

SOUTH AFRICA / JUDGMENT

Omotoso v S (CC15/2018) [2020] ZAECPHC 43 (4 November 2020)

[2020] ZAECPHC 43**COURT**

Eastern Cape High Court, Port Elizabeth

BEFORE

P Zilwa

CASE / FILE NUMBER

CC15/2018

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

IN THE HIGH COURT OF
SOUTH AFRICA
(EASTERN
CAPE DIVISION, PORT ELIZABETH)
CASE
NO. CC15/2018
In

the matter between: TIMOTHY
 OMOTOSO
 Applicant
 and
 THE
 STATE
 Respondent

JUDGMENT

ZILWA J

- [1] In this application the applicant, Timothy Omotoso, seeks the following orders:
- (i) Directing that an investigation been held in terms of section 342A(1) of the Criminal Procedure Act Number 51 of 1977, into the delay in the completion of the trial proceedings in the above Honourable Court's case number CC15/2018.
 - (ii) Granting the applicant bail in the said case in an amount and on such conditions as the above Honourable Court may deem appropriate.

(iii) Granting the applicant further and / or alternative relief.

[2] The application is opposed by the Respondent (The State), which is represented by Mr Ntelwa assisted by Mr Mdolomba and Ms Jodwana-Blayi. The applicant is represented by Mr Price SC, who appears with Mr Dauberman.

[3] In support of his application the applicant has filed papers comprising of founding and replying papers with annexures which are cumulatively in excess of 450 pages. The applicant also led oral evidence 6 witnesses. Besides filing its answering papers comprising of some 30 odd pages the respondent also led oral evidence of 3 witnesses. Thereafter both parties filed further heads of argument before the matter was orally argued before me.

(i) The relief sought in prayer 1

[4] I consider it timely to first deal with and dispose of the relief sought in prayer 1 of the applicant's notice of motion, whose terms are set out in paragraph [1] (i) above. Thereafter I will deal with the bail application proper as sought in paragraph [1](ii).

[5] At the commencement of the hearing I enquired from Mr Price as to whether it would be appropriate for this Court, rather than the Court that is seized with the main trial, to deal with the issues and the relief sought in prayer 1. His emphatic response was that this Court is the proper Court that should deal with such relief and there is no requirement that such application should serve before the trial Court. He further submitted that such relief is often sought before Presiding Officers other than those seized with the main case and that it is actually dangerous for the trial court to deal with it as it might make credibility findings that may affect their role in the main proceedings. He submitted that his reading of the relevant section is that any Judge of the Eastern Cape Division, Port Elizabeth, can deal with the application and the relief that is sought in prayer 1. However, he was not able to refer to any legal authority or case law in support of his submission.

[6] Section 342A(1) of the Criminal Procedure Act reads

"A Court before which criminal proceedings are pending shall investigate any delay in the completion of proceedings which appears to the Court to be unreasonable and which could cause substantial prejudice to the prosecution, the accused or his or her legal advisor, the State or a witness" (emphasis added).

[7] As indicated above, Mr Price's argument at the commencement of the proceedings was that the section does not necessarily require the investigation to be done by the Court that is seized with the pending criminal proceedings or trial, it can be done by any other Judge of this division. I disagree with the interpretation given to the subsection by Mr Price. To me the wording of subsection 342A(i) leaves no room for any other interpretation but that it can only be the Court before which the relevant criminal proceedings are pending that should do the investigation once it appears to it that there are or there may be unreasonable delays in the completion of the proceedings pending before it which could cause substantial prejudice

to the prosecution, the accused or his or her legal advisor, the State or a witness. In my view the rationale for the wording of the subsection is not hard to find. It is the Court that is seized with the criminal proceedings in issue that is in a prime position to formulate the view that the completion of the proceedings before it is unreasonably delayed and that such delay could cause the substantial prejudice referred to in the subsection. Moreover, the factors that are to be considered by the Court in considering the question whether the delay is unreasonable, which are set out in subsection 2 of the section, are pre-eminently factors that can be properly be considered by the Court before which the actual trial is pending or proceeding. Subsection 3 deals with the reliefs or orders that may be issued by the Court upon finding that the completion of the proceedings is being unreasonably delayed in order to eliminate the delay and any prejudice arising from it or to prevent any further delays or prejudice. Such reliefs include;

- (a) refusing further postponement of the proceedings;
- (b) granting a postponement subject to any such conditions as the Court may determine;
- (c) Where the accused has not yet pleaded to the charge, that the case be struck off the roll and the prosecution not be resumed or instituted de novo without the written instruction of the Attorney-General;
- (d) where the accused has pleaded to the charge and the State or the defence, as the case may be, is unable to proceed with the case or refuses to do so, that the proceedings be continued or disposed of as if the case for the prosecution or the defence, as the case may be, has been closed.

In my view the nature of those reliefs is such that they can only be properly granted by the trial court that is seized with the trial, not a different court. The submission by Mr price that the section should be interpreted to mean that another court other than the court that is seized with the trial may do the investigation and grant the reliefs envisaged in the section simply because subsection

- (1) refers to a court, rather than the court before which criminal proceedings are pending, and the fact that sub section (3) entitles the court to issue any order that it deems fit in order to eliminate the delay and the resultant prejudice is, in my view, without substance. Such interpretation runs foul of the provisions of the section, read and viewed holistically. For instance it is unthinkable that another Court other than the Court that is hearing the main case can refuse a further postponement of the proceedings where an application for such postponement is brought by one of the parties as envisaged in subsection (3)(a) or to order that the proceedings be continued and be disposed of as if the case for the prosecution or the defence has been closed as envisaged in subsection (3)(d). It is manifest in my view that these are orders that can only be properly granted by the Court that is seized with the trial and not any other Court.

[8] Moreover, my reading of the section holistically is that the investigation envisaged in the section would be appropriately done by the Presiding Judicial Officer in a trial that is pending before it where one of the parties, be it the State or the defence, has brought an application for the matter not to proceed on a scheduled date, for whatever reason. If the Presiding Officer then formulates the view that the matter is being unduly delayed and that such delay is prejudicial, he or she should then invoke the provisions of the section and make one of the orders referred to in subsection (3). It is for that reason that Revelas J in *S vs Hewu and Others*[1] ordered that “the magistrate who is to preside in the matter is directed to hold an enquiry in terms of section 342A of the Act in the event that a further postponement of the matter is sought by the state”. It is noteworthy that the main trial in the present matter was set down to proceed on the date of commencement of this application.

None of the parties had given an indication of an application for its postponement, meaning that but for this application it would have proceeded. The only reason it had to be postponed was this application.

[9] On final argument Mr Price specifically stated that he had no further argument in support of prayer 1, despite having earlier undertaken to finally argue the relief after he had led oral evidence in support thereof. He conceded that no such oral evidence was led.

[10] For the above reasons I am of the view that the seeking of the relief in prayer 1 of this application before this Court is ill-founded and it cannot succeed.

(ii) The relief sought in prayer 2

[11] The relief sought in this prayer constitutes, in essence a renewed bail application based on new facts or changed circumstances. This is a perfectly permissible procedure where a bail applicant had been refused bail in an earlier application and he is of the view that there are new facts that have emerged since his last bail application that had failed. In this form of application the applicant has to convince the court that there are indeed new facts and that such new facts point in the direction that he should be granted bail. As the term “new facts” clearly denote, in the renewed application the applicant is not given carte blanche to regurgitate the facts that existed in the previous unsuccessful bail application possibly with the hope that the Presiding Officer in the renewed bail application may have a different view and grant bail.

[12] In *S v Petersen*[2] it was held (at [57]) that the purpose of adducing new facts is not to address problems encountered in the previous application or to fill gaps in the previously presented evidence. This means that a renewed bail application can only be brought on the basis of new facts that have since come into being and circumstances that might have changed since the last bail application was brought and refused. In *S v Vermaas*[3] Van Dijkhorst J stated the proper approach to a renewed bail application on new facts as follows (at 531E - F):

“Obviously an accused cannot be allowed to repeat the same application for bail based on the same facts week after week. It would be an abuse of the proceedings. Should there be nothing new to be said the application should not be repeated and the Court will not entertain it. But it is a non sequitur to argue on that basis that where there is some new matter the whole application is not open for reconsideration but only the new

facts.

I frankly cannot see how this could be done. Once the application is entertained the Court should consider all facts before it, new and old and on a totality come to a conclusion. It follows that I will not myopically concentrate on the new facts alleged”.

This means that in dealing with a renewed bail application on new facts it is necessary to compare the “new evidence or facts” with the evidence or facts presented in the earlier bail application. It is on the basis of the law expounded above that this application will be adjudged.

[13] A full record of the proceedings in the previous bail application that was brought by the applicant at the Port Elizabeth Magistrate’s Court has been placed before me. So has the Magistrate’s judgment dated 9 June 2017 refusing the applicant bail on the basis that he had failed to discharge the onus put on him by the provisions of section 60(11)(a) of the Criminal Procedure Act of adducing evidence which satisfies the Court that exceptional circumstances exist which in the interest of justice permit his release. Subsequent to the dismissal of the applicant’s

initial bail application by the Magistrate on 9 June 2017 the applicant noted an appeal against the judgment. Before the

appeal was heard the applicant launched a second bail application based on what he regarded as new facts on 30 August 2017. That application was again refused by the Magistrate on 9 September 2017 on the basis that the alleged new facts were, in fact, not new. The bail appeal against the Magistrate’s judgment refusing bail in the first bail application was heard in this Court by Goosen J who delivered judgment on 30 November 2017, dismissing it. On 26 February 2018 an application for special leave to appeal was made by the applicant to the Supreme Court of Appeal against the judgment of Goosen J. The application was refused by the Supreme Court of Appeal on 4 April 2018.

[14] At the commencement of these proceedings before oral evidence was led and after I had read the application papers I requested Mr Price to stipulate in point form the alleged new facts on which the present application is brought. He paraphrased the new facts that form the basis of this application as follows:

- (i) There is evidence that the applicant is not a flight risk and many of the issues that were raised in the previous application supporting the likelihood of him being a flight risk no longer exist;

- (ii) The case against the applicant is discernibly weak;
 - (iii) The progress of the case is unjustifiably delayed;
 - (iv) Evidence will be adduced to show that the applicant never played any role or ordered anyone to interfere with the State witnesses;
 - (v) One of the State Advocates, Advocate Cerfontein, who had initially formed part of the prosecution team, had withdrawn from the case citing “ethical reasons”, which suggests serious injustices in the prosecution of the case that may lead to it coming to an abrupt end.
- [15] Upon being pointed to the respondent’s heads of argument expatiating the respondent’s understanding of what was being contended to be new grounds by the applicant, namely:
- (a) That the applicant has successfully reviewed the decision of the Department of Home Affairs to declare him a prohibited immigrant and is currently awaiting another decision from the Department;
 - (b) That the applicant’s physical and health condition is affected by his continual incarceration;
 - (c) The risk of the applicant contracting the corona virus in prison is high;
 - (d) To date there are no complaints of intimidation from the State witnesses;
 - (e) The applicant has strong family, emotional and occupational ties to this country;
 - (f) The State case against the applicant is extremely weak.

Mr Price stated that indeed those are part of the new facts on which the present application is based.

- [16] In keeping with the legal principles enunciated above this Court will need to determine whether any of the alleged new facts are indeed new and, if so, their effect, considered in conjunction with the evidence led in the present and the previous bail application on the question as to whether or not they constitute the requisite exceptional circumstances that, in the interests of justice, entitle the applicant to be granted bail.
- [17] In determining those issues the Court has, of necessity, to take into account all the documentary and oral evidence presented in both applications.
- [18] Over and above the bulky application papers and annexures that were filed of record together with the parties’ respective heads of argument before oral evidence was led this Court has also heard two weeks’ worth of oral evidence adduced by the parties in support and opposition of the renewed bail application. Some of that evidence has no direct bearing on the issues for determination in this application but all of it has been carefully scrutinised in the determination of whether or not the applicant has discharged the onus that rests on him in terms of the provisions of section 60(11)(a).

[19] As indicated above the first ground touted on behalf of the applicant in support of his application is that he is not a flight risk. I will proceed to deal with each of the points raised as constituting new evidence and the material put before the Court in support thereof.

[20] As already pointed out above, it is contended that the applicant is not a flight risk and the issues raised in the previous bail application that characterised him as such no longer exist. The likelihood of the applicant being a flight risk who would evade his trial featured prominently in the previous bail application. In dealing with this aspect in paragraph 34 of her judgment the Magistrate expressed herself as follows:

“Based on the strength of the state case, the gravity of the offences as well as if convicted, the applicant faces very lengthy sentences,

coupled with his personal circumstances I have referred to above, I find that there is a likelihood that if he is released on bail he might attempt to flee and evade his trial”

[21] On appeal Goosen J in paragraph 31 of his judgment stated:

“In regard to the question as to whether the evidence establishes a likelihood that the appellant would evade trial, the magistrate took into account several relevant factors. She considered inter-alia whether the appellant has a fixed address; whether he owns assets; his ability to travel; and generally, his ties to the country. The evidence established that the appellant had recently rented a property in Durban. Although Plaatjies stated that he could not find this address, the magistrate nevertheless

accepted that that was where the appellant resides but noted that the appellant had only recently moved into the property and that he gave no additional information regarding his prior residence. The magistrate correctly found on the evidence that the appellant has no fixed assets in the country and that his only assets comprise the ownership of certain motor vehicles. No evidence relating to the nature of his interest in the company was presented by the appellant.”

[22] The documentation before me shows that some of the shortcomings referred to above have since been covered. The evidence of the applicant’s wife established that she and the applicant’s youngest son still reside at the address at No. 10 Loch Ness Lane, Royal Palms, Timley Manor, Durban and that the lease agreement for the property is signed by both she and the applicant. They had moved into the property 51 days before the applicant was arrested. The applicant’s wife also produced a document which reflected a number of residential premises that they had rented and resided on since their arrival in this country before taking residence at their present address. In the second bail application in the Magistrate’s Court documentation was produced which reflected the nature of the applicant’s interest in the company in which he holds a directorship. I may mention that this information was already known and available to the applicant at the time that he launched his first bail application. No tangible reason has been advanced as to why it was not produced at that stage. It will be recalled that a subsequent bail application on new facts cannot be used as a vehicle for closing gaps or shortcomings in the evidence presented in the previous bail application where the relevant material was already available and could

have been used at that stage.

- [23] Most of the factors referred to in paragraph 34 of Goosen J's judgment that militated against him being granted bail are, in my view, still fully applicable. If anything, the applicant's situation with regard to the likelihood of him being a flight risk has in fact worsened. In its papers the respondent has annexed a document dated 14 September 2020 declaring the applicant a prohibited immigrant in terms of section 29(2) of the Immigration Act of 2002 (Act 13 of 2002). This means that as things presently stand the status of the applicant in this country is that of a prohibited immigrant who is liable to be deported from the country in terms of the Act. That position will remain extant until it is challenged, reviewed and set aside either administratively or by a Court of competent jurisdiction. The applicant's wife testified that hers and her son's lawful sojourn in this country depends entirely on the lawfulness of the applicant's status of being legally entitled to remain in the country. This indicates that since, as things presently stand, the applicant is a prohibited immigrant in this country, such prohibition automatically extends to them. Just like the applicant they are liable to be deported from the country in consequence of the applicant's status. On the evidence on record the applicant's wife and son are his only family in this country and if they are deported the applicant would have no other family ties in the country. Mr Price has submitted that the applicant's present status as a prohibited immigrant is of no moment or relevance to the determination of this application. I disagree. To me it has a direct bearing on the increased likelihood of the applicant being a flight risk without any incentive, if granted bail, to remain in this country and stand his trial, especially given the nature of the sentences (Life Imprisonment) that may be imposed on him upon conviction. His wife and their 3 children are UK citizens. None of the children are enrolled in any educational institution in this country. The fact that there may be an extradition treaty between this country and the applicant's country of origin, Nigeria, is no guarantee that the applicant may not flee and not stand trial. He does not have to flee to Nigeria. After all his church has branches in a number of countries. In *S v Petersen* (supra) a full bench noted that the existence of extradition arrangements between South Africa and Namibia provided no guarantee that extradition would indeed take place if the appellant were to "relocate for purposes of evading her trial" (at [78]). In *S v Vermaas* 1996 (1) SACR 528 (T) 539f – g Van Dijkhorst J posed and answered the following question: 'Is extradition a deterrent? It may be more easy nowadays than it was in the past but it is not a watertight remedy and the chances are such that a desperate man would take them thinking that he may escape the net.'
- [24] In his original heads of argument Mr Price had submitted that "the fact that he (the applicant) is an illegal immigrant in the country is of little relevance in a bail application. Our Courts have, on a number of occasions

indicated that to suggest that a person cannot be admitted to bail because he is illegally in the country is in conflict with the

Constitution.” In support of this submission Mr Price referred the Court to the cases of *S v Branco* 2002 (1) SACR 531 (W) at 536; *S v Acheson* 1991 (2) SA 805 (Nm). Since I considered the status of the applicant in the country to have a crucial bearing on the outcome of this application I took time to peruse the authorities referred to herein. However, I was unable to find anything in those cases in support of the submission that the Court in those cases had stated that illegal immigrants in the country may be admitted to bail.

When I pointed this out to Mr Price he apologised for referring the Court to the wrong authorities but insisted that he had the correct authorities that established the principle and that he would furnish the Court with the correct case law before the case is finalised. He was unable to do so and he ended up conceding that in fact such authorities do not exist, in so far as he is aware. He ended up relying on the submission that the Constitution and the Act do not prohibit the release on bail of a prohibited immigrant. In passing I consider it timely to express my disquiet in legal representatives making bold submissions to the Court regarding a particular legal principle and claiming the existence of numerous case law in support thereof when in fact they are aware of none. I accept that this may have been a genuine error on the part of Mr Price but it calls for caution going forward. Courts should be able to accept Counsel’s word about the existence of case law in support of a legal submission without question or compunction, especially where specific cases allegedly in support thereof have been cited in argument.

[25] The applicant has also contended that the case against him is discernibly weak and its progress is unjustifiably delayed. On the evidence before me I am not satisfied that these contentions have been established. I have been informed that only two of the State witnesses have testified to a finish at this stage and that the third one still has to be cross examined. I was further informed that there is still a large number of State witnesses that are still to testify. In my view regardless of how the two State witnesses that have testified to a finish may be viewed to have fared I am not convinced that the strength or otherwise of the State case can be pronounced upon at this stage. As for the alleged delay in the progress of the case, I do not have enough material on record to persuade me that the delay is unjustifiable, especially given the ravages wreaked by the corona virus pandemic in the progress of court cases.

[26] On the aspect of interference with or threats to the State witnesses I accept that there is no evidence that the applicant intimidated or ordered anyone else to intimidate State witnesses. However, it cannot be ignored that since the last bail application State witnesses had been intimidated as the investigating officer, Warrant Officer Plaatjies, testified before this Court and produced documentary proof by way of SMS messages that reflect such threats intimidating State witnesses against testifying against the applicant. Indeed the uncontested evidence is that a family member of one of those witnesses was even shot and injured and some witnesses had to go into hiding and enter the witness protection program. I am of the view that if such events could occur and State witnesses could be terrified of testifying against the applicant even when the applicant is in custody, such fear on their part would justifiably increase many fold if the applicant were to be granted bail. That would be a direct

affront to the interests of justice in my view.

- [27] The conjecture that Advocate Cerfontein's withdrawal as one of the State Counsel in the main case could be suggestive of serious injustices that may taint the whole proceedings in the main case turned out to be a damp squib. Advocate Cerfontein was called by the applicant and she testified. Her testimony did not support the speculation and conjecture that was touted to justify her being called as a witness and Mr Price was constrained to concede likewise.
- [28] The aspect of the applicant's physical and health condition and the risk of contracting corona virus in prison is based on letters (not affidavits), from one Doctor Olaifa A.O who describes himself as a specialist family physician and one Ian Meyer, a clinical psychologist. The gist of Dr Olaifa's letter is that the applicant has been his patient since May 2017 after his arrest and detention at Port Elizabeth Correctional Facility. He states that the applicant was diagnosed as hypertensive and suffering from recurrent insomnia and occasional constipation. He describes the applicant's condition as relatively stable in the last three years. He states that save for the hypertension when he visited him on 22 December 2018 at St Albans Correctional Facility he found the rest of his systemic observation to be normal. On 9 August 2020 he consulted with him telephonically and he found his mood and spirit to be low and he complained of poor social distances practices within the Correctional Facility. He finally opines that given his co-morbidity of hypertension the applicant's risk of contracting covid 19 infection in prison is high.
- [29] In his own letter Mr Ian Meyer states that he did a psychological assessment of the applicant in preparation of the present bail application to establish whether there was new information that warranted consideration to grant the applicant bail. He consulted with the applicant in prison and established that the applicant had elected to be placed in a single cell owing to his fear for his safety. The applicant had explained to him the hardships experienced in prison especially with regard to ablution facilities and poor diet. Mr Meyer opines that due to the applicant's age of 62 years and his hypertension co-morbidity he has increased risk of contracting Covid 19.
- [30] In my view nothing much revolves on these letters with regard to the point under consideration, namely the exceptional circumstances that militate in favour of the applicant, in the interests of justice, being granted bail. What is stated in the letters is a general condition that is experienced by many other prisoners and even other members of the public outside prison. It is a well-known fact that a person with a co-morbidity is at a greater risk of contracting the Covid 19 virus, whether or not he is in custody. In my view the two letters are not of much assistance to the applicant in his quest for bail through the establishment of the requisite exceptional circumstances. The applicant is in a single cell and the uncontested evidence of a Correctional Services Officer on record is that the St Albans Correctional Centre where the applicant is detained has a strict effective regimen in combating Covid 19 infections. The fact that to date the applicant has not been infected with the virus, which has infected and killed many people both in and out of prisons, lends some

credence to the assurance.

[31] The oral evidence that was adduced on behalf of the applicant regarding the circumstances around and the manner of his arrest bear no direct relevance, in my view with regard to the existence or otherwise of the exceptional circumstances that militate in favour of the applicant being granted bail. The legality or otherwise of the manner of the applicant's arrest is not an issue for determination in this application. The gist of such evidence was that before coming to Port Elizabeth to consult with the Hawks at their invitation the applicant's attorneys had been assured that he would only be interviewed but not arrested. It was with that reassurance that the applicant took a flight from Durban to Port Elizabeth for purposes of such interview. In my view his manner of arrest would be of more significance to the present application if the contention was that even before he left Durban and presented himself to the Hawks in Port Elizabeth the applicant knew, and his legal representative had been told that he would be arrested upon his arrival in Port Elizabeth yet, with that knowledge, he still presented himself to the Hawks for arrest in Port Elizabeth. That would have a significant bearing on his flight risk status since it could be justifiably argued that if he had presented himself to the Hawks knowing that he would be arrested that would be an indication of a likelihood that he would stand his trial to a finish. That is not the situation in this case hence, in my view, the manner and circumstances surrounding his arrest is not of much significance in the present enquiry. Similarly, the events

surrounding the attempt by the Hawks to get in contact with the applicant in his Bloemfontein crusade and the events that occurred

there do not, in my view, have a direct bearing on the relevant enquiry.

[32] As indicated above, since the applicant is undergoing trial for offences listed in Schedule 6, he bears the onus imposed upon him by section 60(11)(a) to show, upon being given a reasonable opportunity so to do, the existence of exceptional

circumstances which, in the interests of justice, permit his release on bail. Short of him discharging that onus the Court is obligated to order him to be detained in custody until he is dealt with in accordance with the law. The applicant was given such reasonable opportunity in this case.

[33] It was held in *S v Dlamini*, *S v Dladla*, *S v Joubert*, *S v Schietekat*[4] that under section 60(11)(a) the law giver makes it quite plain that a formal onus rests on a detainee to satisfy the Court about the existence of the requisite exceptional circumstances that, in the interests of justice, permit his release on bail. In *S v H*[5] it was held that exceptional circumstances must be circumstances which are not found in the ordinary bail application, but pertain

peculiarly to an accused person's specific application. The Court should then examine all the relevant considerations in totality in deciding whether an accused person like the applicant herein has established something out of the ordinary or unusual,

which entitles him relief under the subsection. In *S v Petersen* (supra) it was held that exceptional circumstances are generally those that are unusual, extraordinary, remarkable, peculiar or simply

different. In his final heads of argument and in his argument Mr Price submitted that “the State can produce nothing required in an examination of facts and factors on whether or not bail should be granted anywhere in the Bail Act and have therefore failed in putting evidence before this Court why the applicant should not be allowed bail.” He also submitted that “the state has failed miserably to present any evidence . . . that can possibly lead to this Honourable Court not releasing applicant on bail.” This approach is clearly wrong. The onus is not on the State to convince the Court not to grant bail but on the applicant to adduce evidence indicating the presence of exceptional

circumstances that should persuade the Court to grant bail.

[34] Having carefully considered all the evidence before me both written and oral, I am not persuaded that the applicant has succeeded in discharging the onus of showing the existence of the requisite exceptional circumstances that, in the interests of justice, warrants him being granted bail in the circumstances of this case. The conspectus of all the relevant facts adduced in evidence both by the applicant and the respondent, in particular the applicant’s prohibited immigrant status, when viewed together with the other relevant factors referred to in the Act, leads me to the ineluctable conclusion that the applicant has, once again, failed to discharge the requisite onus. That being the case I am left with no other option but to refuse his bail application and, in keeping with the provisions of section 60(11) (a) of the CPA to order that the applicant be detained in custody until he is dealt with in accordance with the law and his pending case is finalised.

[35] In the result, the application fails and it is dismissed.

P ZILWA

JUDGE OF THE HIGH COURT

BHISHO

Counsel for the Applicant: Adv. T N Price SC and Adv. P Daubermann

Instructed by:

Peter Daubermann Attorneys

Oasim South

Pearson Street

PORT ELIZABETH

Counsel for the Respondent: Adv. N Ntelwa, Adv. Z Mdolomba, and

Adv. V Jodwana-Blayi

Instructed by:

Office of the Director of Public Prosecutions

Date Heard:

06, 07, 08, 09 October 2020

12, 13, 14, 15, 16 October 2020

19, 20, 22, October 2020

Judgment

Delivered:

04 November 2020

[1] 2017(2) SACR 67 at 76 para [27].

[2] 2008

(2) SACR 355 (C).

[3] 1996

(1) SACR 528 (T)

[4] 1999

(2) SACR 51 (CC)

[5] 1991

(1) SACR 72 (W).

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAECPEHC/2020/43.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/omotoso-v-s-unknown-topic-aecpehc-2020--6a3ea51d3b1caa9129813a41>

Prepared on 12 October 2026 · Esheria