

IN THE HIGH COURT OF ESWATINI

HELD AT MBABANE

CRIMINAL CASE NO.

294/18

In the matter between

CELUMUSA SIMELANE

APPELLANT

Vs

THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

Neutral citation: *Celumusa Simelane v The Director of Public Prosecutions* (294/18) [2019] SZHC 44 [2019] (11th March 2019).

CORAM

D TSHABALALA J

HEARD

09/11/2018

DELIVERED

11/03/2019

Summary: Application for bail pending appeal - Notice to opposed filed but no answering affidavit by the Crown - During arguments the Crown left it to the Court's discretion in terms of Sexual Offences and Domestic Violence Act - At arguments stage counsel for the applicant pursuing appeal as opposed to bail.

JUDGEMENT

- [1] The Applicant filed a Notice of Motion under a certificate of urgency seeking the following relief:
- (a) That the Court disposes with the normal forms and time limits as to service and hearing the matter as one of urgency.
 - (b) Condonation non-compliance with the Rules.
 - (c) Release of the Applicant on bail pending appeal upon such conditions
 - (d) Further and alternative relief.
- [2] The Crown filed a notice to oppose the application, and that was all. No answering affidavit was filed. The Crown Counsel informed the Court on the hearing of the matter that the Crown was leaving it to the Court to exercise its discretion in terms of the Sexual Offences and Domestic Violence Act.

Meanwhile Counsel for the Applicant filed heads of argument which were at odds with the relief sought in the Notice of Motion. According to the heads the Applicant was appealing before this Court against conviction and sentence. Full arguments were made on how the trial Court erred in passing a custodial sentence of two years against the Applicant. This is not acceptable. This Court is seized with an application for bail pending appeal. It cannot therefore entertain an appeal at arguments stage and where no papers for an appeal had been properly filed. Notice and grounds of appeal were filed in support of the application for bail pending appeal only.

[3] I have decided to consider the Notice of Motion and the founding affidavit in support thereof and to ignore the Heads of argument. This I do in order to avoid penalizing an innocent Applicant for ineptness and negligence of his attorney in the handling of the matter. At paragraph 10 of the founding affidavit the Applicant clearly applies to the Court to grant him reasonable bail pending appeal, taking all the facts and circumstances of the matter as detailed in the affidavit.

[4] I find for the Applicant and admit him to bail, pending appeal on the following conditions:

1. Bail is fixed at E2000-00 (Two Thousand Emalangi) payable in cash amount of E1 000-00 (One Thousand Emalangi). E1000-00 (One Thousand Emalangi) thereof is payable in the form of a surety.
2. Applicant shall surrender his travel document and or passport to the investigating officer and not apply for new one(s).
3. Report to nearest police station once a fortnight on Fridays between

08:00 hours and 16:00 hours.

4. Shall not interfere with Crown witnesses, in particular shall not communicate with the complainant until the case is finalized.

5. He shall prosecute his appeal within a reasonable time

A handwritten signature in black ink, appearing to read 'D. Tshabalala', written in a cursive style.

**D. TSHABALALA J
JUDGE OF THE HIGH COURT**

For the Appellant: R. Mwelase

For the Respondent: N. Dlamini