

"MMI"



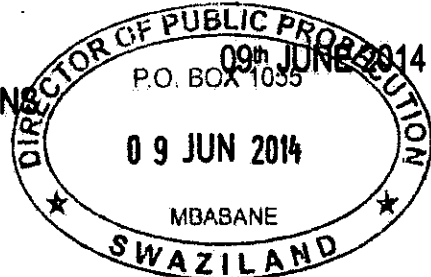
**LEO GAMA &
ASSOCIATES**
ATTORNEYS-AT-LAW

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Our ref: LG/ld/ P003
Your ref: not on file

TO: THE DIRECTOR OF PUBLIC PROSECUTIONS
MBABANE



Dear Sirs,

**RE: MARIO MASUKU AND MAXWELL MANQOBA DLAMINI COURT CASE NUMBER
184/2014**

1. We have been instructed to represent the accused persons herein.
2. We have instructed South African counsel, who however can only be available towards the end of September. We shall therefore apply for a postponement of the matter until counsel is available.
3. We also wish to advise that we shall be challenging the constitutionality of the Suppression of Terrorism Act NO.3 of 2008 and the Sedition and Subversive activities act NO.46 of 1938.

Yours Faithfully

Leo Gama & Associates

Per;


IN THE HIGH COURT OF SWAZILAND
HELD AT MBABANE **CASE NO. 184/14**

In the matter between:

MAXWELL MANCOBA DLAMINI
MARIO THEMBEKA MASUKU

1ST APPLICANT
2ND APPLICANT

AND

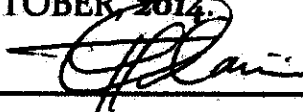
THE KING

RESPONDENT

FILING NOTICE

RESPONDENT'S OPPOSING AFFIDAVIT presented for filing by the undersigned.

Dated at *Mbabane* this *5th* day of **OCTOBER 2014.**



THABO DLAMINI
CROWN COUNSEL
D. P. P.'S CHAMBERS
4TH FLOOR JUSTICE BUILDING
USUTHU LINK ROAD, MBABANE.

TO: REGISTRAR OF THE HIGH COURT

AND TO: LEO GAMA & ASSOCIATES
(APPLICANT'S ATTORNEYS)
C/O T.L. DLAMINI & ASSOCIATES
APEX HOUSE INDUSTRIAL SITE
MBABANE

Received a copy hereof this *9th* day of
OCTOBER, 2014.



APPLICANT'S ATTORNEYS

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

In the matter between:

CASE NO. 184/14

**MAXWELL MANCOBA DLAMINI
MARIO THEMBEKA MASUKU**

**1ST APPLICANT
2ND APPLICANT**

AND

THE KING

RESPONDENT

RESPONDENT'S OPPOSING AFFIDAVIT

I, the undersigned,

2277 DETECTIVE ASSISTANT SUPT. AARON METHULA

do hereby make an oath and states as follows: -

1.

I am a Swazi male adult and a member of the Royal Swaziland Police Service based at Manzini Police Station under the Criminal Investigation Department. I am the investigator of the matter before court and as such in a position to depose to this affidavit. The facts deposed to herein are within my personal knowledge unless it is stated otherwise and are true and correct.

2.

I have read Applicants' application for bail and respond thereto as follows:

AD MAXWELL MANCOBA DLAMINI FOUNDING AFFIDAVIT

AD PARAGRAPHS 1-5

3.

Save to deny that the facts deposed to therein are both true and correct, the rest of the contents therein are not denied.

AD PARAGRAPH 6

4.

It is denied that Applicant's initial bail application was denied without oral reasons being provided by the Honourable Court. The Honourable Court gave its ruling and reasons thereof *ex tempore*. Same were even reported in the daily newspapers of the country for example The Times of Swaziland 7th of May 2014 issue. The Honourable Court ruled that both Applicants are a flight risk, their release on bail will endanger the safety of the public and lastly that 1st Applicant had a propensity to commit offences of a seditious nature and therefore releasing them on bail will not be in the interest of justice. A copy of the said issue of the times of Swaziland is annexed hereto and marked "MM".

AD PARAGRAPH 7

5.

I am advised and verily believe that the new circumstances that Applicant refers to in the rest of his affidavit are irrelevant to the reasons why his initial bail application was denied and therefore does not render the earlier reasons for the denial of bail nugatory.

5.1

To the best of my recollection, 1st Applicant was denied bail on the grounds that he committed the alleged present offence whilst out on bail for a similar offence (i.e. contravention of the Sedition and Subversive Activities Act No. 46 of 1938) and also because his release would be a security threat to the Swaziland Government and Nation and further that he was a flight risk.

5.2

I am advised and verily believe that whether or not a bail application can be reopened depends on whether the new facts found can change the effect of the earlier decision.

5.3

The new facts alleged by Applicants, I submit, do not relate to the reasons for refusal of their initial bail application and therefore do not warrant a reopening of this bail application.

6.

AD PARAGRAPH 8, 9 & 10

Contents of these paragraphs are noted.

7.

AD PARAGRAPH 11

Contents of this paragraph are denied. The laws under which Applicants are charged are still valid laws of the country. The fact that Applicants have challenged their constitutionality does not change anything as far as their bail is concerned. Otherwise we may have a host of awaiting trialists challenge the constitutionality of the laws they are charged under and thereafter demand bail. Assuming that they be granted bail because of the said challenge, then what is to happen should their challenge fail or

Applicants decide to withdraw it after their release on bail but before the 1st December 2014? Would the State have a re-course and re-arrest them?

7.1

The Constitutional challenge that Applicant relates to is of his own making. He initiated it and therefore cannot properly seek to make it a ground for his release on bail.

7.2

When Applicant moved the application to challenge the Constitutionality of both the Sedition and Subversive Activities Act and the Suppression of Terrorism Act, his matter was ripe for trial as an indictment had been prepared, a pretrial conference held and trial date allocated. Applicants are the ones that sought a postponement of their trial through a letter dated 9th June 2014. The letter is annexed hereto as Annexure "MM1". Otherwise the trial dates were June 16 to June 18 2014.

7.3

May I humbly state also that a date of hearing of the three matters that Applicant refers to in this paragraph is the 1st December 2014 and therefore he is not kept in custody indefinitely. Further, his new trial date for this matter is the 5th February 2015.

7.4

May I also state that the fact that Applicant has filed an application challenging the constitutionality of the Suppression of Terrorism Act and Sedition and Subversive Activities Act does not nigate the reasons for their refusal to be admitted on bail and therefore does not constitute a new circumstance warranting a reopening of their bail application. Unless Applicants can show that they are no longer a threat to the safety of the public as the court found them to be, they are not entitled to be admitted on

bail. The new circumstances alleged must negate the court's findings of being a flight risk, danger to the safety of the public and for 1st Applicant having a propensity to commit offences seditious in nature.

8.

AD PARAGRAPH 12

I am not privy to the conversation between the legal representative of 1st Applicant and a certain prosecutor. All I know is that it is Applicant's attorneys that sought a postponement of the matter to enable them to engage a South African Counsel and further challenge the constitutionality of the relevant legislation.

9.

AD PARAGRAPH 13

Contents of this paragraph are denied. The court held it to be in the interest of justice to deny Applicant bail in the initial application for the reasons already stated above. No new facts or circumstances have arisen to negate these reasons for refusal to grant Applicants bail. Therefore, I submit that it still stands to be in the interest of justice to refuse Applicant bail pending trial.

10.

AD PARAGRAPH 14

Contents of this paragraph are denied. Applicant cannot properly pre-empt the decision of the full bench. Unless and until the full bench decides that the provisions of the Sedition and Subversive Activities Act and the Suppression of Terrorism Act to be unconstitutional, those provisions are and/or forms part of the laws of the country and therefore the charges they are facing under those laws are valid.

11.

AD PARAGRAPH 15

May I state that contents of this paragraph are not new. They were dealt with in the initial bail application.

12.

AD PARAGRAPH 16

The contents of this paragraph are denied. The constitutionality or otherwise of the said legislations is yet to be determined by the court.

13.

AD PARAGRAPH 17

Contents of this paragraph are noted.

14.

AD PARAGRAPH 18

Contents of this paragraph are denied. The delay Applicant refers to is at his instance and therefore cannot seek to benefit from it.

15.

AD PARAGRAPH 19

The Respondent herein obtained an order staying the execution of the Court Order Applicant is referring to. Eventually Respondent obtained a Court Order rescinding the order directing His Majesty's Correctional Services to transport 1st Applicant to the University of Swaziland.

16.

AD PARAGRAPH 20

Contents of this paragraph are denied. 1st Applicant's education does not negate the reasons why the Court refused him bail. In fact it is 1st Applicant himself who dismally fail to priorities his education and associate and/or support banned entities like PUDEMO and SWAYOCO and further conduct himself in a seditious fashion. Such conduct does not show that he values his education.

17.

AD PARAGRAPH 21

Contents of this paragraph are not new. They were there in the initial bail application. The court was addressed on same and the Court went on to decline to admit 1st Applicant on bail.

18.

AD PARAGRAPH 22 - 27

I am advised and verily believe that what is contained in these paragraphs is law and arguments. I am further advised that an affidavit is not a proper forum to elevate same. In any event these were laws and arguments canvassed in the initial bail application. They are not new facts or circumstances.

18.1

In as much as 1st Applicant has been acquitted on the offence of being found in possession of explosives, the 2013 charges of Sedition preferred against him still stand. He committed the present offense whilst out on bail on charges of Sedition. This demonstrates a clear propensity on his part to commit offences of Sedition. This therefore means that it is not in the interest of justice to admit him to bail.

18.2

Applicant has demonstrated a strong propensity to commit offences similar in nature to the current charges. Previous arrests and bail conditions have not deterred him from committing offences of such a nature. Therefore Applicant is abusing the bail system to the detriment of the criminal justice system.

18.3

The nature of the charges faced by Applicants are very serious. The contents of the seditious statements he uttered are very disrespectful and threatening to the leadership of the country and the nation at large. The police cannot take what Applicant uttered lightly. Amongst others, Applicant uttered statements to the effect that "The leadership and system of governance of the country should be overthrown". We reasonably believe that if released on bail, Applicant will employ means to carry-out his statements.

18.4

The serious nature of the charges preferred against Applicants herein and the seriousness of the sentences to be visited on them should they be found guilty will induce them to evade trial. The Crown has got a very strong case against Applicants as stated above, therefore the chances of an acquittal are minimal.

18.5

1" Applicant's persistence on committing offences of the same nature whilst out on bail undermines the objectives and the proper functioning of the criminal justice system including the bail system. The public will lose confidence in the criminal justice system where accused persons who commit offences whilst out on bail for other offences continue to be admitted on bail in perpetuity. Applicant has

demonstrated a blatant disregard for bail conditions by continuing to commit offences in spite of being out on bail for other offences.

19.

AD PARAGRAPH 28

Contents of this paragraph are denied. The court has already made a finding in the initial bail application.

20.

AD MARIO THEMBEKA MASUKU'S AFFIDAVIT.

21.

AD PARAGRAPH 1 - 5

Save to deny that the facts deposed to therein are both true and correct, the rest of the contents therein are noted.

22.

AD PARAGRAPH 6

Contents of this paragraph are denied. I reiterate what I stated in paragraph 4 above to be also applicable to 2nd Applicant.

23.

AD PARAGRAPH 7

Contents of this paragraph are denied. I reiterate what I stated in paragraph 5 above to be also applicable to 2nd Applicant.

24.

AD PARAGRAPH 8, 9, & 10

Contents of these paragraphs are noted.

25.

AD PARAGRAPH 11

Contents of this paragraph are denied. I reiterate what I stated in paragraph 7 - 7.4 above.

26.

AD PARAGRAPH 12

Contents of this paragraph are denied. All I know is that it is Applicant's attorneys that sought a postponement of the matter for purposes of engaging a South African Counsel and also to challenge the constitutionality of the relevant legislations.

27.

AD PARAGRAPH 13

Contents of this paragraph are denied. The delay Applicant is referring to is of his making. He cannot therefore turn around and seek to benefit from it.

28.

AD PARAGRAPH 14

Contents of this paragraph are denied. I reiterate what I stated in paragraph 10 above.

29.

AD PARAGRAPH 15

Contents of this paragraph are denied. The Crown have overwhelming evidence against the Applicants.

30.

AD PARAGRAPH 16

Contents of this paragraph are denied. I reiterate what is contained in paragraph 12 above.

31.

AD PARAGRAPH 17

Contents of this paragraph are noted.

32.

AD PARAGRAPH 18

Contents of this paragraph are denied. I reiterate what I mentioned in paragraph 14 above.

33.

AD PARAGRAPH 19 - 23

Contents of these paragraphs are denied. Applicant is put to strict proof thereof. 2nd Applicant's allegations of ill-health were canvassed in the initial bail application nonetheless the Honorable Court ruled that it was in the interest of justice to keep him in custody pending trial. May I state that this means that the Court deemed that the personal circumstances (ill-health) of 2nd Applicant were outweighed by the other considerations i.e. danger to public safety and being a flight risk.

33.1

I am advised and verily believe Applicant a has a right to access private medical treatment at his expense and whilst in custody - Section 16(6)(c) of the Constitution.

33.2

I am advised and verily believe that Section 33 of the Prisons Act 1964 allows 2nd Applicant to source private food, clothing and other necessities. This adequately caters for his diet and warmth concerns.

34.

AD PARAGRAPHS 24 - 33

The Crown have got overwhelming evidence against the Applicant. There are five police officers and an independent witness who witnessed the commission of the offences preferred against Applicant. There is further a video footage of the whole May Day celebration that was taken and which captured the commission of the said offences.

34.1

The natures of the charges faced by Applicants are very serious. The contents of the seditious statements he uttered are very disrespectful and threatening to the leadership of the country and the nation at large. The police cannot take what Applicant uttered lightly. Amongst others, Applicant uttered statements to the effect that "The leadership and system of governance of the country should be overthrown". We reasonably believe that if released on bail, Applicant will employ means to carry-out his statements. The safety and security of the leadership of the country and the nation at large will be greatly compromised should Applicant be admitted on bail. He has manifestly demanded the overthrow of the Kingdom's Government. He has also supported and associated himself with a terrorist group, PUDEMO.

34.2

The seriousness of the charges preferred against Applicants and the possible sentences thereon will induce Applicant to evade trial bearing in mind the strong case of the Crown and Applicant's age.

34.3

Applicant's release on bail may jeopardize the proper functioning of the criminal justice system including the bail system as he may go out and carry out the threats of overthrowing the leadership and government of the Kingdom of Swaziland. His release on bail will compromise the safety and security of the country's leadership and nation.

34.4

There is a strong likelihood that Applicant will flee trial if admitted on bail and there is no way the Court can guarantee that he will not. He may use unofficial routes to live the jurisdiction of this Court.

35.

AD PARAGRAPH 34

As I have stated in the previous paragraphs, the delay 2nd Applicant is referring to is self-created and he cannot properly seek to benefit from it. The law allows that awaiting trialists be refused bail where necessary and same is not a form of anticipatory punishment.

36.

AD PARAGRAPH 35

Both Applicants' application for bail is opposed for reasons stated above.

WHEREFORE may it please the Honourable Court to refuse ~~both~~ Applicants' bail.

Bethula Oshubh

DEPONENT

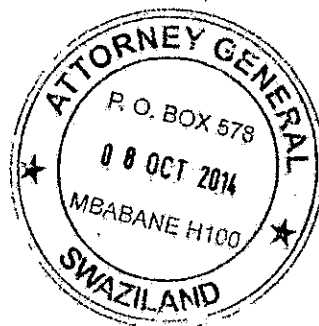
DEPONENT HAVING ACKNOWLEDGED THAT HE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT TO BE TRUE AND CORRECT, HENCE BINDING OVER HIS CONSCIENCE, THUS SWORN TO AND SIGNED FOR BEFORE ME ON THIS THE 07th DAY OF OCTOBER 2014, AT MBABANE.

[Signature]

COMMISSIONER OF OATHS

NAME: Mary Mkhomo

DESIGNATION: Commissioner



No bail for Mario, Maxwell

... judge Mpendulo says they have great potential of endangering public

BY MCHONENI MCHONENI

MBABANE - High Court Judge Mpendulo Simelane says PUDEMO President Mario Masuku and SWAYOCO Secretary General Maxwell Dlamini have a great potential of endangering the public.

Judge Simelane made these comments when dismissing their application to be admitted to bail yesterday.

PUDEMO is the People's United Democratic Movement while SWAYOCO is the Swaziland Youth Congress.

The Crown submitted that the security and safety of the leadership, government and public were seriously threatened by Masuku and Dlamini.

The accused are facing two charges of contravening Section 11 (1) (a) of the Suppression of Terrorism Act No.3 of 2003 and two of violating the Sedition and Subversive Activities Act No. 46 of 1938 as amended.

Masuku and Dlamini are alleged to have committed the offences during Workers Day (May 1) celebrations held at the Selestin Sports ground in Manzini. Judge Simelane, who issued

his judgment immediately after the Crown and defence counsel had finished making submission yesterday, said the accused bail application was unconvincing.

"The accused are facing very serious offences and their bail applications are frivolous. They have a great potential of endangering the public. The first accused (Dlamini) is a repeat offender," Judge Simelane stated.

He then ordered that the accused be remanded in custody until June 16, 2014. He also directed the Registrar of the High Court to conduct a pretrial for the accused.

Judgment

The judge said a full written judgment will be issued in due course.

The State, which is represented by Senior Crown Counsel Thabo Dlamini, was opposing their bail application.

In its opposing papers, the Crown argued that Dlamini was currently out on bail in two matters which are of a similar nature to the current charges.

Detective Assistant Superintendent Aaron Methula submitted that the first matter was being heard by Magistrate Gamedze at Matsapha Circuit Court where Dlamini was being

charged with another offence of contravening the Explosives Act No.4 of 1961.

"Applicant (Dlamini) has demonstrated a strong propensity to commit offences similar in nature to the current charges.

Previous arrests and bail conditions on the matter referred to above have not deterred him from committing offences of such nature. Therefore, the applicant is abusing the bail system to the detriment of the criminal justice," stated Methula.

Crown Counsel Dlamini yesterday informed the court that in relation to Masuku, the State was opposing his application for bail on the basis that the nature and gravity of the charges against him and the punishment likely to be meted out to him on conviction may induce him to evade trial.

The defence counsel had further argued that the court cannot rely on the propensity that one would not commit a similar offence if there was no conviction in the previous offences he is alleged to have committed.

The defence counsel Sipho Gamedze submitted that in the case of Dlamini there was no convictions in all the previous arrests relied upon by the Crown in opposing his bail application.

PUDEMO President Mario Masuku and UNISWA SRC President Maxwell Dlamini.
Ph: Shadiso Shange



Judge insists on setting trial date

MBABANE - High Court Judge Mpendulo Simelane yesterday insisted on setting a trial date for the matter of Mario Masuku and Maxwell Dlamini.

The judge has since allocated the matter three days beginning from June 16 to June 18, 2014. Judge Simelane insisted setting the trial date despite that defence counsel Sipho Gamedze asked that he be allowed to take instructions from the accused.

"I do not have instructions in relation to the trial itself. I have instructions in as far as the bail application is concerned. I ask that I be allowed

to consult with the accused in relation to the trial," said Gamedze.

Judge Simelane could hear none as he clearly stated that he was now seized with the matter and further ordered the registrar to conduct a pretrial conference for the accused.

"The judge informed the accused that whether there was legal representation for them or not the trial will proceed on June 16, 2014.

"The registrar of the High Court is directed to soon conduct a pre-trial conference for the accused. The accused are remanded back in custody until June 16, 2014 for the resumption of their trial," said Judge Simelane.

DUO TO SPEND 43 DAYS IN JAIL

MBABANE - Mario Masuku and Maxwell Dlamini will spend the next 43 days in custody.

This comes after High Court Judge Mpendulo Simelane yesterday remanded them in custody until June 16, 2014 which is the date their trial is expected to resume. The judge has since allocated the matter three days beginning from June 16 to June 18, 2014. The duo was arrested on May 1, 2014 in Manzini during Workers Day celebrations which were held at the Selestin Sports Ground. They are alleged to have uttered seditious statements against the leadership of the country and the government. They are currently kept at the Zikhala Remand Centre and they were yesterday brought to court by armed officers from His Majesty's Correctional services.

The reasons by the State why Masuku and Dlamini will endanger the public if released on bail:

- The applicants (Masuku and Dlamini) are charged with four counts of both the Suppression of Terrorism Act No.3 and the Sedition and Subversive Activities Act No.46 of 1938.
- One of the charges they are facing is that of soliciting and giving support to PUDEMO, a terrorist group in terms of Legal Notice 190/2008.
- It is submitted that in terms of the law, activities of the said PUDEMO, in general, are terrorist in nature and as such threatening to safety and peace of the public.
- Count 2 of the current charges against both the accused states that the leadership and Government of the Kingdom of Swaziland be overthrown.
- It is submitted that such statements viewed against the backdrop of first applicant (Maxwell Dlamini) being tried at the Matsapha Circuit Court for being in unlawful possession of explosives cannot be taken lightly.
- The security and safety of the leadership, government and the public are seriously threatened by the applicants (Masuku and Dlamini). It is, therefore, not in the interest of justice that they be released on bail as they may walk out and renege the communicated demands. It is submitted that the citizens of the country including its leadership have the constitutional right to life and equal protection of the law, according to Section 14 of the Constitution.
- It is further submitted that government equally relies on the protection of the law to be able to carry out its administrative function without undue (terrorist) interference.
- The Crown further submits that the accused are a flight risk and, therefore, will not stand trial.

FIVE RAPISTS SENTENCED TO 45 YEARS

ALL THE SENTENCES

1. Rape - Mkhakeni Mkhama and Thembinzosi Tshabozo were each sentenced to 15 years seven years imprisonment without an option of a fine.
2. Robbery - Mkhakeni Mkhama and Thembinzosi were each sentenced to seven years imprisonment without an option of a fine.
3. Robbery - Mkhama, Tshabozo and Ganda Zikalala were each sentenced to five years imprisonment without an option of a fine.
4. Robbery - Mkhama, Tshabozo, Zikalala and Ekhel Eshembe were each sentenced to five years imprisonment

- without an option of a fine.
5. Theft of Motor Vehicle - Tshabozo, Zikalala and Viscel were each sentenced to five years imprisonment without an option of a fine.
6. Robbery - Mkhama and Tshabozo were each sentenced to five years imprisonment without an option of a fine.
7. Housebreaking with intent to steal and theft - Zikalala was sentenced to three years imprisonment without an option of a fine.

TOTAL - 45 YEARS IMPRISONMENT

MAKHEKHE - Five men were sentenced to a total of 45 years imprisonment for various crimes including rape, robbery, theft of a motor vehicle, and housebreaking with intent to steal and theft. The sentences were handed down by Judge Mpendulo Simelane in a court in Manzini. The accused are Mkhakeni Mkhama, Thembinzosi Tshabozo, Ganda Zikalala, and Ekhel Eshembe. The court also ordered that the accused be remanded in custody until June 16, 2014 for the resumption of their trial.

The court also ordered that the accused be remanded in custody until June 16, 2014 for the resumption of their trial. The judge stated that the accused had a great potential of endangering the public and that their bail applications were unconvincing. He also directed the registrar of the High Court to conduct a pretrial conference for the accused.

The judge informed the accused that whether there was legal representation for them or not the trial will proceed on June 16, 2014. The registrar of the High Court is directed to soon conduct a pre-trial conference for the accused. The accused are remanded back in custody until June 16, 2014 for the resumption of their trial.

The judge also ordered that the accused be remanded in custody until June 16, 2014 for the resumption of their trial. He stated that the accused had a great potential of endangering the public and that their bail applications were unconvincing. He also directed the registrar of the High Court to conduct a pretrial conference for the accused.

The court also ordered that the accused be remanded in custody until June 16, 2014 for the resumption of their trial. He stated that the accused had a great potential of endangering the public and that their bail applications were unconvincing. He also directed the registrar of the High Court to conduct a pretrial conference for the accused.

"MM"