

IN THE HIGH COURT OF SWAZILAND

CRIMINAL CASE NO.134/98

In the matter between:

GUY ALLEN

VS REX

CORAM: MATSEBULA J

FOR THE CROWN: MRS. M. DLAMINI

FOR THE DEFENCE: MR DUNSEITH

JUDGEMENT

1. This is an application for varying certain bail conditions imposed by the Magistrate when the applicant appeared before it and was granted bail pending finalisation of certain charges preferred against applicant. Applicant prays that the bail conditions relating to the surrender of his passport to the police and limiting his movements within the borders of the Kingdom of Swaziland be varied so as to enable him to travel to the Republic of South Africa for a period of three weeks, to go and see his father who, according to him, is terminally ill and he believes might not have long to live.

2. Applicant has annexed to his application annexure "A" a letter from a Dr. D.J. Hacking. Annexure "A" states the nature of the ailment applicant's father suffers from and it states further that applicant does, unfortunately, not have a current valid passport. A request is made that applicant be assisted to obtain a travel document in order for him to visit his father in South Africa.

3. Annexure "A" does not reflect a true position as regards to applicant passport.

4. Applicant states in his affidavit that he has resided and worked in Swaziland for 21 years. He is presently unemployed. He rents a house in Pine Valley, Mbabane. He is not married but has two children born in Swaziland from a

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longstanding relationship with a Swazi woman. He regards Swaziland as his permanent home.

5. Applicant refers to charges alleged against him of housebreaking and theft involving items valued at plus/minus E6, 000.00. He had asked the Magistrate for a variation order of his bail conditions but this was refused.

6. This application is viciously opposed by the Crown who states that application has not been candid with the Court. The Crown avers that the applicant has apparently referred to a charge of housebreaking and theft involving goods to the value of E6, 000.00 when in fact there is another charge involving E10, 000.00.

The Crown also states annexure "A" was written by a person who had been fed with incorrect information. Applicant has a current passport and it is valid.

The Crown has also raised certain points in limine. It is the Crown's contention that since the application for a variation order was refused by the Magistrate, applicant ought to have brought his application by

way of appeal against the refusal by the Magistrate.

I have considered the arguments by the two counsel for and against the application. I do not propose to deal with the matter at great lengths. Mr. Dunseith urged the Court to show compassion for the applicant who wishes to see his terminally ill father before he dies. Mr. Dunseith stated his client is out on bail in any event. He was granted bail because he was going to stand his trial.

Mr. Dunseith said the Court can exercise its inherent jurisdiction and dispose of the matter now that is before it.

It is true that the High Court has an inherent jurisdiction, which the Magistrate's court does not have. The High Court's inherent jurisdiction is however not without limitations. The Common Law and Statutes are some of the limitations. Whereas the inferior Court may do nothing that the law creating it does not permit the High Court may do anything that the law does not forbid. So that where a particular matter is not provided for in the Rules of Court, the High Court, will, in the exercise of its inherent jurisdictionary powers deal with it. (See KING VS KING 1971(2) SA (O) 630 @634).

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Where a Magistrate has made a ruling of a final nature, the ruling can only be brought to the High Court through one of the recognised procedures e.g. appeal or review as the case may be.

It follows from the above that the application for the variation of the bail conditions must fail.

J. M. MATSEBULA

JUDGE