

IN THE HIGH COURT OF ESWATINI

HELD AT MBABANE

CRIMINAL CASE NO. 85/2018

In the matter between:

Rex

v

Bongani Kenneth Sihlongonyane

Neutral Citation: *Rex v Bongani Kenneth Sihlongonyane (85/18) [2021] SZHC - 56 - [2021] (13 April 2021).*

Coram : shabalala J
Heard : 13/04/2021
Delivered : 13/04/2021

Summary: *Bail Conditions - The Accused is indicted for murder. During adjournment of his trial, the accused phoned his friend, who is a star witness for the crown, and inquired if he was aware that "witnesses die. "*

Held: That the accused/ailed to comply with one of his bail conditions that he shall not communicate or interfere with crown witnesses. Bail is accordingly cancelled and the Accused remanded back to custody.

RULING ON APPLICATION FOR REVOCATION OF BAIL.

- [1] The Accused person is facing a charge of murder it being alleged that on or about the 5th February 2018 at or near Motshane in the Hhohho Region, he unlawfully and intentionally killed one Mncedisi Shongwe.
- [2] Trial commenced before me on the 18 March 2021 wherein the Accused pleaded "*not guilty*." The Crown called its 1st witness, Dr Komma Reddy, police pathologist who was examined both in chief and by the defence. Further evidence could not be heard as the Crown informed the Court that, there was no money to cater for witnesses' lunch until April 2021. The matter was adjourned and criminal witnesses, and the Accused who was out on bail, were warned to return for continuation of trial on the 13 April 2021.
- [3] On the set date, Crown Counsel made an application from the bar for cancellation of Accused's bail on the ground that he breached one of the bail conditions by interfering with Crown witnesses. The Crown alleged that contrary to the bail condition the Accused phoned crown witness, one Bonginkhosi Zwane and uttered to him words to the effect that "*witnesses in this matter die*." Further that the Accused met with other Crown witnesses, Veli Shongwe and Bheki Shongwe and inquired from them what evidence they will give in Court, and then proceeded to tell them that whatever evidence they will give will be false. Crown Counsel complained that as a result of the interference one of the witnesses, Bheki Shongwe was now hostile and no longer willing to testify.
- [3] The Crown referred the court to High Court order of the 16 March 2018, clause 5 of which reads as follows:

"...It is hereby ordered by consent that bail be granted to the Applicant to the (sic) following terms: -

1. *To deposit with Treasury the sum of E2.000-00 (Two Thousand Emalangeni.*
- 2.
- 3,
- 4.
5. ***To refrain from speaking with or communicating with or otherwise contacting or interfering with any prosecution witnesses in the case against him. In the event he/she does not know their identity, it be ascertained by him from the investigating officer***" [Emphasis supplied].

[4] In response, defence Counsel informed the Court that the allegations of interference with crown witnesses were denied by the Accused, and that the alleged meeting/conversation with Bheki and Veli never happened, and that regarding Bonginkhosi Zwane, it was actually the latter who made the phone call to the Accused after the 18 March 2021.

[5] The Crown called Bonginkhosi Zwane¹ who testified under oath, *inter alia*, that he and the Accused were friends. He told the Court that he and Accused had several telephone conversations which were instigated by either of them. At one stage, after the 16 March 2018² the Accused invited him to his home where he requested him to construct his 2-room house, which the witness did. On the 03 April 2021 the Accused phoned him and in their conversation the Accused asked him what evidence the witness was going to give, and asked whether he was aware that "*witnesses die.*" The witness said he responded that he would testify and that if witnesses die so be it. Asked to

¹He testified as PW2 in the murder case.

²This is the dated when the Accused was released on bail.

clarify his response the witness said he meant that if he would die for testifying, then let it be.

- [6] This witness faced intense probing questions under cross-examination in relation to his telephone conversations with the Accused, during which he remained unshaken. He admitted that he sometimes called the Accused and that the Accused called him at other times. This happened following the Accused's release on bail in 2018, and after the trial was postponed on the 18 March 2021. Asked by defence counsel on the nature of their conversations, whether they were hostile or friendly, he answered that their conversations were friendly except the one of the 3rd April 2021 when the Accused informed him that "*witnesses die.*"
- [7] When counsel for defence was done questioning the witness in relation to the alleged interference with him, his cross-examination ventured into the witness's testimony on the murder charge which was however. However, cross examination of the witness was adjourned at 13:00 hours to continue on the 5 May 2021 due to the Crown Counsel Ms Nolwazi Mabila feeling unwell. The Court was nonetheless able to finalize the application for revocation of bail based on the evidence availed thus far.
- [8] Both Counsels made their respective submissions. From the evidence of the crown witness, Bonginkhosi Zwane, in chief and under cross-examination, it was clear to the Court that the Accused failed to abide by one of the key conditions of his release on bail, not to interfere with Crown witnesses. It was clear from pmi of the witness's testimony which remained undisputed under cross examination that the Accused did make a not so subtle or not so veiled threat to the witness that "*witnesses die.*"

"The Accused statement was

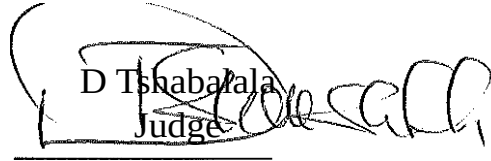
made in relation to the fact that the witness was due to testify in Accused's murder case that was adjourned to the 13 April 2021.

[9] It is also noteworthy that Bonginkhosi is a leading witness of the Crown whose evidence in the murder case is that the Accused told him on the night of the 05 February 2018 that he assaulted the deceased with a log.

[10] The Court considers it immaterial that Bonginkhosi resisted the intimidation attempts by the Accused. The relevant point is that a condition of bail obligating the Accused not to communicate, contact or interfere with Crown witnesses was breached by the Accused. It is also immaterial that Bonginkhosi called the Accused some of the time. It was Accused's obligation to cut communication with the witness until his trial had been finalized. An argument by defence Counsel that the Accused was unsophisticated and might not have appreciated obligations attendant to his release on bail does not hold water. This is because such conditions are read out to the Accused in court and are interpreted from English to siSwati. In rare cases attorneys representing the Accused persons who are not present in court make undertaking to explain the conditions to their clients, and in such cases the court issues a formal directive for the attorney to do so. Nonetheless there is no allegation that the conditions were not communicated to the Accused hence there is no need to investigate that further.

[11] The court having heard the evidence of crown witness Bonginkhosi Zwane and having heard submissions for and against the application, grants the application and makes an order that bail granted to the Accused on the 16 March 2018 is hereby revoked, and accordingly, the amount of E2000-00

deposit paid by him in that respect is forfeited to the state, and any sureties he posted are discharged.

A handwritten signature in black ink, appearing to read 'D Tshabalala', is written over a printed name and title. The signature is stylized and somewhat illegible. Below the signature, the printed text 'D Tshabalala' and 'Judge' is visible. A vertical line is drawn to the right of the signature.

D Tshabalala
Judge

For the Crown: Ms N. Mabila: DPP's Chambers

For the Defence: Mr D. Hleta: