IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE DIVISION, MAKHANDA)

CASE NO.: CA&R 226/2025

In the matter between:

VILI KRASIMIROV GEORGIEV Appellant

and

THE STATE Respondent

JUDGMENT

GQAMANA J

Introduction

[1] The appellant, Mr Vili Krasimirov Georgiev is a Bulgarian citizen who came to South Africa in December 2014 and has been here since. On 22 November 2024,

the magistrate for the district of Gqeberha issued an order for the committal to prison of the appellant awaiting a decision by the Minister under the provisions of section 10 of the Extradition Act 67 of 1962 ("the Extradition Act"). Aggrieved with such order and judgment, the appellant lodged an appeal to this court.

[2] Two issues are raised in this appeal, namely, whether : (a) the provision of section 9 (3) of the Extradition Act was complied with and (b) the interpreter's competency was properly established and recorded as required by section 6 (2) of the Magistrate's Courts Act.

[3] Before setting out the facts, I must outline the relevant legislation dealing with extradition for a better understanding of this appeal.

Extradition scheme

[4] For purposes of the contested issue on extradition on this appeal, I intend to limit my discussion of the extradition scheme to the judicial phase of the extradition process because the administrative and executive phases are not an issue herein. The Extradition Act determines the conditions that must be complied with on the domestic plane before any person sought by a foreign State to undergo trial or serve a sentence there can be surrendered to the requesting State for that purpose[1]. The Act envisages an expeditious process which is geared towards the apprehension and transfer of the individual sought to face criminal trial or serve his or her sentence in the foreign State.

[5] The extradition process is succinctly summarised in *Harksen v President of the Republic of South Africa* [2],as follows:

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[1] DPP, Cape of Good Hope v Robison [2004] ZACC 22 (CC) at para 2.
[2] 2000 (2) SA 825 (CC) para 14.

'…before the person whose extradition is sought may be surrendered to the foreign State, the procedures prescribed in the [Extradition] Act must be completed. This includes the arrest of the person under section 5(1), the holding of an enquiry under section 9(1), and a finding by a Magistrate under section 10 that the evidence is sufficient to make the person liable to surrender. If the Magistrate makes that finding, the Minister of Justice is given a discretion under section 11 to order the surrender of the requested person to any person authorised by the foreign State to receive him or her.'

[6] Once the person sought is detained under a warrant of arrest, s/he must be brought before a magistrate as soon as possible. The magistrate must hold an enquiry with a view to the surrender that person to the foreign State concerned. The extradition process as well as the nature of the extradition enquiry could differ significantly depending on whether the Act alone is applicable or whether an extradition agreement is in force[3]. Where the extradition is requested by a foreign State, as in this matter, extradition process begins in terms of a section 4(1) request, and the extradition enquiry is governed by section 10 of the Act.

[7] The procedure and form of the extradition enquiry is set out in sub-sections 9(2) and (3). Section 9(2) requires such enquiry to be in the form of a preparatory examination conducted in criminal proceedings. However, the committal enquiry is not a criminal trial[4]. The purpose of the enquiry is not to determine the guilt or innocence for the alleged offence, but rather whether the person sought should be sent to the foreign State to stand trial or serve his/her sentence.

[8] The manner in which such an enquiry is to be held was authoritatively articulated by the Constitutional Court in *Geuking*[5] and it was said:

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[3] Robison supra at para [3].
[4] *Geuking v President of the Republic of South Africa* 2003 (3) SA 34 (CC).
[5] Geuking *supra.*

‘[13] After the process of extradition has been initiated by the issue of a warrant of arrest by a magistrate under section 5(1)(a), section 9(1) requires that the arrested person be brought before him or her as soon as possible for the purpose of holding an enquiry with a view to the surrender of such person to the foreign State concerned……Under section 9(2) the inquiry shall proceed in the manner in which a preparatory examination is to be held …. This means that the enquiry must be held in open court, subject to the provisions of section 9(3) of the Act; the evidence must be led to oath or affirmation; and oral evidence is subject to cross examination and re-examination. The State first leads evidence and thereafter the person has the opportunity of making a statement, testifying or calling witnesses.

[14] Under section 9 (3) of the Act, the magistrate may receive any deposition, statement on oath or affirmation (irrespective of whether it was taken in the presence of the person whose extradition is sought), any record of conviction, or any warrant issued by a foreign State, or any copy or sworn translation thereof. Provision is made in section 9(3) of the Act for the authentication of such documents.’

[9] At the conclusion of the enquiry and after hearing the evidence, the magistrate must either grant a committal order or discharge the person.[6] There are two requirements that have to be established before a committal order is made by the magistrate. First, it is required that the magistrate must be satisfied that the person who sought is liable for surrender to the requesting foreign State. The issue of liability for extradition is determined by section 3 of the Extradition Act.

[10] The second requirement is that there must be sufficient evidence to warrant prosecution.[7] If the magistrate is satisfied that these two requirements have been established, s/he must issue an order committing the person sought to prison to

[6] Section 10 of the Extradition Act.
[7] *Director of Public Prosecutions, Western Cape v Tucker* [2021] ZACC 25 (6 September 2021) at paras 11-14 and 68.

await the decision of the Minister with regard to surrender.[8]

[11] In *Tucker*,[9] the Constitutional Court held that:

'A section 10 enquiry is limited to establishing these two jurisdictional facts. If they are established, the magistrate shall commit the sought person to prison, pending the Minister's decision to surrender the person. …… The enquiry before the magistrate involves establishing the liability for extradition and sufficient evidence warranting prosecution in the foreign State and the section 10 decision is solely whether to commit or discharge. The committal determination is '*a narrow and specific issue'* and that does not '*involve deliberation on human rights issues'* or *'whether it is unjust or unreasonable to surrender the applicant'.* These are questions that are relevant to the Minister's decision to surrender the sought person, which is made in terms of section 11 (the surrender decision).[10]'

[12] In *Geuking*,[11] the Constitutional Court had the following to say:

'An extradition enquiry is a balancing act between the requesting State. Their right to prosecute alleged offenders and the individual's rights include the right to a fair trial. The *prima facie* standard ensures that the individual is not arbitrarily surrendered without some legitimate basis.'

[13] This appeal does not engage the executive phase of the extradition process, and I will not deal with it. The contention by the appellant is that there was no admissible evidence as envisaged in section 9(3) which the magistrate could have relied upon to issue the order committal order pending the Minister's decision.

[14] The relevant part of section 9(3) reads as follows:

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[8] Section 10(1) of the Extradition Act.
[9] At para 69.
[10] footnotes omitted.
[11] *Supra*.

‘(3) Any deposition, statement on oath or affirmation taken, whether or not taken in the presence of the accused person, or any record of conviction or any warrant issued in a foreign State, or any copy or sworn translation thereof, may be received in evidence at any such enquiry if such document is -

(a)(i) accompanied by a certificate according to the example set out out in Schedule B;[12]

(ii) authenticated in the manner provided for in the extradition agreement concerned; or

(iii) authenticated by the signature and seal of office-

(aa) ………

(bb) of any government authority of such foreign State charged with the authentication of documents in terms of the law of that foreign State;

(cc)……….; or

(dd). ………’

Facts

[15] It is now convenient to set out the facts. The appellant together with his two co-accused[13] were charged for murder of Stoyan Stoyanov Baltov (the deceased) on 5 December 2008 in Sofia, Bulgaria. His co-accused were found guilty, but the appellant was found not guilty and acquitted in the Sofia City Court on 19 July 2013.

[16] Following his acquittal the prosecution appealed successfully to the Sofia Court of Appeal and his acquittal was overturned. Accordingly, the appellant was convicted on the charge of murder and was sentenced to 18 years’ imprisonment.

[12] Apostille.

[13] Those two accused persons are not relevant to the issues in this appeal.

[17] The matter was then referred to the Sofia Appellate Court. On 17 April 2014, the conviction and sentence were confirmed.

[18] Subsequent to that the appellant through his legal representative appealed the conviction and the sentence. That appeal was heard on 10 November 2014, by the Supreme Cassation Court. On 19 December 2014, the appeal was dismissed, and the conviction and the sentence of 18 years imprisonment was again confirmed.

[19] While the appeal processes in Bulgaria were pending, the appellant was out on warning. He knew that should his appeal fail, he would have to hand himself over to serve his sentence of 18 years' imprisonment.

[20] While the appeal was pending in Bulgaria, the appellant came to South Africa. On 17 August 2018, the appellant was arrested in South Africa upon a warrant of arrest and on request of the Bulgarian authorities to have him extradited, so that he could serve his sentence there.

[21] On 13 September 2018, he was granted bail in the extradition hearing. There were delays in finalising the extradition enquiry, but on 22 November 2024, an order was issued by the magistrate for his committal to prison to await the Minister's decision with regard to his surrender. Aggrieved with such order, the appellant lodged an appeal to this court.

[22] The appellant is out on bail pending the outcome of this appeal. Every stage of the process was intensely litigated.

[23] It is common cause that at the enquiry before the magistrate the State presented the evidence of Lieutenant Colonel Swanepoel of the SAPS. He is the police officer who executed the appellant's warrant of arrest on 17 August 2018. In addition, through his testimony the State also presented a bundle of documents which were marked exhibit A to exhibit M. There are two exhibits which are central to this appeal. First its exhibit B which is the formal extradition request of the appellant from Bulgarian authority to South Africa. Each document therein contains a translated version and an original Bulgarian version. The second document is exhibit C (which was marked C1 to C5(A)) and it contains what I will term "the record of the legal proceedings in the various courts in Bulgaria". Exhibit C contains *inter alia,* the judgment delivered by the Sofia City Court, sentence by that court, arguments in Sofia Court of Appeal, sentence proceedings in Sofia City Appeal Court and decision of the Supreme Cassation Court. Each document, that is, C1 to C5 (A) contains both a certified translation version and the original Bulgarian version.

[24] In a nutshell the aforementioned documents in exhibit C shows that the appellant was charged for murder and he was acquitted but his co-accused were convicted. The appeal by the prosecution against his acquittal was successful and he was sentenced to 18 years' imprisonment. His further appeal processes in all the Bulgarian courts were unsuccessful and consequently his conviction on murder and sentence of 18 years imprisonment were confirmed. The Bulgarian authority had made a request for his extradition so that he could serve his sentence in Bulgaria.

Interpretation of section 9(3) of the Extradition Act

[25] It was submitted on his behalf that the documents mentioned in paragraph 23 above were inadmissible evidence due to lack of compliance with section 9(3) and consequently the magistrate should not have received them in evidence.

[26] In advancing his stance, it was argued that the aforementioned foreign language documents which the State relied upon had to be accompanied by sworn translations as required by section 9(3). Because properly construed, section 9(3) requires that the translated documents must be sworn and to read the word ‘or’ as dispensing with that additional requirement which requires sworn translation would render the specific reference to sworn translation in that section meaningless and would defeat the very purpose of the safeguard.

[27] Mr Daubermann argued that the requirement for the sworn translation is not a mere technicality but an essential safeguard. Without a sworn translator attesting under oath the accuracy and completeness of such a document in foreign language, the magistrate could not have been sure that she was acting on a true and faithful record. Therefore, to rely on unsworn translation, albeit a certified translation falls far short of the constitutional guarantees like an individual’s right to freedom and security and the right not to be deprived of freedom without just cause.

[28] It was submitted that section 9(3) gives effect to these safeguards by ensuring that a sworn translation is the only acceptable way for a court to rely on foreign language material. A strict compliance with the statutory pre-conditions for extradition is a jurisdictional requirement. And if the sworn translation requirement is not met, the magistrate had no lawful basis to act.

[29] Because the magistrate received only an unsworn translation of Bulgarian documents, it was submitted that she was never presented with competent evidence and therefore without competent evidence, the magistrate lacked any jurisdictional foundation to issue a committal order. The unsworn translation documents were not admissible evidence and without admissible evidence the magistrate made the order without jurisdiction.

[30] In addition, it was submitted that authentication of foreign documents should not be conflated with accuracy of the translated content. Because authentication only assures the court that the document is genuine not that its meaning is correctly conveyed. A sworn translator's affidavit is such a separate safeguard designed to ensure that the court does not act on mistranslated or incomplete material. Therefore, the full processes are that the authentication and sworn translation are distinct and accumulative.

[31] Mr Daubermann placed reliance in *Mohamed v President of the Republic of South Africa* [14] for his submissions. He submitted that jurisdictional preconditions in extradition matters are peremptory and cannot be cured by silence, or consent. In advancing that argument it was submitted that the magistrate lacked jurisdiction because the Bulgarian documents were not accompanied by a sworn translation as required by section 9(3) and jurisdictional precondition cannot be waived by consent or silence. Taking the argument to its conclusion, it was submitted that the absence of sworn translation is a fatal defect that cannot be cured by silence.

[32] On the other hand, Mr Stander for the respondent argued that the issues raised

[14] 2001 (3) SA 893 (CC).

by the appellant are technical niceties. It was submitted that the extradition inquiry was in terms of the European Convention on Extradition and both South Africa and Bulgaria are signatories to it. Article 12 of the aforementioned convention states that the request for extradition must be in writing and be supported by the original or authenticated copy of the conviction and sentence or of the warrant of arrest or other order having the same effect and issued in accordance with the procedure laid down in the law of the requesting party, which is Bulgaria. It was submitted that the documents which were placed before the magistrate and in particular exhibit C contained the translation and followed by an original version. So the argument was that the original version was presented to the magistrate. And those documents were issued in accordance with the laws of the requesting state, which is Bulgaria.

[33] Furthermore article 23 deals with the language to be used and it states that:

'The documents to be produced shall be in the language of the requesting or requested Party. The requested Party may require a translation into one of the official languages of the Council of Europe to be chosen by it.'

[34] So the original documents were placed before the magistrate and that those documents were all in Bulgarian language, the appellant's first language and there were also accompanied by a certified translation. It was evident from the appeal record that the appellant is also fluent in English. The transcript of his bail application bears testimony to this.

[35] The respondent to boost its case also made reference to the provisions of sections 30 and 31 of the International Co- Operation in Criminal Matters Act 75 of 1996. I have no ambition to discuss the provisions of Act 75 of 1996 because I hold the view that they are of no assistance to the real issues on this appeal.

[36] In relation to section 9 (3) of the Extradition Act, Mr Stander submitted that it is not a requirement that the original document must be accompanied by the sworn translation. The respondent could have either placed the original or copy or sworn translation before the magistrate. And therefore, because the respondent had placed the original, it was not necessary for same to be accompanied by the sworn translation.

[37] The argument was further that section 9 (3) must be read in conjunction with the European convention. With reliance in *Tucker*[15]judgment, it was argued that it is not for the courts to attempt to impose our rules and standards on other foreign legal system in dealing with extradition matters and therefore our legislation should not put higher burden of proof on the requesting State as to what the European Convention states. It was accordingly submitted that the documentation placed before the magistrate complies with the provisions of section 9 (3).[16]

[38] When one deals with an interpretation of a statute or any legal document the correct approach is that which was set out in *Natal Joint Municipality Pension Fund v Endumeni* [17] that:

'[18] …. Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon coming into existence. Whatever the nature of the document, consideration must be given to the language used in light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed

[15] Director of Public Prosecutions, Western Cape v Tucker [2021] ZACC 25 (6 September 2021).
[16] See Director of Public Prosecutions, Cape of Good Hope v Robinson 2005 (44) SACR 1 (CC) paras 61- 68.
[17] 2012 (4) SA 593 (SCA) at para 18.

and material to those responsible to its production. Where more than one meaning is possible each possibility must be weighed in light of all these factors. The process is objective and not subjective. A sensible meaning is to be preferred to that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document. Judges must be alert to, and guard against, the temptation to substitute what they regard as reasonable, sensible or businesslike for the words actually used. To do so in regard to the statute or statutory instrument is to cross the divine between interpretation and legislation. In contractual context it is to make the contract for the parties other than the one they in fact made. The inevitable point of departure is the language of the provision itself, read in context and having regard to the purpose of the provision and the background to the preparation and production of the document.'

[39] In *Cool Ideas 1186 v Hubbard and Another*,[18] it again said:

'[28] A fundamental tenet of statutory interpretation is that the words in a statute must be given their ordinary grammatical meaning, unless to do so would result in absurdity. There are three important interrelated riders to this general principle, namely:

(a) that the statutory provisions should always be interpreted purposively;

(b) the relevant statutory provision must be properly contextualised; and

(c) all statutes must be construed consistently with the Constitution, that is, where reasonably possible, legislative provisions ought to be interpreted to preserve their constitutional validity. This proviso to the general principle is closely related to the purposive approach referred to in (a).'[19]

[40] Section 9(3) deals with the admissibility of evidence from foreign States during an extradition enquiry. It allows for either the original, or copy, or sworn translation of the document concerned, provided it is authenticated in the manner set out in the Extradition Act or as stipulated in the extradition agreement.

[41] It was submitted on behalf of the appellant that section 9(3) of the Extradition

[18] 2014 (4) SA 474 (CC) para 28.
[19] footnotes omitted.

Act expressly requires that any foreign document relied upon in an enquiry must be accompanied by a sworn translation. Section 9 (3) does not expressly state that. In any event, to construe section 9 (3) in the manner suggested by Mr Daubermann would be inconsistent to the authorities referred to above in relation to the correct approach on statutory interpretation. A provision in a statute must always be interpreted purposively and read in context.[20]

[42] Nowhere in section 9 (3) is it required that the original document be accompanied by the sworn translation. The documents that were placed before the magistrate were original plus the translation version appropriately authenticated. As indicated above, both South Africa and Bulgaria are signatories to the European Convention on Extradition.

[43] In *Robinson,* [21] it was made clear by the Constitutional Court that: *'the decision as to whether a person is to be extradited including the question as to whether documents have been authenticated appropriately must be made by reference to the agreement and the Act.'* So, provisions of section 9 (3) must be read in conjunction with the European Convention on Extradition. Article 12 of such Convention states that the request must be supported by the original or an authenticated copy of the conviction and sentence or of the warrant of arrest issued in accordance with the procedure laid down in the law of the requesting party.

[44] The reliance in *Mohamed*[22] by the appellant in his proposition in relation to the jurisdictional requirements for a magistrate before a committal order can be issued is misplaced. *Mohamed* was not concerned with either the proper

[20] Cool Ideas and Natal Joint Municipality Pension Fund (supra).
[21] *DPP, Cape of Good Hope v Robinson supra* para 3.
[22] *Supra*.

interpretation of section 9(3), or the liability to surrender in terms of section 10(1) of the Extradition Act. An issue in that case was whether *Mohamed* was deported or extradited.

[45] Therefore considered section 9(3) in conjunction with the extradition agreement, I'm satisfied that the documents placed before the magistrate were admissible evidence. The appellant presented no evidence in the enquiry. The evidence by the State was accordingly unchallenged. That evidence shows that the appellant was convicted of murder in Bulgaria and was sentenced to 18 years of imprisonment. Murder is an extraditable offence as defined in section 1 of the Extradition Act. Further there was sufficient evidence to warrant prosecution. In fact, the appellant has already been convicted and sentenced for such an offence. The request for the extradition is for him to serve his sentence in Bulgaria.

[46] Accordingly, both requirements set out in section 10(1) of the Extradition Act were established and as such the magistrate was correct to issue the order committing the appellant to prison to await the decision by the Minister with regard to his surrender.

Was the interpreter's competence properly established

[47] The second ground of appeal is that the magistrate failed to determine the competence of the interpreter. It was argued that once the magistrate elected to proceed with an interpreter, section 6(2) of the Magistrate's Court Act and rule 68 (2) imposed a mandatory duty to administer the prescribed oath or affirmation to the interpreter and record a clear finding that the interpreter was competent to interpret between Bulgarian and English. The fact the appellant is fluent in both

English and Bulgarian languages does not remove that duty by the magistrate.

[48] With reliance on *Sayed v Levitt NO*,[23] it was submitted that a magistrate must actively satisfy himself that an interpreter is fit for purpose and that merely swearing in an interpreter is insufficient. It was argued that failure to ensure competence results in an inherently prejudicial irregularity, vitiating the proceedings.

[49] Firstly, the magistrate in his reasons has stated the following:

> "On 29 July 2024 the court enquired about her competency as an interpreter. She was a Bulgarian citizen, with Bulgarian language as her first language and English as a second language. She finished school in Bulgaria and is currently residing in South Africa. Upon questioning her ability to translate, she handed documentation to the court confirming this and stated that she is fluent in both languages. The documentation was handed back to her upon request. The court made a ruling that she is a competent interpreter and swore her in. There was no need to establish her competency again on 18 November 2024."

[50] Secondly, the appellant's home language is Bulgarian. However, it is evident from the appeal record that the appellant is fluent in English. The record shows us that in the bail application, he testified fluently in English. And nowhere during the enquiry did the appellant raise issue on incorrect interpretation. Unlike in *Sayed*, where the issue of incorrect interpretation was pertinent. There, the court even said that the record reflects that the interpreter was not fluent in English, at times the court could not understand what the interpreter was saying and even the appeal records shows that it was difficult to follow and understand what the interpreter said. This is not the case here. The appeal record is clear. It shows that the interpreter was also fluent in English.

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[23] 2012 (2) SACR 294 (KZP).

[51] Furthermore on both appearances at the extradition enquiry (i.e. on 29 July 2024 and 18 November 2024), no objection was raised about the incorrect interpretation.

[52] Neither the appellant nor his legal counsel raised an objection about the competence of the interpreter during the enquiry. The enquiry was not merely a game; there was an ethical duty on the appellant's counsel to raise the issue of the interpreter's competence if he felt that the interpreter was not properly sworn in. The issue with the interpretation suddenly surfaced for the first time in the notice of appeal after the committal order had been issued.

[53] Accordingly the second ground of appeal has no merits, and it must also fail.

Order

[54] In the result, the appeal is dismissed.

N GQAMANA

JUDGE OF THE HIGH COURT

I agree:

V NONCEMBU

JUDGE OF THE HIGH COURT

APPEARANCES:

Counsel for the Appellant	:	*Mr Daubermann*
Instructed by	:	Griebenouw Attorneys
		Gqeberha
Counsel for Respodent	:	*Adv M Stander*
Instructed by	:	Director of Public Prosecutions
		Gqeberha
Heard on	:	30 July 2025
Judgment delivered on	:	07 October 2025