

SOUTH AFRICA / JUDGMENT

Molefe v S (A 391/11) [2011]

ZAGPJHC 159 (14 October 2011)

[2011] ZAGPJHC 159

COURT

South Gauteng High Court, Johannesburg

BEFORE

FHD Van Oosten

CASE / FILE NUMBER

A 391/11

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SOUTH GAUTENG HIGH COURT

(JOHANNESBURG)

NOT REPORTABLE

CASE NO: A 391/11

DATE:14/10/2011

In the matter between

K MOLEFE.....APPELLANT

and

THE STATE.....RESPONDENT

Criminal Procedure - Bail Appeal – bail pending trial refused by court a quo – charges of corruption fraud and theft

- Schedule 5 matter – relevant factors to be considered – syndicate operating within ranks of SA Post Office – strong prima facie evidence against applicants – failure by appellant to deal with the allegations against him – failure to show that in interest of justice to be permitted on bail - appeal dismissed

J U D G M E N T

VAN OOSTEN J:

- [1] This is an appeal against the refusal of bail pending trial, by the Regional Magistrate, Johannesburg. The appellant has been arraigned as accused 8 in the trial in which there are altogether nine accused.

- [2] According to a provisional charge sheet that was handed in at the hearing of the bail application, altogether 71 charges, including corruption, theft, attempted theft and fraud are preferred against the accused. Not all the charges are against all the accused: the appellant provisionally faces 30 charges of theft and one of fraud.
- [3] The application for bail in the court a quo commenced on 18 July 2011. Only 6 of the 9 accused, including the appellant, applied for bail. The application proceeded by way of affidavits that were filed by the applicants and the State, and no oral evidence was led. The Regional Magistrate dismissed the application in respect of all the applicants.
- [4] The State handed in and replied upon an affidavit deposed to by Mr Janse van Rensburg, who is the National Manager, Forensic Investigations Unit of the South African Post Office. In this affidavit he has dealt fully with all the available evidence against the accused that has come to light in the investigation that followed after it was established that the South African Post Office had suffered losses to the tune of R2,1m for the financial year 1 April 2010 to 31 March 2011, resulting from 87 cases of client accounts fraudulently dealt with by employees of the South African Post Office.
- [5] It is abundantly clear from the affidavit of Janse van Rensburg that the losses I have referred to, resulted from the unlawful operations of a syndicate, the members of which are all employees of the South African Post Office. Accused 1, it is alleged, is the kingpin of the syndicate, while the other accused are all involved in some way or another.
- [6] The appellant deposed to an affidavit on which he relied for the purpose of the bail application. It is common cause that the appellant, at all relevant times, was the Hillbrow branch manager of the SA Post Office. As for the appellant's personal circumstances, the following appears: he is married and 4 children were born from the marriage; he is resident in South Africa;

he is the registered owner of immovable property and he owns two motor vehicles. In conclusion he states somewhat nonsensically: "The court will realise that I am suffering from a terminal illness".

- [7] Concerning the case against him, the appellant scantily states that he was arrested at his workplace, to which is added: "I deny having been found in possession of incriminating evidence against me".
- [8] When the affidavit of Janse van Rensburg was handed in the contrary appeared as for the appellant's involvement in the syndicate. The investigation, according to Janse van Rensburg, revealed that the appellant had been in possession of copies of identity documents, concerning some of the accounts under investigation, that were eventually passed on to accused 2. The total sum fraudulently withdrawn from accounts at the Hillbrow Post Office amounts to R587 800. The investigation further showed some connection between accused 1 and the appellant: the appellant's name was amongst accused 1's contacts on his cell phone which was confiscated at the time of his arrest.

- [9] After the handing in of Janse van Rensburg's affidavit, the applicants were afforded the opportunity to respond thereto. Three of them in fact did respond. The appellant, however, did not.
- [10] It is common cause that the bail application concerns a Schedule 5 matter. The onus accordingly, was on the applicants to show that the interests of justice will permit the granting of bail (See *S v Dlamini and Others* [1999] ZACC 8; 1999
- (2) SACR 51 (CC)). In determining this aspect, the factors set out in s 60 (4) to (9) of the Criminal Procedure Act 51 of 1977 should be taken into consideration.
- [11] It is true, as was correctly submitted by counsel for the appellant, that the mere fact of a strong prima facie case against an accused, in itself, will not constitute a sufficient reason for refusing bail. In this matter, however, it goes much further. Here, the prima facie evidence for the State shows a well-organised crime syndicate having operated over a period of time, within the ranks of the South African Post Office. The appellant's involvement in the syndicate has not been denied or gainsaid by the appellant. On the contrary, he did not avail himself of the opportunity firstly, to correct his initial bare denial, and secondly, to controvert any of the allegations made against him. These aspects, in my view, weigh heavily against the granting of bail. The personal factors of the appellant I have already referred to, in essence parroting the requirements referred to in s 60 (4), therefore, pale into insignificance.
- [12] The investigation of the operations of the syndicate, as is apparent from Janse van Rensburg's affidavit, has now reached a sensitive stage. Further information has in the meanwhile come to the fore, as disclosed in an affidavit by the investigating officers in this matter, concerning the involvement of the appellant in the syndicate. These allegations have likewise been left unanswered by the appellant. It is, finally, the intention of the State to seek the approval of the National Director of Public

Prosecutions to charge the accused with racketeering.

- [13] For all these reasons, I conclude that the appellant has failed to prove that it will be in the interests of justice for him to be released on bail.
- [14] I am accordingly satisfied that the Regional Magistrate properly exercised his discretion in refusing bail.
- [15] In the result the appeal is dismissed.

FHD VAN OOSTEN

JUDGE OF THE HIGH COURT

COUNSEL FOR THE APPELLANTADV C THOMPSON

COUNSEL FOR THE RESPONDENT.....ADV (MS) W VOS

DATE OF JUDGMENT14 OCTOBER 2011

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