



IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

Criminal Case No: 191/15

In the matter between:

SIBUSISO B. SHONGWE

v

REX

Neutral Citation : Sibusiso B. Shongwe v The King (191/15) [2015]
SZSC102 (17 JUNE 2015)

Coram : Q.M. MABUZA J

Heard : 22/4/2015; 23/4/2015

Delivered : 17 JUNE 2015

SUMMARY

APPLICATION FOR BAIL. BAIL REFUSED ON THE GROUNDS THAT THE APPLICANT IS A FLIGHT RISK; HE IS LIKELY TO TAMPER WITH AND INFLUENCE CROWN WITNESSES; HE IS LIKELY TO INTERFERE WITH POLICE INVESTIGATIONS AS THESE WERE INCOMPLETE.

JUDGMENT

MABUZA –J

[1] The Applicant came by way of urgency seeking an order in the following terms:

- (a) Dispensing with the manner of service and time limits prescribed in the Rules of this Honourable Court and hearing this matter as one of urgency.
- (b) Condoning the Applicants' non-compliance with the said Rules of Court.
- (c) That the applicant be admitted to bail on such terms and conditions as the court may deem fit.
- (d) Granting the applicant any further and/or alternative relief as the court may deem fit.

[2] When the matter came before me on the 23/4/2015 for argument I dismissed the application on the following grounds:

- (a) The Applicant is a flight risk;
- (b) The Applicant is likely to tamper and interfere with Crown Witnesses;
- (c) The investigations of the police are not completed; and
- (d) He is likely to interfere with police investigations.

That the Applicant is a flight risk

- [3] The Applicant is facing two counts of contravening the Prevention of Corruption Act No. 3 of 2006 and one count of theft.
- [4] Submissions were made by the Crown that the Applicant was facing very serious offences which were likely to attract very harsh custodial sentences.
- [5] Section 35 (1) of the Prevention of corruption act No. 3 of 2006 provides for a fine of up to E100,000.00 (One hundred thousand Emalangeni) or imprisonment not exceeding ten years or both. In my view such a sentence is likely to induce the Applicant to evade trial. In the case of **Maxwell Dlamini and Another v Manzini Senior Magistrate and Others** case No. 1526/11 M.C.B. Maphalala J stated as follows:

“The case of Rex v Pinero 1992 (1) SACR 577 (NM) AT 580 C-D reflects our law on the question of bail; The overriding issue is whether the interests of justice will be prejudiced by the granting of bail in the particular case. It is central and fundamental to the granting of bail that the accused should stand trial, not interfere with Crown witnesses. That his realease should not endanger the maintenance of law and order as well as undermine the security of

the state; in doing so the Court will have regard to the gravity of the offence charged. If the charge is serious, the likelihood is great that he would not stand trial, and, would interfere with Crown witnesses”.

[6] In the following cases this Court refused bail amongst others on the ground that the Applicants faced serious charges and would be likely to evade trial.

- (i) **Sipho Gumedze & Five Others vs Director of Public Prosecutions** Civil Case No. 135/2004 at [35] – [38];
- (ii) **Maxwell Mngoba Dlamini & Another vs Rex** case No. 184/2014 at [27];
- (iii) **Mthulisi Alaster Khumalo vs Rex** case No. 439/2014 at [8].

[7] It was submitted that the Applicant has considerable means as evidenced by the amount of money found in one of his accounts for which he was unable to explain when asked to. He could live comfortably in any neighbouring country with ease.

Likelihood to tamper with and interfere with Crown witnesses.

[8] The submission that the Applicant is likely to interfere with Crown witnesses was advanced by the Crown. This submission was supported by

the investigating officer Mr. S.M. Mthethwa who has given his opinion on this issue through his opposing affidavit. The investigator stated that due to the Applicants former political position his influence and relationship with Crown witnesses makes him more likely to influence and or interfere with the Crown witnesses. In the case of **Sipho Gumedze and Five Others v Director of Public Prosecutions** (supra) at paragraph 40 the Court stated as follows:

“S v Hlongwa 1979(4) S.A, 122 at page 113 H – 114 A is authority for the rule that, depending on the circumstances the court may in the exercise of its discretion to refuse or allow bail also rely on the investigating officer’s opinion that the accused will interfere with state witnesses, even though the officer’s opinion is unsupported by direct evidence...”

[9] I align myself to this quote and agree with the investigating officer that the applicant is likely to tamper with and influence Crown witness. For example the Applicant was able to lay hold of a High Court case file which relates to him; this file was found at his home. It could not have left the Registrar’s office of its own free will, he must have influenced or colluded with a Court official to give it to him; hence the charge of theft.

Police investigations incomplete; and the Applicant is likely to interfere with them.

[10] It was the Crown's submission that the police investigations were incomplete and that they required more time to conclude these before the release of the Applicant. Mr. Mthethwa in the answering affidavit stated that while investigating another crime related to the Applicant, the police discovered the High Court file necessitating the need for further investigation. The file was discovered on 20th April 2015. This application was filed on the 21st April 2015 for hearing on the 22nd and 23rd April 2015. The police needed more time to complete their investigations and feared that he would interfere with these investigations should he be released on bail. Hence my refusal to admit the Applicant to bail at that stage. Furthermore Mr. Mthethwa undertook to complete the police investigations at the earliest possible time and to ensure that the matter is brought to Court within the earliest time possible (see paragraph 18 of the answering affidavit).

[11] For the foregoing reasons I found and held that the Crown had on a balance of probabilities proved that it was not in the interests of justice to release the

Applicant on bail at the material time. Consequently I refused and dismissed the application.

Q.M. MABUZA
JUDGE OF THE HIGH COURT

For the Applicant : Mr. Dlamini
For the Respondents : Mr. Mathunjwa