



**IN THE HIGH COURT OF SWAZILAND**

**JUDGMENT**

Civil Case No. 84/15

In the matter between:

**SIYABONGA SIMELANE**

**Applicant**

And

**THE KING**

**Respondent**

**Neutral citation:**            *Siyabonga Simelane vs The King (84/15 [2016]*  
*[SZHC 65] 8<sup>th</sup> April 2016)*

**Coram:**                        **MAPHALALA PJ**

**Heard:**                        **4<sup>th</sup> March, 2016**

**Delivered:**                **8<sup>th</sup> April 2016**

**Applicant:**                **in person**

**For Crown:**                **Mr. P. Dlamini**  
**(Senior Crown Prosecutor from the DPP's Chambers)**

**Summary:**    *Criminal Procedure - Application for bail where Applicant is charged with murder - Crown contends Applicant has failed to prove the existence of exceptional circumstances in accordance with the provisions of the Criminal Procedure and Evidence Act, (as amended)*

*- this court dismisses the Application for bail - Applicant has not proved exceptional circumstances under the said section - the Application is dismissed - I make no order as to costs.*

## **JUDGMENT**

### **The Application**

- [1] Before court is an Application for bail by one Siyabonga Simelane an adult Swazi citizen of Gamula area under Chief Mbekwane Matsenjwa in the Lubombo region, who was arrested by the Lubulini police on the 1<sup>st</sup> September, 2015 charged with the crime of murder.

### **The opposition**

- [2] The Crown opposes the Application for bail and has filed an opposing affidavit of one 6043 D/Constable Themba Nhlabatsi an officer stationed at Lubulini Police Station under the Criminal Investigation Department (CID) who is the Principal investigating officer in the present case. The main ground of opposition can be gleaned at paragraph 7 of the said affidavit to the following:

**May I submit that it will not be the best interest of justice that the Applicant be released on bail. I have information that the community of Gamula area wasn't to kill the Applicant. They have also attacked the Applicant's grandmother on numerous occasions accusing her of giving the Applicant special *muti* which helps the Applicant to kill people in the area. The Lubulini police were forced to open an enquiry file No. 7/16 where the Applicant's grandmother was laying a charge against unknown people who were attacking her at night. The recent occasion was on the 23<sup>rd</sup> December 2015 and the 15<sup>th</sup> January 2016. These attacks on the Appellant's grandmother had forced her to flee the homestead and seek refuge at a Ndlovu homestead. May I state further that, recently the**

**Ndlovu homestead has been attacked by the unknown people looking for the Applicant's grandmother. I am verily advised that this will have the effect of undermining the objectives of the criminal justice system. It will further disturb public order and undermine public peace more so because Applicant's life would be in a grave danger.**

[3] In paragraphs 5 to 6 further grounds are canvassed

### **The Applicant's Founding Affidavit**

[4] The Applicant wrote a letter addressed to the Registrar of this court on the 15 February, 2016 stating the in details contrasting the averments made by the Police officer as stated in paragraph [2] of this judgment.

[5] The Applicant to the said affidavit states that he never absconded from the police and stated that the averments in the opposing affidavit were highly exaggerated and should not be considered by this court.

[6] In paragraph 8 of his affidavit made an Application for bail and promise to abide by all the bail conditions set by the court.

### **The Arguments**

[7] The parties appeared before me on the 4<sup>th</sup> March, 2016 where I heard arguments for the Applicant who was conducting his case and the Crown was represented by Mr. P. Dlamini who filed Heads of Arguments for which I am grateful.

[8] The arguments of the Applicant were based on the affidavit that I have mentioned at paragraph [4] of this judgment.

[9] The Crown on the other hand as I have already stated in paragraph [2] I thereof is of the view that it will not be in the interest of justice to release the Applicant on bail.

### **The court's analysis and conclusion thereof**

[10] Having considered the affidavits of the parties and the arguments by the Applicant and the Crown represented by Mr. Dlamini that it will not be in the interest of justice to release the Applicant on bail on the facts of the matter. I say for the following reasons.

[11] Firstly on the basis of the averments of the Police Officer 6043 D/Constable Themba Nhlabatsi it would not be in the interest of justice to release the Applicant on bail as members of the community at Gamula area are baying for Applicant's blood. That members of the community have attacked the Applicant's grandmother on numerous occasions accusing her of giving the Applicant special **muti** which helps the Applicant to kill people in the area. The facts surrounding this incident are found at paragraph [2] of this judgment.

[12] Secondly, I find the averments made by the Police Officer at paragraph 5 of the said affidavit that it would not be in the interest of justice as stated in the said affidavit. In the said paragraph 5 the officer has deposed as follows:

**I submit that it will not be in the interest of justice that the Applicant be released on bail because there is a likelihood that Applicant, if he is released on bail, may attempt to evade the trial. At time of arrest the**

**Applicant was employed in the Rural Development Project (RDP) building houses at Manguza (Ndumo) area in the Republic of South Africa. May I further state that the Applicant has close relatives who are resident in South Africa. Among others are Bheki Ntshangase an uncle and Thandeka Simelane a sister. It is submitted that if the Applicant is released on bail he may go and stay with his relatives in South African. The Applicant does not used passport to cross to the Republic of South Africa he does not have one. Instead the Applicant is using informal crossing point to go in and out of the country.**

[13] Thirdly, the Applicant has failed to established the existence of exceptional circumstances that may warrant this court to release him on bail. In this regard I refer to section 96(14) of the Criminal Procedure and Evidence Act No. 67 of 1938, and High Court cases of **Rex vs Jeremiah Dube and others 1979 – 1981 SLR 342 at 349** and that of **Brian Mduduzi Qwabe vs Rex Case No. 43/2004.**

[15] In the final analysis on the facts of this case it will be in the interest of justice that the Applicant be kept in custody until the matter is finalized as there is a likelihood that if released on bail he may evade trial. Therefore, the Application for bail is dismissed forthwith. I make no order as to costs.

**STANLEY B. MAPHALALA**

**PRINCIPAL JUDGE**