



**THE HIGH COURT OF SWAZILAND**

**HELD AT MBABANE**

**CASE NO.184/2014**

In the matter between:

**MAXWELL MANQOBA DLAMINI  
MARIO THEMBEKA MASUKU**

**1<sup>ST</sup> APPLICANT  
2<sup>ND</sup> APPLICANT**

**AND**

**THE KING**

**RESPONDENT**

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**FILING NOTICE**

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**RESPONDENT'S HEADS OF ARGUMENT** presented for filing by the undersigned.

Dated at MBABANE this 24 day of October 2014.

**THABO DLAMINI**  
PROSECUTING COUNSEL  
DIRECTOR OF PUBLIC PROSECUTIONS' CHBS.  
4<sup>TH</sup> FLOOR, JUSTICEBUILDING  
USUTHU LINK ROAD  
MBABANE

TO : THE REGISTRAR OF THE HIGH COURT

AND TO: LEO GAMA & ASSOCIATES  
(Applicant's Attorneys)  
C/O T.L. DLAMINI & ASSOCIATES  
APEX HOUSE, OFFICE 10 & 11  
INDUSTRIAL SITES, MBABANE

Received a copy hereof on the  
25<sup>th</sup> day of October 2014.

10:00am  
**APPLICANT'S ATTORNEYS**

# IN THE HIGH COURT OF SWAZILAND

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## **RESPONDENT'S HEADS OF ARGUMENT**

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1. The Applicants were arrested and charged under the Suppression of Terrorism Act 2008 and the Sedition and Subversive Activities Act 1938. After this arrest they moved a bail application at the High Court.
2. The bail application was opposed by the Crown for the following reasons:
  - (a) The Appellants were at flight risk
  - (b) 1<sup>st</sup> Applicant has a propensity of committing similar offences;
  - (c) The Applicants are a risk to public order and security.
3. The merits of the bail application were heard by the court. The above Honorable Court dismissed the bail application having found that the Applicant were both a flight risk and a risk to public order and security. The court also found that 1<sup>st</sup> Applicant has a propensity of committing similar offences.

4. The said judgment was final and definitive both on nature and in effect and the above Honourable Court has become *functus officio*.

**SWAZI MTN LTD VS MV TEL COMMUNICATIONS (PTY) LTD AND ANOTHER CIVIL APPEAL CASE NO. 32/2006**

5. The Applicants now again move a bail application before the above Honourable Court. The applicants are raising three (3) new personal circumstances in support of their application. The new personal circumstances are namely:
  - (i) That the Appellents intend challenging the constitutionality of the Sedition And Subversive Activities Act, 1938 and the suppression of Terrorism Act 2005.
  - (ii) The Deteriorating Health of 2<sup>nd</sup> Appellant;
  - (iii) The interruption of the 1<sup>st</sup> Applicant's education.
6. The question which falls for determination in the present matter is whether or not it is competent for the above Honourable Court to entertain and deal with the present application when it had previously made a finding and decision in respect of the relief being sought.
7. Admittedly, our law does permit that a person who has been denied bail on an earlier occasion can apply and be admitted to bail if circumstances have changed. However, a court faced with such a situation has to look at the earlier reasoning for declining bail which in *casu* was that the

Applicants are a flight risk and that they are a threat to public order and security. Added to that was that the 1<sup>st</sup> Appellant has a propensity of committing similar offences.

8. Whether or not a bail application can be reopened depends on whether the new facts found can change the effect of the earlier decision of bail application which resulted in its dismissal. The new facts must render the earlier reason for decision nugatory.

See **Charles Myeza V Rex ( 117/2006) [2014] SZHC**

9. In the circumstances for the bail application to be reopened the applicants should allege new fact that will demonstrate to the above Honourable Court that their personal circumstances have changed. They have to demonstrate that they are no longer a flight risk nor are they still a threat to public order and security. 1<sup>st</sup> Appellant should go on to demonstrate that he no longer has the propensity of committing similar offences.

10. The reopening of a bail application upon the discovery of new facts or circumstances is a general rule than that of thumb.

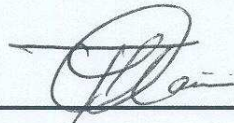
See: **Charles Myeza V Rex supra**

11. It is submitted that the applicants have dismally failed to raise new circumstances or facts that would render the earlier decision nugatory and as such the bail application cannot be reopened.

12. It is submitted that the finding by the above Honourable Court in the earlier bail application remains final and definitive both in nature and effect.
13. The general rule is that a final judgment which is correctly express the decision of the court cannot be altered by the same tribunal which pronounced it.
14. Respondents reiterate that the Appellants are at flight risk and that they are a threat to public order and security and finally that 1<sup>st</sup> Applicant has a propensity to commit offences similar in nature to the current charges.

**WHEREFORE**, may it please this Honourable Court to dismiss the appeal.

Dated at **MBABANE** on this 24<sup>th</sup> day of October 2014.



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**THABO DLAMINI  
(RESPONDENT'S COUNSEL)  
D.P.P.'S CHAMBERS  
4<sup>TH</sup> FLOOR JUSTICE BUILDING  
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