

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

Criminal Case No. 353/2007

PETER NKAMBULE

Vs

REX

Coram: S.B. MAPHALALA - J

For the Applicants: MR. M. MABILA

For the Respondent: MR. S. DLAMINI

JUDGMENT

19th March 2008

[1] The Applicant Peter Nkambule an adult Swazi male of Esitjeni area in the Manzini District has filed this application on Notice of Motion that he be admitted to bail upon such terms and conditions the court may deem fit.

[2] In the affidavit founding his application he has stated that on or about the 26 September 2007, he was arrested by members of the Royal Swaziland Police stationed at Mbabane Police Station together with Zakhele Hlophe, Lucky Nkambule and Samuel Prince Manana and jointly charged with robbery. He is currently kept at Sidvashini Correctional Services. In paragraph 5 to 8 averments are made *inter alia*, that if released on bail he will not undermine or jeopardize the objectives or proper functioning of the criminal justice or disturb public order or undermine public peace and security.

[3] The Respondent opposes the application and has filed the affidavit of one 3475 Detective Inspector Clement Sihlongonyane based at the Mbabane Police Station. According to the officer the Applicant was the ringleader and the mastermind behind the robbery, to the extent of providing a firearm to the other accused person. That there is likelihood that Applicant may intimidate witnesses and/or destroy evidence. That admitting Applicant to bail may jeopardize the proper functioning of criminal justice system including the bail system. Further averments are made in paragraph 5 of the said affidavit are canvassed.

[4] In arguments before me Counsel for the Applicant attacked the Respondents affidavit that it has made bare allegations where hearsay evidence has been adduced. That this is against the provisions of the Constitution of this country in Section 14.

[5] The Crown on the other hand relied on Section 96 (8) of the Criminal Procedure and Evidence Act.

[6] I have considered the facts of the matter and the arguments of the parties and I have come to the firm view that there is nothing untowards in the Respondent's opposing affidavit. In bail

application hearsay evidence can be admitted.

[7] In the result, the point raised by the Applicant is dismissed and that the matter proceeds to the merits of the bail application.

S.B. MAPHALALA

JUDGE