

SOUTH AFRICA / JUDGMENT

Bouwer v S (Bail Appeal) (BA09/2025)

[2025] ZALMPPHC 94 (12 May 2025)

[2025] ZALMPPHC 94**COURT**

Limpopo High Court, Polokwane

BEFORE

Naude-Odendaal

CASE / FILE NUMBER

BA09/2025

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IN

THE HIGH COURT OF SOUTH AFRICA

LIMPOPO

DIVISION, POLOKWANE

CASE

NO: BA09/2025

(1)

REPORTABLE: NO/YES

(2)

OF INTEREST TO OTHER JUDGES: NO/YES

(3)

REVISED.

SIGNATURE:

DATE:

12/05/2025

In

the matter between:

CASPARUS

CHIRISTOFFEL WILLEM BOUWER

APPELLANT

and

THE

STATE

RESPONDENT

JUDGMENT

NAUDE-ODENDAAL J:

- [1] This is an appeal against the refusal by the Magistrate in the Magistrate's Court for the district of Mookgopong, held at Mookgopong, to admit the Appellant to bail. The appellant is facing two charges, one being for Statutory Rape and the second being for Promoting Sexual Grooming of a Child by facilitating a meeting or communication to commit a sexual act.
- [2] There was a dispute between the State and the Defence whether the charges fell under Schedule 6 or Schedule 1 of the Criminal Procedure Act 51 of 1977 ("the CPA"). Ultimately the court a quo made a ruling that these offences fall under Schedule 1 and the Bail Application is to be henceforth adjudicated on this basis. The

Appellant was legally represented throughout the proceedings.

- [3] During the course of the bail proceedings the Appellant filed an affidavit in support of his bail application. The Appellant did not give viva voce evidence. The Affidavit was read on to record, together with some of the contents of the Annexures and appears from pages 17 to 41 of Bundle 2.
- [4] The Respondent, in opposing the granting of bail led viva voce evidence of the Investigating Officer, Francis Constance Kruger. Mrs. Kruger testified that the state has a strong case against the Appellant, further that there is a likelihood that he will commit a Schedule 1 offence again and that he will interfere with witnesses and destroy evidence. She testified that when he heard the police was looking for him, he already started to destroy some evidence from his phone, further he also attempted to influence the brother of the victim.
- [5] Under Cross-examination, Mrs. Kruger, reluctantly so, conceded that should the Appellant be released on bail, a high bail amount should be set with strict conditions.
- [6] The State also called Mrs. Emily Tsita, a Social Worker employed by the Department of Social Development. She works under the Child Protection Unit. She testified that the victim is a 14 year old child who does home schooling and is mostly alone at home during the day when her parents are not there. She further testified that the victim

is afraid of the Appellant and requested that he remains behind bars in order for her to continue to attempt to have a normal life.

- [7] Mrs. Tsitsa also testified that the Appellant has a history of a case similar to this one, and therefore there is a real fear that he will commit a further offence and jeopardize the safety of the children around Mookgopong. Ms. Tsitsa requested the court not to grant bail as it will have a negative impact on the child victim, as well as the

public at the moment.

- [8] It was submitted by the Defence that the child victim has presented at least three versions of what transpired and therefore is not reliable. Under cross-examination, Mrs. Tsitsa also conceded that should the Appellant be released on bail, strict bail conditions should be set.
- [9] The Defence called Mrs. Wolmarans, also a Social Worker. According to Mrs. Wolmarans, the Accused and his Family is very stable. Also, the Accused is a person who would assist people in need where ever he can.
- [10] Mrs. Wolmarans also testified that having done her examination and having considered all the documents in her possession, the Accused person is suitable for bail and will abide by his bail conditions. Mrs. Wolmarans testified that justice would not be served if the Accused person is kept in custody.
- [11] In the judgment in the bail application, the court considered the affidavit filed by the Appellant and the viva voce evidence given by the investigating officer, Mrs. Tsitsa and Mrs. Wolmarans.
- [12] The court a quo also took into consideration the strength of the Respondent's case against the Appellant and found that a link was established between the offence committed and the Appellant. The court a quo found that the State has established that it has a strong case against the Appellant. The court a quo further found that the safety of the witnesses may be compromised if the Appellant can be admitted to bail and that it would be impossible to impose a condition that the Appellant cannot have access to any electronic device.
- [13] The court a quo further found that there is a likelihood that the Appellant will interfere with witnesses and evidence and that it would not be in the interest of justice to grant the Appellant bail.
- [14] In the final analysis and having considered all the evidence that was placed before the court a quo, the court a quo found that it would not be in the interest of justice for the Appellant to be released on bail.
- [15] Section 60(1)(a) of the Criminal Procedure Act, 51 of 1977 stipulates that an Accused who is in custody in respect of an offence shall, subject to the provisions of section 50(6), be entitled to be released on bail at any stage preceding his or her conviction in respect of such offence, if the court is satisfied that the interests of justice so permit.
- [16] Section 60(4) of the Criminal Procedure Act, 51 of 1977 stipulates as follows:-
- "(4) The interests of justice do not permit the release from detention of an accused where one or more of the following grounds are established:
- (a) Where there is the likelihood that the accused, if he or she were released on bail, will endanger the safety of the public or any particular person or will commit a Schedule 1 offence;

- (b) Where there is the likelihood that the accused, if he or she were released on bail, will attempt to evade his or her trial; or
 - (c) Where there is the likelihood that the accused, if he or she were released on bail, will attempt to influence or intimidate witnesses or to conceal or destroy evidence; or
 - (d) Where there is the likelihood that the accused, if he or she were released on bail, will undermine or jeopardise the objectives or the proper functioning of the criminal justice system, including the bail system;
 - (e) Where in exceptional circumstances there is the likelihood that the release of the accused will disturb the public order or undermine the public peace or security."
- [17] If any one of these requirements or factors are found to be present, it is not in the interest of justice that the Accused person be released on bail. Only one factor is sufficient to be present for a refusal of the granting of bail, and not all factors taken cumulatively.
- [18] In *S v Schietekat* 1998 (2) SACR 707 (C) at 713h-714j Slomowitz AJ stated the following:
- "Bail proceedings are sui generis...The State is thus not obliged in its turn to produce evidence in the true sense. It is not bound by the same formality. The court may take account whatever information is placed before it in order to form what is essentially an opinion or value judgment of what an uncertain future holds. It must prognosticate. To do this it must necessarily have regard to whatever is put up by the State in order to decide whether the accused has discharged the onus..."
- [19] The test appears to be whether there was a likelihood that the Appellant would evade trial and a likelihood of something more than a mere temptation. The strength of the State's case and the probability of conviction, although an important consideration, does not displace the main issue which the court is required to decide, that is whether or not the interests of justice permit the release on bail of the Appellant.
- [20] Section 65(4) of the Act provides that a Court hearing an appeal against a refusal to release an applicant on bail will not set aside the decision of the Magistrate unless such Court is satisfied that the decision was wrong in which event the issue of bail may be considered afresh. The proper approach for the Court hearing the appeal was set out in *S v Barber* 1979 (4) SA 218 (D) at 220 E-H) as follows:

"It is well-known that the powers of this Court are largely limited where the matter comes before it on appeal and not as a substantive application. This Court has to be persuaded that the magistrate exercised the discretion which he has wrongly. Accordingly, although this Court may have a different view, it should not substitute its own view for that of the magistrate because it would be an unfair interference with the magistrate's exercise of discretion. I think it should be stressed that, no matter what this Court's own views are, the real question is whether it can be said that the magistrate who had the discretion to grant bail but exercised that discretion wrongly ..."

[21] A finding that the Magistrate's decision is wrong will ensue once it is shown that he misdirected himself/herself in some material way in relation to fact or law. Absent a finding that the magistrate misdirected himself/herself, the appeal must fail. Tritely, the powers of an appellate court are limited where a matter comes before it on appeal and not as a substantive application for bail. For that reason, when considering if the decision by a court of first instance is wrong, an appellate court will accord deference and attach appropriate weight to the fact that the court of first instance is vested with a discretion. The appellate court will eschew any inclination to impose its own decision unless it is persuaded that the court of first instance is wrong.

[22] I have had regard to the affidavit of the Appellant and the viva voce evidence and report by Mrs. Wolmarans, as well as the viva voce evidence of the Investigating Officer, Mrs. Kruger and the Social Worker, Mrs. Tsitsa and the court a quo's judgment. I cannot find that the court a quo misdirected itself in any way in reaching the conclusion that it did.

[23] In *S v Yanta* 2000 (1) SACR 237 at page 239 para c-d, Van Zyl J stated as follows:-

"Because bail applications are neither civil nor criminal proceedings, but a unique Judicial function, the rules of evidence in trial actions are not strictly adhered to. Therefore hearsay evidence is admissible at bail applications (in casu hearsay evidence by the police investigating officer, about the content of witness statements implicating the accused in the commission of the offence with which she was charged)."

[24] In my view, it cannot be said that the Magistrate was wrong in refusing to admit the Appellant to bail. What is noteworthy and cannot be ignored is that the Appellant deleted certain whatsapp messages, directly or indirectly attempted to threaten and interfere with witnesses and that the State has prima facie, a strong case against the Appellant.

[25] In my view, the court a quo correctly found that the interest of justice does not permit the Appellant's release on bail. There is no basis for the appeal court to interfere with the discretion exercised by the Magistrate. The appeal must therefore fail.

[26] I accordingly make the following order:-

1. The bail appeal is dismissed.
2. A copy of this order must be forwarded to the Appellant by the Registrar of this Court.

M. NAUDE-ODENDAAL

JUDGE OF THE HIGH COURT,

APPEARANCES:

HEARD ON:

5 MAY 2025

JUDGMENT

DELIVERED ON: 12 MAY 2025

For the Appellant:

Adv. Essa Boucher Attorneys

C/O Ramusi Attorneys

Polokwane

For the Respondent:

Adv. M. Mchale

Office of the Director of Public Prosecutions

Limpopo Division, Polokwane.

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Prepared on 9 October 2026 · Esheria