



IN THE HIGH COURT OF SWAZILAND

JUDGMENT

Criminal Case No.342/12

In the matter between:

REX

Applicant

and

FRANK SHABANGU

Respondent

Neutral Citation: *Rex vs Frank Shabangu (342/12) SZHC 02 [10 JANUARY 2013]*

Coram: **MAPHALALA PJ**

Heard: **21 DECEMBER 2012**

Delivered: **10 JANUARY 2013**

Summary: Applicant applies to be -

- (i) Released on bail forthwith;
- (ii) The court refuses the Application and orders that the Crown files its Opposing Affidavit in terms of the law.

- [1] The Applicant one Frank Shabangu a 40 year old male of Motshane area has filed an Application before this court on Notice of Motion to be admitted to bail. Further, that such bail be on such terms and conditions this court deems fit, necessary and appropriate.
- [2] The Crown opposes the Application and has filed a notice to oppose but has not filed the requisite opposing affidavits. However more of this will be revealed as I proceed with the Application which was argued by Mr. B. Sgwane for the Applicant on 21st December, 2012.
- [3] This Application has some history in that the Applicant has been represented by the Miss N.T. Dlamini of Sgwane and Partners. This explains the participation of Mr. Sgwane on 21st December 2012 when the matter was argued. Mr. Sgwane argued forcefully that in the interest of justice Applicant ought to be granted bail forthwith.
- [4] Mr. Magagula who appeared for the Crown also advanced forceful arguments against the release of the Applicant as contended by Mr. Sgwane. He argued that he has been in communication with the junior attorney Miss Dlamini of Sgwane and Partners for sometime in this matter. Further, that in terms of the provisions of the *Criminal Procedure and Evidence Act*, the Applicant cannot be granted bail. He specifically cited section 96(12) (a) of the *Criminal Procedure and Evidence Act*.

[5] Having considered the arguments of both parties in this matter in view of the history of the matter as outlined by Mr. Magagula for the Crown I do not think it will be in the interest of justice to release the Applicant as contended by Mr. Sgwane.

[6] On the facts of the case and the arguments of the parties I decline to grant the Application based on the arguments of the parties and rule that the Respondent file a fully fledged opposing affidavit and thereafter that Applicant files a replying affidavit in accordance with the Rules of this Court. Thereafter the matter be brought before me for arguments of the parties.

[7] In the result, the present Application for bail is refused for now as stated in paragraph [6] of this judgment.

STANLEY B. MAPHALALA

PRINCIPAL JUDGE

FOR APPLICANT : Mr. B. Sgwane

FOR RESPONDENT : Mr. B. Magagula