

IN THE HIGH COURT OF ESWATINI
JUDGMENT

HELD AT MBABANE

CASE NO. 514/23

In the matter between:

SIBONISO DLADLA

VS

THE KING

Neutral Citation : *Siboniso Dladla vs The King (514/23)*
[2023] SZHC 296 (24th October 2023)

CORAM : J.S Magagula J

DATE HEARD : 11/10/23

DELIVERED : 24/10/23

- [1] This is a bail application in which the applicant seeks to be admitted to bail upon such terms as the court may determine. The application is opposed by the crown.
- [2] The applicant is charged together with two others for one count of murder and one count of House Breaking with intent to steal and theft. Apart from these charges the applicant faces another count of murder in which he is charged alone. All in all the applicant is charged with two counts of murder and one count of House Breaking with intent to steal and theft.
- [3] The prosecution contends that the applicant ought to adduce evidence of exceptional circumstances warranting that he should be admitted to bail. The contention is based on the provisions of Section 96 (12) (a) of the Criminal Procedure and Evidence Act, 1938 as amended. The section provides;-

(12) Notwithstanding any provision of this Act, where an accused is charged with an offence referred to-

- (a) In the fifth schedule the court shall order that the accused be detained in custody until he or she is dealt with in accordance with the law, unless the accused having been given a reasonable opportunity to do so, adduces evidence which satisfies the court that exceptional circumstances exist which in the interest of justice permit his or her release-**

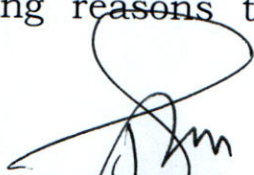
- [4] The prosecution maintains that the applicant stands charged with two counts of murder which is a Fifth Schedule offence and that he has failed to adduce evidence of exceptional circumstances as required by law. The prosecution further maintains that there is overwhelming evidence against the accused making the possibilities of his conviction to be very high. The offences he is facing are very serious and this will induce him to evade trial and easily skip the country since his home is at Gege which is next to a porous border line.
- [5] In response the applicant states *inter alia* that he has been in custody for a period of ten months without being tried. He contends that the court should consider such to be an exceptional circumstance in itself. He also states in his replying affidavit that his other co-accused have been released on bail and that this is another exceptional circumstance. However during arguments his counsel conceded that none of his co-accused has been released as alleged. The applicant also states that he has seven (7) minor children who are dependent on him for their livelihood.
- [6] I do not see anything exceptional about a person having been in custody for a period of ten [10] months before trial as this is quite common. This is not to say that the court sees nothing wrong with such or that it condones it. Suspects ought to be tried within the shortest possible time so that their fate should

be determined sooner. The adage that *"justice delayed is justice denied"* shall always hold true.

- [7] Again the fact that the applicant has seven minor children is no exceptional circumstance. Many parents have seven children and some even more. Regarding what constitutes exceptional circumstances the statement by Ota J (as the then was) in the case of Mzwandile Dlamini vs The King, Criminal Case No. 83/13 at paragraph 7 is aposite. The learned Judge stated;-

" ...The term exceptional circumstances is not defined. There can be many circumstances which are exceptional as the term in essence implies. An urgent serious medical operation necessitating the accused's absence is one that springs to mind. A terminal illness may be another. It would be futile to attempt to provide a list of possibilities which will constitute such exceptional circumstances. To my mind to incarcerate an innocent person for an offence which he did not commit could also be viewed as an exceptional circumstance. Where a man is charged with the commission of a schedule 5 offence when everything points to the fact that he could not have committed the offence because eg he has a cast -iron alibi, this would likewise constitute an exceptional circumstance."

- [8] The above statement of the learned Ota J does not of course seek to define exceptional circumstances. It is just an indicator or example of the things that are likely to constitute exceptional circumstances. The applicant has not alleged anything similar to such. He has therefore failed to provide any evidence of exceptional circumstances. The point raised in limine therefore ought to succeed.
- [9] The point in *limine* apart, the applicant is facing very serious charges carrying very heavy sentences. Moreover, by his own evidence at paragraph 8.1 of the founding affidavit, the applicant had a part to play in the murder under count one as he says his role was to keep watch and ensure that the evil mission was not disturbed. The high likelihood of his conviction coupled with the heavy sentences likely to be imposed on conviction will induce the applicant to evade trial.
- [10] For the foregoing reasons the application for bail is refused.



J.S MAGAGULA J

For the applicant : N. Ndlangamandla

For the Respondent : M. Dlamini