

IN THE HIGH COURT OF SWAZILAND

REX

Vs

MAKHOSINI NJOBENI

SOMISO MBHAMALI

Criminal Case No. 88/2006

Coram

S.B. MAPHALALA - J

For the Applicants

IN PERSON

For the Crown

MR. S. DLAMINI

JUDGMENT 30th

March 2007

[1] The two Applicants have applied before this court to be released on bail where they have been indicted for the crime of murder. The Crown

opposes the applications and has filed an opposing affidavit in this regard. The 1st Applicant Makhosini Njobeni is an elderly man whilst the 2nd Applicant is a considerable younger man of 21 years and is still a scholar doing Standard 10. When the matter came before me last Friday the 2nd Applicant submitted before court that the 1st Applicant is not involved in the commission of this offence and therefore should be released forthwith. For his part he stated that he will attend trial whenever required to do so by the court.

[2] The Crown on the other hand has taken the position in respect of both Applicants that if they were released on bail they would abscond. In this regard it was contended that the 2nd Applicant is of Mozambican origin and that he still has strong roots in that country. If the 2nd Applicant were to escape to Mozambique it will be difficult to have him brought back to Swaziland to finish his trial. Further, Mozambique is a very big country which will make it very difficult, if not impossible for the authorities to trace the 2nd Applicant in that country.

[3] In support of the above-cited arguments the Crown relied on the cases of *S vs Nichas* 1977 (1) SA. 257 (C) and the local decision in the matter of *Jeremia Dube vs R* 1979 - 81 S.L.R. 187 and further relied on the provisions of the *Criminal Procedure and Evidence Act No. 67 of 1938 (as amended)* more particularly Section 96 (4) thereof.

[4] It appears to me on the facts and the arguments presented that the 1st Applicant is entitled to be released on bail. He is an elderly man with a family in Swaziland unlike the 1st Applicant who appears to me on the facts

that he is a classical flight risk. On the facts of this matter I am inclined to grant the 1st Applicant bail and refuse bail in respect of the 2nd Applicant, and so it is ordered.



S.B. MAPHALALA