

SOUTH AFRICA / JUDGMENT

Louis v S (139/2023; A452/2012)

[2024] ZAGPPHC 667 (8 May 2024)

[2024] ZAGPPHC 667**COURT**

North Gauteng High Court, Pretoria

BEFORE

Mlotshwa

CASE / FILE NUMBER

139/2023

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Policy**IN****THE HIGH COURT OF SOUTH AFRICA****GAUTENG****DIVISION, PRETORIA****Case number: 139/2023****A452/2012****(1)****REPORTABLE: NO****(2)****OF INTEREST TO OTHER JUDGES: NO****(3)****REVISED: YES/NO****DATE:**

08/05/2024

SIGNATURE

In

the matter between: PIET
PULE
LOUIS
APPELLANT
THE
STATE
RESPONDENT

JUDGEMENT

MLOTSHWA AJ

A.

INTRODUCTION

1. The appellant is charged with three counts of theft of sum of monies of R149 590, R346 000 and R332 335 respectively from individuals which were paid to him for the purchase of immovable property around Emfuleni, Vanderbiljpark.
2. The appellant unsuccessfully applied for bail in the Vanderbiljpark Magistrate's court on 5 October 2022.
3. The appellant is now appealing to this court against the refusal by the magistrate's court to admit him to bail.
4. The parties agreed before the magistrate's court that the bail application fell under the ambit of section 60(11) (b) of the Criminal Procedure Act (the Act) as the appellant has previous convictions and further that other charges are pending against him.
5. Section 60(11) (b) of the Act provides as follows;

"Notwithstanding any provisions of the Act, where an accused is charged with an offence referred to in Schedule 5, but not Schedule 6, the court shall order that the accused be detained in custody until he or she is dealt with in accordance with the law, unless the accused, having been given a reasonable opportunity to do so. Adduces evidence which satisfy the court that the interests of justice permit his or her release".

B. DISCUSSION

6. The appellant moved his bail application by way of an affidavit. Due to the fact that most parts of the record of the proceedings are indistinct, including the portion dealing with the appellant's affidavit, it is impossible to repeat verbatim the contents of the appellant's affidavit. From the bit that can be made out of the transcribed record the appellant stated that he has one previous conviction of theft committed in 2000. That he has no pending cases. That the complainants paid him for the registration of property and that due to his incarceration, he is unable to complete the processes.

7. He stated that the transactions are still pending. He acknowledges that he knew the complaint(s). He further stated that he would need the physical files to respond adequately to the charges.
8. He stated that he will not interfere with witnesses, nor will he evade his trial. He believes that the matter can be solved as soon as he gets the files. That he is able to abide by any bail conditions that may be imposed on him. He may even report to the investigating officer.
9. He concludes by stating that it will be in the interest of justice that he is granted bail. That he understands the purpose of bail is to secure his attendance at court when he is required to do so and that he would be afforded the opportunity to adequately prepare for his trial. He states that if he is not released on bail his business will suffer. That concluded the appellant's application.
10. The State lead the evidence of Sergeant Mathibela, the investigating officer to oppose the appellant's bail application. In short, the investigating officer testified that during 2020 and 2021 the complainants paid the sums of R149 590, R346 000 and R332 335 to the appellants respectively. They were taken by an agent to the offices of the appellant to pay the money for the purchase of immovable properties where they were also made to sign the offers to purchase.
11. According to the investigating officer, one of the complainants, Ms Nteo, regularly went to the appellant's offices in Vanderbiljpark to enquire about the registration of the property in her name. She was at all times given excuses by the appellant until she found out that the appellant no longer operated from those offices. She was told that the appellant had moved offices to Vereeniging. She could also not find the appellant's offices in Vereeniging.
12. Ms Nteo then went to the alleged seller of the property who advised her that she ("the seller") did not own the property.
13. The second complainant, Mr Modise intended to purchase a property from the owner, Mr Mogotsi. They were advised that an attorney, Mr Piet Louis Pule (the appellant) would help them to conclude the sale agreement and have the property transferred to Mr Modise's name. Both went to the appellant's offices. There they signed the deed of sale. Mr Modise was then informed to pay the money to PP Administrators and Conveyancers bank account. PP Administrators and Conveyancers is the name under which the appellant conducted his business. The appellant undertook to have the property registered in the purchaser's name.
14. They enquired from time to time from the appellant about the registration of the property into the purchaser's name to no avail. The appellant then ignored their telephone calls. They too could no longer find the appellant's offices. He was also avoiding their calls, they decided to lay criminal charges against him.

15. Mathibela testified that the dockets were assigned to him for investigations. He then started to look for the appellant. The appellant initially took his calls and promised to come to depose to a warning statement. He never came. He also no longer took calls from Sergeant Mathibela. Mathibela then found out that his colleague, a Sergeant Magamba also had a theft docket against the appellant. The appellant was also not taking calls from him (Sergeant Magamba).
16. Mathibela testified that after the appellant did not take their calls, they then started to look for him until they found and arrested him.
17. Since his arrest many other complainants came forward to complain about the appellant. Mathibela testified that there are about ten other dockets of theft that are being investigated against the appellant.
18. Mathibela testified that the appellant furnished them with a residential address and when they went to verify the address, they found the appellant's mother who confirmed that she is the appellant's mother but that the appellant does not stay there, and she does not know where he stays.
19. The appellant then gave them another address at Protea where he was a tenant there. He was however no longer staying there. They were then furnished with another address which is at 4[...] M[...] Street, Mohlakeng where his aunt, Maria Kedibone Louis stays. The aunt confirmed that they have fetched the appellant's belongings from where he was renting and that the appellant will stay with her if he is admitted to bail.
20. Mathibela testified that the appellant has two previous convictions of theft.
21. Mathibela stated that he objects to the appellant being granted bail as the appellant has a propensity to commit the crime of theft as is evidenced by his previous convictions. He is further likely to evade his trial because of the many cases that are brought against him. He further objects on the ground that the appellant evaded his arrest when he realised that the police were looking for him.

C. THE LAW RELATING TO INTEREST OF JUSTICE.

22. The onus is on the applicant to adduce evidence and hence proof to the satisfaction of the court, that it is in the interest of justice to permit his release on bail.
23. The court must be satisfied that the release of the applicant on bail is in the interest of justice.

S v Petersen 2008 (2) SACR 355 (C)

24. There is no onus on the State to disprove that it is not in the interest of justice to admit the appellant to bail. The fact that evidence tendered as proof of such circumstances has not been challenged, does not enhance the probative weight of such evidence.

S v Mpulampula 2007 (2) SACR 133 (E)

S v Moeti 1991 (1) SACR 462 (B)

S v De Abreu 1980 (4) SA 94 (W)

25. In S v Thornhill (2) 1998

(1) SACR 177 (C) it was stated at 182 e-f that:

“The determination of the question whether the applicant for bail will abscond and forfeit bail essentially involves an enquiry into the probable future conduct of the appellant. This future conduct has to be determined on the basis of information relating inter alia to the applicant’s prior conduct. What has to be determined therefore is not a fact or set of facts, but merely a future prospect which is speculative in nature even though it is based on proven facts.”

26. In S v Nichas 1977 (1) SA 257 (C) it was stated at 263 G-H that:

“If there is a likelihood of heavy sentences being imposed the accused will be tempted to abscond.”

27. The strength of the State’s case coupled with the prospect of a custodial sentence, will constitute an incentive to abscond and if the personal circumstances of the accused are not out of the ordinary, exceptional circumstances will not be established.

28. In S v Scott-Crossley 2007 (2) SACR 470 (SCA), the Supreme Court of appeal ruled that:

“In evaluating the prospect of success, it is not the function of this court to analyse the evidence in the court a quo in great detail. If the evidence is excessively analysed, it will become a dress rehearsal for the appeal to follow.”

29. This court is not to make a finding whether the appellant will be convicted of the charges brought against him by the State as was stated in S v Vermaak 1996 (1) SACR 528 (T) at 539h, that:

“Is the State’s case strong? That question I cannot answer, as I have not sat through the tedious months of evidence. At least there is a prima facie case on the merits.”

30. In S v Branco 2002 (1) SACR 531 (W) at 535 d-e it was further stated that:

“A bail application is not a trial. The prosecution is not required to close every loophole at this stage of the proceedings.”

31. The State is not obliged to show its hands in advance, at least not before the time when the contents of the docket must be made available to the defence. An accused who chooses to challenge the strength of the State’s case must make his own way and not expect it to be cleared before him.

32. Furthermore, hearsay evidence in bail applications is admissible as it was stated in S v Yanta 2001 SACR 237 (THK) at 245 I and at 246 j that:

“In so far as the evidence of the investigating officer is concerned, it was contended on behalf of the appellant that his evidence consisted of hearsay and that little or no weight should be attached thereto. In my view, the magistrate was in this regard correct in finding that the evidence is admissible for the purposes of the bail proceedings.”

33. From the evidence of the investigating officer it is clear that the State is in possession of strong prima facie evidence implicating the appellant in the commission of the crimes.
34. As stated above this court is not required to make a provisional finding of guilt or innocence, but merely to evaluate the prima facie strength of the State's case.

See *S v Van Wyk* supra:

35. The fact that the State has a strong prima facie case is of key importance in the determination of whether the appellant has shown if the interest of justice requires that he be admitted to bail or not.

S v Van Wyk 2005 (1) SACR 41 (SCA)

36. Further in terms of section 65(4) of the Act, this court shall not set aside the decision against which the appeal is brought, unless it is satisfied that the decision is wrong.
37. In *S v Barber* 1979(4) SA (D) at 220 E-H it was held that:

“It is well known that the powers of this are largely limited where the matter comes before it on appeal and not as a substantive application for bail. 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 that would be unfair interference with the magistrate's exercise of his 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 that discretion to grant bail exercised that discretion wrongly.”

38. The appellant does not have a fixed place of abode. The State has a prima facie strong case against the appellant. The appellant states that he requires the files pertaining to the matters of the complainants to sort out their registration. But as we speak, he does not have an office. He does not state where the files are kept.
39. The appellant is neither an attorney nor an estate agent. He does not state in what capacity he received the complainants' monies as he does not have a trust account.

D.

CONCLUSION

40. This court is not convinced that the decision of the magistrate to refuse to admit the appellant to bail is wrong.

Order

It is accordingly ordered as follows:

The appeal is dismissed.

DATED AT PALMRIDGE THIS 8th DAY OF MAY 2024.

MLOTSHWA AJ

MLOTSHWA J

ACTING JUDGE OF THE HIGH COURT,

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