



IN THE HIGH COURT OF ESWATINI
JUDGMENT

Case No. 285/2024

In the matter between:

ISAAC DUBE

Applicant

And

THE KING

1st Respondent

THE PRINCIPAL MAGISTRATE FIKILE NHLABATSI

2nd Respondent

THE ATTORNEY GENERAL

3rd Respondent

Neutral citation: *Isaac Dube v The King & 2 Others (285/2024) [2024] SZHC 195 (15 August 2024)*

CORAM : **T. DLAMINI J**

Heard : 08 August 2024

Delivered : 15 August 2024

EX TEMPORE ORDER

T. Dlamini J

Before court is a two-pronged application. First, it is an appeal against a refusal by the 2nd Respondent to admit the Applicant to bail. Secondly, it is an application for review and setting aside of the 2nd Respondent's decision of 10 July 2024 remanding the Applicant to custody.

Having heard the parties' attorneys after having read the papers filed of record, and having considered the issues raised and the authorities referred to, I have come to the conclusion that, amongst other considerations:

- i) The 2nd Respondent had an obligation to afford the Applicant an opportunity to seek to be admitted to bail but failed and disregarded that obligation;
- ii) The trial was pushed through the throat of the Applicant by the 2nd Respondent without ascertaining if he was ready for trial much against established practice and in violation of *s.21 (2) (d) of the Constitution of the Kingdom of Eswatini, Act 001/2005*, which enjoins Judicial Officers to afford an accused person adequate time and facilities for preparation of his defence; and
- iii) That the 2nd Respondent's impartiality is tainted and compromised by her conduct of hosting in her Chambers the complainant, and her brother who is a witness, two days before the matter was enrolled and presided over by her.

For the above mentioned considerations, amongst others, the following orders are issued:

1. The review is allowed and the decision of the 2nd Respondent of 10 July 2024 remanding the Applicant into custody is set aside, and the Applicant is ordered to be released from custody forthwith.
2. Under further and/or alternative relief, the trial of the Applicant is ordered to commence *de novo* before another Magistrate as the impartiality of the 2nd Respondent is held to be tainted and compromised by her conduct of hosting the complainant and her brother who is a witness, in her Chambers two days before the matter was enrolled, heard and presided over by her.
3. A full judgment will follow later.



T. DLAMINI
JUDGE OF THE HIGH COURT

For Applicant: Mr. S. Dlamini
NMK Shongwe Attorneys

For Respondents: Mr. S. Phakathi
Director of Public Prosecutions Chambers