

**IN THE HIGH COURT OF SWAZILAND**

HELD AT MBABANE

CRIMINAL CASE NO. 138/04

In the matter between:

**SIPHO GUMEDZE V  
REX**

CORAM

FOR THE APPLICANT

FOR THE RESPONDENT

Q.M. MABUZA - JUDGE

MR. S. BHEMBE

MR. B. MAGAGULA

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**JUDGMENT 1/6/07**

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[1] Before me is an application in which the Applicant seeks to be admitted to bail under conditions to be determined by this court and/or alternative relief.

The Applicant was arrested on the 3<sup>rd</sup> October 2004 and has been in custody since then. He was charged with two counts of robbery and three counts involving contravention of the Arms and Ammunition Act 1964 (as amended) and one count of defeating and obstructing or attempting to defeat or obstruct the cause of justice. He was charged with several other co-accused. Applicant applied for bail which was refused by Justice Maphalala on the 17/2/05 on the following grounds:

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- That the Applicant had played an active role in the commission of the offence.
- That he had the propensity to commit crime.
- That he was the kingpin of an organized gang.

[4] The Applicant has further submitted that the last mentioned ground which was central for the refusal to admit him to bail no longer exists. This he attributes to the fact that the trial has since begun before me and many crown witnesses have been led and none of them implicate him. The trial remains unfinished.

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[5] The relevant part of his affidavit reads thus:

**7. The Crown has led several witnesses and has based the two (2) robbery cases on the evidence accomplice witnesses mainly Peter Nkambule, Mkhetsile Mabuza and Sanele Dlodlu.**

**8. Peter Nkambule was personally involved in the planning of the robbery at Vukuzenzele Siteki, although he did not participate he knew and kept contact with all the people who participated in that robbery. He actually went to Nisela Farm and partook in the distribution of the stolen money. This witness did not make mention of me as a participant in that robbery nor did I receive any share of the money stolen. Concerning the robbery at Tex-Ray Peter never mentioned me as being party to the planning and execution of the robbery.**

**9. Sanele Dlodlu has also testified in this trial and he outlined his participation in the crimes committed and at no point did he**

**mention me as a participant in any of these robberies.**

**10. Throughout the trial only one accomplice, Mkhetsile Mabuza, made mention of me. Her evidence was to the effect that on certain day I and Accused 4 visited her at her work place at Tex-Ray and I asked about security arrangements there. The short comings of her evidence are as follows:**

**10.1 she had never seen me before**

**10.2 she pointed me out in the dock**

**10.3 prior to her identifying me in the dock she failed to describe in detail features, marks and other indications that she claims to recognize me with. Questions as height, build complexion and clothing were never asked and answered by her.**

**10.4 she is a single uncorroborated accomplice whose evidence is of little if any value at all.**

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**11. The evidence that has been led regarding the unlawful possession of firearms has been that of my former helper Nozipho Lungile Mamba whose evidence basically is that on a particular day in my absence, Accused 1 brought a bag to my house and she kept it. The day when I came back in the evening she forgot to show me the bag which had been left by Accused 1. The Police came with AI before she could tell me of the presence of the bag as left by Accused 1. The bag contained ammunition and firearms.**

**13. Regarding the charge relating to defeating or obstructing or attempting to or obstruct the course of Justice, no evidence has been led. However, it remains an open secret that Musa Dlamini, a well known Manzini Attorney is outside the country and is not practicing as of now. I have learnt also of the death of Musa's brother who was supposed to testify in this connection.**

**14. It is my humble submission that the Crown has a dismally weak case against me and this is far cry from the conclusion as reached by**

**Justice Maphalala that I was kingpin of the gang that committed robberies. It has emerged from the evidence that Peter Nkambule is the kingpin.**

**16. It is my humble submission that there are exceptional and compelling grounds for my release on bail in that:-**

**16.1 The active participation in the robberies that was previously stated by the Crown in opposing my bail has dissolved into thin air. None of the principal offenders and searchers if these crimes ever makes mention of my participation even though evidence has been led from the inception of these crimes to the arrest of the participants and recovery of the monies and other exhibits. Therefore the conclusion that I was kingpin of the gang does not hold true.**

**17. Since my arrest and detention I have developed an eye problem. I have consulted Government doctors both in prison and at Mbabane Government hospital who have**

**failed to help me but advised me that I should seek medical help from South Africa. I am suffering terribly from this eye problem as it occurs regularly.**

[6] The Respondent filed an opposing affidavit deposed to by 3543 D/Constable Lucky Simelane which was signed on the 1/2/07. The contents of the affidavit are very short and do not deal with the issues raised by the Applicant in his founding affidavit. The contents of the Applicant's affidavit remain uncontroverted. I suspect this is because the Respondent is of the same view as the Applicant with regard to the strength of the evidence against the Applicant.

[7] It is undesirable for judges to lead evidence but it is correct that I have heard the bulk of the evidence in the case Criminal Case No. 135/04 in which the Applicant was indicted together with 7 other co-accused. The 8<sup>th</sup> accused was not apprehended, the 6<sup>th</sup> accused was acquitted. It is my view that the Crown is very near the end of its case. The evidence led against the Applicant so far hardly calls for a response.

[8] In the result I make the following order:

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The Applicant is admitted to bail subject to the following conditions:

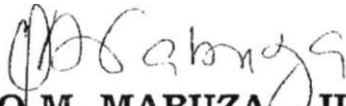
(a) He shall deposit the cash amount of E5,000.00 and provide surety in the amount of E45,000.00

(b) He shall report to the Manzini Police once a week every Friday between the hours of 8.00 a.m. to 4.00 p.m.

(c) He shall surrender his passport and travel document to the Manzini Police.

(d) He shall not interfere with crown witnesses.

(e) Should he fail to attend trial or abscond his bail money shall be entreated to the state.

  
**Q.M. MABUZA - JUDGE**