IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE CRIM. CASE NO.60/06

In the matter between:

GOODMAN JAMU MNGOMEZULU APPLICANT

VS

REX RESPONDENT

CORAM: MAMBA J

FOR APPLICANT: IN PERSON

FOR RESPONDENT: MS Q. ZWANE

JUDGEMENT

5th December, 2008

[1] The Applicant who is an awaiting trial prisoner at the Mbabane Prison was arrested and detained on a charge of murder on the 24th February, 2006. He is accused of having murdered his wife. Following his incarceration, he applied for bail before this court. This application was granted on the 12th May 2006 and bail was fixed at the statutory amount of E50 000.00 of which E10 000.00 were to be paid in cash and the balance in the form of surety. He has failed to meet this bail term or condition and has now applied to be released in terms of section 136 (2) of the Criminal Procedure and Evidence Act 67 of 1938 (hereafter referred to as the Act).

[2] In support of his section 136 application, which was filed on 21st July 2008 the applicant states that he was committed for trial to this court on the 11th May 2007 and that he was not brought to trial during the first session of this court, held six months after his committal and because of this fact or non event that is to say, the failure to bring him to trial, he qualifies to be released under the provisions of the said Act. I set out below the provision of the section in full:

> "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 has elapsed between such date of commitment and the time of holding such session, unless -
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> a) 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
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> before the close of such first session an order has been obtained from the court under section 137 for his removal for trial elsewhere.
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> (2) 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."

[3] The factual situation as stated by the Appellant herein is admitted by the Respondent, who, however, state that the Applicant is wrong in his interpretation of the relevant section of the Act and he is not entitled to be released from custody as he was granted bail by this court on the 12 May 2006. The crux of the objection by the Respondent is that a person who has had his bail application determined or finalized by the court, may not thereafter call in aid the provisions of section 136 (2) of the Act. These

provisions have been the subject of many decisions by this court, the Supreme Court (then court of Appeal) and the Natal Provisional Division, in South Africa.

[4] In the case of **S v LULANE AND OTHERS, 1976 (2) SA 204, at 206-7** which was followed in the case of **REX v CELANI MAPONI NGUBANE (Appeal Case 5/04) and CELANI MAPONI NGUBANE v THE DPP** (case 11/04) (both yet unreported), Didcott J stated that: "It is equally clear that the words "such person", which appear in sec 150 (1) (b), denote the "person" referred to in Sec 150 (1) (a) who has been "committed to trial or sentence" and whom "the Attorney General has decided to prosecute before a "superior court". **(SEE RIDDOCH v ATTORNEY GENERAL, TRANSVAAL, 1965 (1) SA 817 (W) AT p. 819 A).** The description fits each accused precisely. It follows that both paras (a) and (b) of the subsection apply to all the Accused. Whether either of them applies likewise to the situation in which the accused find themselves is however another question."

And at. 208G the learned judge said that:

> "The object of the subsection is plain. It is devised to meet the situation in which an accused person is detained while he awaits trial and unable to get bail in the ordinary way; and its aim is to limit the period during which someone in that situation must remain in custody. But for its provisions, his captivity would inevitably have lasted until his trial began, whenever that happened to be."

(The provisions of section 150 (a) and (b) were then similar to our section 136(1) and (2) of the Act). As stated above this judgement was followed by Masuku J in **Ngubane's case (supra)** where the learned judge stated as

follows:

"It is my considered view that before a person can move an application in terms of sub-section (2), as the Applicant has done, he must have satisfied the requirements of subsection (1) and must not have been afforded any relief thereunder. In particular it must be clear that the Applicant has been unable to obtain bail in the ordinary way and that the time limits in subsection (2) have been fully met." These views were approved and followed by our Court of Appeal in **Ngubane's case (supra)** and they constitute our law on the matter.

[5] The interpretation ascribed to or placed on the section by the Applicant is clearly erroneous. It is founded on an interpretation of subsection 136(2) as if it were a stand-alone or isolated and independent from other provisions of the Act, for instance the provisions of subsection 136(1) and sections 137 and 138 of the Act. For instance, sub-section (1) clearly provides that, the person referred to therein shall "be brought to trial ...or else shall be admitted to bail." In the present application, the Applicant has not, it is common cause, been brought to trial. He has, however, been admitted to bail. His inability to meet the terms for his release from captivity (on bail) is another matter or consideration altogether different. His remedy lies somewhere else and not under section 136(2) of the Act.

[6] For the foregoing reasons, the application is dismissed.

[7] I should note that in **Ngubane's case (supra)** the Court of Appeal ruled that "in all future proceedings for relief in terms of section 136 of the Act,

the Registrar [of the High Court] shall be cited as a corespondent with the Director of Public Prosecutions." In **casu** the Director of Public Prosecutions has been cited as the only respondent. I condoned this failure or non compliance by the Applicant as I considered that the Applicant was in person and was not trained in law and probably not au fait with court procedure and practice, and court judgements. And, in the overall circumstances of this case, including the want of objection by the Director of Public Prosecutions, I did not consider that the interests of justice would be prejudiced by the failure by the Applicant to cite the Registrar as a corespondent in these proceedings. This, I emphasise, is not a license for or invitation to slap-dash preparation and presentation of court processes by litigants; including those appearing in person.

MAMBA J