



IN THE SUPREME COURT OF SWAZILAND

JUDGMENT

Criminal Appeal Case No.18/13

In the matter between:

FANA JOEL MASILELA

Appellant

VS

REX

Respondent

Neutral citation: *Fana Joel Masilela vs Rex (18/2013) [2014]
[SZSC 15] (30 May 2014)*

Coram: M.M. Ramodibedi CJ
A.M. Ebrahim JA
S.A. Moore JA

Heard: 07 May 2014

Delivered: 30 May 2014

Summary: *Criminal procedure – bail – appeal against refusal to grant bail by court **a quo** – appeal dismissed.*

JUDGMENT

EBRAHIM JA:

[1] This is an appeal against the refusal by the court **a quo** to grant the appellant bail.

[2] The appellant was arrested by the Royal Swaziland Police on the 11th November 2012 and charged with murder.

[3] He applied for bail before the learned judge **a quo** and failed in his application on 9 August 2013.

[4] He lodged a notice of appeal on 5 September 2013 challenging the refusal to grant him bail.

[5] No effort appears to have been made thereafter to prepare the record in order for the appeal to be processed and heard in this court, until 2 April 2014.

[6] No explanation for this delay has been proffered.

[7] This matter was set down for hearing in this court for the 7 May 2014 and this date for the hearing was confirmed during

the course of the roll call on the 2 May 2014. Counsel for the appellant was present during the course of the roll call.

[8] The Court roll had been circulated widely prior to the roll call on that day, including to the Law Society, prior to the 2 May 2014.

[9] This case was set down for hearing for the 7 May 2014. Printed on the roll, as part of the information relating to this case was the following “Application to declare appeal abandoned.”

[10] Contained in the record relating to this matter was a document headed “Notice of Abandonment”. Therein was stated “BE PLEASED TO TAKE NOTICE that the above appeal is hereby abandoned.”

[11] This notice had been prepared by the appellant’s attorneys and dated 9 April 2014.

[12] Mr. Jele, who represented the appellant in this court; conceded that it was he who had filed that document with the Registrar. He also conceded that he had not withdrawn the notice.

[13] Counsel also informed this court that the appellant's trial had been set for hearing for the 30 April but due to him not being available and for other reasons, which he did not specify, the matter had been postponed.

[14] We are now advised by counsel representing both parties that the matter is due for trial on the 2nd June 2014. We were also informed that the learned judge who postponed the matter on the 30th April 2014 to the 2nd June 2014 has directed that no further postponement will be granted.

[15] We were further informed that one of the appellant's co-accused has since fled.

[16] It seems to me that common sense dictates, that if the trial of the appellant in this matter is to commence in three days time from the date of this judgment, that the application for the granting of bail should be deferred at this stage. In any event neither party in this matter has placed sufficient information before this court in support of their respective positions. Bald assertions are made without any meaningful evidential basis

being supplied in support of the submissions made to the court.

[17] I do not consider it appropriate, in the circumstances of this case, that the application to grant bail has merit.

[18] Accordingly the appeal is dismissed.

A.M. EBRAHIM
JUSTICE OF APPEAL

I AGREE :

M.M. RAMODIBEDI
CHIEF JUSTICE

I AGREE :

S.A. MOORE
JUSTICE OF APPEAL

FOR THE APPELLANT : **Mr. S. Jele**
FOR THE CROWN : **Mr. S. Magagula**

