

CASE NO.17/2003

In the matter between:

VUSI NXUMALO (NDWANDWA)

1st Applicant

VS

THE REX

CORAM : MASUKU J.

For Applicant : Mr C.S. Ntiwane
For Respondent : Ms S. Wamala

JUDGEMENT

1st April 2003

The Applicant was charged with the murder of Cashaza Dlamini and the illegal possession of a firearm. He is desirous of being admitted to bail pending his trial. He contends that he did not kill the deceased and that he was not in any way involved therein. This, he further alleges, was testified to by his co-accused Wonder Mavuso and Nathi Nkonyane during their remand hearing.

The Crown has basically raised two issues in opposition. Firstly, it is contended that the Applicant is likely to abscond trial as he has allegedly been crossing illegally into the Republic of South Africa (R.S.A.) without using a passport. Secondly, it is alleged that there is a reasonable fear that he may interfere with the witnesses being his mother and sister amongst others.

In response to the first issue, the Applicant vehemently denies this and states that he has a home in this country and that he has no reason to flee as he has good prospects of success at the trial. The factual basis upon which the allegation of illegal entry into the R.S.A. is made has not been substantiated by Crown. For that reason and in the absence of evidence indicating that there is high likelihood of a guilty verdict being returned in order to induce flight, I am unable to lend weight to the bald allegations by the Crown.

Regarding the latter aspect, it is the Crown's contention that the Crown witnesses are known to the Applicant and they are his close relatives, therefor making it highly likely that he will tamper with them. The Applicant, in reply, states that he does not live in the same homestead with the said witnesses and that he would heed any condition imposed by the Court which would curtail or restrict his contact with the said witnesses.

In dealing with this point, Mahomed J. stated the following in **S VS ACHESON 1991 (2) SA 805 (Nm Sc) 822 :-**

"2. The second question which needs to be considered is whether there is a reasonable likelihood that, if the accused is released on bail, he will tamper with the relevant evidence or cause such evidence to be suppressed or distorted. This issue again involve an examination of other factors such as

(a) whether or not he is aware of the identity of such witnesses or the nature of their evidence;

(b) whether or not the witnesses concerned have already made their statements and committed themselves to give evidence or whether

it is still the subject of continuing investigations:

(c) what the accused's relationship is with such witnesses and whether or not it is likely that they may be influenced or intimidated by him;

(d) whether or not any condition preventing communication between such witnesses and the accused can effectively be policed."

The identity of these witnesses has been disclosed and so has their relationship with the accused. It is clear that they are his close relatives and because of that relationship, it would in my view be likely that they may be influenced and/or intimidated by him. Further and more importantly, it would be very difficult, if not impossible, to effectively police any condition preventing or limiting communication or contact between the Applicant and the witnesses in question.

I am of the view that for that reason bail ought to be refused *in casu* and I so order.

T.S. MASUKU
JUDGE