

**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE – PORT ELIZABETH)**

Case No.: CC48/2006
Date heard: 02 June 2011
Date delivered: 02 June 2011

In the matter between:

SIMON PETER MUGRIDGE

Applicant

and

THE STATE

Respondent

B A I L A P P E A L J U D G M E N T

DAMBUZA, J:

1]The applicant in this bail application was convicted in 2007 of rape, indecent assault, *crimen injuria*, Contravention of the Film and Publications Act 65 of 1996 and possession of drugs. He was sentenced to an effective term of 15 years imprisonment. I granted him leave to appeal to the Supreme Court of Appeal against the convictions and sentence. He now applies for bail pending his appeal.

2]It turns out as, appears from the affidavit filed by the applicant in support of his bail application that the record of proceedings in the trial Court went missing about a year and a half to two years ago, after it had been forwarded to the Registrar of the Supreme Court of Appeal.

3]There is no indication on the papers before me that the application was served on the Registrar of the Supreme Court of Appeal and there is no written indication from that office as to what the explanation is regarding the missing record.

4] But it is common cause that a new record has to be prepared and that the costs thereof is about R32,000.00. *Mr Le Roux* who appears on behalf of the respondent confirms these facts from the bar. Neither the Registrar of this Court nor the Registrar of the Supreme Court of Appeal assumes responsibility for this cost. And the Office of the Legal Aid which represents the applicant, I am advised, is unable to bear this cost. With the result that the appeal process has, seemingly reached a dead-end.

5]Meanwhile the applicant remains incarcerated at the St Albans Prison, serving the sentence in respect of which he was granted leave to appeal.

6]This is an extraordinary situation which, in my view, on its own constitutes an exceptional circumstance within the meaning of Section 60(11) of the Criminal Procedure Act, Act 51 of 1977. I am mindful of the fact that the existence of reasonable prospects of succeeding on appeal does not, of itself constitute an exceptional circumstance. But that factor, in this case together, with the lost record of the proceedings in the criminal trial, through no fault of the applicant, and the fact that no one is willing to assume responsibility therefore, and the resultant undue delay of the appeal process, cumulatively

do constitute exceptional circumstances. Consequently the peculiarity in the circumstances, individually constitute exceptional circumstances and/or, viewed with other factors, cumulatively constitute such exceptional circumstances. I am alive to the fact that the applicant is serving a long sentence. On the other hand, it would appear that there is no increased risk of abscondment. The applicant states in the affidavit that his passport has expired. There is also evidence that he will be constructively occupied with church related activities whilst he is out on bail. In the end I am persuaded that the interests of justice permit that the applicant be admitted to bail.

7]Further, because of the main persuasive factor for the granting of bail, I consider it necessary that the record of these proceedings (i.e. the bail application) and my order in respect thereof be brought to the attention of the President of the Supreme Court of Appeal urgently so that the deadlock may be resolved and the appeal finalised. There is no indication, on the record as to whether he is aware of the problems that beset the appeal.

8]Consequently the following order shall issue:

[8.1] Bail is granted in the amount of R10,000.00; such bail shall be subject to the conditions set out in Annexure "A" hereto.

[8.2] The Registrar of this Court is ordered to forward a copy of the record of these proceedings (including this judgment) to the President of the Supreme Court of Appeal, Bloemfontein within

seven days hereof.

N. DAMBUZA
JUDGE OF THE HIGH COURT

Appearances:

For the applicant:	Adv A. Hattingh instructed by Roelofse & Roelofse Inc. of Port Elizabeth.
For the respondent:	Adv M. Le Roux on behalf of the Director of Public Prosecutions, Port Elizabeth

ANNEXURE “A”**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE DIVISION – PORT ELIZABETH****CASE NO.: CC48/06**

In the matter between:

SIMON PETER MUGRIDGE

Applicant

versus

THE STATERespondent

BAIL CONDITIONS

1. That the Applicant will not leave the Magisterial district of Port Elizabeth without leave of Captain Shanagan of the Family Violence, Child Protection and Sexual Offences Unit of the South African Police (FCS).
2. That the Applicant report on Mondays, Wednesdays and Fridays between 08:00 and 15:00 to Captain Shanagan, in his absence Mrs Yolande Ferreira, of the FCS at 22 Old Grahamstown Road, Chamber House, 2nd Floor, Room 231, North End, Port Elizabeth.

3. That the Applicant shall not apply for a passport or any travel documents.

4. That the Applicant shall take up residence and employment at the premises of the Wells of Life Churches International, No. 6 St. Andrews Street, Yathar House, Central, Port Elizabeth

and

Should the need arise to change his residence or place of employment, the Applicant shall report it to the said Captain Shanagan prior to such change.

5. That the Applicant shall report to the Registrar, High Court, Port Elizabeth within 3 Court days from being served with a notice to serve any sentence as determined by the Supreme Court of Appeal, on finalization of the appeal.