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SWAZILAND HIGH COURT

Robert Mandla Magongo
applicant

Vs

Commissioner Of Police
Director Of Public Prosecutions
Attorney General
Defendants

Civ. Case No. 1234/2000

Coram

SAPIRE, CJ

For Plaintiff
For Defendant

C.S. Ntiwane
L.M. Maziya

JUDGMENT (15/05/2000)

This is an application by one Robert Mandla Magongo to be released from custody where he is being held in terms of the Magistrate's court order pending prosecution. The charge against him is one which is a non-bailable offence. It is also one in respect of which a Police Officer may arrest a person suspected of committing a crime without a warrant if the Police Officer has a reasonable suspicion that the individual involved has committed the offence.

The applicant Magongo is a high ranking policeman and the charge against him relates to the interference to say the least with exhibits comprising substances which were in the possession of the police for prosecution purposes. The offence of which he is charged is a non-bailable one. He was arrested and brought before the court. The representative of the Director of Public Prosecutions was present and

indicated that the prosecution was not to proceed that day for various reasons given among the others that a member of the DPP staff will be prosecuting. The Magistrate however responding to argument from the applicant's attorney summarily dismissed the case and ordered that the applicant be released. This happened and he was subsequently rearrested by the same policeman who had arrested him in the first case. The subsequent arrest was on the same charge as previously. He was brought before the Magistrate and remanded in custody.

The first dismissal of the case by the Magistrate and his order for the release of the applicant was brought on review in different proceedings in this court. In view of the applicant's re-arrest and the fact that the applicant was at the time still in custody it seemed to me that the question as to whether the Magistrate's order should be set aside was academic and I have made no order on that application.

In the present case there is only one issue and that is whether having been released it was competent for a policeman to re-arrest him. It has been argued that the Criminal Procedure and Evidence Act does not make provision for a re-arrest and that once the police have made an arrest on a reasonable suspicion and the accused had been released that reasonable suspicion was somehow exhausted by the proceedings.

I cannot see why the reasonable suspicion which the arresting officer Ndlangamandla had at the commencement of the case should not persist.

If despite the release of the accused from custody it is still possible for him to be prosecuted for the same offence and if a police officer continues to have reasonable suspicion there is no reason why he should not be re-arrested.

The question of unlawful arrest has not been canvassed in the Magistrate Court and the presiding officer made the order for the continued retention of the applicant in custody pending the case. These are not review proceedings in the proper sense of the word as the Magistrate himself is not a respondent in this case. A matter cannot be brought to court in this manner other than by way of an appeal for review because there are criminal proceedings pending in the Magistrate Court at that time. It is true that since these events I have in terms of section 88 bis given the Director of Public Prosecutions leave to prosecute for this offence in the High Court by way of

summary trial. There is no reason to treat the applicant differently from any other person in custody on a non-bailable charge which is to be heard in this court.

Accordingly the application will be dismissed.


S.W SAPIRE, CJ