



**IN THE HIGH COURT OF SWAZILAND
JUDGMENT**

Case No. 210/13

JOHANNES MTSETFWA

APPLICANT

And

THE KING

RESPONDENT

Neutral citation: Johannes Mtsetfwa v *The King* (210/13)[2013]SZHC 133

Coram: OTA J.

Heard: 28 June 2013

Delivered: 9 July 2013

Summary: Aggravated rape; Bail application; No exceptional circumstances urged; Bail refused.

OTA J

- [1] The Applicant who is charged with rape, commenced this application for bail in terms of sections 95 and 96 of the Criminal Procedure and Evidence Act, as amended (CP&E).

- [2] The allegation is that the Applicant raped four of his biological daughters and exposed them to the risk of contracting HIV / AIDS. The Applicant thus stands charged with aggravated rape.

- [3] This offence falls within the contemplation of offences under the Fifth Schedule of the CP&E. Section 96 (12) (a) of the CP&E prescribes that persons charged with these very violent offences, such as rape, murder, armed robbery committed under aggravated circumstances, will be entitled to bail only where they can show exceptional circumstances entitling them to same.

- [4] The law places a formal onus on the Applicant to adduce evidence which on the balance of probabilities justify the grant of bail in the interest of justice.

- [5] What will constitute exceptional circumstances that will warrant bail has been defined as something unusual but less than unique, in effect one of a kind. See the case of **Wonder Dlamini and Another v Rex, Appeal Case No. 01/2013.**
- [6] Each case must invariably be treated according to its own peculiar facts and circumstances.
- [7] Do such exceptional circumstance (s) exist *in casu*? I think not. All the Applicant says in his bail application, which is articulated in a letter dated 29 May 2012 and addressed to the Registrar of the High Court, is that he will abide by all the bail conditions if granted bail and that he intends to plead guilty to the charge. These factors do not by any stretch of the imagination qualify as such exceptional circumstance (s) as anticipated by law.
- [8] The indisputable facts of this case is that the Applicant has already pleaded guilty to the charge preferred and the Respondents have led evidence to an

advanced stage in proof of commission. The only evidence outstanding is the DNA test which is being awaited from the Republic of South Africa.

[9] I am inclined to agree with the Respondents, that in the absence of exceptional circumstances and in the face of the severity of the punishment for the charge of aggravated rape to which the Applicant has already pleaded guilty, there is a great likelihood that if released on bail he will evade trial.

[10] This application thus tilts against the interest of justice. It fails and is accordingly dismissed. It is recommended that Applicant's trial be expedited.

DELIVERED IN OPEN COURT IN MBABANE ON THIS

THEDAY OF2013

OTA. J

JUDGE OF THE HIGH COURT

Applicant in person

For Respondents:

E. Matsebula