

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

**CASE NO. 468/2010**

**In the matter between:**

**BHEKITHEMBA NGWENYA**

**VS**

**REX**

**CORAM:**

**OTA, J**

**FOR THE CROWN**

**S. FAKUDZE**

**APPLICANT**

**IN PERSON**

**JUDGMENT**

**OTA, J**

[1] This is a bail application. From the record the Applicant was charged for attempted murder and Robbery. Following his arrest, and arraignment before the Nhlangano Magistrate Court, he commenced this application for bail via a letter to the Registrar of The High Court dated the 9<sup>th</sup> of November 2010, requesting the Court to admit him to bail in terms of Section 95 of the Criminal Procedure and Evidence Act

67/1938 as amended (CP & E). He avows in the application not to interfere with crown witnesses if bail is granted.

[2] The crown is opposed to this application. To this end the crown filed a six paragraph affidavit in opposition sworn to by 3716 Detective **Dumsane Zwane**, described in that process as the investigating police officer. The crown's main ground of opposition is that the Applicant became a fugitive from the law after committing the offence. That he escaped to the Republic of South Africa without travel documents and remained there until he was deported to The Kingdom by the Immigration Department of that country as an illegal immigrant. The crown contends therefore that granting the Applicant bail is not in the interest of the administration of Justice, as he is a high flight risk.

[3] In his reply the Applicant contends both in his papers and oral argument before this Court on the 4<sup>th</sup> of August 2011, that he is not a high flight risk. That he is not a fugitive from the law. That he stays legally in the Republic of South Africa, where he is gainfully employed in one of the mines. That he has the company's identity card, South African identity book and bank book. That he was not deported from

South Africa, but was brought back because of the information given to that country by The Kingdom that he was suspected of having committed the offence.

[4] There is no doubt and as rightly contended by the Applicant, that pursuant to Section 95 of the CP & E this Court has the powers to grant bail pending trial. This is a discretionary power of the Court, which the Court is enjoined to exercise judicially and judiciously upon facts and circumstances that show that it is just and equitable to grant same. Section 96 (4) of the CP &E sets out certain parameters to guide the Court in the exercise of this discretionary power. That legislation states as follows :-

*" 96 (4) The refusal to grant bail and the detention of an accused in custody shall be in the interest of justice where one or more of the following grounds are established:-*

*a) where there is a likelihood that the Accused, if released on bail, may endanger the safety of the public or any particular person or may commit an offence listed in part II of the First Schedules; or*

*b) where there is a likelihood that the Accused if released on bail, may attempt to evade the trial;*

*c) where there is a likelihood that the Accused, if released on bail, may attempt to influence or intimidate witnesses or to conceal or destroy evidence.*

*d) Where there is a likelihood that the Accused, , if released on bail, may undermine or jeopardize the objectives or the proper functioning of the criminal justice system, including the bail system, or*

*e) Where in exceptional circumstances there is a likelihood that the release of the Accused may disturb the public order or undermine the public peace or security"*

[5] It behoves me now to examine the facts of this case to ascertain whether the Applicant has satisfied all the circumstances demonstrated ante, to warrant a grant of the application instant.

[6] From the facts it is obvious to me that the Applicant resides in the neighbouring Republic of South Africa, where he works in a mine. Even though the Applicant strove in his application to demonstrate to the Court that if released on bail he will not evade his trial by escaping to South Africa, I am however not impressed by the reasons put forward by the Applicant. The crown alleges that if granted bail nothing stops the Applicant from illegally returning to South Africa as he did before,

thus evading his trial. Even though the Applicant alleged to be legally resident in South Africa he has not presented any documents in Court in proof of this fact. All he told the Court in oral argument was that he usually enters into The Republic with temporary documents. The only fact that remains certain to me is that the Applicant had to be repatriated from the Republic of south Africa in the wake of this offence. From the facts before me I am inclined to agree with the crown, that even if the Court were to grant the Applicant bail and condition same upon the surrender of his travel documents, nothing stops the Applicant from escaping The Kingdom and entering South Africa illegally with temporary travel documents as per his own showing It thus appears to me that the Applicant is a high flight risk especially as the Applicant has failed to demonstrate that he has any family ties or assets in The Kingdom. To grant the Applicant bail will in my view, therefore not serve the interest of the administration of justice.

[7] On these premises it is hereby 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.

No order as to costs.

**DELIVERED IN OPEN COURT THE 12<sup>th</sup> DAY OF August 211**

**OTA J.  
JUDGE OF THE HIGH COURT**