

**IN THE HIGH COURT OF SWAZILAND
HELD AT MBABANE**

CASENO. 140/10

In the matter between:

MANQOBA MOKOENA

VS

REX

**CORAM
CROWN
ACCUSED**

**OTA J.
MS. ZWANE
IN PERSON**

JUDGMENT

OTA J.

RULING

[1] The Applicant who was arrested and arraigned before the Magistrates Court for murder commenced the bail application instant via a letter written to the Registrar of the High Court dated the 8th of March 2010. The crown for it's part opposed the bail application vide the Opposing Affidavit of 4086 Sgt. Patrick Du Pont, described in that process as the investigating police officer. The crown's grounds of

opposition are that there is a likelihood that the Applicant may attempt to influence or intimidate the crown witnesses if released on bail, by reason of the fact that the deceased was a neighbour of the Applicant's Aunt at Enykatfo where the Applicant resided at the time of this incidence. That the witnesses were neighbours to both the Applicant and his Aunt. That the witnesses are all friends of the Applicant, and that the Applicant knows the nature of the evidence to be tendered by said witnesses. That the Applicant's Aunt is his only relative resident in Swaziland, since his parents reside in The Republic of South Africa.

[2] Therefore, to release the Applicant back to the community where the offence occurred would not only give him the opportunity to interfere with the said witnesses but may also induce a sense of shock or outrage in the community in view of the circumstances under which the offence took place. The crown also alleged that since the Applicant's parents reside in South Africa, there is a likelihood that the Applicant may abscond to that country thus evading his trial.

[3] In his reply the Applicant alleged that he has another Aunt who is resident at Sigombeni in the Manzini Region, which is far from Enyakatfo Northern Hhohho where the offence occurred. That the allegation that he might abscond from the jurisdiction thus evading his trial is not true, because his parents who were resident in South Africa died some few years ago, which fact necessitated his relocation to his aunt in Swaziland. Applicant reiterated that he will reside at Sigombeni till the end of the trial.

[4] This court undoubtedly has the powers to grant the Applicant bail pending trial as urged. This is however a discretionary power of the court which must be exercised judicially and judiciously. To achieve the judicial and judicious exercise of this power, the court is enjoined by section 96 of the CP & E as amended, to weigh certain factors in the balance, in the interest of justice. Some of these factors include but are not limited to the following

- 1) whether the accused is familiar with the identity of the crown witnesses and with the evidence which they may bring against him or her.
- 2) the nature and the gravity of the offence on which the accused is to be charged. whether the nature of the offence or the circumstances under which the offence was committed is likely to induce a sense of shock or outrage in the community where the offence was committed.
- 3) whether the safety of the accused might be jeopardized by his or her release
- 4) any other factors which in the opinion of the court should be taken into account.

[5] In casu, the accused is charged with murder. Even though the circumstances under which the offence was committed has not been alleged by the crown, it is however judicially settled that the offence of murder is a very serious one attracting a sentence of up to 25 years and above or death where extenuating factors are not evident. Therefore the gravity of the offence for which the Applicant is charged, cannot be over emphasized. The crown alleges that the Applicant

knows the crown witnesses who will be called to testify in this case. That the witnesses live in the neighbourhood where the offence occurred, are Applicant's friends and that the Applicant also knows the nature of their evidence. I notice that the Applicant failed to deny these allegations made by the crown other than to state that he will not interfere with the crown witnesses and that he has another Aunt resident at Sigombeni Manzini Region which in his view is far away from the scene of this incidence in Enyakatfo Hhohho Region, where he previously resided therefore he should be released on bail to his Aunt at Sigombeni.

[6] I wish to say straight away here that to release the Applicant on bail to his Aunt in Sigombeni does not derogate from the real likelihood of interference by the Applicant with the crown witnesses. I say this in view of the fact that the Applicant and the said witnesses are friends and Applicant knows the nature of their evidence. Moreover, I take judicial notice of the fact that the kingdom of Swaziland is small in land mass therefore distances between one location and another are not so far away.

[7] Furthermore, there is also the real likelihood that the Applicant may abscond back to the neighboring Republic of South Africa, where he previously resided in the event of bail being granted, thus evading his trial. This is more so as the Applicant has not demonstrated any close family ties, emotional or occupational ties in the Kingdom, to lead the court to a different view.

[8] In the light of the foregoing, I am firmly convinced that to grant the Applicant bail will not serve the interest of the administration of justice.

[9] In the circumstances it is accordingly ordered as follows

That the Applicant's application for bail do and is hereby dismissed. It is further ordered that the Applicant's trial be expedited in the circumstances.

No order as to costs.

DELIVERED IN OPEN COURT IN MBABANE ON THIS

THE.....12th.....DAY OF .August... 2011

OTA J.

JUDGE OF THE HIGH COURT