



IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	YES / NO
Of Interest to other Judges:	YES / NO
Circulate to Magistrates:	YES / NO

Case No: A81/2019

In the matter between:

ZOLA JAMES SINGAPHI

Appellant

and

THE STATE

Respondent

CORAM: MOROBANE, AJ

JUDGMENT: MOROBANE, AJ

HEARD ON: 10 JUNE 2019

DELIVERED ON: 11 JUNE 2019

- [1] This is an appeal against the decision of the Magistrate in the Wepener district Court in which the appellant's bail application was dismissed. The brief facts are that the deceased was stopped by the appellant on the side of the road and was asked for his driver's licence. At that stage a Toyota vehicle with four armed occupants approached and stopped at the scene. After

alighting from the vehicle, they disarmed the appellant of his firearm, kidnapped the deceased and fled the scene. The deceased was later found dead. The appellant was arrested and arraigned on charges of conspiracy to commit murder, murder and kidnapping.

[2] During the bail proceedings, the state opposed the application on the possibility that the appellant might be killed as a result of his confession and the thought that the appellant might interfere with the witnesses

[3] In support of his application, the appellant relied on the following grounds in terms of his notice of appeal:

1.1 The learned magistrate erred in finding that the appellant failed to prove that there are exceptional circumstances why release on bail should be granted.

1.2 The learned magistrate erred in placing undue emphasis on the fact that the court should, in providing bail to law enforcement officers, be careful not to lose the trust of the community; and

1.3 The learned magistrate erred in his finding that the state has a strong case against the appellant.

[4] In terms of 60(11) (a) of the Criminal Procedure Act 51 of 1977 ("the CPA") read with Schedule 6, the appellant is required to prove on a balance of probabilities that exceptional circumstances exist which, in the interest of justice, permit his release. In **S v Dlamini 1999 (2) SACR 51 (CC)** paras 64-65, Kriegler J stated:

[64] Section 60(11) (a) contemplates an exercise in which the balance between the liberty interests of the accused and the interest of society in denying the accused bail, will be resolved in favour of the denial of bail, unless “exceptional circumstances” are shown by the accused to exist.

[65] A bail application under s 60(11) (a) is more gravely invasive of the accused person’s liberty right than that under s 60(11) (b). To the extent, therefore, that the test for bail established by s 60(11) (a) is more rigorous than that contemplated by s 35(1) (f) of the Constitution, it limits the constitutional right.’

- [5] The appellant pleaded with the court to accept his reasons as exceptional circumstances that permits his release on bail. These are that he is employed as a traffic officer and does not want to lose his job; that his wife is on strong medication and she cannot look after their sickly daughter alone; and that he would not abscond. In ***S v Botha en 'n Ander 2002 (1) SACR 222 (SCA)*** para 20, the court concluded as follows:

‘Ingevolge beide art 60(11) (a) and (b) is daar ’n formele bewyslas op ’n beskuldigde wat om borgtog aansoek doen “om getuienis aan te bied wat die hof oortuig”. ... Artikel 60(11) (a) bevat twee afsonderlike vereistes waarvan die beskuldigde die hof op ’n balans van waarskynlikhede moet oortuig: eerstensdat daar buitengewone onstandighede bestaan wat sy of haar vrylating toelaat en, tweedens, dat sodanige buitengewone onstandighede die vrylating in die belang van geregtigheid veroorloof...’

- [6] The magistrate found that the reasons advanced by the appellant are not exceptional on the basis of evidence given during the proceedings. Therefore, the appellant failed to discharge the onus which rested on him.

[7] In conclusion, section 65(4) of the CPA provides that a bail appeal should fail unless the court of appeal is satisfied that the decision of the lower court was wrong. In this instance, I cannot find in any way that the magistrate was wrong. It follows therefore that the appeal cannot succeed.

[8] I make the following order:

1. The application for condonation for the late filing of the appellant's notice of appeal is granted.
2. The appeal is dismissed.

V.M. MOROBANE, AJ

On behalf of the appellant: Adv J Nel SC
Instructed by:
Giorgi & Gerber Inc.
BLOEMFONTEIN

On behalf of the respondent: Adv Pienaar
Instructed by:
Director of Public Prosecutions
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