.

11. The area of Port Elizabeth which includes the Schauder Township, is one to which the regulations in question apply.

12. No reasonable precautions were taken by the accused to ensure that not more than 10 natives attended the meeting.

Reasons for Judgment.

13. The Witnesses : The testimony of all the witnesses was on the whole satisfactory and accepted by the Court, and the Court believed the defence witnesses when they stated that they did not know whether any natives or how many natives, if any, attended the meeting.

14. The Court accepted the Crown contention that it had accepted beyond a reasonable doubt that more than 10 natives attended the meeting. Several witnesses with knowledge of natives testified to more than 10 natives attending. Sergeant Kleinhans states that 16 natives attended. He and other policemen attended the meeting upon instructions and, like the others, took special notice of this factor. He took down the names of the natives who attended. He

was not cross-examined on this point. Col. Det. Sergt. Fritz states he saw 21 natives who attended. Constable de Boer counted 16 natives there. Constable Brand gave the figure as "ongeveer 21 naturelle daar".

15. On the other hand the defence stated that they were aware of the regulations, that they do not know if natives attended the meeting and that they took no precautions to ensure that (not) more than ten natives attended them meeting. One of the speakers was a native. One of the pamphlets advertising the meeting referred to Pass Laws and native women. In these circumstances those addressing the meeting should have anticipated that natives might attend the meeting, and the fact that they took no precautions in this respect is a factor which the court is entitled to take into consideration in accepting the Crown evidence that more than 10 natives attended this meeting.

Legal Issues :

16. Mens rea In this case, in the opinion of the Court, the Crown established mens rea beyond a reasonable doubt. See paragraph 15 above.

The accused were alive to the provisions of the regulations and the prohibition in regard to meetings at which natives attended, and they took no precautions whatsoever. The case of Rex versus Tsotsi S.A.L.R. 1956 (2) (A.D.), it is submitted, does not apply here.

17. Conviction bad in law.:

In regard to paragraph (3) of the notice of appeal, viz., that the regulations are ultra vires, this is a matter for determination by the Superior Court. This Court is precluded from deciding thereupon by virtue of section 110, Act 32 of 1944.

Dated at Pinetown this 19th. May, 1958.

(Sgd.) A.J. Wood, Magistrate.