

**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, BHISHO)**

APPEAL NO. C.A&R 16/2018

Reportable	No
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In the matter between:

MANEZI NQAYI

Appellant

And

THE STATE

Respondent

BAIL APPEAL JUDGMENT

BESHE ADJP:

[1] This is an appeal against the refusal to admit the appellant to bail pending his appeal against both conviction and sentence in the Zwelitsha Magistrate's Court. The learned Magistrate granted appellant leave to appeal his conviction and sentence.

[2] The appellant pleaded not guilty to a charge of assault with intent to do grievous bodily harm. It was alleged that he hit the complainant with a glass on

the eye. He was however convicted as charged after the trial and sentenced to undergo 36 months imprisonment.

[3] Evidence at the trial revealed that: The incident occurred at a drinking place Sly bar. Complainant and appellant had been drinking and joking with others. When the bar was about to close appellant struck complainant with a glass on his eye for a reason that was not apparent to the complainant. The incident was witnessed by one of complainant's friends who testified in court. The injury resulted in complainant losing his eye. Appellant's defence was that as he was preparing to leave the bar complainant approached him and objected to him taking liquor with him whilst they were still sitting there. Appellant told him it was his liquor he could do as he pleased with it. Complainant tried to grab the liquor away from him. At the time he was carrying a bottle of wine and a glass with some wine inside. He reported complainant's behaviour to the owner of the bar. When he tried to leave the bar again complainant followed him and hurled insults at him. He decided to throw the wine at him but it so happened that complainant was moving his face towards him and got struck by the glass in the process. The Magistrate rejected appellant's version and found that he hit the complainant with the glass on his eye for no reason. She then convicted the appellant of offence charged.

[4] Appellant sought leave to appeal. The prosecutor submitted that the application had no basis or merit but in the same breath did not oppose the application for leave to appeal.

[5] The Magistrate “noted” the appeal on the basis that appellant had a constitutional right to lodge an appeal.

[6] Appellant’s attorney moved an application for bail pending appeal and submitted as follows: *“He is not a flight risks, he has a permanent place of residence and is permanent (sic) employed, he is traceable, he can if the court wishes so sign at the nearest police station twice or trice a week – the nearest police station will be Bhisho.”* The State did not oppose the application. The application was dismissed by the Magistrate without providing any reasons – save to state that she is not bound by the attitude of the State. This is not acceptable as a judicial officer has a duty to give reasons for his decision. As was stated in *Mokele* 2012 (1) SACR 431 SCA [12] a decision the Court was also referred to in the appellant’s Heads of Argument. *“I find it necessary to emphasise the importance of judicial officers giving reasons for their decisions. This is important and critical in engendering and maintaining the confidence of the public in the judicial*

system. People need to know that courts do not act arbitrarily, but base their decision on rational grounds. Of even greater significance is that it is only fair to every accused person to know the reasons why a court has taken a particular decision, particularly where such a decision has adverse consequences for such an accused person. The giving of reasons becomes even more critical, if not obligatory, where one judicial officer interferes with an order or ruling made by another judicial officer. To my mind this underpins the important principle of fairness to the parties. I find it unjudicial for a judicial officer to interfere with an order made by another court, particularly where such an order is based on the exercise of a discretion, without giving any reasons therefor." Appeals to this Court with regard to bail are governed by section 65 of the CPA. Sub-section 4 provides that: *"The Court or Judge hearing the appeal shall not set aside the decision against 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 opinion the lower Court should have given."* The Magistrate's decision was wrong in that she does not seem to have applied her mind to the application. Her decision seems to be arbitrary, if not random. She is correct that she is not bound by the attitude of the State. She should have gone further and considered the merits of the application for bail pending appeal.

[8] Ordinarily, once a Court has found that the appeal does have prospects of success, it leans in favour of granting bail pending appeal. Unfortunately in this matter the Magistrate did not make such a finding – namely that there are reasonable prospects of success on appeal be it on the conviction or sentence which is the proper test for granting leave to appeal. Be that as it may, after conviction, the Court must take into account that the risk of absconding is increased when a person such as the appellant in this matter is facing time in jail (36 months). No such risk / likelihood has been shown to exist. Granted that the appellant does not have any immovable property and is not married. Even if there might be a slim chance, if any, of the conviction being set aside, the prospect of the sentence being altered / interfered with cannot be discounted. Accordingly the appeal against the refusal of bail pending an appeal succeeds.

The appellant is granted bail in the amount of R2000,00 (Two Thousand Rand) with the following conditions attaching to his release that:

He hands himself over to appropriate prison authorities within a period of 7 days after the receipt of the notification of the dismissal of his appeal against conviction or sentence or both or within 7 days after having abandoned the appeal.

The appellant is to report every Monday, Wednesday and Friday at the Bhisho Police Station between 07H00 and 17H00 immediately after having paid bail.



N G BESHE

ACTING DEPUTY JUDGE PRESIDENT

BHISHO

Counsel for the Appellant:

Adv. Jikwana

Instructed by:

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KING WILLIAMS TOWN

For the Respondent:

Adv. Monis

Instructed by:

Director of Public Prosecutions
BHISHO

Date Heard:

01 June 2018

Judgment Delivered:

01 June 2018