



IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 133/19

In the matter between:

TWOBOY MHLONGO

V

REX

Neutral Citation : **Twoboy Mhlongo v Rex (133/19) [2019] SZHC 75 (30 APRIL 2019)**

Coram : **MABUZA – PJ**

Heard : **16 APRIL 2019**

Delivered : **30 APRIL 2019**

SUMMARY

Criminal Law: Bail – Applicant seeks bail – Bail opposed by Crown – Bail granted.

JUDGMENT

MABUZA -PJ

- [1] Serving before me is an application made by Twoboy Mhlongo (the Applicant) to be released on bail. The bail application is opposed by the Respondent.
- [2] The Applicant is an adult male of Sibovu area in Mahlalini in the Shiselweni region. He was arrested on the 21st day of March 2019 whilst at his parental home at Mahlalini. This fact is admitted by the Respondent in its opposing affidavit.
- [3] He was charged with four counts namely, attempted murder, malicious injury to property, possessing a firearm without a licence or permit and unlawfully possessing (8) 9mm live rounds of ammunition.

- [4] In the count of attempted murder he is alleged to have unlawfully pointed a firearm at Philemon Mhlongo and further fired two shots at the said Mhlongo with the intent to commit the offence of attempted murder.
- [5] The Applicant and the said Mhlongo (complainant) are brothers. A dispute over fields arose between them. The Applicant says that he fired two shots in the air on 27th December 2017 in an attempt to scare off the said Mhlongo who was aggressively approaching Applicant with an iron bar with the sole intention of assaulting him. The complainant was in the company of his sons who ran away when they saw the firearm but the complainant did not. The complainant was not injured.
- [6] The Applicant says that he has a defence for the charge of attempted murder to which he will plead not guilty.
- [7] He says that he will plead guilty to the other three counts i.e damage to property, unlawful possession of a firearm together with live ammunition.
- [8] The Applicant further states that he comes home at month ends as he supports his parental home. While home during January 2019, he was

injured. A rock crushed his leg and he was admitted to the Mbabane Government hospital on the 21st January 2019 and only got discharged recently and was recovering at his parental home, where his relatives were assisting him. He says that his leg needs specialist medical attention which he cannot obtain while in custody where he is a burden to other inmates as they have to assist him.

[9] The Respondent has filed an opposing affidavit deposed to by 5626 Simphiwe Ndlangamandla a police officer based in Nhlngano and the lead investigator in this matter.

[10] The main ground of opposition is that the Applicant is a citizen and permanent resident of the Republic of South Africa and if released on bail is likely to skip the country and never come back to stand trial. Furthermore the Applicant uses informal crossings to enter into the country and does not use regular border gates otherwise the police would have arrested him sooner as the incident happened around December 2017. Had it not have been for the injury to the Applicant which forced him to seek treatment in Eswatini at his parental home, he would never have been caught.

[11] On the aspect of specialized treatment officer Ndlangamandla states that the correctional facilities in this country offer medical services to any suspect admitted thereto. The Applicant is no exception and he can also get medical attention just like any suspect in the correctional centre.

[12] In his replying affidavit, he states that he is employed in South Africa (like a lot of Swazis) and that it is his mother who permanently resides in South Africa otherwise his home where his father and siblings are is in Eswatini. He is the bread winner.

[13] He also states that he did not know that he was wanted by the police nor did the police leave any word at his home that they wished to see him.

[14] He states that the Correctional Facility at Nhlangano does not have doctors and does not offer specialized care. It only provides pain killers and dressing of his wounds for which he is grateful.

[15] I have visited the heads of arguments by respective counsel and am of the conclusion that the Applicant be released on bail. Even though he is a

citizen of the RSA, he has explained that this is for purposes of employment. It is his mother who is permanently resident in the RSA.

[16] Most Swatis who live near the boundary with South Africa use informal crossings to and fro the two countries. Our police may alert our soldiers who patrol these areas to keep a look out for the Applicant. Finally there is an extradition treaty between the two countries which can be activated if the need ever arose.

[17] The Applicant has also proved exceptional circumstances with regard to his injuries. Officer Ndlangamandla has not stated the names of the Doctors and their specialties available to the Applicant.

[18] The Applicant has stated that he will plead guilty to three of four counts. This in my view can occur expeditiously, it needs no committal to the High Court. The defence that he has raised for the attempted murder charge has not been controverted by the Crown or officer Ndlangamandla. The likelihood of an acquittal is there and even the possibility of a non-custodial sentence should he be convicted.

[19] Finally, the Respondent has failed to inform the Court when the Applicant is likely to be tried. I say this because in my experience on the bench accused persons stay in prison considerably long periods before their trials even when their cases are as straight forward as the Applicants case. In my considered view, the case of the Applicant should not even take a day, hence my query as to when the trial is likely to take place.

[20] In the circumstances, the application for bail is granted upon the following terms and conditions:

- (a) **He is ordered to pay E15,000.00 (Fifteen thousand Emalangeni) E5,000.00 cash and E10,000.00 surety;**
- (b) **He is to surrender his travel document and or passport (both Swazi and South African) to the Nhlangano police;**
- (c) **He is to report to the Nhlangano Police Station once a month on the last Friday of each and every month beginning end of May 2019;**

(d) He is not to interfere with witnesses in respect of this case.



EMBARANE Crim. Care No.

**Q. M. MABUZA
PRINCIPAL JUDGE**

For the Applicant : Mr. H.M. Mdluli

For the Respondent : Mr. S. Gama