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

Case no: A(B)03/2024

In the matter between:

CAROLINE SEVIER

Appellant

and

THE STATE

Respondent

Heard: 13 February 2025

Delivered: 25 March 2025

JUDGMENT

ADAMS, AJ

Introduction

[1] Individuals facing extradition may apply for bail pending the outcome of their extradition proceedings. Bail applications in extradition cases are governed by the Extradition Act 67 of 1962 and the general principles of bail under the Criminal

Procedure Act 51 of 1977 ("the CPA"). Courts carefully evaluate each application to balance the applicant's rights with South Africa's international legal obligations.

[2] This is an appeal in terms of Section 65(1) of the CPA against the magistrate's refusal of bail pending the finalization of extradition proceedings against the appellant. The State opposes the appeal.

Background to the Appeal

[3] The appellant was arrested on 26 January 2024 on a warrant issued by the Cape Town magistrate under Section 5(1)(b) of the Extradition Act 67 of 1962. The warrant was executed in Greenpoint by Interpol.

[4] The appellant brought an application for her release on bail on 6 March 2024. At the hearing of the bail application, it was accepted by the Magistrate on the strength of an agreement between the parties that the proceedings should be dealt with in terms of Schedule 5 of the CPA, rendering the provisions of s 60(11) applicable to the proceedings. In terms of this section, the Appellant was expected to present evidence to the satisfaction of the court that the interests of justice permitted her release. This was the basis upon which the application was determined by the Magistrate in the court a quo.

Details of the charges in the requesting state

[5] The extradition of the appellant is sought by the UK for her to stand trial on the following charges:

Count 1

Conspiracy to supply cocaine, a controlled drug of class A, contrary to section 1(1) of the Criminal Law Act 1977. It is alleged that between 1 January 2016 and 21 March 2017 at Hastings in East Sussex the appellant conspired together with Callum Gower, Tyler Leisch and Danielle Lodge to supply cocaine.

Count 2

Conspiracy to supply MDMA (Methylenedioxymethamphetamine), a controlled drug of class A, contrary to section 1(1) of the Criminal Law Act 1977. It is alleged that between 1 January 2016 and 21 March 2017 at Hastings in East Sussex the appellant conspired together with Callum Gower, Tyler Leisch and Danielle Lodge to supply Methylenedioxymethamphetamine (MDMA).

Count 3

Conspiracy to supply cannabis, a controlled drug of class B contrary to section 1(1) of the Criminal Law Act 1977. It is alleged that between 1 January 2016 and 21 March 2017 at Hastings in East Sussex the appellant conspired together with Callum Gower, Tyler Leisch and Danielle Lodge to supply cannabis.

The evidence adduced at the bail hearing

[6] The appellant and the respondent elected to present evidence at the bail hearing by way of affidavit. The following affidavits were presented in the court a quo:

[7] The Appellant presented affidavits deposed to by herself, a letter from SAMI, an affidavit deposed to by Ethan De Kock and a pre-trial report by social worker, Arina Smit. In addition, an affidavit as well as Charne Theunissen and other documentation such as emails relating to her claims of being employed and articles relating to corruption among and the arrest of home affairs officials, were also included. The evidence presented by the appellant sets out her personal circumstances as well as that of her family. These aspects will be dealt with later in this judgment.

[8] The respondent presented affidavits deposed to by Captain Hendry Mahope, an affidavit by Home Affairs official, Ivan Klaasen, affidavits by Gerrit Smit as well as other relevant documents in support of their opposition to the release of the appellant.

[9] The evidence presented shows the salient facts regarding the matter in the UK and the conduct of the appellant in South Africa to be as follows:

The appellant was arrested in the United Kingdom (UK) on 21 March 2017. She was stopped by the police in a rental vehicle and consequent upon a search of the vehicle they discovered a large quantity of cocaine and cannabis in the car

[10] On 22 March 2017 the appellant was released on police bail, subject to certain conditions. In June 2017, the appellant was released under investigation and bail conditions no longer applied.

[11] During 2017, the appellant ostensibly started working for Belgravia Wealth Management in Turkey.¹ In this regard it must be noted that the confirmatory email is not evidence under oath, nor did it include any details relating to when the appellant started working in Turkey or what the conditions of employment were.

[12] On or about 6 November 2017 British authorities discovered that the appellant was no longer in the UK and since they were under the impression that she was somewhere in Europe, evidence was presented by the British police to the UK Crown Prosecution Service on 10 April 2018 to apply for a European warrant for the appellant.

[13] The police investigations in the UK were finalised around 6 August 2018 and the Crown Prosecution Service authorised the charges against the appellant and applied for a European warrant.

[14] On 27 January 2019 details of the appellant were circulated internationally in line with the European arrest warrant. On 28 August 2019 appellant travelled on Turkish airlines from Istanbul to Cape Town. Her British passport carried no stamp endorsement to indicate when and from where she left the United Kingdom.

¹ See email from Julie Trainers on page A99 Volume 4

[15] In August 2019 appellant entered South Africa at Cape Town International Airport (stamp 709) on a visitor's visa which was valid until 26 November 2019. The appellant's entry into South Africa was captured in the Home Affairs records. On 10 November 2019 the appellant exited South Africa (stamp 261) to Zimbabwe via Beit Bridge but her passport had no validity date endorsement for her stay in Zimbabwe. Home Affairs did not have a stamp issued with the number 261.

[16] On 15 November 2019 a warrant of arrest was issued for the appellant by the Westminster Magistrate's Court in support of the extradition process. On 19 November 2019 the appellant applied, with the assistance of South African Migration International (SAMI) and employee Miriam Mushuamba, for a change in her visitor's Visa conditions to the South African authority to obtain a medical Visa.

[17] On 25 November 2020 the appellant appealed the decision in respect of her application to change her Visa and on 21 February 2021 that application was rejected too. In November 2020 Miriam Musuamba left SAMI on maternity leave and never returned.

[18] The rejection of the application for a change in the appellant's visitor's Visa was served on her on 12 March 2020. It is common cause that throughout these processes the British police regarded the appellant as released under investigation.

[19] On 2 March 2021 the appellant entered South Africa from Zimbabwe via Beit Bridge and endorsement in her passport with stamp 656 and permit stamp 159. Home Affairs has no record of the entry. The endorsement stamp was issued to a person who died in December 2022.

[20] On 1 June 2021 the appellant exited South Africa via Beit Bridge (Stamp 286) to Zimbabwe. Home Affairs has no record of her movement, and the stamp belonged to an old register not currently issued. The appellant's passport showed no validity date for a stay in the neighboring state.

[21] SAMI records reflect that on 1 June 2021 the appellant applied for a medical visa in terms of section 17 of the Immigration Act, the outcome was not collected.

[22] On 16 August 2021 appellant exited Zimbabwe and entered South Africa via Beit Bridge (stamp 286). Home Affairs has no record of entry into South Africa and the stamp belonged to an old register not currently issued. Permit stamp 26 also belonged to an old register and was not current.

[23] On 31 October 2021 appellant exited South Africa (stamp 486) via Oliver Tambo Airport. Home Affairs has no record of her exiting South Africa and no record of the appellant re-entering South Africa. The stamp belonged to an old register not current. On the same day the appellant entered Namibia. Her passport carried no stamp to indicate when she left Namibia.

[24] On 6 November 2021 the appellant entered South Africa (stamp 313) via Cape Town International Airport without a Visa validity date and left on 15 November 2021 via Beit Bridge. Home Affairs has no record of the movement into and exiting South Africa. Stamp 313 reflected in her passport was discontinued on 4 November 2011 and handed in administration. The way in which the date was set out on the authentic stamp number 313 of Home Affairs started with a year, month and day unlike the endorsement stamp found in the passport of the appellant.

[25] In February 2022 according to information contained in the affidavit of Ethan De Kock, he started working for the appellant. On 15 December 2022 the appellant entered Namibia with no departure endorsement in her passport. On 22 December 2022 the appellant entered South Africa at Vioolsdrift without a Visa validity date and no record by Home Affairs of her movements into South Africa.

[26] On 22 February 2023 a new warrant of arrest was issued by the Magistrate's Court at Sussex in the UK and on 2 March 2023 the first instance warrant was issued by Westminster Magistrate's Court in the UK.

[27] On 7 June 2020 SAMI issued what appears to be a general letter which the appellant attaches to her papers. The letter indicates that:

“Applicants whose applications are still pending: long-term visa holders (Work, Business, Study, Relative And Accompany Spouse) who form part of the 62692 visa backlog applications, be granted a temporary extension until 31 December 2023 of the current Visa status...”²

The appellant makes no averment indicating that she had a Visa application pending in the period between 7 June to 31 December 2023.

[28] The appellant entered into a lease agreement on or about 20 June 2023 with the Phoenix Trust to rent a property located at 1[...] W[...] Apartments Mouille Point, Cape Town from 1 September 2023 to 31 August 2024. The rental amount was R50,000 per month and a rental deposit of R100,000 was payable in terms of the agreement. At this stage SAMI had no official instruction to act on behalf of the appellant. The appellant entered into this agreement without the assurance that her legal status in South Africa had been regularized for the period in question.

[29] In addition, on 20 June 2023 when she entered into the lease agreement, the appellant had a bank account with First National Bank account number 6[...]. There is no explanation from the appellant how she managed to open a bank account in South Africa without a valid visa.

[30] On 29 October 2023 appellant exited to Zimbabwe. Home Affairs has no recordal of her exit through a border post. On the same day the appellant entered South Africa via Beit Bridge with a vehicle and had a valid visa until 27 January 2024. This movement was captured in the Home Affairs records.

[31] On 26 January 2024 SAMI applied for the extension of her visitor permit on behalf of the appellant. The appellant was arrested in the extradition matter while an application for a retirement visa was under consideration. At the time of her arrest, she had no valid visa to be in South Africa.

² volume 5 page A237

[32] These records of what is captured in the passport of the appellant were set out in the affidavit of an official of Home Affairs, Ivan Klaassen³ who also noted that due to the warrant of arrest issued in the UK, the appellant became a prohibited person in terms of section 29 (1)(b) of the Immigration Act 13 of 2002 (the immigration Act). He noted that the absence of capturing certain movements meant the passport was not scanned at the ports of entry and the stamps were endorsed fraudulently. He picked up the same pattern of fraudulent entry and exit endorsements when examining the passport of the son and co-accused of the appellant.

[33] On 6 February 2024 Home Affairs was in the process of serving the appellant with a declaration as an undesirable person in terms of section 30 (1)(a) of the Immigration Act.

[34] The affidavit of detective Chloe Burgess⁴ states that the appellant and her son travelled on suspected fraudulent documents to several countries since 2017. She opines that upon conviction the appellant would receive a rather lengthy sentence due to the large quantity of drugs seized. The appellant, according to Burgess is well versed in evading the police and she left the UK on short notice without ever returning.

The Magistrate's findings

[35] On 30 April 2024, the magistrate refused bail, concluding that the appellant failed to prove that her release was in the interests of justice. The key findings were that:

- the interests of justice did not favour releasing the appellant.
- there is a strong case in the UK against the Appellant and that there is a reasonable basis for her extradition.

³ Page A270 of Volume 6

⁴ Page A265 of Volume 6

- there is a likelihood that if the Appellant was released on bail, because of the gravity of the charges she may evade her trial.
- the appellant's history of international travel and questionable passport endorsements indicate a likelihood of evading trial.
- No bail conditions could effectively mitigate concerns regarding whether the appellant would evade trial.
- Considering the past conduct of the appellant, strict bail conditions would not be effective.

[36] The Magistrate ultimately held that the appellant failed to demonstrate that bail was justified under Section 60(11) of the CPA and refused her application to be admitted to bail. It is this decision which the appellant seeks to assail in the proceedings before me.

The merits on appeal

[37] In the appeal proceedings, the respondent conceded that the application does not resort under schedule 5 and that the respondent therefore carries the onus. It was conceded by the respondent that there was therefore an irregularity in the hearing in the court *a quo* and the appeal court is at liberty to undertake its own analysis of the evidence to determine whether the refusal of bail was warranted.

Grounds for Appeal

[38] The grounds for appeal raised by the appellant are that the Magistrate erred in reaching the following findings:

- Applying Schedule 5 to the bail application.
- Finding the appellant to be a flight risk without sufficient evidence.
- Attributing fraudulent passport endorsements to the appellant without proof.

- Overlooking the poor prison conditions at Pollsmoor in her bail determination.
- Drawing adverse inferences from the appellant's failure to address the merits of the extradition request.
- Failing to consider reasonable bail conditions as an alternative.

Submissions in this court

[39] Submission in the heads of argument prepared on behalf of the appellant that she left the UK lawfully could not be sustained and was, correctly in my view, not pursued by counsel for the appellant in argument before me.

[40] It was submitted on behalf of the appellant that this court should also find that the magistrate in the court *a quo* was wrong if one has regard to the provisions of section 60(2A) of the CPA. This section enjoins the court, before reaching a decision on a bail application, to take into consideration any pre-trial services report regarding the desirability of releasing an accused on bail, if such report is available. It was contended that the report compiled by the social worker Arina Smit⁵ is a comprehensive pretrial report that wasn't considered by the Magistrate when she refused bail. This aspect will be discussed later in this judgment.

[41] The evidence and argument presented on behalf of the appellant was of no assistance in determining the issue of bail given the selective way answers to questions germane to the determination of bail were provided to the court *a quo*. In the proceedings before me a similar pattern of selective disclosure of information emerged.

[42] Concerning the evidence around the difficult conditions at Pollsmoor, the appellant was not entirely truthful. In her affidavit she claims that medicines delivered to the prison which was required to treat health conditions she suffers from were not given to her. However later in the same document it appears that the

⁵ page A106 of the record

medication was given to her a short while after it was delivered by a family member. This delay may be explained by the process followed at prisons where items brought for detainees are checked for contraband prior to delivery to the detainee concerned. It is accepted that the conditions in detention facilities are not ideal, but this is just one of several relevant factors which must be considered in determining bail applications.⁶

[43] The high watermark of the argument presented by counsel for the appellant centered around the inability of the respondent to show the likelihood of the appellant evading her trial in the UK and the misdirection by the Magistrate in accepting the agreement between the parties in the court *a quo* relating to schedule 5 being applicable to the proceedings as sufficient cause for this court to reconsider the application and release the appellant on bail. The latter contention was conceded by the respondent. A misdirection has the effect that the appeal court is free to consider within the circumstances presented whether bail ought to have been refused or granted.

[44] Counsel for the appellant could not point out in relation to the reasoning of the magistrate where the magistrate erred in finding that the appellant's release on bail would not be in the interest of justice. The magistrate provided a well-reasoned judgment setting out fully the reasons why she refused bail.

[45] The authorities referred to on behalf of the Appellant were misquoted and on each one the counsel had to concede that the wrong principle was placed in argument before me. Reliance on *Otubu v Director of Public Prosecutions Western Cape*⁷ which counsel for the appellant contended applied to the circumstances inherent in this matter is misplaced as it is distinguishable from the circumstances of the appellant given that the consideration which led to the granting of bail in the *Otubu* matter was that an extradition request had not yet been received by South

⁶ See in this regard the authority referred to by appellant's counsel, namely *S v Mpofana* 1998 (1) SACR 40(Tk) and *S v Van Wyk* 2005(1) SACR 41 (SCA)

⁷ 2022 (2) SACR 311 (WCC)

African authorities. None of the authorities referred to by appellant's counsel provides cogency for the arguments advanced on her behalf.

[46] Counsel for the appellant sought to imply that the fact that the appellant did not appear in the UK court is an indication that the UK authorities have a weak case against her. It was posited that the decision taken by the UK authorities that the matter was 'stood down' is tantamount to a (provisional) withdrawal. I agree with the submissions of the respondent that these are not inferences one can draw in circumstances where it concerns a foreign legal system and foreign law enforcement authorities with their own principles, procedures and investigative methods. It would be dangerous in the absence of any information relating to these legal procedures and principles to speculate on what transpired in the UK after the appellant was arrested. What is clear from the evidence is that at all material times there has been clear indication from the relevant law enforcement that the investigation into this matter was ongoing and the appellant was not absolved from any involvement.

[47] The respondent submits that this court must refuse bail in the circumstances because the appellant is a proven flight risk. The respondent contends that South Africa's international extradition obligations under the European Convention on Extradition, 1957, which South Africa acceded to in 2000 also necessitates careful consideration of the circumstances in determining the application for bail.

[48] The respondent submits that the appellant is proven to be a flight risk judging by her overall conduct in the matter and the circumstances that were placed in evidence before the magistrate as will be outlined further in this judgment. It is contended that her conduct is a clear indication that she has no intentions of returning to the UK.

The Legal Framework

[49] Determining an appeal against the refusal of bail falls within the framework espoused in section 65(4) of the Criminal Procedure Act 51 of 1977. The section provides as follows:

"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."

[50] The test for determining whether interfering with the Magistrate's judgment is justified is to consider whether there was a *material* misdirection by the Magistrate in connection with the facts or the law. The sentiments expressed in *S v Barber*⁸ are apposite:

"It is well known that the powers of this Court are largely limited where the matter comes before it on appeal and not as a substantive application for bail. This Court has to be persuaded that the magistrate exercised the discretion which he has wrongly. Accordingly, although this Court may have a different view, it should not substitute its own view for that of the magistrate because that would be an unfair interference with the magistrate's exercise of his discretion. I think it should be stressed that, no matter what this Court's own views are, the real question is whether it can be said that the magistrate who had the discretion to grant bail exercised that discretion wrongly."

[51] If such misdirection is established, the appeal court is at large to consider whether bail ought, in the particular circumstances, to have been granted or refused, and in the absence of a finding that the magistrate misdirected him or herself the appeal must fail.

The approach to the evidence presented

[52] In *S v Smith and Another*⁹ the Court held that:

⁸ [1979 \(4\) SA 218 \(D\)](#) at page 220 E-H

⁹ 1969(4)SA 175(N)

‘The Court will always grant bail where possible and will lean in favour of and not against the liberty of the subject provided that it is clear that the interests of justice will not be prejudiced thereby’.

[53] The CPA provides the procedural guidelines for bail applications and appeals in extradition matters. Specifically, Section 60 outlines the general provisions for bail, while Section 65 deals with appeals against bail decisions. In extradition contexts, these sections are applied to ensure that the rights of the individual are balanced against the interests of justice.

‘Bail proceedings are sui generis...The State is thus not obliged in its turn to produce evidence in the true sense. It is not bound by the same formality. The court may take into account whatever information is placed before it in order to form what is essentially an opinion or value judgment of what an uncertain future holds. It must prognosticate.¹⁰ (my emphasis)

Analysis of the principles applicable to the bail application and appeal

[54] When assessing bail applications in the context of extradition proceedings, consideration is given to several factors, including:

Whether the appellant is a flight risk

[55] In determining whether the appellant poses a high risk of fleeing to avoid extradition, the following consideration is given to factors such as:

- The seriousness of the offense in the requesting country.
- The likelihood of a severe sentence if convicted.
- Access to financial resources that could facilitate fleeing.
- The strength of the case against the appellant, which entails assessing the prima facie evidence supporting the extradition request.

¹⁰ S v Schietekat [1998 \(2\) SACR 707](#) (C) at 713h-713Jj

- Personal Circumstances such as the appellant's personal and community ties.
- The interests of Justice. Section 60(4) of the Criminal Procedure Act, indicates that bail can be refused if it is not in the interests of justice. Factors considered includes:
 - The likelihood that the appellant will endanger public safety
 - The possibility of interfering with witnesses or evidence
 - The likelihood of extradition being granted
 - The conduct of the appellant such as indications that the appellant has previously taken steps to evade law enforcement, used false identities, or such as in this matter, the fraudulent entries in the appellant's passport are relevant factors which was considered by the court a quo and before me on appeal.
 - Whether granting bail in the circumstances undermines the criminal justice system

These factors assist in the determination of whether the release of the appellant on bail would align with the interests of justice.

[56] The magistrate in the court a quo correctly considered:

- The absence of a verifiable fixed address.
- The appellant's previous conduct, including her movements across jurisdictions.
- Fraudulent passport endorsements
- Her access to financial resources, which could facilitate absconding.

The Strength of the Case against the appellant

[57] The charges against the appellant involve substantial evidence, including:

- UK police reports confirming the seizure of drugs in her possession.

- Fingerprints and other documentary evidence linking the appellant to multiple crime scenes.
- Suspicious travel movements post the UK arrest and release from bail.

[58] In *Mathebula v S* (431/2009) [2009] ZASCA 91, the Supreme Court of Appeal held that an accused relying on a weak case must present persuasive evidence. Affidavit evidence, which is not subject to cross-examination, is generally less compelling.

[59] In my view, the magistrate correctly found that in the circumstances of this case and applying the provisions of Section 60(4) of the CPA, that: The public interest outweighs the appellant's personal circumstances. It cannot be in the public interest to allow conduct such as that attributed to the appellant relating to the fraudulent entries in her passport which went unexplained in circumstances where it clearly points to the appellant being aware of these entries. In the circumstances as outlined in the evidence presented, there is in my considered view, a high probability of extradition.

[60] As noted in *S v Nichas*¹¹ and *S v Van Wyk*¹², a strong case coupled with the probability of a lengthy sentence may justify the denial of bail.

Discussion of the evidence presented in the court a quo

[61] It is against this background that the appeal against the refusal of bail by the court *a quo* must be considered. The grounds of appeal in brief is that the magistrate ought to have found that considering the personal circumstances of the appellant, the fact that she is not a flight risk, that she has immovable property in South Africa, that she is gainfully employed and carrying on business in South Africa while also employing two people, that she has family who is residing in South Africa, the fact that she has been "lawfully" residing in South Africa for a considerable period of time and the fact that there is a weak case made out against her by the UK authorities

¹¹ 1977(1) SA 257 (C)

¹² 2005 (1) SACR 41 (SCA)

which, considered collectively, constitute circumstances that justifies a finding that it is in the interest of justice for her to be granted bail.

Issues with the appellant's Case

[62] The State acknowledges certain discrepancies in the affidavits setting out the dates of certain events in the UK. However, it remains uncontested that:

- The applicant was arrested in the UK and was subjected to a legal process.
- The applicant was released on bail but under conditions, contrary to her assertion that she was released without conditions.
- The UK legal system operates under different principles and procedures, and its police and investigative authorities function independently.
- While aware of the ongoing investigation, the appellant left the UK under suspicious circumstances.
- The UK authorities reported to their South African counterparts that the applicant departed using false documents, raising concerns about her credibility and legal compliance.

[63] It stands uncontroverted that there is no official record of the appellant's legal departure from the UK. Had she left lawfully, there would be immigration stamps or other record of her exit.

[64] The State suggests that these factors strongly support the argument that the appellant absconded from the UK to evade prosecution, reinforcing the concern that she remains a flight risk in South Africa.

[65] The appellant was given ample opportunity to explain why her passport lacks an exit stamp from the UK and to show that she entered Turkey using a British passport. She elected not to do so. The circumstances of her exit from the UK and entry into Turkey therefore remain unexplained. She did not inform the authorities of

her departure despite knowing she was still under investigation. She does however provide an explanation for her presence in Turkey.

[66] This pattern of selective disclosure is evident throughout the bail proceedings. For instance, she failed to disclose that her UK bail was subject to conditions but when she was caught in a lie relating to conditions attached to the granting of bail, she is quick to argue that the fact that she complied with those bail conditions ought to count in her favour. She provided no credible explanation for the fraudulent passport stamps used to justify her extended stay in South Africa and seeks to apportion blame for this conduct elsewhere.

Concerns Regarding the Appellant's Passport Stamps

[67] By 21 February 2021, the appellant was aware that her visa application to remain in South Africa had been rejected and that all appeals had been exhausted. Fraudulent entry and exit stamps were discovered in her passport which, in the absence of any explanation, can be regarded as indicating an attempt to fabricate legal residency. The appellant offered no explanation as to why she knowingly placed fraudulent stamps in her passport or at the very least did not question the stamps if she did not travel to the destinations indicated. It is not clear from her evidence whether she in fact travelled as indicated in her passport.

[68] The following averments relating to Mushuamba and SAMI went unconfirmed. These relate to an official of SAMI, a certain Ms Maarman, who ostensibly informed the appellant that Mushuamba's work was incorrect, and that her work would be corrected by SAMI. There is no indication of what the incorrect work entailed, and no confirmatory affidavit or other form of confirmation was filed by the appellant. This seem to be an attempt to direct blame for the entries in the appellant's passport at Ms Mushuamba.

[69] The respondent submits that an irresistible inference can be drawn that the appellant paid someone to insert fraudulent stamps in her passport to justify her continued stay in South Africa. This inference is supported by the fact that:

- The individual allegedly responsible for the fraudulent stamps, Mariam Mushuamba, was on maternity leave from November 2020 and never returned to work.
- The appellant has not explained how she contacted Mushuamba, how much she paid her, or why she made direct payments instead of using official channels to make payment to SAMI.
- No receipts were provided for these payments to Mushuamba, suggesting an illicit transaction.
- There is no evidence confirming that the appellant travelled across the African continent, as indicated by the passport entries

[70] The appellant's actions demonstrate:

- A history of evading law enforcement by leaving the UK undetected.
- A pattern of deception, including fraudulent passport endorsements and inconsistent statements about her legal status.
- A lack of ties to South Africa, as evidenced by her attempts to remain in the country through illegitimate means.

Appellant's means and travel documents

[71] Seen in the context of her past conduct in leaving the UK under mysterious circumstances while the matter is still under investigation, it cannot be as it was suggested by Counsel for the appellant that she was 'free and clear' in terms of the investigation. If that was so, why would she not leave any trace of her exit from the UK? In these circumstances I agree with the sentiments expressed by the Magistrate in the court a quo that surrendering her passport as a condition of bail would be cold comfort in circumstances where it is known that she travelled from the UK to Turkey without the exit from and entry into the respective countries reflected in her travel documents and where she did not disclose how this was orchestrated.

[72] The only information provided by the appellant in her affidavit is that she departed the UK because of an employment opportunity in Cyprus. There is no

explanation as to when she departed, how she exited the UK, why her departure was not recorded in her passport by the British authorities. This is information which fell peculiarly within the knowledge of the appellant and was important information for the determination of the bail application. While it is understood and I am mindful that there's no onus resting on the appellant, it would be reasonable to expect her to provide this information given its importance in the determination of her application to be released on bail and in the light of the evidence presented to the court a quo by the respondent.

[73] The record reflects and the magistrate remarked on the fact that the appellant was dishonest in several respects. By way of example the information relating to her release on bail without bail conditions and regarding the date of her arrival in Cape Town is not accurate. She also does not disclose whether she in fact travelled to the various African countries as is reflected in her passport. The impression one gets upon perusal of her affidavit is that she remained in Cape Town throughout. If this is so, why did she not question these entries?

[74] In relation to her personal circumstances the appellant was equally not forthcoming. She informed the court that she has no criminal convictions. This was gainsaid by evidence provided by Interpol that she was convicted for theft in Hastings, UK in 1990.

The Appellant's Business and Residency Claims

[75] The appellant claimed that she is running a business in South Africa and employs two people. However, there is no evidence of business registration or tax compliance with the South African Revenue Service (SARS) attached to her papers. The person purportedly employed by the appellant sets out in his confirmatory affidavit that he is merely undergoing training and there is no proof of actual employment. The appellant applied for a retirement visa, which seem to contradict her claim that she is an active business owner.

[76] The appellant provided information relating to her employment and source(s) of income. However, the employment contracts attached to her affidavit were

unsigned. The appellant's version in relation to her employment with PPC and Oxtan capital is also not consistent and information relating to income was contradicted by evidence indicating that it was established by the British police that the appellant last received payment from Belgravia in September 2023.

[77] These discrepancies in relation to her financial position (transactions recorded in bank records presented to the court) was discussed in the judgment of the court a quo as a concern. It is clear that the appellant did not play open cards with authorities or the court a quo in relation to providing a full picture of her finances and source(s) of income.

[78] The appellant similarly did not explain how she was able to establish a business, open bank account and employ people if she was in South Africa on a visitor's Visa. Equally puzzling is the appellant's evidence that her intention was to establish and grow a business in Cape Town. If she intended to establish a business and employ people, why she would enlist SAMI to provide assistance in obtaining a retirement visa as opposed to business visa?

[79] In her papers, there is also no independent corroboration for her contention that she employs two people. There are no official documents showing the 'employees' as having been registered for UIF or with other statutory bodies such as SARS included in her papers.

[80] It is accepted that South Africa has a large percentage of unemployment. This seems to be another instance where the facts are tailored and manipulated to portray a picture of the appellant as a person that will be a benefit to her family and South Africa if released on bail.

The pre-trial services report

[81] The report by Arena Smith (social worker) does not assist the appellant's case, as it merely outlines her personal circumstances without addressing the core legal concerns related to her being branded a flight risk. The report cannot be regarded as a pre-trial services report as intended in the CPA. A lot of emphasis is

placed in the report on the poor prison conditions and while aspects such as financial means and travel documents are mentioned, it glosses over these pivotal issues and only those aspects meant to advance the case of the appellant for bail is highlighted. For example, the social worker discusses the legal status of the appellant and mention is made of SAMI and Ms Mushuamba but none of the concerns noted in the case of the respondent is directly addressed or discussed. There is a clear attempt to apportion blame to Mushuamba for the fraudulent entries in the passport while the involvement or extent of knowledge on the part of the appellant about these pertinent issues are not dealt with at all.

[82] All these aspects negatively impact the credibility of the appellant and more importantly it tends to show an inclination towards running away from accepting responsibility and accountability for her actions. This is evidenced by the fact that she admits to running a business in South Africa without adhering to the necessary prescripts relating to registration of a business with certain statutory bodies and other legal and formal requirements to enable her to do so lawfully. She claims to employ individuals without adhering or complying with issues such as tax, contributions to the Unemployment Insurance Fund and other aspects relating to the proper registration in her role as employer.

[83] The same can be said for her submissions in relation to her frail mother. She indicates that caring for her mother is a two-person job, but she fails to indicate what measures has been put in place from the time she was arrested until the hearing of the bail application some time later. There is nothing to indicate that her mother has, due to inadequate care, taken a turn for the worse. In the absence of any explanation or information to the contrary, it must be accepted that this is no longer a concern.

[84] Importantly she does not explain why, if her intentions were to remain in South Africa permanently to contribute to the economy and to operate a business that employs people, she would apply for a retirement visa. She also does not explain why she remained in SA and worked here, operated a business when she entered SA on a visitor's visa and why in the many instances, she, extended her stay, she did not rectify this situation and apply for a business visa.

[85] In the years she spent in South Africa since 2019 there has never been any indication that the authorities were informed that she was in fact working and carrying on business in South Africa. The reasons for this are not explained and as indicated earlier while being mindful that there is no onus on the appellant, in relation to her application for release on bail, these are important questions the court needs answered to inform a determination on the issue of bail as it relates to her respect for and obedience to legal procedures and authority such as the bail system.

[86] Again, it needs to be emphasized that there is no onus on the appellant but in the face of evidence pointing to her being a flight risk and blatantly flouting legal rules and regulations, most notably the issue of the fraudulent stamps in her passport, it would be reasonable to expect that these issues would be cleared up in the evidence presented in support of her application for bail. When the appellant does include some form of corroboration regarding the fraudulent entries, it does not relate to her circumstances but to that of her son.

[87] On a conspectus of the evidence before the court, there is a real and substantial risk that the appellant will abscond if released on bail. The appellant has no immovable property in South Africa or the UK. Her affidavit sets out that while she claims the desire to set down roots in Cape Town, the appellant has moved around in Cape Town and leases she enters for accommodation are not long-term leases as the appellant claims.

[88] It appears that the manner in which the facts and circumstances were presented to the magistrate were carefully engineered to present the most favorable picture of the appellant, a picture that would support a finding that the appellant is a suitable candidate for release on bail.

Conclusion and Order

[89] The appellant has failed to establish a material misdirection in the magistrate's decision to refuse bail. The findings regarding flight risk, the strength of the case, and the interests of justice are supported by the evidence presented in the

court a quo and fortified by case law and statutory provisions. On the test espoused in section 65(4) of the CPA, I cannot find that the decision inherent in the order of the Magistrate refusing bail, was wrong.

[90] Accordingly, the appeal against the magistrate's decision to refuse bail is dismissed.

ACTING JUDGE OF THE HIGH COURT
M F ADAMS

For Plaintiff : Adv R Liddell

Instructed by : Mathewson Gess Inc.

For Defendant : Adv. L. Badenhorst

Director of Public Prosecutions Cape Town