



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN**

CASE NO: 10802/2024

In the matter between:

VINOLAN PILLAY

Appellant

and

THE STATE

Respondent

ORDER

On appeal from: the Durban Magistrates' Court (sitting as court of court instance):

The appeal is dismissed.

JUDGMENT

Veerasamy AJ

[1] This is a bail appeal against the final protection order granted by the Durban Magistrates' Court in terms of s 60(12)(b) of the Criminal Procedure Act¹ ('the CPA').

[2] The appellant was charged with the contravention of a protection order. The offence fell under the umbrella of schedule 5 of the CPA and thus the onus was on the

¹ Criminal Procedure Act 51 of 1977.

appellant to adduce evidence as to why it was in the interests of justice that he should be afforded bail.

[3] The State did not oppose the granting of bail.

[4] The magistrate granted bail with the conditions of R500 bail money payable and that the appellant was not to contact the complainant in any manner.

[5] In addition to the above conditions, the magistrate granted a final protection order in terms of s 60(12)(b) of the CPA. It is only the granting of the final protection order which is the subject of this appeal.

[6] The appellant's grounds of appeal are inter alia as follows:

- (a) that the magistrate erred in conducting an enquiry in terms of s 60(12)(b) of the CPA;
- (b) that the magistrate was mistaken in her interpretation of s 60(12)(b) of the CPA;
- (c) that the magistrate erred in not having consideration to the fact that an interim protection order had already been issued against the appellant in terms of the Domestic Violence Act² (the DVA) at the time that the bail had been granted; and
- (d) that the magistrate had no jurisdiction to grant a final protection order as a condition of bail as contemplated by s 60(12)(b) of the CPA.

[7] For this appeal to be considered, the first issue to be determined is whether a protection order granted in terms of s 60(12)(b) of the CPA is a condition of bail.

[8] Section 60(12)(b) of the CPA reads as follows:

'If the court is satisfied that the interests of justice permit the release of an accused on bail as provided for in subsection (1), in respect of an offence that was allegedly committed by the accused against any person in a domestic relationship, as defined in section 1 of the Domestic Violence Act, 1998, with the accused, and a protection order as contemplated in that Act has not been issued against the accused, the court must, after holding an enquiry, issue a

² Domestic Violence Act 116 of 1998.

protection order referred to in section 6 of that Act against the accused, where after the provisions of that Act shall apply.'

[9] Broken down into its component parts, s 60(12)(b) provides that:

- (a) once a court determines that it is in the interests of justice that the accused be released on bail, and
- (b) if the offence is one which was allegedly committed by the accused against any person in a domestic relationship, as defined in terms of s 1 of the DVA; and
- (c) if a protection order as contemplated by the DVA has not been already issued; then
- (d) the court must, after holding an enquiry "issue a protection order referred to in section 6 of that Act against the accused, where after the provisions of that Act shall apply."

[10] 'A general principle of statutory interpretation is that the words used in a statute should be understood in their normal grammatical sense unless this would lead to an absurd result.'³ In *Cool Ideas 1186 CC v Hubbard and Another*,⁴ the Constitutional Court provided three general principles to this rule, being:

- '(a) that statutory provisions should always be interpreted purposively;
- (b) the relevant statutory provision must be properly contextualised; and
- (c) all statutes must be construed consistently within the Constitution...'⁵ (Footnotes omitted.)

[11] Section 60(12)(b) of the CPA confers a power upon a court hearing an application for bail to equally "hold an enquiry, issue a protection order referred to in s 6 of that Act against the accused, whereafter the provisions of that Act shall apply." The purpose of the section is clearly to protect the victims of domestic violence, in circumstance where the criminal charge is related to domestic violence.

³ *Tshwane Metropolitan Municipality v Vresthena (Pty) Ltd and Others* 2023 (6) SA 434 (SCA) para 20.

⁴ *Cool Ideas 1186 CC v Hubbard and Another* 2014 (4) SA 474 (CC).

⁵ *Ibid* para 28.

[12] Section 60(12)(b) directs the court intending to grant bail in circumstances of alleged domestic violence to issue an order in terms of s 6 of the DVA. Once such an order has been granted, the section further provides that such order must be dealt with in terms of the further provisions of the DVA.

[13] It is clear from the wording of s 60(12) of the CPA that two orders are contemplated, the first being the granting of bail subject to conditions⁶ and the second being a protection order in terms of the DVA.⁷

[14] The protection order is not a condition of the order granting bail. The section would not direct the granting of a distinct and separate order as is contemplated in s60(12)(b) if in fact the matters to be canvassed under a protection order could be dealt with as conditions of bail in the order granting bail.

[15] This then raises the question as to whether the protection order is appealable under the umbrella of s 65 of the CPA. Section 65(1)(a) provides that an appeal lies inter alia against '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.'

[16] There were only two conditions of bail imposed by the magistrate, being the amount of R500 as bail money and the condition that the appellant would have no contact with the complainant. Neither of those two conditions are the subject of this bail appeal.

[17] The statutory framework for determining an appeal against bail is set out in s 65(4) of the CPA which provides that:

'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.'

⁶ Section 60(12)(a) of the CPA.

⁷ Section 60(12)(b) of the CPA

[18] The magistrate exercising the power under s 60(12)(b) of the CPA granted an order under the DVA. That order cannot be appealed under s 65 of the CPA.

[19] Even if I am incorrect in my interpretation of s 60(12)(b) of the CPA, the protection order is not appealable because same was consented to by the appellant. On a reading of the record, it is clear that the appellant consented to the protection order being granted and in fact consented to the terms of the order. In support of his bail application the appellant in fact argued that the final order was sufficient to deter any conduct on his part.⁸

[20] The appellant now argues that his consent was not '*true consent*'. He argues, that his consent was obtained as a result of the pressure imposed upon him by the magistrate.

[21] The party relying on duress must prove *inter alia*:⁹

- (a) a threat of considerable evil to the person concerned or his family.
- (b) that the fear was reasonable;
- (c) that the threat was of an imminent or inevitable evil;
- (d) that the threat or intimidation was unlawful or *contra bonos mores*; and

[22] During the proceedings in the Court *a quo* the appellant was represented by an attorney who took instructions from him on the terms of the protection order which was to be granted. It is not evident from the record that the appellant was under any threat or harboured any fear. Nor does the record reflect any unlawful threat or intimidation.

[23] There are no circumstances arising in these proceedings which would allow an appeal against the protection order which was a consent order.¹⁰

⁸ Appeal Record page 81 lines 13-15.

⁹ *Arend and Another v Astra Furnishers (Pty) Ltd* 1974 (1) SA 298 (C) at 306A-C.

¹⁰ *Vuselela Security SPV (RF) v Lizoxola Properties* [2023] ZAGPJHC 1129 para 2 (unnumbered).

Conclusion

[24] The appeal accordingly cannot succeed. The final protection order is not a condition of bail and accordingly falls outside of the parameters of s 65 of the CPA. In any event, the order was consented to by the appellant and on this score alone no appeal lies against such order

Order

[25] I therefore make the following order:

The appeal is dismissed.


I VEERASAMY AJ

HEARD ON:

10 October 2024

JUDGMENT DATE:

16 October 2024

FOR THE APPELLANT:

D Reddy

INSTRUCTED BY:

Avir Maharaj Incorporated

FOR THE RESPONDENT:

K L Singh

INSTRUCTED BY:

Office of the Director of Public Prosecutions