

SOUTH AFRICA / JUDGMENT

Tucker v S (A437/2017) [2018]

ZAWCHC 8 (15 January 2018)

[2018] ZAWCHC 8

COURT

Western Cape High Court, Cape Town

BEFORE

Binns-Ward

CASE / FILE NUMBER

A437/2017

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IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

CASE NUMBER: A437/2017

DATE: 15 JANUARY 2018

In the matter between:

LEE NIGEL TUCKER Appellant

And

THE STATE Respondent

J U D G M E N T

BINNS-WARD, J:

In this matter I heard argument in an appeal by the appellant against the refusal by the magistrate who issued a committal order in respect of the appellant's surrender for extradition to the United Kingdom if the Minister considers fit to allow him bail.

The appellant has noted an appeal in terms of section 13 of the Extradition Act 67 of 1962. The magistrate was empowered, in terms of section 13(3) of the Extradition Act, to entertain an application for bail by the person concerned pending the

determination

of such appeal. The magistrate refused the appellant's application for bail, and it was from that refusal order that the appeal served before me sitting during recess as a single Judge.

It was apparent during the argument of the matter that both Mr Burke, representing the Director of Public Prosecutions, Western Cape, and Mr van der Berg, who appeared for the appellant, were proceeding on the basis that the appeal was regulated by Magistrate's Court Rule 67 which regulates appeals in criminal matters. However, as I pointed out to them during argument, and having considered the matter further, subsequently confirmed in my own mind, appeal proceedings in terms of the Extradition Act, whether they be the section 13(1) appeal itself or an appeal from an order made by the magistrate in respect of bail in terms of section 13(3) of the Act, are primarily of a civil rather than a criminal nature. Municipal Courts in extradition proceedings are not concerned with the guilt or innocence of the party whose extradition has been requested, and at no stage fall to be seized of the trial of the allegations giving rise to the alleged offences in respect of which the person's surrender is sought.

The position is therefore distinguishable from, and not governed by the provisions of section 65(1)(b) of the Criminal Procedure Act 51 of 1977, which, exceptionally, afford a judge of the High Court, sitting alone, jurisdiction to entertain and determine appeals against the refusal of bail by a magistrate.

The position in my view is instead governed by the provisions of Section 14(3) of the Superior Courts Act 10 of 2013 which provide insofar as relevant:

"Except where it is in terms of any law required or permitted to be otherwise constituted, a court of a Division must be constituted before two Judges for the hearing of any civil or criminal appeal."

For those reasons, regrettably - having regard to the amount of effort already put into this matter, I have concluded that I did not have jurisdiction, sitting as a single judge, to hear or decide the matter; and that any order I might purport to give would on that account be a nullity.

IN THE CIRCUMSTANCES THE APPEAL WILL HAVE TO BE POSTPONED FOR ARRANGEMENTS TO BE MADE FOR ITS RE-ENLISTMENT FOR HEARING BY TWO JUDGES.

(The appellant's counsel is granted leave to mention to the allocating Judge my previous involvement in the matter and the fact that I have already prepared a judgment in draft ready for delivery this morning.)

BINNS-WARD, J

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Prepared on 12 October 2026 · Esheria