

SOUTH AFRICA / JUDGMENT

Mahlatsi and Others v S (A111/2020)

[2020] ZAGPPHC 177 (28 May 2020)

[2020] ZAGPPHC 177**COURT**

North Gauteng High Court, Pretoria

BEFORE

Mosopa

CASE / FILE NUMBER

A111/2020

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Source record**IN THE HIGH****COURT OF SOUTH AFRICA****GAUTENG****DIVISION, PRETORIA****Case number.****A111/2020****28/5/2020****In the****matter between:**

SELLO
MAHLATSI
1st Appellant
SIPHO
DHLADHLA
2nd Appellant
TEBOGO
RODNEY GERRIT
MATHOSA
3rd Appellant
AMOS
NDUBANE
4th Appellant
SIPHO EMMANUEL
MAGWAZA
5th Appellant
DELMOND
BUYISO MASHIANE
6th Appellant
And
THE

STATE
RESPONDENT

JUDGEMENT

MOSOPA, J

INTRODUCTION

1. This is an appeal against refusal to grant bail by Magistrate Ms Sheppard in the Benoni Magistrate Court on the 11 March 2020.
2. Appellants are all charged of the following offences;
 1. two counts of extortion ,
 2. contravention of the protection order issued on the 20 February 2020, and
 3. assault with intent to do grievous bodily harm.
3. It is common cause that the charge resorts under Schedule 5 of the Criminal Procedure Act 51 of 1977 ("CPA").

FACTUAL BACKGROUND

4. Appellants were arrested on the 28 February 2020 for the above offences. On the 11 March 2020 they appeared before Magistrate Ms Sheppard for formal bail application, which application was refused by the below court. Aggrieved by such refusal, appellants are now appealing against such refusal to be permitted to bail pending finalization of their trial matter.
5. It is common cause that appellants and complainants has a contractual dispute emanating from, what appellants says it is, payment of rates which has been unilaterally extended by the complainants, which is the main contractor and appellants as sub-contractors.
6. On the 29 August 2019 in this court, complainants obtained an interim interdict against the appellants, restraining them from inter alia, invading, taking occupation or demarcating land identified in Annexure X of the Notice of Motion and building, constructing or delivering any building materials to the property.
7. On the 26 February 2020 appellants were declared to be in contempt of a court order issued on the 20 August 2019 in this court and committed to prison for a period of two months, alternatively fined to the amount of R200,000,00.

8. Despite the pronouncement and committal of the appellants to imprisonment for being in contempt of the order of 20 August 2019, appellants are currently being charged of contravention of the court order of the 26 February 2020 (even though incorrectly referred to as contravention of the protection order in the charge sheet).
9. There is no indication on record which suggests that the appellants complied with the order of the 26 February 2020 by either serving imprisonment term or paying a fine. I am saying so as there is no indication on record that the appellants appealed such an order, or reviewed or rescind such an order, meaning that such order remains in force and effect.
10. State alleges that appellants intimidated employees of the complainants at the site of construction and further chased them away from the sight, extorted an amount of R350,000,00 from complainants before any meeting could be held.
11. Both the state and appellants advanced their cases on affidavit, and appellants led the evidence of Ms Lindiwe Ndubane who is also a Community Liaison Officer who was overseeing the construction which resulted in the arrest of appellants.

LEGAL PRINCIPLE

12. Section 60(1)(a) of the CPA provides;

"60(1)(a) - 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 interest of justice so permit".

13. Sec 60(4)(a)-(e) provides;

"60(4) - The interest 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 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
- (b) Where there is a 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 a 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 a likelihood that the accused, if he or she were released on bail, will undermine or jeopardize the objectives or the proper functioning of the criminal justice system, including the bail system,
- (e) Where in exceptional circumstance there is a likelihood that the release of the accused will disturb the public order or undermine public peace or security.

14. The concept of "interest of justice" was defined in the Constitutional

Court matter of S v Dlamini ; S v Dladla and others; S v Joubert; S v Schietekal [1999] ZACC 8; 1999 (2) SACR 51 (CC) to mean, "that it bears the same narrow meaning akin to "the interest of society" (or interest of justice minus the interests of the accused)".

APPEAL

15. In refusing bail of appellants the court below observed;

"The court finds, given the evidence that was placed before the court, that the appellant did not satisfy this court on a balance of probabilities that it will be in the interests of justice to permit their release on bail and it is specifically with relation to subsection 60 (4) (d) that there is a likelihood that the accused if they were released on bail will undermine or jeopardize the objectives of a proper functioning of the criminal justice system, including a bail system".

16. The court below did not give reasons which support its finding. It is however trite that when determining the provisions of Sec 60(4)(d), court may take into account the fact that appellants knowingly supplied false information at the time of his arrest or during bail proceedings as provided by Sec 60 (8) (a). There is nothing on record which indicates that appellants supplied false information.

17. There is also no indication from record that appellants are in custody or there is a pending charge against the appellants. The appellants are also not on parole as required by Sec 60 (8) (b). In their affidavits the appellants declared their previous convictions and pending matters against them and none was traversed by the state in the affidavit filed by the investigating officer in opposing the bail application.

18. There is also no evidence on record that if bail granted the appellants will not comply with bail conditions as required by Sec 60 (8) (c).

19. The state does not oppose the appellants to be permitted to bail. In his heads of argument, Adv Fourie on behalf of the state submitted that, "In the absence of any evidence that the appellants are likely to abscond it is evident that Magistrate relied to a large extent on the appellant's apparent failure to comply with the Court Order dated 20 August 2019. It is submitted that she should have considered that, whilst she is now dealing with a criminal matter (as opposed to initial civil one) possible obstructive conduct by the appellants can be curbed by stringent bail conditions with severe consequences should they fail to adhere thereto. It appears that she failed to consider such a possibility. "I am in full agreement with Mr Fourie and as such appellants are entitled to be permitted to bail".

20. Now what is left is to be determined is the amount of bail and the bail conditions to be attached to the release of appellants on bail. The appellants are already found to be in contempt of the Court Order of the 26 August 2019 and as such I cannot agree with the amount of bail suggested by the appellants. The state suggests a substantial amount of bail to be ordered and conditions similar to the order of Wepenaar J of the 26 August 2019. I am also in full agreement with this submission. The appellants and the complainants are known to

each other and as such complainants deserve protection.

21. In the consequence I make the following order;

1. Appeal is upheld on the following conditions;

- (a) Appellants are permitted to bail in the amount of R10,000,00 per appellant.
- (b) Appellants are ordered to refrain from interfering with any of the complainant's facilities, installations, buildings, construction sites, employees, agents, contractors, or any other officials at eh properties.
- (c) Appellants are ordered to refrain from damaging, threatening, intimidating, impeding or assaulting any person in the facility of the complainants.
- (d) Appellants are ordered to refrain from approaching within 25 meters of the entrance of the properties of the complainants.
- (e) Appellants are ordered not to leave Gauteng Province without the knowledge of the Investigating Officer.
- (f) Appellants are ordered to report on every Wednesday to Daveyton Police Station alternatively to the nearest Police Station to their residential properties between 6 am and 6 pm.
- (g) Appellants are to attend court on each and every remand date ordered by the trial court until their matter is finalized alternatively withdrawn by the state.
- (h) Appellants are ordered to refrain from harassing, interfering or having a contact whatsoever with the witnesses in this matter.
- (i) Appellants are ordered not apply for any travelling documents with the Department of Home Affairs until their matter is finalized and in the event that they have applied for such, to surrender such travelling documents to the Investigating Officer. It is further ordered that the copy of this order also be served on the Department of Home Affairs.

M.J MOSOPA

JUDGE OF THE HIGH

COURT, PRETORIA

APPEARANCES

For Applicant : Pat Malesoena Attorneys

Instructed by : Pat Malesoena Attorneys

For Respondent: Adv AJ Fourie

Instructed by: Director of Public Prosecution

Date of hearing : 04 May 2020

Date of delivery : 28 May 2020

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Prepared on 10 October 2026 · Esheria