



IN THE HIGH COURT OF SWAZILAND

JUDGMENT

Case No: 261/12

In the matter between

NTANDO BHEKUMUSA DLAMINI

APPLICANT

And

**DIRECTOR OF PUBLIC PROSECUTIONS
THE COMMISSIONER OF POLICE**

**1ST RESPONDENT
2ND RESPONDENT**

Neutral citation: *Ntando Bhekumusa Dlamini v The Director of Public Prosecutions & Another (261/12) [2013] SZHC 131 (9 July 2013)*

Coram: OTA J

Heard: 28 June 2013

Delivered: 9 July 2013

Summary: Aggravated rape: application for bail; no exceptional circumstances urged in terms of Section 96 (12) (a) of

the Criminal Procedure and Evidence Act 67/1938, as amended (CP&E); bail refused.

Judgment

- [1] The Applicant is charged with aggravated rape of his 14 year old biological daughter. This state of affairs brings the offence within the contemplation of offences under the Fifth Schedule of the Criminal Procedure and Evidence Act 67/1938, as amended (CP&E).
- [2] To be entitled to the bail which he contends for in this application, the law requires the Applicant to prove on a balance of probabilities exceptional circumstances justifying the grant of same in the interest of justice, in terms of Section 96 (12) (a) of the CP&E.
- [3] In his founding affidavit the Applicant alleged that though he knows the complainant, he did not rape her; he has a *bona fide* defence to the charge; if admitted to bail he will reside at Mdumezulu area and not

interfere with either the complainant or crown witnesses and that he is unemployed.

[4] It is my considered view that the factors ante do not qualify as such exceptional circumstances, which have been defined in the case of **Wonder Dlamini and Another v Rex Criminal Appeal Case No 01/2013**, as something more than merely 'unusual' but rather less than unique which means in effect 'one of a kind'.

[5] In coming to this conclusion, I am mindful of the fact that in the case of **S v Jonas 1998 (2) SA SACR 667 (South Eastern Cape Local Division)**, the court held that evidence showing that an Accused person did not commit the alleged offence would constitute an exceptional circumstance justifying his release on bail.

[6] This is however not such a case. Applicant's bare allegation that he did not commit the offence and that he has a *bona fide* defence will not suffice.

[7] Applicant was required to adduce evidence to convince the court that on a balance of probabilities he did not commit the offence. Moreso in the face of the allegation by the Respondents that the Applicant recorded a statement before a magistrate at Siteki Magistrate Court admitting that he raped the complainant and also the allegation that there is DNA evidence to the effect that the Applicant is the biological father of the child born by the Complainant. These allegations are not controverted by the Applicant. They are deemed admitted and established.

[8] I am also inclined to agree with the Respondents that there is a likelihood that the Applicant will interfere with crown witnesses if released on bail. The complainant was taken to a place of safety after the crime was reported and during investigation, because of this reason. She is allowed to visit home on request. Her step mother, who is Applicant's wife, however, knows where she is kept.

[9] The said step mother and complainant's grandmother all stay at the Applicant's homestead at Mdumezulu, where Applicant admitted in his founding affidavit that he will return to if released on bail.

[10] I agree with the Respondents that communication between the Applicant and these witnesses cannot be effectively prohibited in these circumstances. This state of affairs makes a likelihood of the Applicant interfering with these witnesses palpable. This factor to my mind disables this application.

[11] In the result this application fails and is dismissed accordingly. It is recommended that the Applicant's trial 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: E Matsebula
(Crown Counsel)