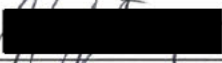


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2025-064708

|                                                                                                      |                                     |
|------------------------------------------------------------------------------------------------------|-------------------------------------|
| (1)                                                                                                  | REPORTABLE: YES / NO                |
| (2)                                                                                                  | OF INTEREST TO OTHER JUDGES: YES/NO |
| (3)                                                                                                  | REVISED: YES/NO                     |
| <u>21 May 2025</u>  |                                     |
| DATE                                                                                                 | SIGNATURE                           |

In the matter between:

**PHUMELELE MYEZA**

Appellant

and

**DIRECTOR OF PUBLIC PROSECUTION (THE STATE)**

1<sup>st</sup> Respondent

**MAGISTRATE OF THE MAGISTRATE'S COURT  
FOR THE DISTRICT OF LENASIA HELD AT LENASIA**

2<sup>nd</sup> Respondent

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**JUDGMENT**

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**STRYDOM, J**

- [1] In this matter the applicant brought an urgent application in the ordinary urgent court set down for 13 May 2025 for an order that the applicant be released on bail subject to conditions which the Court may deem fit.
- [2] As the matter relates to bail, the matter was referred to me by the Deputy Judge President for allocation to a judge sitting in the Criminal Court for this term. I allocated the matter to myself and ascertained that the matter appeared to be unopposed.
- [3] On 13 May 2025 I directed that the papers in this matter must again be served on the Director of Public Prosecutions, the first respondent, and if the first respondent elected to oppose the matter, it should file a notice to oppose before 16h00 on 14 May 2025 and an opposing affidavit by 16h00 on 16 May 2025. These documents were filed, and the matter became opposed.
- [4] According to the original notice of motion the application was served on the magistrate by leaving a copy thereof with the clerk of the Lenasia Court. The name of the clerk appears on the notice of motion. As the Court was informed that the magistrate who was dealing with the bail application was on leave, the Court decided that the application needs not to be served on the magistrate yet again.
- [5] On 19 May 2025 this matter was heard by this Court. After the argument was heard, the judgment was reserved.
- [6] The applicant in her notice of motion, supported by her affidavit, requested this Court to intervene in the pending and uncompleted bail application brought by the applicant in the Lenasia Regional Court and to grant her bail.
- [7] The Court was requested to exercise its inherent jurisdiction to intervene in uncompleted bail proceedings which commenced in a Magistrates Court. Also to exercise this its powers of supervision over the conduct of proceedings in the lower courts.
- [8] That a High Court could intervene in unconcluded proceedings, including bail proceedings, in the Magistrate's Court has been established. The source of this

power is found in the common law and the Constitution. In the matter of *Sandi Majali* case number 41210/2010, decided in this division, it was held in paragraph (14) that a High Court has inherent jurisdiction to intervene in uncompleted bail proceedings in a Magistrate's Court, and also has supervising power over the conduct of proceedings in the Magistrate's Court in both civil and criminal matters to '*supervise the manner in which*' the courts discharge their functions in order to ensure '*quality control*'. It was held that this power to intervene in uncompleted bail proceedings in lower courts is rarely exercised. It is only exercised in very special and peculiar cases. The court found that the case it was dealing with was such a rare case as a grave injustice would occur as there was no lawful justifiable reason to keep the arrested person in detention. The court also referred to the matter of *Magistrate Stutterheim v Mashiya* 2003 (2) SACR 106 (SCA), in which matter it was held that the bail application should in principle be heard as a matter of urgency because it affects personal liberty. Cameron JA held in paragraph [14] that higher courts, however, have emphasized repeatedly that the power to intervene in unconcluded proceedings in lower courts will be exercised only in cases of grave rarity -- where grave injustice threatens, and where intervention is necessary to attain justice.

- [9] In the matter of *Petrus Johannes Henderik Du Bruin v the State (Director of Public Prosecutions) and Another* case number 6359/2024, Daffue J, in the Free State Division, also exercise this inherent power by granting bail to an applicant whilst the bail application of the applicant was still pending in the lower court. The court considered the circumstances to be exceptional as there existed no reason for not letting the applicant out on bail. The court warned, however, that the judgment should not be seen as *carte blanche* to all accused persons to approach the High Court as a court of first instance whilst proceedings are pending in the lower courts.
- [10] This Court will have to decide whether the case of the applicant is such a rare case where the exceptional circumstances enjoins this Court with the power to consider the bail application of the applicant despite the uncompleted bail application still pending in the Magistrates Court.

- [11] To decide whether this matter of the applicant could be classified as an exceptional matter where interference is justified, the Court would have to refer to the factual matrix of this matter.
- [12] The applicant is a suspect in a criminal case where it is alleged that she in her capacity as an employee of the South African Social Security Agency ("SASSA"), with other employees, unlawfully and intentionally, defrauded SASSA by accessing the SASSA computer system and intercepted data from the system. This information was used to draw funds from the account of SASSA which was not payment to social grant beneficiaries but payment to themselves. It is alleged that the accused used fraudulent identification documents which were created enabling them to process grant applications. The amount involved exceeded R100 000 and as a result thereof the bail application resorted under Schedule 5 of the Criminal Procedure Act 51 of 1977 (the "CPA").
- [13] This would mean that the bail application resorted under section 60(11)(b) of the CPA. This section provides that a court shall order that the accused be detained in custody until he or she is dealt with in accordance with the law, unless the accused, having been given a reasonable opportunity to do so, adduces evidence which satisfies the Court that the interests of justice permit his or her release on bail. Accordingly, the applicant bore the onus to prove, on a balance of probability, that the interests of justice permitted her release.
- [14] On 17 March 2025 the applicant appeared in the Magistrate Court, Lenasia and the prosecutor confirmed that she is being charged with fraud. The matter was postponed until 31<sup>st</sup> March 2025 for the purpose of joining the applicant with her co-accused and for a bail application.
- [15] On 31 March 2025 the matter was further postponed, after an objection, to 2 April 2025 for the bail application.
- [16] On 2 April 2025 the bail application commenced, and the applicant's bail affidavit was read into the record. In this affidavit she set out her personal circumstances. She stated that she was employed by SASSA as a Grant Administrator. She is married with two minor children. She accepted that her bail application resorted

under Schedule 5 of the CPA. She stated that if bail is granted, she would stand her trial. She denied the allegations against her.

- [17] It should be noted that the applicant appeared with ten other applicants who also sought bail. All the applicants' affidavits were read into the record. Thereafter an affidavit deposed to by the investigating officer, Constable Manana was read into the record. This took some time, and the matter could not be finalised by the end of the court day. The matter had to be postponed and a date which suited the Court, the prosecutor and all the legal representatives, about nine (9) in total, had to be arranged. The magistrate placed on record that she has many outstanding part-heard bail applications. She asked the legal representatives to discuss dates for continuation of the bail application. There was a request from one of the legal representatives that the further affidavit the State previously referred to should be read into the record before the adjournment, but the magistrate placed on record that it was quarter past three (3) and she still had further matters on the court's roll. The magistrate acceded to the request, but this never happened as an extended conversation took place between the court and the various representatives to obtain a future date which suited everybody for the continuation of the bail application. Clearly, it was difficult to get a suitable date. Eventually the matter was postponed to 29 and 30 April for continuation. By that time the end of the court day was reached.
- [18] Before the adjournment the magistrate said that they will have to finish the bail application before the end of April otherwise *"we are going into June and I cannot do that in a bail application"*. It should further be noted that one of the reasons for the long adjournment was the unavailability of Mr. Eksteen, acting for accused 11.
- [19] When the matter was postponed, the magistrate placed the following on record:
- "Strictly speaking in terms of section 50(6) of the criminal procedure act courts should not postpone bail applications for longer than 7 days. That is what the law says but in reality when there are so many accused in a case, so many attorneys, we cannot adhere to that seven day turnaround time for postponing a bail*

*application. You heard the discussions on the dates that I could provide some of your legal representatives were not available.*

*So unfortunately, the first two available dates that we could agree on is 29 and 30 April and it is crunch time from my point, it is the last two days I am here. I am not here for the entire month of May. This has been pre-planned more than a year ago."*

- [20] The matter then proceeded on 29 April 2025. The prosecutor then read the statement of Mr. Masimela Khubeka into the record. He is employed by SASSA in the capacity of assistant manager responsible for the data quality and compliance. This entailed that he oversaw compliance with the use of the social pension system (SOCPEN), which is an electronic database, containing all the beneficiaries of the grants administered by the SASSA. His evidence pertained to technical aspects and all data which was captured and accessed on the system by employees of SASSA. He stated that the total amount which was unlawfully paid out was R 677 542.00. A further affidavit, also deposed to by Mr. Khubeka, was read into the record. He stated that he was intimidated by one of the suspects which were arrested. This concluded the case for the State opposing the bail of all the applicants.
- [21] The court afforded the applicants an opportunity to provide evidence in rebuttal. Some applicants reopened their cases and further affidavits were filed. It was, *inter alia*, stated that in all probabilities the 10<sup>th</sup> applicant no longer had access to the SASSA system.
- [22] After further evidence was led by some of the applicants, the court enquired from the prosecutor if he discussed this evidence with the investigating officer. The court was informed that the investigating officer was on leave and not at court. The court then said that the court might require certain information to be placed before court based on the information provided in these further affidavits. The court said that she will have to rely on section 60(3) of the CPA and request that further information be placed before the court. The court stated as follows: "*It is not complicated but it is of absolute importance for me to make a proper ruling*".

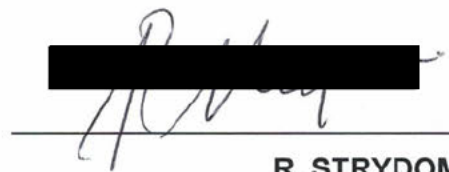
- [23] The court went ahead to place on record the nature of the further evidence which she required. This related to the question whether the applicants would still be able to access the SOCPEN system by using their SASSA computers or laptops. She wanted to know what the current employment status of the applicants were at SASSA. She indicated that there was no mention made in the letter received by the applicants from SASSA that they were suspended. She referred to the letter received by the applicant which was handed to her at the prison. She wanted to know if the laptops of the SASSA employees, who also were applicants before court, would be confiscated and access blocked to the SASSA system. She wanted further information from Mr. Khubeka. It was argued by one of the legal representatives that the information sought could be obtained from any SASSA official during the course of the court day or on the next day, which was in any event, reserved for this bail application. The court mentioned that she required information, which was within the domain of SASSA, but she also required information regarding the movements of the fourth applicant, a foreign national.
- [24] The court then asked the prosecutor whether the information from SASSA could be obtained to be available the next day. Colonel Ragenda who was the commander of the investigating officer, which was on leave, then addressed the court directly. He stated that the evidence from SASSA could be obtained but the HR department must get involved and that the laptops still need to be confiscated. The defence counsel made submissions to avoid a long postponement and information was exchanged about how long it would take to get a movement report from the State department.
- [25] The court during exchanges with legal representatives made it clear that she required information on whether the applicants, who were employed by SASSA, would return to their work if released on bail. She wanted to know whether their access to the SOCPEN computer system would be blocked. She said the reason why this information was sought by her was for her to consider whether there existed a possibility that evidence could be concealed or be destroyed. The magistrate said that these are the factors that the court needs to know, because if this was the situation, it would strongly point to a denial of bail. If it was not, it

would favour the applications of the applicants. During the discussion some of the applicants indicated a willingness to hand back their laptops. It was placed on the record that the laptop of the 11<sup>th</sup> applicant was already blocked. She could not gain access to the system. The attorney for the current applicant placed on the record that passwords are only valid for 30 days. After 30 days, access to the system is blocked. The court indicated that she still wanted to know whether the applicants will return to work and, if so, whether they will have access to the SOCPEN system. She requested that someone from SASSA had to come and explain this to her.

- [26] It was stated by the prosecutor that the matter should stand down till the next day for the information to be placed before court through evidence. The court indicated that the Colonel must be afforded time to obtain the information the court required. Eventually the dates of 10 and 11 June 2025 were decided upon for the continuation of the bail application, as the magistrate was on leave for the month of May.
- [27] Unhappy with this situation, the applicant approached this Court to be released on bail. The case which was advanced by the applicant was that this bail application by its very nature remains urgent. It was argued that sufficient evidence was placed before the magistrate to decide the bail application. It was argued that the magistrate should not have exercised her discretion, afforded to her in terms of section 60(3) of the CPA, to request that additional information be placed before her as the requested information was already on record. It was argued that this Court now must consider the available evidence and should grant the applicant bail.
- [28] In terms of section 60 (3) of the CPA, if a court is of the opinion that it does not have reliable or sufficient information or evidence at its disposal, or that it lacks certain important information to reach a decision in a bail application, the presiding officer shall order that such information or evidence be placed before the court. This is legislated in peremptory terms. A presiding officer would exercise a discretion whether he or she requires further information to reach a decision. It is trite that a court would not lightly interfere with a discretion exercised by a lower court. (see: *S v Pillay* 1977(4) SA 531 AD). The learned

magistrate required reliable information on the question of whether the applicants would, if bail is granted, return to their place of employment where they would be able to access the computer system of SASSA. Not all the queries of the magistrate were reliably answered by the submissions of the legal representatives who appeared before her. The magistrate provided a reason why the further information she sought was important for her to know. If applicants still had access, it would be possible for them to interfere with evidence. If, on the other hand, no such access was possible it would have supported their bail applications.

- [29] The evidence, which was already placed before Court in this regard, was not necessarily reliable to the extent that it could be accepted as factually correct. In my view, the learned magistrate was entitled to direct that the evidence should be placed before her through a witness from SASSA. I cannot conclude that the magistrate exercised her discretion unreasonably or not judicially. Unfortunately, this led to a rather long postponement of this bail application.
- [30] There have been long delays in finalising this bail application. It should be mentioned that the delay during the second part of March and after 2 April 2025 was caused, partly because of the difficult task of getting a date that suited all the legal representatives of the applicants. This, unfortunately, happens in matters where many legal representatives are involved. If there was not such a long delay previously, the situation that the matter had to be postponed for so long because the magistrate went on leave would not have arisen.
- [31] The focus on the application before this Court was on the alleged lack of a cogent reason to postpone the matter rather than the long postponement itself. As this Court concluded that a reason for the postponement existed nothing further needs to be said about the length of the postponement.
- [32] In my view, the applicant failed to make out a case for this Court to intervene and to grant the applicant bail whilst there still is an uncompleted bail application before the magistrate.
- [33] The application is dismissed.



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**R. STRYDOM**

**JUDGE OF THE HIGH COURT  
GAUTENG DIVISION, JOHANNESBURG**

Heard on: 19 May 2025

Delivered on: 21 May 2025

Appearances:

For the Appellant: Adv. W. B. Ndlovu

with Adv. P.G. Masindi

Instructed by: Maluleke (RT) Attorneys

For the 1<sup>st</sup> Respondent: Adv. M. Phatlanyane

Instructed by: National Prosecuting Authority