

THE REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

Case No: **CC01/2023**

Before the Hon. Justice Slingers
Hearing: **4 March 2025**
Judgment Delivered: **7 March 2025**

In the matter between:

THE STATE

Applicant

and

IVAN RUITERS

Accused 8

JUDGMENT

SLINGERS J

[1] This is an application brought in terms of section 66(3) of the Criminal Procedure Act 51 of 1977 (**'the CPA'**).

Section 66(3) reads as follows:

'If the accused admits that he failed to comply with the condition in question or if the court finds that he failed to comply with such condition, the court may, if it finds that the failure by the accused was due to fault on his part, cancel the bail and declare the bail money forfeit to the State.'

[2] On 5 December 2024, bail in the amount of R500 was set for Mr Ruiters with various conditions which included reporting at Grassy Park police station on Mondays, Wednesdays and Saturdays between 06h00 and 18h00.

- [3] On 20 December 2024, Mr Ruiters was arrested on charges of attempted murder and the unlawful possession of an un-licensed firearm (**'the new charges'**). Mr Ruiters was remanded in custody in respect of these new charges and remains in custody as he elected not to apply for bail following his arrest on 20 December 2024.
- [4] It is common cause that because of his arrest and consequent detention, Mr Ruiters failed to adhere to his bail conditions which required him to report at Grassy Park police station three times a week. The state argues that his arrest, resulting in the breach of the bail conditions, was wholly his fault and that it was committed with intent. The defence argues that no fault can be attributed to Mr Ruiters as he was prevented from complying with his bail conditions as a result of his arrest and detention, which was not his fault.
- [5] It is trite that these proceedings are not criminal proceedings. Consequently, the state need not establish the requisite facts beyond reasonable doubt but need only do so on a balance of probabilities.¹
- [6] The requisite facts are (i) that Mr Ruiters breached his bail conditions and (ii) that it was due to his fault.² In this matter it is common cause that Mr Ruiters did not comply with his bail conditions of 5 December 2024. The question that concerns this court is whether it can be found that he had any fault in creating the impossibility of complying therewith as a result of being arrested. Ms Kuun robustly argued that this question could only be answered by entering the merits of new charges which could be potentially prejudicial to him in those criminal proceedings.

¹*Sebe v Magistrate, Zwelithsa and Another* 1984 (3) SA 885 (CKS)

²*Jack v Vermeulen NO and Another* 1979 (1) SA 659 (C)

- [7] Mr Ruiters was either arrested without a warrant in terms of section 40 of the CPA or with a warrant. Section 40 of the CPA provides that a police officer may arrest any person without a warrant, if the person is reasonably suspected of committing or of having committed an offence as listed in items (a) to (q) of section 40(1). Alternatively, Mr Ruiters would have been arrested with a warrant. A warrant of arrest may be issued in terms of section 43 of the CPA. A warrant of arrest could only be issued on written application which states that there is information on oath that there is a reasonable suspicion that Mr Ruiters committed the alleged offences.
- [8] Therefore, irrespective of whether Mr Ruiters was arrested with or without a warrant, his arrest could only have been effected if there was a reasonable suspicion that he committed the offences giving rise to his arrest on 20 December 2024.
- [9] A reasonable suspicion must be more than a hunch and should not be an unparticularized suspicion. It must be based on specific and articulable facts or information. Furthermore, the reasonable suspicion must be based on credible and trustworthy information.³
- [10] Put differently there had to have been some credible and trustworthy information that Mr Ruiters committed the new charges resulting in his arrest on 20 December 2024. Given the elements of the new charges, there had to have been credible and trustworthy information that Mr Ruiters intentionally performed the unlawful action(s) giving rise to the new charges. At this stage, I would be

³ *Biyela v Minister of Police 2023 (1) SACR 235 (SCA)*

remiss not to mention that the lawfulness of the arrest of 20 December 2024 was not questioned or disputed. Therefore, for the purposes of this judgment the lawfulness of Mr Ruiters' arrest is assumed. Following his arrest, Mr Ruiters would have been held in lawful custody in terms of section 39(3) which provides that:

'The effect of an arrest shall be that the person arrested shall be in lawful custody and that he shall be detained in custody until he is lawfully discharged or released from custody.' The phrase 'released from custody' includes being released on bail by the police or at court.

[11] As a result of the jurisdictional factors required for the lawful arrest and detention of Mr Ruiters which were not disputed or challenged, I am satisfied on a balance of probabilities that his own conduct resulted in his arrest and that he was responsible for the situation which made it impossible for him to comply with his bail conditions. Put differently, it was due to his own fault that Mr Ruiters was unable to comply with his bail conditions.

[12] As the state has shown on a balance of probabilities that Mr Ruiters has breached his bail conditions due to fault on his part, the onus passed to him to show on a balance of probabilities such relevant facts to persuade the court not to withdraw the bail or to declare it forfeited to the state.⁴

[13] It is not disputed that Mr Ruiters elected not to bring a bail application in respect of his arrest on 20 December 2024. In the circumstances it must be accepted that he took no steps which could possibly have secured his release which would have resulted in his ability to comply with the bail conditions. Ms Kuun argued

⁴ *Sebe v Magistrate, Zwelitsha and Another* 1984 (3) SA 885 (CKS)

that it was Mr Ruiter's prerogative not to bring a bail application at this stage and that she does not know what advice he received not to bring a bail application at this stage. This may be, but the election not to bring a bail application with the absence of an explanation for such election, has consequences. An accused may elect not to bring a bail application for various reasons which may or may not pertain to the merits of the matter, for example insufficient funds. Had the court been informed that Mr Ruiters had elected not to bring a bail application because he was trying to finance same, it could have been a factor in his favour which the court would have considered when weighing up whether he discharged his onus.

[14] The onus shifted to Mr Ruiters to show facts relevant to persuading the court not to withdraw his bail. If this required him to place facts pertaining to the circumstances of his arrest before the court, then that is what he had to do. His election not to do so has consequences. As he elected not to present any facts to challenge the facts and case presented by the state, the court would be entitled to assume that there are no such facts.⁵

[15] Mr Ruiters failed to discharge his onus.

[16] Section 66(3) provides that a court may cancel an accused's bail and forfeit the bail to the state if it is found that an accused, due to fault on his part, failed to comply with the bail condition. Thus the court is called upon to apply its mind to the cancelling of the bail and the forfeiture thereof- these are two distinct and separate issues.⁶ No facts or arguments were presented in respect of declaring

⁵ *S v Boesak 2000 JDR 0792 (CC)*

⁶ *Sebe v Magistrate, Zwelitsha and Another 1984 (3) SA 885 (CKS)*

the bail forfeited to the state. Therefore, there are no facts and/or grounds on which this court can properly exercise its discretion in respect hereof.

[17] In the circumstances, I make the following order:

- (i) The bail granted to the accused, Mr Ivan Ruiters on 5 December 2024 is cancelled in in terms of section 66(3) of the CPA. Therefore, he will be remanded in custody in respect of this matter.
- (ii) No order is made in respect of the forfeiture of the bail money.


[REDACTED]
Slingers, J

7.3.2025