



THE HIGH COURT OF SWAZILAND

**PHILEMON KHUMALO & SABELO DALTON
NDLANGAMANDLA**

C. C. 10/2004 & C. C. 11/2004

Coram
For the Applicants For
the Respondent

S.B. MAPHALALA-J MR. J.
MASEKO MISS S.
WAMALWA

**JUDGMENT
(07/05/2004)**

These two matters were argued at the same time, and for convenience this judgment pertains to both matters.

In both matters the Applicants are seeking for a discharge in terms of Section 136 (2) of the Criminal Procedure and Evidence Act No. 67 of 1938. They have filed their founding affidavits spelling out the facts in support of these applications.

They have made averments as to when they were arrested for these offences and the dates on which they were committed for trial before the High Court. They have not

been allocated a date of hearing and that since their committal they have not been transferred to any other court of appropriate jurisdiction. **

When the matter came for arguments it was agreed by the parties that whatever outcome in the case I heard and reserved judgment in that of *Dumisani Phenyane vs Rex - Criminal Case No. 126/1997* would apply to these cases, in view of the similarities of the legal point for determination.

The crisp point decided in *Dumisani Phenyane (supra)* was whether an Applicant who had not been granted bail was entitled to be discharged in terms of the Section. Following what was held by Masuku J in *Celani Maponi Ngubane vs The Director of Public Prosecutions, Civil case No. 11/2004* (unreported) that for an Applicant to be afforded relief under the Section, it must be clear that the Applicant has been unable to obtain bail in ordinary way and that the time limits in sub-section 2 have been fully met. I concluded that the Applicant had not satisfied the requirements of the Section and was thus not entitled to a discharge.

The facts of the two cases before me are at all fours with that in the case of *Dumisani Phenyane (op cit)* and therefore the *ratio decidendi* in *Celani Maponi Ngubane (supra)* applies with equal force in the two cases before me.

In *casu*, the Applicants have not shown that they were unable to obtain bail in the ordinary way.

In the result, the applications are dismissed. I make no order as to costs.


S.B. MAPHALALA
JUDGE