

CASE NO. 43/2001

In the matter between

NKOSINATHI MPANZA

APPLICANT

AZARIAH LANGA

APPLICANT

PETER MCINTYRE

APPLICANT

JABULANI MHLABANE

APPLICANT

Vs

REX

Coram
For Applicants
For Respondent

S.B. MAPHALALA – J
MR. L. GAMA
MR. N. MASEKO

**RULING ON BAIL APPLICATION
(06/07/2001)**

Before court is an opposed application for bail in respect of the applicants. This application came in the wake of the Court of Appeal Case No. 41/2000 which declared the Non-Bailable Offences Order No. 14 of 1993 unconstitutional and thus of no force and effect. The applicants are charged under Game (Amendment) Act, 1991.

Before their bail applications could be heard Decree No. 2 of 2001 was issued which *inter alia* sought to restore the *status quo* prior to the ruling of the Appeal Court.

The matter came before me on the 29th June 2001, where I heard arguments and reserved my ruling. Mr. Gama for the applicants contended on behalf of the applicants that they are entitled to bail. He advanced two grounds for saying so. Firstly, his view is that when the Decree was issued the applicants had already filed their applications. However, without much ado, I disagree with this proposition in

that the court only heard the matter on the 29th June 2001, where it did not have the power to grant bail. It would have, perhaps been a different matter if the 2001 Decree had been issued after the court had heard the matter. Prior to the 29th June the court was not seized with the matter. It follows, therefore that the application for bail on this ground ought to fail.

The second ground put forth by Mr. Gama is that the applicants are charged under the Game (Amendment) Act No. 4 of 1991, which does not fall under the 2001 Decree. The Decree only refers to Section 8 of the Game Act No. 31 of 1953, which is different from the 1991 Act. Therefore, applicants would be entitled to bail. Again I beg to differ with Mr. Gama in this respect. Section 8 of the 1953 Act was amended by Section 5 of the 1991 Act in that the whole Section 8 of the former law was replaced. According to Section 21 of the Interpretation Act No. 21 of 1970 where a law repeals and re-enacts, with or without modifications, any provisions of a former law, references in any other law to the provisions so repealed shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted.

It would appear to me, therefore that on the strength of Section 21 of the Interpretation Act applicants ought to fail on this ground.

In the circumstances I come to a finding that the applicants are not entitled to bail in view of Section 12 (v) of the Decree No. 2 of 2001.

S.B. MAPHALALA

JUDGE

RULING ON BAIL APPLICATION

Before court is an opposed application for bail in respect of applicants in this matter. The applicants are charged with Section of the Game Act. This offence fell under the Non-Bailable Offences Order No. 14 of 1993 until this order was set aside by the Court of Appeal in Case No. 41/2000 which declared the order unconstitutional. The applicants filed their applications for bail following this ruling by the Appeal Court. Before their bail could be heard Decree No. 2 of 2001 was issued which *inter alia* sought to restore the *status quo* prior to the Appeal Court ruling.

The matter then came before me on the 29th June 2001, where I heard arguments and

I reserved my ruling to this afternoon. Mr Gama for the applicants contended that his clients are entitled to bail on two grounds. Firstly, his view is that Decree No. 2 of 2001 does not have retrospective effect; in that when the Decree was issued the applicants had already filed their applications. However, without much ado, I disagree with this proposition in that the court only heard the matter on the 29th June 2001, where it did not have the power to grant bail. It would have, perhaps be a different matter if the Decree had been issued after the court had heard the matter and had reserved its judgment. Prior to the 29th June 2001 the court was not seized with the matter. It follows, therefore that on this ground the applicants would not be entitled to bail.

On the second leg of his contention Mr. Gama argued that the applicants are charged under a 1991 Act which act does not fall under the scheduled offences in Section 12 (v) of Decree No. 2 of 2001. The said Decree prescribes that only the contravention of Section 8 of the Game Act No. 31 of 1953 would be Non-Bailable. It would appear to me that Mr. Gama is correct.

Section 12 of Decree No. 2 of 2001 reads as follows:

“Notwithstanding any provision of any law, a court of law shall refuse to grant bail to any person charged with:

- i)
- ii)
- iii)
- iv)
- v) Contravention of Section 8 of the Game Act No. 51 of 1993”

Section 8 of the Game Act No. 51 of 1953 reads as follows:

Prohibition of Hunting Royal Game

“ (1) No person shall at any time hunt royal game unless he is in possession of a valid permit issued under the provisions of Section 16 or otherwise than according to the conditions set out

in such permit...”

The applicants in casu are charged under Section of 1991 Act and not No. 51 of 1953. This Act is not listed under Section 12 of Decree No. 2 of 2001.

In the premise, it is clear that the applicants would be entitled to bail in the circumstances.

S.B. MAPHALALA
JUDGE