



IN THE HIGH COURT OF ESWATINI

JUDGMENT

Case No. 245/2019

In the matter between:

ALEX POUND LANGA

APPLICANT

AND

THE KING

RESPONDENT

Neutral citation: *Alex Pound Langa and The King* [245/2019] [2019] SZHC 135
(29th July, 2019)

Coram: FAKUDZE, J

Heard: 11th July, 2019

Delivered: 29th July, 2019

Summary: *Criminal Procedure – application for bail – Applicant non Swazi and has been resident in the country for over 13 years – has no roots in the country and therefore likely to evade trial – also charged with serious offence of Human Trafficking – bail refused.*

BACKGROUND

[1] The Applicant was arrested by the Manzini Police and was charged with four (4) counts, which are (a) contravening Section 14 (2) (c) of the Immigration Act, 1983, (b) contravening Section 23 of the Citizenship Act, 1982 and (c) two counts for contravening Section 19 of Human Trafficking and People. Smuggling Act, 2009.

THE PARTIES' CONTENTION

The Applicant

[2] The Applicant submits that he arrived in the country in 2005 using an emergency passport. He has stayed in the country since then and has a strong intention to stay here as the domicile of his choice. He has stayed in the country for close to 13 years.

[3] The Applicant further avers that he has three children who were born in Swaziland and their mother is a Swazi. The number of years he has spent in the country qualifies him for permanent residence and he was arrested whilst in the process of acquiring it.

[4] The Applicant states that he does not have any devices used to produce the documents allegedly supplied by him and none was found in his possession during the investigation. The Applicant states further that he did not

smuggle anyone into the country. He is being framed for all the charge laid against him and he will plead not guilty when trial commences.

- [5] The Applicant alleges that he stands to lose financially if he is kept in custody pending trial. He lives from hand to mouth through getting piece jobs in an informal set up. He also sells vegetables. If he does not work, his family will suffer.
- [6] The Applicant finally submits that the sentences coupled with the offences he is charged with are normal and cannot sway human nature to evade trial, hence, there is no way he can jeopardize the interests of justice.

The Respondent

- [7] The Respondent's case is that the Applicant is a foreigner who has committed a very serious offence in terms of the Human Trafficking law. Police have been trying to arrest him but to no avail as he has been evading arrest.
- [8] The Applicant is also a prohibited immigrant. He stands to be deported in the event he is found guilty and after serving his sentence. The Applicant states that he used lawful means to stay in the country, but investigations show that he forged the entry permit, the identity document and the travel

document. If he is released on bail, he will still be kept in custody pending his deportation.

- [9] The Respondent states that in terms Section 96(4)(b), the refusal to grant bail and the detention of an accused in custody shall be in the interests of justice where there is a likelihood that the accused, if released on bail, may evade trial. In this instance, if the Applicant is released on bail, he will evade trial.

THE APPLICABLE LAW

- [10] In **A.V. LANSDOWN AND J. CAMPBELL'S** Book titled, **The South African Criminal Law and Procedure, Volume V** 1982 Juta and Company at page 311 the purpose of bail is described as follows:

“The function (of bail) is the safe guarding of personal liberty by enabling a person held on a criminal charge to regain his freedom pending the determination of the allegations against him.”

- [11] In **R v Mark M. Shongwe 1982-1986 (1) S.L.R. 193**, the general principle was emphasised with regards to bail in the following words:

“If there is a likelihood that the accused will stand trial if released on bail or that he will not interfere with witnesses or otherwise hamper or hinder the proper course of justice, he will normally be granted bail.”

[12] The importance of these excerpts is that an unnecessary or avoidable pretrial detention or incarceration should be avoided where the accused's attendance in court can be secured by other means such as a release on bail without it having an adverse effect on the interests of justice.

[13] In **Matthias Moyo v Rex Case No 469/2015**, His Lordship Mlangeni dismissed an Application for bail on the grounds that the Applicant was a Zimbabwe National and that he had no roots in this country in the form of any substantial investment which would compel him to stand trial.

COURT'S ANALYSIS

[14] In as much as the Applicant has established that he came to Swaziland in 2005 and has been resident in the country since that time, he has failed to establish that he is a National of Eswatini and that he has roots in the country in the form of any substantial investment which would compel him to stand trial.

[15] The fact that he has a fiancée with whom he has three children and the fiancée is a Swazi is not good enough. In the **Mathias Moyo Case**, the Applicant had made a similar allegation but it transpired that this was not a good ground upon which bail could be granted. Section 96 (4)(b) specifically states that "The refusal to grant bail and the detention of an

accused in custody shall be in the interests of justice where there is a likelihood that the accused if released on bail, may attempt to evade trial.” In this case, there is a likelihood that the accused, if released on bail, may attempt to evade trial.

[16] The court has also taken into account the fact that the accused has been charged with two serious offences pertaining the Trafficking of Human beings. There is also a charge of falsifying documents to help non Swazis to obtain legal documents like identity cards and passports. The seriousness of the offences may lead to the Applicant not standing trial.

[17] In totality of all that has been said above, the bail is refused and I order that the trial of the accused be expedited in term of Section 88 bis of the Criminal Procedure and Evidence Act, 1938.



FAKUDZE J.

JUDGE OF THE HIGH COURT

For: Applicant: T. Dlamini

For Respondent: C. Ngwenya