

IN THE HIGH COURT OF ESWATINI

HELD AT MBABANE

CASE NO: 35/2025

In the matter between:

MUSA KHANDZABANGEKHO MAHLALELA

APPLICANT

And

REX

RESPONDENT

Neutral citation : *Musa Khandzabangekho Mahlalela v Rex*
[35/2025] [2025] SZHC 11 (11 February
2025)

CORAM: **B.S. DLAMINI J**

DATE HEARD: 31 January 2025

DATE DELIVERED 11 February 2025

RULING ON BAIL APPLICATION

INTRODUCTION

- [1] The Applicant, Musa Khandzabangekho Mahlalela, is an adult Liswati male who resides at Ka-Dvokolwako area, in the District of Manzini. On the 21st November 2024, the Applicant is alleged to have committed two counts of Attempted Murder in that he unlawfully and intentionally attempted to kill one Bhekithemba Ndlovu and Mbongeni Ndlela and thereby did commit the said offences.
- [2] The Applicant was arrested by Mliba Police Officers on the 21st November 2024 and has been kept in custody since that date. It is common cause that Applicant was arraigned on charges of assault with intent to cause grievous bodily harm before the Magistrates' Court. These charges were later amended to Attempted Murder, which change meant that Applicant had to approach the High Court for his bail application.

[3] Applicant instituted the present application for bail at the High Court on the 16th January 2025. It is alleged by Applicant that he is innocent of the charges levelled against him and that he will plead not guilty during trial. The Applicant has averred in his Founding Affidavit that;

“[11] I state that I am not a flight risk and that I do not have any other business interest outside Swaziland. I undertake to surrender my passport to the investigating officer until the end of my trial.

[12] If released on bail, I shall not in any manner whatsoever try to defeat the ends of justice or demean myself in any way that would be prejudicial to the interests of justice nor interfere with Crown witnesses or police investigations as I am advised that I will be re-arrested and forfeit the bail bond.”

[5] In an Opposing Affidavit deposed to by 7213 Detective Constable Charlton Mtsetfwa, the Crown advanced a number of grounds on why it believes the Applicant should not be admitted to bail. According to Detective Mtsetfwa, the Applicant was accosted by a ‘Water Party’

(Bemanti) and he was asked to take off his hat. The Applicant resisted the order and the “*complainants then tried to remove the hat forcefully and that is when Applicant started to assault them with a bush knife he was carrying...*” According to the Investigating Officer (Detective Mtsetfwa), there is a likelihood that if released on bail, the Applicant will disturb public order or undermine the public peace or security. Applicant’s release will, according to Detective Mtsetfwa, also reduce public confidence in the criminal justice system.

- [6] It is further alleged by the Crown that Applicant has a very strong resentment against his regiment as he is former member of the *Mgadlela Regiment* where he was suspended for misbehavior. It is argued by the Crown that it will not be in the interest of justice to release Applicant on bail. The Crown also states that Applicant has relatives in the Republic of South Africa and may use informal crossings to relocate to that country in order to escape trial. The resistance against Applicant’s release is also on the ground that Applicant faces serious offences which may attract a custodial sentence upon conviction.

ANALYSIS AND FINDINGS

[7] In the Court's view, the Crown has not been able to prove and substantiate its grounds of opposition to the application, and in particular, demonstrating why it believes the Applicant will not stand trial or that he will elope the jurisdiction of the Court. The Applicant is married and has a young family in the country which, on a balance of probabilities, works in his favour. The Court does not agree with the Crown that the interests of justice favours the denial of bail to Applicant. An allegation that an accused or Applicant for bail will escape the jurisdiction of the Court must be supported by relevant facts and/or evidence and not merely be speculative or based on assumptions.

[8] This Court, in **Brian Mduuzi Qwabe v Rex, Crim. Case No. 43/2004**, held as follows;

“Regarding the Applicant tampering with relevant evidence or witnesses if admitted to bail, factors to be include the following;

(i) The identity of and nature of the evidence of the witnesses;

- (ii) Whether the witnesses have already made their statements and committed themselves to testify or whether it is still the subject of continuing investigations;
- (iii) The relationship between the accused and such witnesses and the likelihood that the witnesses may be influenced or intimidated by him; and
- (iv) Whether conditions imposed regarding communication can be policed effectively.”

[9] None of the conditions listed above can be said to be operating against the granting of bail to the Applicant. The Court in the *Brian Qwabe case* (above), went to hold that;

“The last factor to be considered is how prejudicial it might be for the accused in all the circumstances to be kept in custody by being denied bail. Issues that come to the fore include the following;

- (i) The period already spent by the accused in custody;
- (ii) The period he is likely to spend in custody before trial;
- (iii) The cause of the delay in completion of his trial and his contributions, if any, to the delay;

- (iv) The extent to which he might be prejudiced in engaging legal assistance for his defence and in effectively preparing his defence if he remains in custody;
- (v) The health of the accused.”

[10] All the above factors appear to be working in favour of the accused person on the facts of the present matter. Upon being granted bail, it does not mean the accused will have escaped the charges, but such an arrangement is only meant to be a balancing factor between the rights of the complainants and the rights of the accused person. Prior to conviction, none of the parties should enjoy a right which might in the long run, be prejudicial to the other.

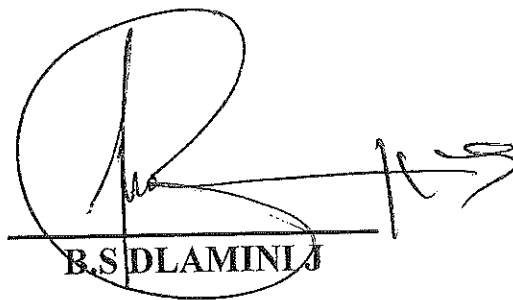
[11] In the circumstances, the Court is of the view that bail be granted to Applicant and it is so ordered. The Applicant is granted bail in the sum of E 50,000.00 under the following conditions;

- (a) The Applicant is to pay a cash sum of E 5,000.00 and provide surety in the sum of E 45,000.00.

- (b) The Applicant is to surrender his passport or other travel document to the Investigating Officer at Mliba Police Station and is not to apply for a new passport or other travel document.
- (c) The Applicant is to report monthly in person at the Mliba Police Station between the hours of 8:00 am and 4:00 pm. Such reporting to take place on the first Friday of his release and thereafter every last Friday of the month.
- (d) The Applicant is not to contact, interfere or communicate with the prosecution witnesses in the matter against him.
- (e) Applicant is to remain within Eswatini.
- (f) Applicant is to provide the Investigating Officer with his residential address forthwith upon release.
- (g) Applicant is to attend Court whenever called upon to do so.
- (h) Applicant is not to commit a similar or any other offence whilst out on bail.

(i) Any amendment to any of these conditions may only be authorized by the High Court of Eswatini.

(j) Failure to comply with any of these conditions shall result to the bail being withdrawn and Applicant kept in custody pending finalization of the matter.



B.S. DLAMINI

THE HIGH COURT OF ESWATINI

For the Applicant:

Attorney Mr. S. Hlophe

(S.G Hlophe Attorneys)

For the Crown:

Attorney Miss. S. Khumalo

(D.P.P's Chambers)