

IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE PROVINCIAL DIVISION

Case No.: A102/2022

Reportable: YES/NO

Of interest to other Judges: YES/NO

Circulate to Magistrates: YES/NO

In the matter between:

TEBOGO MAHLEKE RADIETA

Appellant

and

THE STATE

Respondent

Coram: Opperman, J

Date of hearing: 21 October 2022

Judgment: 24 October 2022. The reasons for judgment were handed down electronically by circulation to the parties' legal representatives by email and release to SAFLII on 24 October 2022. The date and time for hand-down is deemed to be 24 October 2022 at 15h00.

Summary: Appeal – Bail

JUDGMENT

[1] This is an appeal in terms of section 65 of the Criminal Procedure Act 51 of 1977 of a so-called Schedule-6 bail application that stems from the Magistrate's Court.

[2] In terms of section 60(11)(a) of the Criminal Procedure Act 51 of 1977 it was legislated that notwithstanding any provision of this Act, where an accused is charged with an offence referred to in Schedule 6, the court shall order that the accused be detained in custody until he or she is dealt with in accordance with the law, unless the accused, having been given a reasonable opportunity to do so, adduces evidence which satisfies the court that exceptional circumstances exist which in the interests of justice permit his or her release.

[3] The appellant stands accused of robbery with aggravating circumstances read with section 1 of the Criminal Procedure Act 51 of 1977¹ and section 51(2) of the Criminal Law Amendment Act 105 of 1997. The aggravating circumstances involve the use of a firearm during the perpetration of the robbery. The minimum sentence applicable for a first offender is 15 years imprisonment and further offenders 20- and 25-years imprisonment.

[4] Section 60(11B)(a) is clear that in bail proceedings the accused, or his or her legal adviser, *is compelled to inform the court whether:*

- (i) the accused has previously been convicted of any offence; and*
- (ii) there are any charges pending against him or her and whether he or she has been released on bail in respect of those charges.*

¹ All references will be in terms of the Criminal Procedure Act 51 of 1977 except if otherwise indicated.

(b) Where the legal adviser of an accused on behalf of the accused submits the information contemplated in paragraph (a), whether in writing or orally, the accused shall be required by the court to declare whether he or she confirms such information or not.

(c) ...

(d) An accused who wilfully—

(i) fails or refuses to comply with the provisions of paragraph (a); or

(ii) furnishes the court with false information required in terms of paragraph (a), shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.

[5] Section 65 regulates the appeal to superior courts with regard to bail. Section 65(1)(a) states that an accused who considers himself aggrieved by the refusal by a lower court to admit him to bail or by the imposition by such court of a condition of bail, including a condition relating to the amount of bail money and including an amendment or supplementation of a condition of bail, may appeal against such refusal or the imposition of such condition to the superior court having jurisdiction or to any judge of that court if the court is not then sitting.

[6] Section 65(4) provides the test for the court sitting on appeal to apply:

The court or judge hearing the appeal shall not set aside the decision against which the appeal is brought, unless such court or judge is satisfied that the decision was wrong, in which event the court or judge shall give the decision which in its or his opinion the lower court should have given.

[7] The evidence of the investigating officer shows that Mr. Radieta, the appellant, is accused three in the case of four accused. On 4 February 2022 they entered Pep

Stores in Koppies; Free State and armed with firearms. They, with force, took money and cell phones from the people in the store.

[8] They fled in a vehicle at high speed and turned onto a gravel road but lost control over the vehicle and the vehicle, as the investigating officer testified: “rolled”. Some farmers arrived on the scene of the accident by chance and found the three accused. The appellant was inside the vehicle. Loose bank notes were strewn in the vehicle. The farmers secured the scene and called the police. The accused were arrested and the money in the vehicle amounted to R32 360-00. This to be the money that was robbed at Pep Stores in Koppies. There was also an unlicensed firearm confiscated in the vehicle.

[9] The appellant was at this stage released on bail pending the trial on a robbery in Ermelo. He had to attend the case on 11 February 2022.

[10] The appellant also has previous convictions. In 2003 he was convicted of robbery and murder and sentenced to 17 years imprisonment and life imprisonment respectively.

[11] *The appellant did not disclose this in his statement to the court.* He also during cross examination held that he was only sentenced to 13 years imprisonment: “...the robbery was set aside and the murder sentence changed to 13 years imprisonment.” This in stark contrast to the SAP 69 document from which the investigating officer obtained the previous convictions of the accused. The evidence of the investigating officer stands beyond any doubt. The evidence of the appellant is a mere affidavit that stands untested.

[12] In the meanwhile, the case in Ermelo was withdrawn but the reasons were unknown to everybody. The fact remains that the accused was involved in the crime in this case when the robbery case against him was pending in Ermelo. He did not then know that the case would be later withdrawn. He brought an application on this new fact for release; the withdrawal of the Ermelo case. The application was again refused.

[13] As said; the appellant did not testify but handed in an affidavit in support of his application. He maintains that he is innocent of the crime. He is self-employed as a mechanic and earns a salary of R10 000.00 per month. He possesses immovable property to the amount of R700 000.00. He is single with two children of 10 and 5 years old. He can afford R2000.00 bail.

[14] On page 19 of the record he stated unequivocally that: "I have no previous convictions and no pending cases".

[15] The appellant is a man that blatantly lied in the face of the court by stating that he does not have previous convictions. It is a criminal offence and he is now facing another charge in addition to the one of the robbery. His previous convictions are serious. He was sentenced to life imprisonment for murder and 17 years imprisonment for robbery.

[16] It can never be the law of this country that a man with the history and character of Mr. Radieta, that was caught with the stolen loot and an unlicensed firearm shortly after the robbery, may be released into the community pending his trial. He is a danger to society and it will be a travesty of justice if a court should release him. The sentence he faces will be at minimum 20 years imprisonment. He is a real flight risk.

[17] The decision of the court *a quo* was not wrong.

ORDER

[18] The appeal is dismissed.

M OPPERMAN, J

APPEARANCES

For the appellant

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