IN THE HIGH COURT OF SWAZILAND

SIBUSISO DLAMINI

VUSI THEMBA MAMBA

SANELE DLAMINI

DERRICK NGWENYAMA

Vs

REX

Criminal Case No. 18/2005

Coram: S.B. MAPHALALA - J

For the Crown: MR. B. MAGAGULA

For the Applicants: IN PERSON

JUDGMENT

4th May 2007

[1] All the Applicants are applying that their bail granted on the 9 March 2007 by Annandale ACJ be varied such that they be permitted to pay a sum

of E500-00 as bail and to provide a surety for the balance of E14, 500-00. All the Applicants have been in custody for periods of 3 to 4 years imprisonment without their cases being heard where they are facing murder charges. I must mention that on the 9th March 2007, they were each granted bail of El 5, 000-00 and were to abide to a number of conditions outlined in the court orders of the 9th March 2007.

[2] The Crown does not oppose the application for variation *per se* but has stated that the sum of E2, 000-00 instead of *E500-00* being sought by the Applicants is proper in the circumstances. The court has heard the individual applications from all the Applicants and it is clear from what they stated that they are all indigent. Some are suffering from various diseases including the dreaded **HIV Aids.** As I have stated earlier on in paragraph [1] *supra* the Applicants have been in custody for periods ranging from 3 years to 4 years imprisonment without trial. Indeed this is a very scary spectacle to our judicial system and goes against any notion of constitutionalism.

[3] The purpose of bail is to strike a balance between the interests of society (the accused should stand his trial and there should be no interference with the administration of justice) and the liberty of an accused (who, pending the outcome of his trial, is presumed to be innocent). See *Nagel (ed), Rights of the accused (1972) 177- 8* and *Du Toit et al, Commentary on the Criminal Procedure Act, Juta* at page *9 -2* and the cases cited thereat).

[4] It is a trite principle of law that the court should always grant bail where possible and should lean in favour of the liberty of the subject provided that the interest of justice will not be prejudiced (see *Du Toit supra* at page *9 -6).* Bail is entirely non penal in character. See generally *S vs Acheson 1991 (2) S.A. 805 (NmHC).*

[5] The constitutional right to be released on bail will become meaningless where an excessive amount is fixed. But the court is entitled to fix a high amount of bail where the accused is clearly a man of vast financial resources. See generally *S vs Stanfiled 1997 (1) S.A. 221 (c).* To the accused of little or no means, any amount of bail practically means no bail *(see Du Toit (supra)* at page *9 - 2).*

[6] The court should endevour to fix bail at an amount which not only can be paid but which will make it more advantageous to the accused to stand his trial rather then flee and thereby estreat his bail (see *R vs Du Plessisl957 (4) S.A. 463 (W).*

[7] In the present case clearly all the Applicants cannot afford the amount of El5, 000-00 and they are all men of straw and most of them have been abandoned by their relatives because of being arrested for this crime. It is my considered view on the legal principles I have cited above and the peculiar circumstances of each Applicant in this application that it will be reduced to the sum of E500-00 and further that they furnish sureties for the outstanding amount of E14, 500-00.

[8] In the result for the afore-going reasons each Applicant's bail reduced to E500-00 and they are each to furnish a surety for El4, 500-00 terms of the provisions of the Act.

S.B. MAPHALALA

JUDGE