



**IN THE HIGH COURT OF SWAZILAND**

**JUDGMENT**

Case No. 315/2013

In the matter between:

**MARWICK KHUMALO**

**1<sup>st</sup> Applicant**

**JOSE EMIDIO RODRIGUEZ**

**2<sup>nd</sup> Applicant**

**NOMPUMELELO ZULU**

**3<sup>rd</sup> Applicant**

And

**THE KING**

**Respondent**

**Neutral citation:** *Marwick Khumalo & 2 Others v The King (315/2013) [2013] SZHC 194 (4<sup>th</sup> September 2013)*

**Coram:** **M. Dlamini J.**

**Heard:** **3<sup>rd</sup> September, 2013**

**Delivered:** **4<sup>th</sup> September, 2013**

*bail application – factors to be considered where bail has been granted on before – Crown should establish that grant of bail will jeopardise interest of justice*

Summary: The three Applicants' liberty was truncated by a charge of fraud for the sum of E444,500. They have since lodged an application for bail which is opposed by the Crown.

### **Background**

- [1] The following are matters of common cause:
- [2] By strength of a search warrant dated 24<sup>th</sup> June 2013 investigators from the Anti Corruption Commission conducted a search upon 1<sup>st</sup> applicant's various residences. They seized a number of documents. At the same time 1<sup>st</sup> applicant was arrested in accordance with a warrant of arrest issued on the same day as the search warrant. The charge leveled against him was one of fraud to the total tune of E5,776,896.63. Third applicant was also arrested during the same period as 1<sup>st</sup> applicant. They were charged as accomplices.
- [3] Upon appearance for bail on the charge of E5,776,896.63, the respondent did not oppose their bail application. Accordingly, the court issued a consent order releasing the 1<sup>st</sup> and 3<sup>rd</sup> applicants upon usual conditions.
- [4] It is common cause that the documents seized from the search of 25<sup>th</sup> June 2013 later informed the investigation of the present charge, *wit.* fraud for E444,500.
- [5] For this offence of E444,500, all the applicants were arrested on 27<sup>th</sup> August, 2013. Although they individually moved for bail, their applications were consolidated to be heard simultaneously.

[6] By application of the applicants, the matter was postponed to the 3<sup>rd</sup> of September, 2013 in order to enable all parties to complete filing of the necessary pleadings.

### **Issues**

#### **1<sup>st</sup> Applicant**

[7] The 1<sup>st</sup> applicant contends that he is innocent of the charges leveled against him by respondent.

[8] It was submitted on his behalf that the warrant of arrest issued in June 2013 reflected that the 1<sup>st</sup> applicant was investigated and so arrested for offences which occurred between 2007 - 2011. This present charge, having been said to have taken place in 2010 was therefore not a new charge. For this reason, the charge ought to have been added to the first charge of E5,776,896.63 as a further count.

[9] On his personal circumstances, he submits that as he is the son of this soil, with residences in two places, he is not a flight risk. Weight is added to this by his victory in the primary elections. This means that he has been ushered to contest for the secondary elections of which he has reasonable prospects of success. His perpetual incarceration will jeopardise his chances of winning in that he is denied the opportunity to engage in vigorous campaign.

[10] He is married with two wives and nine children. His health is not stable as he suffers from hypertension.

## **2<sup>nd</sup> Applicant**

- [11] The 2<sup>nd</sup> applicant informs the court that at the time of the commission of the offence, he was not the manager of his business. In that regards, he knows nothing of its activities. For this reason therefore, any unlawful activity during this period should not be imputed to him. The person who was in charge is deceased. He avers that he has been residing in the Kingdom for a period of 45 years. He has established a number of businesses including the one which is the subject of the present charge. He has his family and resident in Swaziland. He was in short, deep rooted in this country.
- [12] The 2<sup>nd</sup> applicant further states that when the investigators came to his house at Dalriach, he did not resist a search even though they were without a relevant search warrant. This demonstrates his willingness not to hamper investigations.
- [13] Two medical reports were submitted on his behalf indicating that blood pressure was high, presumably having been triggered by his arrest. He was during the bail hearing admitted at Mbabane Clinic and the doctor did not indicate as to when he will stabilize.
- [14] He further pointed out that he had employed about 300 workers and therefore his continued incarceration might lead them to losing their jobs as his businesses stand to shut down.

### **3<sup>rd</sup> Applicant**

- [15] The 3<sup>rd</sup> applicant asserts her innocence by stating that she was no longer in office during the commission of the offence alleged in the charge sheet.
- [16] She stands in the same footing as 1<sup>st</sup> applicant in that she was first arrested in June 2013 and subsequently granted bail by consent of respondent on the E5,776,896.63 fraud charge.
- [17] She has not violated the conditions imposed upon her in regard to the first charge.
- [18] Like her co-accused, she avers that she has her roots in Swaziland having been born and raised therein.
- [19] She states that she suffers from sinus and in constant need of medication.
- [20] It was submitted on her behalf that she cannot reasonably be suspected to flee for a crime less than a million when she could not on one of E5+million.

### **The Respondent**

- [21] The respondent's charge is premised on the following evidence as deposed by the investigator, Mr. Mthethwa:
- [22] On the 4<sup>th</sup> to 14<sup>th</sup> May 2010 Commonwealth Parliamentary Association (CPA) held a meeting in Swaziland. This meeting was to be held at Happy Valley Resort & Casino, 2<sup>nd</sup> applicant's business. However, the venue was

shifted to the Royal Swazi Sun. Swazi Royal Sun produced invoices for the sum of E258,125.40 for services rendered for this meeting. This sum was paid by Government.

[23] However, 3<sup>rd</sup> applicant prepared another set of documents indicating that the same conference held at Royal Swazi Sun was held at Happy Valley Resort and Casino. 3<sup>rd</sup> applicant submitted invoices to the tune of E444,500. The government paid this amount. The 1<sup>st</sup> applicant received this cheque which was deposited into Happy Valley Building Loan Account. Withdrawals were effected within two days of its deposit. The respondent contends that there is a likelihood that the applicants faced with this second charge are likely to abscond trial on the basis of the charges they already face and that more charges are to be formulated against them. They are likely to face a lengthy custodial sentence in view of the magnitude of the amounts involved in their charges.

[24] The respondent raises a number of factors which operates against the applicants. I shall revert to them fully later in this judgment.

**Question of law:**

[25] **Gardiner and Lansdown, “South African Criminal Law and Procedure, Volume 1”** at page 252 defined bail as:

*“...the setting at liberty of a prisoner upon security being taken for his appearance at a certain time and place.”*

[26] Section 96(1)(a) reads:

*“Bail application of accused in court*

*96 (1) In any court-*

*a) An accused person who is in custody in respect of an offence shall, subject to the provisions of section 95 and the Forth and Fifth Schedules, be entitled to be released on bail at any stage preceding the accused’s conviction in respect of such offence, unless the court finds that it is in the interest of justice that the accused be detained in custody;*

[27] It is trite that the amendment as reflected in Section 96 of the Criminal Procedure and Evidence Act No.67 of 1938 ushered a shift in the burden of proof in matters of bail. The reading of this section points out that the approach to be adopted by our courts in bail matters is that bail application should not be refused. By this section outlining various circumstances which ought to be established in order to warrant bail refusal, it thereby “shifted” the onus which traditionally rested upon the applicant to the Crown. **Van Blerk J. A. in Magano and Another v District Magistrate Johannesburg, and Others 1994 (4) S.A. 169** at 171 articulated this shift with precision as he stated:

*“The language of the section does not merely give to an accused person the right to apply for bail which he has under the Criminal Procedure Act...but the right to be released from detention with or without bail. That right may only be denied an accused person where the interest of justice require otherwise. ... For these reasons I am of the view that accused person does not bear the onus of proving that he should be released from detention, but that the State is required to show that he should be refused such bail because the interest of justice require it.”*

[28]

I am very much alive to his Lordship **Van Schalkwyk J.** dissenting view on the question of burden of proof as propounded in **Ellish En Audere Prokureur – Generaal WPA 1994 (4) S.A. 835** at 836 where he held as follows:

*“The question of law in issue was whether the regional magistrate had erred in placing the burden of proof on the State in the bail application. The Court a quo held that a bail application was not a criminal proceeding and that the right created by s25 (2) (d) of the Constitution of the Republic of South Africa Act 200 of 1993 which granted an accused the right to be released from custody pending his trial, was a qualified right, and that in the eyes of the legislature the qualification was no less important than the right itself. That bail applications were sui generis proceedings.*

*Further, that the process of reasoning which the presiding officer had to apply went to the probable future conduct of the accused which had to be determined on the basis of certain information which related to the past and the future: what had to be determined was not a fact or a set of facts but merely a future prospect which was speculative in nature even though it was based on proven facts.*

*Accordingly, that in a bail application there could be no question of a burden of proof. If at the end of the enquiry there was a balance between the interests of the State and those of justice then the accused was entitled to be released on bail.*

*That the notion ‘in the interests of justice’ in s25(2) (d) had a meaning which placed it outside of the category of provable facts: the concept entailed rather a value judgment and required the presiding officer to exercise a discretion.*

*Further that as a concept was not a factual matter it followed that there could be no question of there being a burden of proof.”*



[29] That as it may, a plethora of authorities still hold the view that the Crown bears the *onus*. I refer to **S v Vermaas 1996(1) SACR 528** at 530 where he maintained:

*“The onus rests upon him who asserts that the accused should not be released, that is the State.”*

### **Adjudication**

[30] As can be deduced from its answering affidavit, the respondent basis its opposition on the grounds *viz.*, the applicants if released on bail will endanger the safety of the public; attempt to evade justice; influence or intimidate witnesses or conceal or destroy evidence; jeopardise the objectives or proper functioning of the criminal justice system and disturb public order or undermine public peace or security.

[31] I now seek to enquire on the interest of justice *vis-à-vis* the applicants interest to be released on bail.

[32] The respondent commences by indicating the strength of its case. It seeks to establish that it has a *prima facie* case against the applicants.

[33] **Chief Justice Nathan** in **Ndlovu v Rex 1982-86 S.L.R. 51** at **F** stated:

*“There is a subsidiary factor also to be considered, namely the prospect of success in trial.”*

[34] The learned judge, correctly in my view, referred to the evidence showing *prima facie* case as “*subsidiary*” to the question of bail. In other words the

mere fact that the respondent has a strong case should be considered not as a stand alone factor but together with other factors pointing that granting applicants bail is likely to serve the interest of justice. This is evident by section 94 (6) which reads:

*“In considering whether the ground in subsection (4) (b) has been established, the court may, where applicable, take into account the following factors, namely-*

*‘(g) the strength of the case against the accused and the incentive that the accused may consequence have to attempt to evade his or her trial’.*”

[35] This leads me to the second ground by respondent. The respondent has informed the court that owing to the magnitude of the amounts involved, the applicants are likely to evade the jurisdiction of this court.

[36] This submission stands to be interrogated. I have already highlighted that in *casu*, the 1<sup>st</sup> and 3<sup>rd</sup> applicants were granted bail without objection in count one where the amount said to be defrauded was a sum of E5,776,896.63.

[37] Count 2 on a similar charge of fraud, the sum concerned is E444,500. By any standard of reasoning, the sum upon which by respondent’s own demonstration of allowing applicant to bail is relatively much higher than the sum involved wherein respondent is now resisting the bail application.

[38] Further, the 1<sup>st</sup> and 3<sup>rd</sup> applicants were granted bail on this exorbitant amount of E5,776,896.63 on the 27<sup>th</sup> June, 2013. They have not escaped

since then. It is not clear how they could be said that they shall not escape when the amount involved is somehow insignificant when compared to the first count. There is no allegation that they have failed to report.

[39] In view of the above, the reprehension that the applicants will escape is without basis.

[40] A third ground raised by respondent is that the applicants if released on bail will endanger the safety of the public. In support thereof, the respondent deposed:

*“The First and Second Applicants, Sanele are on bail for exactly the same offence namely fraud perpetrated on the Government, this time, however, involving an amount in excess of E5 million. The First Applicant was released on bail in June this year.”*

[41] The above averment gives the impression that the 1<sup>st</sup> and 3<sup>rd</sup> applicants are now arraigned for the sum of E5 million. That is not the position. The 1<sup>st</sup> and 3<sup>rd</sup> applicants were facing in June 2013 a fraud charge to the tune of over E5 million. They are now facing a count of fraud for the sum of E444,500. What is glaring from the pleadings is that the sum of E444,500. is said to have been committed not during the period in which they were admitted to bail but in 2010, a period covered by the first count of E5 million where they were granted bail. During the hearing, I enquired from the Crown as to whether there was any reason which could be advanced on behalf of respondent that on basis of the above, they could not simple consider the count of E5 million as a holding charge and add to the indictment in due course all other offences which may be discovered during

the on-going investigation. The response by the learned Mr. Leppan was that he had no instructions on that.

[42] Addressing the ground raised that the applicants are likely to endanger the safety of the public, there was no factual basis alleged on this ground. It became difficult to consider this ground in the light of the undisputed averment at the instance of 1<sup>st</sup> applicant that in his constituency he has won the primary elections. It is therefore self destructive that on the one hand the 1<sup>st</sup> applicant by popular vote is esteemed by members of his community and on the other he is said to be a danger to the public. I am afraid the evidence presented before this court is contrary to the assertion that the 1<sup>st</sup> applicant is a danger to his community.

[43] I note that the 3<sup>rd</sup> applicant has not contested for any election. However, in the absence of any evidence showing that she is likely to endanger public safety, I cannot sustain this ground.

[44] The respondent submits further that the applicants, specifically the 1<sup>st</sup> applicant “*may attempt to influence or intimidate witnesses or conceal or destroy evidence.*”

[45] Dealing with a similar question, **Mohamed C.J.** in **S v Acheson 1991 (2) SA 822-823** stated:

*“The second question which needs to be considered is whether there is a reasonable likelihood that, if the accused is released on bail, he will temper with the relevant evidence or cause such evidence to be suppressed or distorted. This issue again involve an examination of other factors*

*such as (a) whether or not he is aware of the identity of such witnesses or the nature of their evidence:*

*(b) whether or not the witnesses concerned have already made their statements and committed themselves to give evidence or whether it is still the subject of continuing investigations:*

*(c) what the accused's relationship is with such witnesses and whether or not it is likely that they may be influenced or intimidated by him;*

*(d) whether or not any condition preventing communication between such witnesses and the accused can effectively be policed”*

[46] On this respondent deposed that the investigations are still on going. As the 1<sup>st</sup> applicant is known by many people he may hamper investigations.

[47] The above point might be good at face value. However, *in casu* it is defeated by the evidence that the very same applicant (1<sup>st</sup>) was granted bail at the instance of the very same respondent on a very substantial amount three months ago. It is not as if the 1<sup>st</sup> applicant is suddenly known by many people. He was, three months ago, known by these people. Further, no evidence to the effect that the 1<sup>st</sup> applicant has interfered or intimidated witnesses. The respondent states:

*“Witnesses in this case however, have already been threatened and my information is that the First Applicant is responsible therefore.”*

[48] The question still remains unanswered even though posed to respondent's Counsel *viz.*, the reason why respondent in the light of this serious averment failed to move an application for cancellation of 1<sup>st</sup> applicant's bail and forfeiture of the bail amount. The only reasonable irresistible inference that can be drawn is that this is merely reprehension without basis, with due respect.

[49] What compounds respondent submission further is that the 1<sup>st</sup> applicant whom it alleges threatened witnesses, has submitted copies of two correspondences addressed to the respondent requesting for a list of witnesses in order to comply with a the condition imposed under his first bail application. This has not been forthcoming. In that way, the requirements set out by his **Lordship Mohamed C.J.** are difficult to envisage at respondent's instance.

[50] Much alive to the provisions of Section 96 (3) which reads:

*“If the court is of the opinion that it does not have reliable or sufficient information or evidence at its disposal or that it lacks certain important information to reach a decision on the bail application, the presiding officer shall order that such information or evidence be placed before the court”,*

[51] I enquired during submission from respondent Counsel whether he has any new ground to assert in order to enable this court to come to a just conclusion on this application. Respondent's Counsel informed the court that his instructions are not beyond the pleadings. In this way, the court was confined to the pleadings before it.

[52] The respondent did not pursue its last ground on the likelihood that the applicants *“may jeopardize the objects or proper function of the criminal justice”*. This is because in support hereof, the respondent had deposed that 1<sup>st</sup> applicant had failed to comply with his bail conditions such that it was compelled to seek a warrant of apprehension. This was with reference to a counter application filed during 1<sup>st</sup> applicant's application for bail variation. Although the bail variation application was refused, the warrant of

apprehension, on respondent's own showing and admission were without basis after the counter application was interrogated. Learned Counsel Mr. Leppan was well advised in this regard.

[53] On the question of holding applicants into custody on the basis that investigations are ongoing, I am not inclined to deviate from the position of our law as canvassed in **S. v Bennet 1976 (3) S.A. 652** that:

*“the State cannot arrest in order to investigate”*

[54] Mr. Leppan urged the court to consider that the Director of Public Prosecutions has opposed bail and accept as correct the grounds on interference with witnesses and investigations.

[55] On this ground, I refer to **S v Nichas and Another 1977 (1) S.A. 257** where it was held:

*“In regard to the weight to be attached to the Attorney-General's opposition to the grant of bail it is important to have regard to the stage in proceedings at which the accused seeks bail. Where the application is made during the course of trial or at the conclusion of the trial, the magistrate will know what the nature of the offence is and under what circumstances it was alleged to have been committed; he may have some knowledge personality and background and may be able to assess the risk in granting bail. But where the application was made two days after the appellant's arrest, before any charge had been framed and while police were still in embryo stage, the magistrate could have had little or no knowledge of the matter. In such circumstances the court must give great weight to the views of the Attorney-General, who may well be in*

*possession of witness' statements, of confidential documents and of the accused's records."*

[56] However, in **S v Essack 1965 (2) S.A. 161** at 163 the court held:

*"But this is not to say that whenever the Attorney-General (Director of Public Prosecutions) opposes such an application the court will refuse to allow bail, for opposition might often be justifiably offered out of consideration of caution."*(words in brackets my own)

[57] In *casu*, I do not think that the opposition is within "consideration of caution" as demonstrated above.

[58] I now sum up 1<sup>st</sup> and 3<sup>rd</sup> applicants application by juxtaposing it with the case of **Zweli Mdziniso v Commissioner of Police and Another, High Court Case No. 13 of 2013** where her **Ladyship Ota J.** was faced with a similar application. In that case, the applicant had been charged with offences involving violence *wit*, robbery (armed) and unlawful possession of arms and ammunition which occurred in Manzini. He was granted bail. Subsequently, the Crown withdrew charges. He was later charged with the same offence which however were said to have taken place at Msunduza. The Crown opposed bail. The honourable judge held at paragraph 14:

*"I am however, more inclined to treat the fact that the Applicant did not violate his previous bail conditions in the charges contained in MD2 as an exceptional circumstance warranting his release on bail. The charges in MD2 are similar to the ones detailed in MD1 which we are currently faced with. There is no evidence to show that whilst out on bail in relation to MD2 the Applicant violated his bail conditions by committing any of the*



*breaches which the Respondents now urge in casu, as detailed in paragraph [6] ante. I am convinced that this factor alone constitutes a veritable ground for the grant of this application.”*

[59] *Fortiori*, in *casu*, the respondent has not alleged that the 1<sup>st</sup> and 3<sup>rd</sup> applicants while on bail have violated any of the bail conditions imposed upon them in June 2013. This factor alone warrants their release from custody.

[60] I now turn to the 2<sup>nd</sup> applicant’s application.

[61] The respondent informs the court that as regards 2<sup>nd</sup> applicant:

*“15. ...there are various other serious charges being investigated against him.”*

[62] I need not say much on this as I have pointed out from the *ratio decidendi* of **R v Bennet** *supra* that the averment that investigations are still pending cannot be a basis to refuse bail.

[63] The second contention by respondent is that:

*“The second Applicant made no attempt to assist.”*

[64] Surely the 2<sup>nd</sup> applicant or any accused for that matter is not obliged in law to assist with investigation. I see no basis for this proposition.

[65] Respondent answers to 2<sup>nd</sup> applicant’s application to be released on bail owing to his ill-health as follows:

*“The second Applicant have (sic) raised a medical condition as a possible ground justifying his release on bail. This averment is however vague and conspicuous by its lack of detail and no good reason therefore exist why he could receive the necessary medication in custody.”*

[66] The 2<sup>nd</sup> respondent cured the vagueness by applying to file a supplementary affidavit. The respondent did not oppose this application. The 2<sup>nd</sup> applicant then handed a doctor’s report informing that 2<sup>nd</sup> applicant was admitted for a condition which needed a doctor’s attention. This was done after the advice of a government doctor who had received the 2<sup>nd</sup> applicant from the police.

[67] I agree with Mr. Leppan’s contention that there are adequate facilities to cater for 2<sup>nd</sup> applicant’s conditions namely his escalating blood pressure at the Correctional Services.

[68] The respondent further informs the court that 2<sup>nd</sup> applicant should be refused bail because his business can be supervised by other personnel.

[69] I refer in this regard to the *dictum* in **Bheki Madzinane v The King Case No. 224/2013** para 5 where it stipulates:

*“5. It is very imperative that the court does not shut its eyes to the crucial factor of Applicant’s job and the likelihood of his losing same by reason of his continued incarceration. We must always bear in mind that an Accused person is presumed innocent until he pleads or is proven guilty. Therefore, for him to suffer loss of employment prior to his conviction, if that were to be the result of his trial, will not serve the course of justice. As this court observed*

*in the case of Siphon Gumedze and five others v Director of Public Prosecutions, Civil Case No. 135/2004, para [13], with reference to the text Criminal Procedure, Handbook, 5<sup>th</sup> Edition para 137, by Bekker et al, where the learned editors made the following commentary on Section 60 (4) of the South African PENAL Code which is in pari material with our Section 96 CP&E, as amended:-*

*“The accused who ... is presumed to be innocent is subject to the punitive aspect of detention. The effect of remaining incarcerated will probably result in the loss of his job, of his respect in the community ...even if (later) acquitted ... And if detention has resulted in the loss of the (accused’s) job, he may not be able to even retain an attorney. The (accused) who is denied the right to bail will feel that effect at the most important level of Criminal Procedure ... at the trial level...”*

[70] However, in *casu* on 2<sup>nd</sup> applicant’s own showing, the applicant does not run his Happy Valley Resort and Casino business. It is run by management of whom he is not part of. I see no reason why the other businesses cannot operate similarly, if the averment that he does not run his Happy Valley Resort business is anything to go by.

[71] I have already demonstrated why the other grounds of interference and jeopardy to criminal justice system cannot be sustained. The same view holds in respect of 2<sup>nd</sup> applicant.

[72] His personal circumstances such as that he has been a resident of Swaziland for years is not in issue. In fact the respondent says that he has no issue with applicant's personal circumstances at its paragraph 11.

[73] I am inclined to grant 2<sup>nd</sup> applicant bail for the reason that his co-accused were granted bail on a much significant amount. He is facing a charge much lesser than his co-accused.

[74] It would defeat all logic and result in mockery of justice that a person facing the same charge on a much higher value would be granted bail while his co-accused who is charged for a much lesser amount be incarcerated. I agree with Counsel for 2<sup>nd</sup> applicant that this factor alone vitiates any ground for refusing bail. The interest of justice would best be served by granting the 2<sup>nd</sup> applicant his bail application.

[75] I am guided in this position by the dictum in **Zweli Mndziniso** *supra* where the learned judge found that there was no basis for the applicant to hold that he could not remain incarceration because he was asthmatic. The honourable judge found in favour of the applicant on one ground and held that bail should be granted. Similarly, the fact that I have not found in favour of the 2<sup>nd</sup> applicant as regards his conditions and business does not mean that as I found in his favour on the other ground, his bail application should fail.

[76] The last lap for determination is whether to impose any new bail conditions on the 1<sup>st</sup> and 3<sup>rd</sup> applicants.

[77] It is my considered view that all things being equal, the respondent ought to have simply added this present count on the first count of E5 million. I say

this because the amount is less than that of the count upon which they were granted bail under a consent order. Procedurally where one is granted bail on a multiple charge, the count with a higher value is considered in determining the amount to be fixed for bail. Similarly, had the present charge been of a higher magnitude I would not hesitate to impose a bail amount which is commensurate to the charge.

[78] The respondent has not suggested any further stringent conditions and I therefore do not wish to labour further on this point.

[79] I now turn to 2<sup>nd</sup> applicant.

[81] In determining the amount to be fixed with regards to 2<sup>nd</sup> applicant, I draw reference to the amount fixed on behalf of his co-accused. Although faced with a fraud charge of E5million, by consent of respondent, the 1<sup>st</sup> and 3<sup>rd</sup> applicants were granted bail for the sum of E50 000.00. I understand they paid E10 000 cash and the balance was in a form of surety.

[82] For the principle of our law that like cases should be treated alike, I make the following orders:

1. Applicants' application is granted.
2. 2<sup>nd</sup> Applicant is ordered to:-
  - 2.1 pay bail at a fixed amount of E10,000 cash;
  - 2.2 provide surety for the sum of E30 000;

- 2.3 surrender his travelling documents or passport to Lobamba Police and not reapply for any;
  - 2.4 should remain within the jurisdiction of this court until his trial is finalized;
  - 2.5 report every fortnightly on the 2<sup>nd</sup> Friday between the hours 8.00 a.m. and 5.00 p.m. at Lobamba Police Station;
  - 2.6 refrain from interfering, threatening or communicating with Crown witnesses in regard to the present charges;
  - 2.7 refrain from interfering with investigations with regard to the present charge;
  - 2.8 provide the investigating officer one Mr. Sipho Mthethwa with his residential address and not to change it pending finalization of his trial;
  - 2.9 appear in court whenever served with necessary court documents or subsequently ordered to;
  - 2.10 not to breach any of the above conditions as same might result in his bail cancelled and bail amount forfeited;
3. Should 2<sup>nd</sup> applicant wish to have any of the above conditions altered, amended or relaxed, he should apply to this court.

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**M. DLAMINI**  
**JUDGE**

For 1<sup>st</sup> Applicant: **Senior Counsel B. Roux instructed by Z. Jele**

For 2<sup>nd</sup> Applicant: **Senior Counsel M. Van der Walt instructed by B. Mdluli**

For 3<sup>rd</sup> Applicant: **M. Mabila**

For Respondent : **Senior Counsel G. J. Leppan instructed by the Director of Public Prosecutions**





