



IN THE HIGH COURT OF SWAZILAND

JUDGMENT

Criminal Case No.438/10

In the matter between:

SIFISO SHADRACK SIMELANE

Applicant

vs

REX

Respondent

Neutral citation: *Sifiso Shadrack Simelane vs Rex (438/2010) [2014] [SZHC 140] (9th July 2014)*

Coram: **MAPHALALA PJ**

Heard: 2nd May 2014

Delivered: 9th July 2014

For Crown: Mr. S. Dlamini

For Accused: In person

Summary: (i) *The Applicant is applying for bail while his trial is in progress in the court a quo.*

- (ii) *On the other hand the Crown contends that it will not be in the interests of justice to release the Applicant at this stage in view of section 95(2) of the **Criminal Procedure and Evidence Act, as amended.***
- (iii) *In the result, after considering the arguments of the parties to and fro I have come to the considered view that it will not be in the interests of justice to release the Applicant at this advanced stage of the trial in the court **a quo** and therefore bail is refused for this reason.*

JUDGMENT

The Application

- [1] Serving before court is an Application for bail where Applicant in his letter to the Registrar of this court dated 13 March, 2013 states the following:

“Dear Sir/Madam,

1

I am a Swazi male citizen aged 33 years old of Mtsebeni area at Gege constituency under Chief Mlobokazane Fakudze in the Shiselweni region. I was arrested on the 5th October 2010 by Matsapha police officers under Lukhozi Serious Crimes Unit and charged with several counts of robbery. I appear at the Manzini magistrate court where, I apply bail and I was advised to move my bail application at the High Court.

2

My Lord, I am desirocis to be admitted to bail considering my personal circumstances in that, I am the bread winner in my family. I have a burden of taking care of my motherless child, my six (6) siblings, two (2) of whom are attending school, after one (1) of them being dropped out of school due to financial problems. My father had passed on and never left any will for us as he was of a poor status.

3

My Lord, before my arrest I was self-employed as an electrician; I was able to support my family because I was able to get tenders for the job. Your Honour, ever since my incarceration my family has been subjected to become food beggars, thus putting at risk of being victims of human trafficking with the sole purpose of trying to make ends meet.

4

My Lord, besides being responsible to my family, the community at large stand to lose support in community work such as of that house wiring, because I was the one rendering such services in my area.

5

I humble request this Honourable Court to grant me an affordable bail considering my poor status. May I request the court to take into account, that the time I have spent in prison that, I have no source of income. My Lord, I can afford paying (E1 000.00) one thousand Emalangenzi as cash, and provide surety with my relative.

6

My Lord, may I sate that I am not a flight risk, should the court grant me bail. I promise that I will abide by all bail conditions that the court may choose to impose on me. I will stand trail whenever the court orders me to do.

7

Wherefore I pray that it may please this Honourable Court to make an order in terms of the Notice of Motion.”

The opposition

- [2] The Crown opposes the Application and has filed an Opposing Affidavit of 3980 Detective Sergeant Bongani Mhlanga stating the grounds of opposition thereof.
- [3] The main ground as gleaned from the said Opposing Affidavit of the police officer cited above is that the trial has commenced and three witnesses have been called by the Crown in relation to counts seven, eight and nine.
- [4] At paragraph 4 thereof the Crown contends the following:

“The Applicant was arrested and co-charged with nine (9) other persons. Charges against accused number four (4) Sibusiso “Kitaza” Mthembu were withdrawn and he was turned into an accomplice witness. They were charged with fourteen (14) counts, nine (9) of those counts being robbery offences, and the others being three (3) counts of Contravening the Arms and Ammunitions Act 24 of 1964 as amended and one (1) count of contravening section 7(1) of Act No.22 of 1922 as amended. The Applicant appears in eight (8) of the robbery counts being counts 1, 2, 3, 4, 5, 6, 7, 8 and 9 except for count 6. The Applicant then appears in count twelve (12) being of contravening of the Arms and Ammunitions Act in

that he was found in possession of a browning 9mm pistol and count fourteen (14) being found in possession of dagga.”

The arguments

(i) For the Appellant

[5] The Applicant who is conducted his own case and has filed very comprehensive Heads of Arguments for which I am grateful.

[6] The gravamen of the argument by the Applicant is based on the long entrenched principle of the law that an accused person is innocent until proven guilty by a court of law, and that bail in itself is not supposed to be a punitive nature but a protection of personal liberty as envisaged by the Constitution of Swaziland. In support of this argument the Applicant cited what was held by **Mohammed J** in the South African of **Acheson 1991(2) SA** at 822 to the following **dictum**:

“An accused person cannot be kept in detention pending his/her trial as a form of anticipatory punishment. The court will ordinarily grant bail to an accused unless this is likely to prejudice the ends of justice.”

[7] Various arguments are advanced in paragraph 3 to 6 of his Heads of Arguments. The main argument advanced is that the Crown has not

advanced sufficient evidence to find him guilty in the charges against him. I must say various arguments that are advanced are difficult to understand except that he desires that he be released on bail. I must also mention that what is clear is that the trial in the court **a quo** is still ongoing and all his co-accused are out on bail. The Appellant feels frustrated by this state of affairs of being in custody whereas his co-accused are out of custody.

(ii) For the Respondent

[8] The attorney representing the Crown Mr. S. Dlamini also filed Heads of Arguments for which I am grateful. The main ground of opposition for the Crown as contended in these Heads of Arguments is that the trial is at an advanced stage and it would not be in the interests of justice to release the accused on bail at this stage of trial but that those sections of the Act are qualified by the requirement that such bail can be granted if it is in the interests of justice. That *in casu* it is not in the interests of justice to grant him bail at this stage.

[9] The Crown advanced comprehensive arguments in paragraphs 1 to 5 of the Heads of Arguments analysing the evidence of these witnesses.

[10] The above therefore is the ground for opposition of the bail in respect of the accused person.

The court's analysis and conclusions thereon

[11] Having considered the affidavits of the parties and the arguments advanced for the Applicant and the Crown I have come to the considered view that it will not be in the interests of justice to release the Applicant on bail at this stage of the proceedings. The case has progressed to an advanced stage in the court **a quo** and it is my considered view that section 95(2) and 96 of the **Criminal Procedure and Evidence Act No.67 of 1938** are applicable and it will not be in the interests of justice to release the Applicant at this stage of the proceedings.

[12] That his co-accused are out on bail is neither here nor there as the court is not privy as to how they were released on bail or their participation in the commission of the offences as one of them was made an accomplice witness for the Crown.

[13] In the result, for the foregoing reasons the Application for Applicant to be released on bail is refused. I made no order as to costs.

STANLEY B. MAPHALALA
PRINCIPAL JUDGE