



Rex v. Sipho Nhlabatsi

Case No. 202/2005.

Country: Swaziland

Region: Africa

Year: 2005

Court: High Court

Health Topics: HIV/AIDS, Infectious diseases, Prisons

Facts

The applicant was arrested and detained by the Swaziland police on charges of attempted murder. He contended that his six children and two wives were going through a difficult time due to his incarceration because he was the only breadwinner for his family. He also claimed that he was HIV positive and suffered from various illnesses such as tuberculosis and pneumonia and that, because his condition was deteriorating daily, he would die before his trial if he were in prison.

The applicant applied for bail on his attempted murder charge.

Decision and Reasoning

The Court declined to grant bail to the applicant.

The Court reasoned that if the applicant were to be released on bail, he would interfere with the witnesses as one of his wives and his children were the key witnesses in the criminal case. Given the applicant's relationship to the witnesses, the interest of justice could be compromised. While the Court noted that the applicant's incarceration could adversely affect this entire family because he was the sole breadwinner, it found that the interests of justice should win over the applicant's personal circumstances. In addition, the Court stated that the applicant's trial should be expedited to ameliorate his circumstances.

Decision Excerpts

"There are four basic principles which govern bail conditions. First, a bail condition may not be contra bonos mores. Secondly, bail conditions should be neither vague nor ambiguous. Thirdly, a bail condition should not be ultra vires, i.e. condition outside those permitted by law not to be inserted. Fourthly, a bail condition must not be practically feasible." Para. 7.

"On the facts of the present case it appears to me that if applicant were to be released on bail, in view of the close relationship between him and the two witnesses, he is likely to interfere with them; and thus jeopardizing the interests of justice. On the other hand his continued incarceration adversely affects his whole family, as he is the sole breadwinner. This is indeed, a very fine balancing act. However, it would appear to me that the interests of justice should take precedence over the Applicant personal circumstances. For this reason I am obliged to decline granting bail to the Applicant on these facts. In casu I find that a condition that Applicant should not interfere with the two witnesses will not be practically feasible (see R vs Fourie (supra) It would also appear to me that in the interest of justice the Crown ought expedite the procedure of trial, and that Applicant be tried as soon as possible to ameliorate his continued incarceration." Para. 8.