

IN THE HIGH COURT OF ESWATINI

JUDGMENT

In the matter of:

Case No: 335/2024

GINA WANDILE MPHUMELELO MHELWANE Applicant

and

THE KING Respondent

Neutral Citation : **Gina Wandile Mphumelelo Mhelwane and The King
(335/2024) [2024] SZHC 346 (13th Decmber, 2024)**

Coram : M. Dlamini J

Hear : 22nd August, 2024

Delivered : 13th December, 2024

JUDGMENT

Summary: The applicant seeks bail on the charge of contravening the Suppression of Terrorism Act 2008 as amended, murder and theft on the ground that he is not a flight risk. The respondent has opposed his bail application asserting that

applicant has failed to aver to exceptional circumstances as the offences he is facing fall under Schedule 5.

The Parties

1. The applicant is a LiSwati adult male of Siteki, Moyeni area, Manzini Region.
2. The respondent is represented by the Director of Public Prosecutions, charged with prosecution of criminal and quasi-criminal matters.

Applicant's case

3. The applicant, seeking for bail, contended as the grounds:

“I humbly state that I am innocent of the offences charged and I will plead not guilty at the trial. I am not a flight risk, I will not interfere with any prosecution witnesses, and shall abide by the bail conditions if so granted bail. I am not employed. I will live with my family at Siteki/Moyeni area and can never risk and escape and avoid trial. I have my roots and heart here in Swaziland.”¹

4. He further contended before urging the court to grant him bail:

¹ Para 6 of the founding affidavit.

“I humbly state that this matter is urgent in that I am innocent of the charges. The current deprivation of liberty whilst guilt has not been established is wrongful. I am an inhabitant of the above said area. It may please the Court to allow me to bail so that I may go back to fend for my children and parents.

9.

I submit that the matter is urgent and I implore the court to be mindful of the presumption of innocence until proven guilty principle in deciding my case first.²”

Respondent’s case

5. The respondent has opposed the application on a number of grounds. Respondent first raised a point of law. It deposed that applicant is facing a charge of contravening the Suppression of Terrorism Act, murder and theft. The murder offence falls under the 5th schedule of the Criminal Procedure and Evidence Act No.38 of 1967.

6. On the merits, respondent deposed on how the murder of the deceased in the murder charge was carried out. Respondent averred that applicant facilitated

² Para 8 and 9 of the founding affidavit.

the kidnapping and murder of the deceased who was an officer of Correctional Services. Respondent contends that there is overwhelming evidence at its disposal against applicant.

Adjudication

7. The applicant deposed in his founding affidavit that he is facing a murder charge. No doubt this murder charge falls under the 5th schedule. I have gone through applicant's founding affidavit and observed that it falls short of two cardinal principles in bail matters. The first is that in bail matters a mere or bare denial of the allegations levelled against a suspect is insufficient. Applicant ought to have stated his defence. This is a common law principle in bail application.

8. The second short coming is that he failed to attest to exceptional circumstances. Defining exceptional circumstances, Magid AJA³ who sat in our jurisdiction, meticulously stated:

³ Senzo Motsa v Rex. Crim Appeal Case No. 15/2009

“The word ‘exceptional’ in relation to bail must mean more than merely, ‘unusual’ but rather less unique which means in effect ‘one of a kind.’”

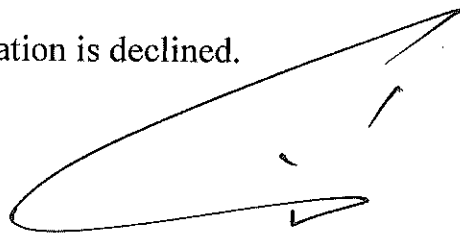
9. There are absolutely no averments in the founding affidavit by applicant on exceptional circumstances. The applicant having stated how and when he was arrested, mentioned the charges he was facing and undertook to abide by the bail conditions once bail was granted. There was not an iota of evidence relating to exceptional circumstances.

Order

10. For the above reasons I am duty bound to enter as follows:

10.1 Applicant’s bail application is declined.

10.2 No order as to costs.



M. Dlamini J

For the applicant : **L. Dlamini of L.N DLamini and Associates**

For the respondent: **M. Nxumalo from the Director of Public Prosecutions’**

Chambers