

SOUTH AFRICA / JUDGMENT

Janse Van Rensburg v S (Bail Appeal) (BA02/2025; SA158/2024) [2025] ZAMPMHC 33 (23 June 2025) [2025] ZAMPMHC 33

COURT

Middelburg High Court, Mpumalanga

BEFORE

Langa

CASE / FILE NUMBER

BA02/2025

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IN THE HIGH COURT OF SOUTH AFRICA

MPUMALANGA DIVISION (MIDDELBURG LOCAL SEAT)

CASE NO: BA02/2025

COURT A QUO SA158/2024

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

DATE 23 JUNE 2025

SIGNATURE

In the matter between:

MICHAEL ADRIAAN JANSE VAN RESNBURG APPELLANT

AND

THE STATE

RESPONDENT

JUDGMENT: BAIL APPEAL

Coram: Langa J

Introduction and Concise Facts

- [1] This is an appeal against the findings and order of the Magistrates Court, Secunda, in which the court denied Appellant bail on 21 August 2024. This bail application was dealt with in terms of Section 60(11)(b) of the Criminal Procedure Act 51 of 1977 ("the Act") as there was no dispute that the offence falls under Schedule 5 of the Act. The Appellant was arrested for theft in the Secunda case and also currently has a pending case of fraud in George, Western Cape ("the George case").
- [2] It must be noted that despite all attempts to obtain the same, the reasons for the decision could not be obtained from the presiding magistrate who has reportedly since been suspended. The matter is therefore proceeded with on the basis of the evidence and the magistrate's terse two paragraph judgment as contained in the transcribed record.
- [3] The Appellant, who was out on warning in respect of the George case according to him, was arrested in respect of the Secunda case and made his first appearance in the court a quo on 27 March 2024 on which date the case was postponed to 02 April 2024 for the bail application. However, the matter could not be proceeded with on 2 April 2024 and was postponed on several subsequent dates for various reasons until 24 August 2024 when the bail application was finally heard and finalized. The myriad of postponements were occasioned by many reasons inter alia legal representation and the accused not having been brought to court from the correctional centre on several occasions. The reasons for some of the postponements are not clear from the record though. Whatever the reasons may be, it must be said that it took unacceptably inordinately long for this matter to be heard and finalised and this apathetic approach cannot be countenanced by the court and deserves censor.

Evidence

- [4] In the appeal both the Appellant and the Respondent adduced their evidence by way of affidavits. On the merits the Appellant confirms that he was arrested in the Secunda case on a charge of theft which he denies having committed. He contends that the State does not have a strong case against him.
- [5] Concerning his personal circumstances he states that he is a South African citizen of 45 years of age. He is married with two minor children aged one and twelve who are all staying with him and his wife. Although he confirms that he is currently unemployed, he nevertheless states that his wife and children are dependant on his income for rent and food. He states further that he has been informed that his wife also needs an operation for brainstem and that if she does go for the operation no one will be available to take care of the children who are currently taken care of by her. He states that has moveable property to the value of R100 000.00 which includes household furniture and a car.

- [6] The Appellant also avers in his affidavit that his first child suffers from kidney issues and the youngest has a hearing disability and eyesight problem. He avers that his child depends on him for blood donations as he is the only match to donate blood to him. He further alleges that he has a chronic heart condition and is on chronic medication for pain resulting from the back injury he suffered a few years ago.
- [7] In the affidavit the Appellant avers that he has a previous conviction from 22 years ago and that he is not currently out on bail on any other charge but on warning in the George matter. As stated above, he confirms that he has a pending case of fraud in George, Western Cape, in respect of which he is currently in custody after he had previously been released on warning. He states that the reason he is now remanded in custody in George is that he was convicted in the George court for failure to appear while on warning and sentenced to twenty eight (28) days imprisonment which he has already served.
- [8] Despite the fact that he was convicted by court and sentenced, the Appellant however states that his failure to appear George Court was a result of a misunderstanding with the dates and was not intentional. He essentially suggests that he was wrongly convicted. He states that if released on bail in this matter, he will not evade his trial and will abide by all the bail conditions. The Appellant further alleges that since he was moved to George, he has not been able to have proper contact with his lawyers and family and could not even properly raise funds for his defence as he had no access to his family.
- [9] The Appellant further states that he does not intend fleeing as his roots, family and property are in South Africa. He avers that although he possesses a valid passport it is with his lawyers presently and can be handed over to the authorities. He further asserts that he will not interfere with witnesses as he does not know the identity of state witnesses. Despite this assertion he also says that he has been warned by his legal representative to avoid any contact with the witnesses as that may jeopardize his chances of obtaining bail. He also makes an undertaking not to interfere with the police investigations and further avers that should he be released, he will not endanger the safety of the public. The Appellant states that should be granted bail he can be in a position to pay R1500.
- [10] The Respondent's evidence on the other hand is contained in the affidavit of sergeant Siphokazi Gxarisa, the investigating officer. She confirms that the Appellant was arrested in George on a charge of fraud involving about R1million. She states that after he was granted bail the Appellant absconded and a J50 warrant of arrest was authorised against him. She states further that the accused was arrested for other cases before and has three previous convictions of fraud and was sentenced to direct imprisonment in respect of two of them and a suspended sentence for the third one.
- [11] Sergeant Gxarisa further states that the accused does not have a fixed address and that when they went to confirm his address his father in law stated that he does not stay at the address given to the police and they are also unable to communicate with him as he is evading the case in George. The last time they saw him was in January when he came to fetch his

passport. Lastly Sergeant Gxarisa states that the Appellant is likely to flee as he did with the case in George in respect of which he is now kept in custody after he failed to appear while on.

The Applicable Legislative Provisions

- [12] It is trite that on appeal a decision made by court a quo during bail application can only be set aside only if it is patently wrong. Section 65(4) of the Act provides that the court or judge hearing the appeal shall not set aside the decision against which the appeal is brought, unless such court or judge is satisfied that the decision was wrong, in which event the court or judge shall give the decision which in its or his opinion the lower court should have given. *S v Barber* 1979 (4) SA 218 (D) at 220 G; *Sewela v S* 2010 (731/10) [2010] ZASCA 159.
- [13] In terms of Section 60(11)(b) of the Act, the accused applying for bail in respect of a Schedule 5 matter must satisfy the court on balance of probabilities that the interests of justice permit his release on bail failing which he must be detained in custody. Section 60(4) of the Act provides that the interests of justice do not permit the release from detention of an accused where one or more of the listed grounds from paragraph (a) to (e) are established and these grounds include inter alia, 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; or will attempt to evade his or her trial; or will attempt to influence or intimidate witnesses or to conceal or destroy evidence; or will undermine or jeopardise the objectives or the proper functioning of the criminal justice system, including the bail system or 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. (underlining my emphasis).

Principal Submissions

- [14] It is argued on behalf of the Appellant that no evidence was placed on record by the Respondent that the Appellant will be a danger to society or will commit a schedule 1 offence if released on bail. It is further argued that there is no evidence that the offence he allegedly committed is prevalent in society.
- [15] Concerning the question whether he is a flight risk, the Appellant's argument is that although he missed the court appearance in George Magistrates court, he was tried, convicted and sentenced to twenty eight (28) days imprisonment which he has served in its entirety. The Appellant suggests in this regard that he was not trying to evade his trial but simply forgot the date and later handed himself over to the police when he was informed that a warrant for his arrest had been authorised.

- [16] It was submitted on his behalf that the Respondent failed to place evidence on record that he will evade his trial should he be released on bail and he insists that he will not flee and does not have the financial means to do so. Furthermore, it is argued as alluded to above that although he possesses a passport, it is currently with his legal representatives and that he is prepared to hand it over to the authorities should that be necessary. It is further argued that he cannot afford to forfeit his bail money should he be released on bail.
- [17] In support of his contention that he will not flee, it is argued further that the Appellant's family, economic ties and place of residence and business are located within the Republic, and he does not have assets outside of the country and only possesses assets of the value of R100 000.00 consisting basically of household furniture and a car.
- [18] It is further argued that the State does not have a strong case against the Appellant and that he does not know the identity of the witnesses and will not contact and interfere with them or interfere with the investigations against him. It is further argued that the Appellant never furnished false information at the time of his arrest or during the application for bail but that there was a miscommunication regarding his previous convictions. It is reasoned that the reason he mentioned one previous conviction is that he did not remember how many he had and they were also old previous convictions.
- [19] The Appellant in addition argues that his right to freedom stands to suffer if he is denied bail as his trial will most likely take two (2) years to finalise and he has already been in custody since 28 March 2024. Regarding his health, as stated above it was argued that he is not in good health even though no supporting evidence was forthcoming to confirm this suggestion.
- [20] Contrary to the Appellant's allegations, the Respondent argues that the main witness in this case is a victim and pensioner, who is known to the Appellant as they are family friends and that the State case against him is strong. The Respondent further contends that the Appellant has a pending case against him, in which he was released on "bail"

but failed to appear in court and that his failure to attend court shows that he has little or no regard for the law. The further

argument is that the offence he is facing is of a serious nature as it involves a large amount of money and that he stands to get a lengthy sentence should he be found guilty.

- [21] Regarding his allegation that he is the breadwinner; the State argues that this contention cannot be correct as he is unemployed with no known source of income. Concerning his averment that he will not interfere with witnesses the Respondent argues that there is evidence that the Appellant had influenced his co-accused in his pending George case not to attend court and is therefore capable of interfering with anyone attending the same case with him or with state witnesses who he is well acquainted with.

- [22] Concerning his health, the Respondent argues that although the Appellant stated in the court a quo and in this appeal that he suffers from heart disease, he however failed to submit any single proof that he suffers from such condition. The Respondent argues therefore that the Appellant has failed to show that the interests of justice permit his release on bail and that the learned magistrate acted correctly in denying the Appellant bail.

Discussion

- [23] In the light of the evidence and the submission made the issue in this appeal is whether the learned magistrate erred in denying the Appellant. In my view the main issue to be decided in this matter is whether the Appellant is a flight risk. Although the Magistrate gave a terse and unhelpful sub-standard judgment, the record is however sufficient to enable this court to decide this issue despite the absence of reasons for judgment which could not be obtained from the Magistrate who is no longer available as stated above. To uphold or dismiss the appeal simply because the reasons for judgment could not be obtained would in my view amount to elevating form over substance.
- [24] It is common cause that the Appellant's bail application resorts under the ambit of Schedule 5. In terms of section 60(11) the court shall order that the accused be detained in custody unless the accused, having been given a reasonable opportunity to do so, adduces evidence which satisfies the court that the interests of justice permit his or her release. As stated in the preceding paragraphs, section 65 (4) provides that the functions and powers of the Appeal Court hearing the bail appeal are similar to those of an Appeal Court hearing an appeal against conviction and sentence and that the Appeal Court must therefore be persuaded that the court a quo exercised its discretion wrongly before it can interfere with its decision. The appeal court should not merely substitute its own view for that of the court a quo because that would be an unfair interference with the court a quo's exercise of his discretion. *S v Barber, supra*.
- [25] The primary question in this matter is whether the Appellant has proved on a balance of probabilities that the interests of justice permit his release on bail. Before I deal with the question whether the Appellant has proved that he is not a flight I will deal with his personal circumstances on which he also heavily relies.
- [26] Firstly, the Appellant has made unsubstantiated claims that he is the family bread winner in circumstances where he is not working and earning an income. This is concerning to me because it is not honest and honesty is key in such proceedings. The Appellant should have been frank to the court and stated that he is not working instead of giving the impression that he is and taking care of the family when he had not been able to do so for some time. Furthermore, he states that he has a business which is located in the Republic but it is not clear from his evidence as to what business it is and where it is operating from. This lack of detail on such a simple matter is concerning regarding the Appellant's bona fides.

[27] Secondly, the Appellant now states, as part of his arguments on appeal, that he has suffered a heart attack after the bail application. Although this is new information which was obviously not dealt with in his founding affidavit in the application for bail, despite this claim the Appellant has however failed to submit any proof of this serious illness. In paragraph 8.10 of his Founding Affidavit, he only states that he is on chronic medication but likewise he does not provide any proof of any illness for which he is on medical treatment and proof of the said chronic medication. In any event if the heart attack is indeed a new issue this should perhaps be considered for bail application on new facts and not appeal as it was not part of the

issues

the court a quo had before it when dismissing the bail application.

[28] Thirdly, the Appellant also failed to mention the correct number of his previous convictions and explains this by saying that it is because of misunderstanding as he did not remember how many he had and they were also old previous convictions. This explanation is ridiculous and suggests that the Appellant was not completely frank with the court.

[29] Having said that it would however appear that the Appellant's previous convictions are old. As his evidence that they are 22 years old has not been refuted, one has to accept in his favour that they have fallen away considering the provisions of section 271A of the Act. In addition, although the Magistrate mentioned that there are previous convictions recorded, she however did not elaborate as to what the implications thereof were in the dismissal of the application for bail. Furthermore, the evidence on either side does not give the details of these previous convictions such as the dates of conviction and sentence. Accordingly, the bail application and consequently the appeal should not turn much on this aspect of the previous convictions due to the sparsity of the information relating thereto.

[30] I now revert to what is essentially the core issue in this matter which is the allegation that the Appellant is not a flight risk. As stated in the preceding paragraphs it is common cause that the Appellant has a pending fraud case in George Magistrates Court in respect of which he is custody after he was refused bail. Although the State alleged that he had been released on bail in this matter and absconded, it would appear he was actually released on warning as he alleges. However, whether he was on warning or bail is not so significant for this appeal. What is material is that while he was out on bail or warning, he failed to attend court on the appointed date and this is common cause.

[31] It is also common cause that as a result of his failure to attend court, a warrant for his arrest was authorised. He was then arrested in the Secunda matter for theft and was eventually subsequently tried for contempt of court in George and sentenced to twenty eight (28) days imprisonment. The Appellant brushes this issue off by saying that as he has served the sentence, this issue is therefore of no moment in this appeal. Of course, this issue is very material and pertinent to the bail application a quo and consequently this appeal. It cannot

be heard of that the failure to appear and its consequences should not play any persuasive part in this appeal.

- [32] This court cannot ignore that as a result of his failure to appear, the Appellant was also denied bail in the George Magistrates Court apparently after a formal bail application. The result is that as the proceedings a quo and in this court were launched, the Appellant was and is still in custody pending the George matter. While the fact that he has been refused bail in another matter should not be decisive in whether he should be granted bail in this matter, it is nevertheless a relevant and pertinent issue to be considered in this appeal.
- [33] While it is a fact that the Appellant was arrested on the Secunda case while there was a warrant of his arrest in respect of the George case, it is astonishing that the Appellant is now, in the appeal, attempting to explain and justify his failure to appear for which he was admittedly convicted and sentenced in the George case. Despite the conviction and sentence, he is suggesting that he was not guilty and that his failure was due to a misunderstanding. This is of course the explanation that should have been advanced in the George Magistrates Court during the contempt proceedings. If it was, the conviction means that it was rejected and the Appellant convicted and sentenced for failure to appear. If it was not raised in that court then it is just an afterthought at this stage. The Appellant cannot therefore be allowed to exhume this issue which was dealt with and finalised and against which no appeal lies. This explanation should accordingly be rejected. Likewise, the Appellant's assertion that he gave himself up to the police after realising that there was a warrant for his arrest falls to be rejected as it is also not correct since he was arrested in respect of the Secunda matter and only later transferred to George Court. The implication of all this is that the Respondent has demonstrated that the Appellant has a propensity not to attend court while out on warning. This, in my considered view, means that he is a flight risk.
- [34] In conclusion, taking into account that the Appellant has a similar pending case in respect of which he is currently in custody after the bail was refused; and further taking into consideration that he has previously failed to appear in court after he was released on warning until he was arrested, I am not persuaded that the interests of justice permit the release of the Appellant on bail. Based on the facts and taking into account the provisions of sections 60(4)(b) read with 60(11) of the Act, the interests of justice do not permit the release of the Appellant on bail. The Appellant has failed to discharge the onus to prove on a balance of probabilities that the interest of justice permit his release on bail. The appeal accordingly cannot succeed and should be dismissed.

Order

- [35] In the result I make the following order:

The appeal is dismissed.

MBG LANGA

JUDGE OF THE HIGH COURT

Appearances:

For the Appellant:

Mr B Le Roux

For the Respondent:

Advocate CV BVUMA

Date of hearing:

06 June 2025

Date delivered:

23 June 2025

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