



THE HIGH COURT OF SWAZILAND

FUTHI MLOTSHWA

Applicant

Vs

THE KING

Respondent

Crim. Case No. 164/2002

Coram

For the Applicant

For the Respondent

S.B. MAPHALALA – J

MR. J. MASEKO

MRS M. DLAMINI

JUDGMENT ON BAIL

(05/06/2002)

Before me is a bail application brought with a certificate of urgency. The order being sought by the applicant is *inter alia* that she be admitted to bail on terms and conditions as the court may deem necessary.

The applicant has filed a founding affidavit thereto.

The respondent was duly served with the application. Mrs Dlamini who appeared for the respondent did not file papers in opposition as the respondent does not oppose bail in this case per se but is of the view that whatever bail this court imposes should reflect the effect of the current legislation that an accused should pay half the value of the items stolen. She is of the view that a sum of E10, 000-00 to E20, 000-00 would be appropriate in the present case.

On the other hand, Mr. Maseko for the applicant resists this and offers a sum of E5, 000-00 as appropriate taking the applicant's personal circumstances as outlined in her affidavit. These being reflected from paragraphs 10.1, 10.2, 10.3, 10.4, 11, 11.1, 11.2 and 11.3. The applicant is a mother of three young children. The eldest being a ten-year-old child attending school and the youngest being a year old. Since her arrest these children had to move in with her mother who is an elderly woman, unemployed and with no other source of income. These facts, indeed paint a bleak picture of the applicant's personal circumstances.

She further deposed in her affidavit that at the time of her arrest she was employed and earning a sum of E2, 500-00 per month. Her husband earns a sum of E3, 000-00 per month. Furthermore, that her state of health is in peril as she suffers perpetual migraine and ulcers.

Mr. Maseko also submitted on her behalf that she and her husband are still a young couple just starting out in life and have no other means to put forth more than the E5, 000-00 which they have offered.

The parties in this matter have drawn recognisance form pertaining to reporting and such like.

I have considered the facts of this matter. The underlying principle in bail applications is whether or not an accused person will attend trial. It is not punishment. In the circumstances of the present case, my considered view is that an appropriate sum would be E5, 000-00.

In the result, the applicant is admitted to bail of E5, 000-00 and further that the recognisance entered into by both parties is made an order of court.

S.B. MAPHALALA

JUDGE