



IN THE HIGH COURT OF SWAZILAND

JUDGMENT

Case No: 206/13

In the matter between

NKOSINGIPHILE MAZIYA

APPLICANT

And

THE KING

RESPONDENT

Neutral citation: *Nkosingiphile Maziya v The King (206/13) 2013*
[SZHC] 126 (4 July 2013)

Coram: **OTA J**

Heard: **28 June 2013**

Delivered: **4 July 2013**

Summary: **Applicant charged with rape and robbery; Bail application; Failure to disclose previous charge and breach of previous bail conditions disabling the application.**

Judgment

- [1] The Applicant Nkosingiphile Maziya who is presently charged with the offences of rape and robbery seeks to be released on bail pending his trial.
- [2] This application is in terms of Sections 95 and 96 of the Criminal Procedure and Evidence Act 67/1938, as amended, (CP & E).
- [3] In a simple letter dated 18 May 2013 and addressed to the Registrar of the High Court, the Applicant articulated what he alleges are exceptional circumstances that entitle him to this relief as follows:-
- 1) He is a sole breadwinner and provider of four (4) children, one of which is his and three others belonging to his late sister.
 - 2) If not released on bail he will lose his employment at AGPF under Swazi wire.
 - 3) His mother is very sick and has become bedridden since his arrest.

- [4] The Respondents for their part opposed this application with the affidavit of **Mduduzi Mathunjwa**, described therein as Senior Crown Counsel based at The Director of Public Prosecutions Chambers.
- [5] From the Respondents' affidavit, it appears that the Applicant is currently being tried together with two others, on six counts of the offence of robbery at the Manzini Magistrates Court, under Case No. MZ 421/12, which trial is at an advanced stage. It is also not controverted that it was whilst out on bail in Case No. MZ 421/12, that the Applicant is alleged to have committed the present offences of rape and robbery for which he stands charged on eight (8) counts.
- [6] I agree with the Respondents that this state of affairs is a factor that strongly militates against Applicant's release on bail in the interest of justice. This is because not only is the Applicant a person with the propensity to commit these sort of offences, but there is every likelihood that Applicant will breach his bail conditions as he did in MZ 421/12. In these circumstances and in the face of the very

serious offences with which the Applicant is charged in both cases, a great possibility exists that he will evade his trial in the event of his release on bail.

[7] I am also inclined to agree with the Respondents that the mere fact that the Applicant failed to disclose in this application the very material fact of the 6 counts of robbery and rape he faces in MZ 421/12, and the fact that he breached his previous bail conditions therein, disentitle him to the Court's indulgence. This is more so as the Applicant has not taken the Court into his confidence to disclose why he left out this very vital information. This leaves only one inference to be drawn, which is that the Applicant's action in this regard was deliberate. In view of the fact that in terms of Section 96 (8) of the (CP&E), this is a factor that the Court is required to consider in its discretion to grant or refuse bail, failure of the Applicant to disclose it defeats the *bona fides* of this application, disabling it.

[8] In any case, the offences for which the Applicant is charged fall within the contemplation of the Fifth Schedule of the CP&E. Section

96 (12) (a) of the CP&E requires the Applicant to show exceptional circumstances that would entitle him to the bail sought. The factors urged by the Applicant, which I have detailed in paragraph [3] above, fail woefully to meet the required standard in this regard, as enunciated in the case of **Wonder Dlamini and Another v Rex Criminal Appeal No. 01/2013**. They do not constitute exceptional circumstances that would justify the relief sought.

[9] By reason of the totality of the foregoing, this application lacks merits. It fails and is accordingly dismissed. It is recommended that the Applicant's trial should be expedited.

**DELIVERED IN OPEN COURT IN MBABANE ON THIS
.....DAY OF2013**

**OTA J
JUDGE OF THE HIGH COURT**

Applicant in Person

For the Respondent: M.D Nxumalo
(Crown Counsel)