



IN THE HIGH COURT OF SWAZILAND

BONGINKOSI BOTJO KHANYILE

Vs

REX

Criminal Case No. 189/2005

Coram

S.B. MAPHALALA - J

For the Crown

MR. S. DLAMINI

For the Applicant

IN PERSON

JUDGMENT

[1] The Applicant has filed an application under Section 136 (2) of the Criminal Procedure and Evidence Act No. 67 of 1938 contending *inter alia*, that he was arrested on the 8th December 2004 and charged with the crime of

murder. He was arrested by police officers from Bhunya Police Station. Subsequent to his arrest he was brought before the Manzini Magistrate Court where he was committed for trial at the High Court on the 18th September 2006. He was transferred from Zakhele Correctional Services to Sidvwashini Correctional Services.

[2] The Applicant contends that six months from his date of committal elapsed on the 17th March 2006, the first session of the High Court held after the expiry of the sixth month from his date of committal was held from the 17th March 2006 and elapsed on the 22nd September 2006. He submits that he was not brought for trial on the sixth month from his date of committal. He submits further that an order for his removal elsewhere in terms of Section 136 (1) of the Criminal Procedure and Evidence Act has not been obtained from the High Court by the Director of Public Prosecutions prior to him launching this application therefore he has satisfied all the legal requirements of Section 136 (2) of the Act. Consequently, he should be discharged under the Act.

[3] The Crown on the other hand has not filed any opposition to this application save to mention a submission by Crown Counsel when the matter was heard that a trial date of the Applicant has been secured.

[4] It appears to me that the application made by the Applicant under Section 136 (2) of the Act is well-founded.

[5] Section 136 (1) of the Act provides as follows:

"136 (1) Subject to the provisions of this Act as to the adjournment of a court, every person committed for trial or sentence whom the Attorney general has decided to prosecute before the High Court shall be brought to trial at the first session of such court for the trial of criminal cases held after the date of his commitment, or else shall be admitted to bail, if thirty-one days have elapsed between such date of commitment and the time of holding such session, unless:-

(1) the court is satisfied that, in consequence of the absence of material evidence or for some other sufficient cause, such trial cannot then be proceeded with without defeating the ends of justice; or

(2) before the close of such first session an order has been obtained from the court under section 137 for his removal for trial elsewhere.

(3) If such person is not brought to trial at the first session of such court held after the expiry of six months from the date of his commitment, and has not previously been removed for trial elsewhere, he shall be discharged from his imprisonment for the offence in respect of which he has been committed.

(4) For the purposes of this section a person shall not be deemed to have been committed for trial in any case in which the Attorney General has, under section 86, ordered a further examination to be taken, until such further examination has been completed.

(5) The accused, with his own consent in writing and with the consent of the Attorney general may be brought to trial at any time after his commitment notwithstanding that such period of thirty-one days has not expired".

[6] It is trite law that if such person is not brought to trial at the first session of such court held after the expiry of six months from the date of his committal, and has not previously been removed for trial elsewhere, he shall be discharged from his imprisonment for the offence in respect of which he has been committed, (see *Swift's Law of Criminal Procedure Second Edition* at page 233 and the cases cited thereat).

[7] On the facts of the present case the Applicant satisfies all the requirements of the section and therefore ought to be discharged under the Section, and it is so ordered.



S.B. MAPHALALA

JUDGE