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REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: A208/2019

(1) REPORTABLE: **YES** / NO

(2) OF INTEREST TO OTHER JUDGES: **YES**/NO

(3) REVISED: YES

DATE 13 October 2025

SIGNATURE

In the matter between:

MANYABA RUBBEN MOHLALOGA

Applicant

And

THE STATE

Respondent

JUDGMENT

MOSOPA J

[1] This is an application for the extension of bail of the applicant, pending an application for leave to appeal to the Constitutional Court. The application is opposed by the respondent, suffice to say that the respondent did not file an answering affidavit in opposition of the application.

Background

[2] The applicant, who was arraigned as accused 2 in the Regional Division of Gauteng, Pretoria, was convicted of one count of fraud and one count of contravention of section 4 of the Prevention of Organised Crime Act 21 of 1998 (POCA) (money laundering) on 15 January 2018. He was then sentenced, as a sequel to such convictions, on 14 February 2019, to an effective sentence of 20 years imprisonment. The trial court granted the applicant leave to appeal against his sentence but refused leave to appeal his conviction.

[3] Pursuant to such conviction and sentence, the applicant, who was out on bail at that stage, successfully brought a bail application pending petition and appeal to the High Court and was permitted to bail in the amount of R70 000,00.

[4] This appeal to the High Court was dismissed on 23 January 2023. The applicant's bail was then reinstated by Neukircher J on 6 March 2023. The Applicant's bail was granted in the amount of R70 000,00, with conditions attached, pending special leave to the Supreme Court of Appeal (SCA). In terms of Neukircher J's order, the applicant had to *inter alia*:

4.1 inform the Investigating officer once the appeal process is concluded and

4.2 report to the Pretoria Magistrate's court within 14 days should his petition be declined.

[5] On 1 September 2023, the applicant's petition was determined by Mbatha JA and Unterhalter AJA (as he was then) in the Supreme Court of Appeal ("SCA") and the following order was made:

5.1 The application for condonation is granted.

5.2 Special leave to appeal against sentence is granted to the full court of the Gauteng Division of the High Court, Pretoria.

5.3 The application for special leave against conviction is dismissed.

[6] Aggrieved by the decision, the applicant filed an application for reconsideration in terms of section 17(2)(f) of the Superior Courts Act 10 of 2013 ("SCAct") on 6 November 2023 to the President of the Supreme Court of Appeal ("President"). On 3 January 2024, the President made an order referring the decision

made on 1 September 2023 (dismissing the applicant's application for special leave to appeal against conviction) for reconsideration and, if necessary, variation and further that the special leave to appeal is referred for oral argument in terms of section 17(2)(d) of the SCAAct.

[7] On 8 August 2025, the SCA, after hearing oral arguments in terms of section 17(2)(d), made the following order:

7.1 The application for reconsideration of the decision refusing special leave to appeal against conviction is struck from the roll.

7.2 The appeal against sentence is dismissed.

[8] The order had the effect that the applicant had to surrender himself to the clerk of the court to start serving sentence. On 29 August 2025, the applicant brought an urgent application for the extension of bail following Neukircher J's order of 6 March 2023, pending the application for leave to appeal the SCA order to the Constitutional Court. The parties then agreed that the applicant should not surrender himself for detention until the extension of bail application is determined.

[9] I was then allocated the file by the Office of the Acting Deputy Judge President on 4 September 2025 to hear the matter. The applicant filed his application for leave to the Constitutional Court on 8 September 2025, which was after filing his application for bail to this court. The parties agreed that this matter be heard on 16 September 2025. After hearing, I then reserved judgment.

Personal circumstances

[10] The applicant, in his affidavit in support of the extension of bail pending the petition to the Constitutional Court, averred that:

10.1. he was born on 8 August 1973 in Alberton, Gauteng Province, South Africa, and he is currently 51 years old;

10.2. he resides at 2[...] A[...] Crescent, L[...] Estate, Silverlakes Road, Tiger Valley, a property which is valued at R4,2 million. He has been residing at that address for approximately 9 years;

10.3. he resides with his wife and their four children, who are all depending on him for maintenance as his wife is unemployed. They have been married for 22 years. The ages of his children range from the age of 21 years to 5 years;

10.4. he is the owner of another property situated at 3[...] F[...] Crescent, Eskol Villa Bendor, Polokwane, with an approximate value of R2.1 million;

10.5. he does not own any assets in foreign countries and his travelling documents have been with the Investigating Officer since he was released on bail, following Neukircher J's order;

10.6. he operates a commercial farm owned by Manyaba Group CC, and he is a member of the close corporation, situated at D[...], D[...] H[...], Modimolle, Limpopo, farming with livestock and poultry with a net income of between R25 000,00 and R40 000,00 per month;

10.7. he furthermore generates income through the operation of a bus and taxi also owned by Manyaba Group CC, under the control of Moletjie Taxi Association and generates an income of approximately R8 000,00 per month;

10.8. he is also a student at Tshwane University of Technology, pursuing a Doctorate in Public Management, and

10.9. he will be in a position to pay a reasonable amount of bail, if permitted to bail.

Applicable legal principle

[11] The proviso to section 58 of the Criminal Procedure Act 51 of 1977 ("Act") makes the following provision:

"[P]rovided that where a court convicts an accused of an offence contemplated in Schedule 5 or 6, the court shall, in considering the question

whether the accused's bail should be extended, apply the provisions of section 60 (11) (a) or (b), as the case may be, and the court shall take into account-

- (a) the fact that the accused has been convicted of that offence; and
- (b) the likely sentence which the court might impose.”

[12] The accused was convicted of a crime which falls under Schedule 5, meaning the relevant provision, which must be read together with the provision in section 58, is section 60(11)(b) of the Act, which reads as follows:

“60(11) Notwithstanding any provision of this Act, where an accused is charged with an offence-

- (b) referred to in Schedule 5, but not in Schedule 6, the 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.”

[13] The relevant section places an onus on the bail applicant to prove, by adducing evidence, that it is in the interests of justice that he or she be released, failing which the court determining such bail application will order him or her to remain in detention. The bail applicant must convince the court dealing with the bail application that it is in the interests of justice to permit his release¹. (In *S v Bruintjies*² even though the bail applicant was convicted of a crime resorting under Schedule 6, the same principle is applicable *in casu*).

[14] Of importance is what was stated in *S v Madlala*³:

“A bail application is allowed along the way at each step of arrest and trial (and application for leave to appeal and petition), but the closer the accused comes to conviction, the lower, generally speaking, are the chances that an accused will be permitted to bail because once convicted and sentenced he must start serving his sentence. That fact is echoed in the CPA in s 307, in that, the legislation demands that execution of a sentence is not suspended

¹ *S v Rohde* [2019] ZASCA 193; 2020 (1) SACR 329 (SCA) at para 4.

² 2003 (2) SACR 575 (SCA) 577 (b).

³ [2019] ZAGPPHC 599; 2020 (2) SACR 120 (GP) at para 26.

unless bail is granted. The default position in the CPA is, therefore, that, once a sentence is imposed, sentence must be implemented, and the accused must start serving his sentence unless bail is granted.”

[15] The *Madlala* matter endorses the principle of finality of matters, more especially where a bail applicant is convicted and sentenced. The only exception will be where bail is granted. The approach adopted in the *Madlala* matter, does not offend the provisions of section 35(3)(o) of the Constitution, which reads as follows:

“(3) Every accused person has a right to a fair trial, which includes the right—
(o) of appeal to, or review by, a higher court.”

However, this is not an absolute right.

[16] The test in applications for bail pending leave to appeal to the Constitutional Court is “reasonable prospects of success”. In *S v Smith*,⁴ the following was stated:

“What the test of reasonable prospects of success postulates is a dispassionate decision, based on the facts and the law, that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In order to succeed, therefore, the appellant must convince this court on proper grounds that he has prospects of success on appeal and that those prospects are not remote, but have a realistic chance of succeeding. More is required to be established than that there is a mere possibility of success, that the case is arguable on appeal or that the case cannot be categorised as hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal.” (Footnotes omitted.)

[17] In terms of section 17(1) of the SCAAct;

“17(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that—

- (a) (i) the appeal would have a reasonable prospect of success; or
- (ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.”

⁴ [2011] ZASCA 15; 2012 (1) SACR 567 (SCA) at para 7.

[18] The court dealing with bail pending leave to appeal to the Constitutional Court is not seized with the authority to determine the merits of the appeal, but should establish whether there are reasonable prospects that the Constitutional Court would come to a different conclusion from the one arrived at by the SCA. In *S v Nel*,⁵ Moseneke J, when dealing with this aspect, stated;

“The decision of this Court is to determine whether there is a reasonable prospect of success of the application, should it come before the Constitutional Court. That is a very vital distinction. Superior Courts, in the normal course of their functions, are called upon to pass judgment on whether there is a reasonable likelihood of success should an appeal come before another Court of appellate jurisdiction. I am not called upon to usurp the function of the Constitutional Court. I am called upon to determine, on the total evidentiary material before me, whether the Constitutional Court is likely to alter materially the decision arrived at by the Supreme Court of Appeal. That is clearly very different from the function of the Constitutional Court, which would be seised with the determination of the merits of the actual application for leave which I am not called upon to do.”

[19] In *S v Masoanganye*⁶ the court held that what has to be considered when granting bail pending appeal was the seriousness of the crime, the real prospects of success on conviction, and the real prospects that a non-custodial sentence may be imposed and whether the bail applicant is a flight risk or not. All these factors must be considered together with the provision of section 60(4)(a)-(e) of the Act.

[20] The right to be presumed innocent is no longer available to the applicant due to conviction and the resultant sentence. The applicant was sentenced to an effective 20 years imprisonment. In *S v Rohde*,⁷ the following was stated:

“[5] The next difficulty for the appellant is his changed status. The stark reality is that the presumption of innocence no longer operates in his favour. As stated by the court a quo:

‘Pre-trial release allows a man accused of crime to keep the fabric of his life intact, to maintain employment and family ties in the event he is acquitted or given a suspended sentence or probation. It spares his

⁵ 2002 (1) SACR 425 (T) at 430 b-e. See also: *S v Hlongwane* 1989 (4) SA 79 (T).

⁶ [2011] ZASCA 119; 2012 (1) SACR 292 (SCA) at para 14.

⁷ [2019] ZASCA 193; 2020 (1) SACR 329 (SCA) at paras 5-6.

family the hardship and the indignity of welfare and enforced separation. It permits the accused to take an active part in planning his defence with his counsel, locating witnesses, proving his capability of staying free in the community without getting into trouble. This including conflicting judgments under considerations.

[6] On conviction other considerations come to the fore. An increased risk of abscondment once a person has been convicted and sentenced to a lengthy term of imprisonment is inevitable. The severity of the sentence imposed will be a decisive factor in the court's exercise of its discretion whether or not to grant bail. The notional temptation to abscond (which confronts every accused person) becomes a real consideration once the length of the gaol sentence is known. (Footnotes omitted.)"

Analysis

[21] It is now approximately seven years since the applicant was convicted and sentenced. It took a period of approximately one year and a month after the applicant was convicted in January 2018 to be sentenced on 14 February 2019 for charges that stemmed from December 2007 to 1 February 2008. The reasons for the delay are not clearly set out in the applicant's affidavit in support of the bail application. Since his sentence, the matter served before different forums, from the High Court up to the SCA. In the SCA, the matter served before three different forums.

[22] When the matter served before Mbatha JA and Unterhalter AJA (as he was then) the applicant was granted special leave to appeal sentence, but special leave against conviction was dismissed. On 8 August 2025, the SCA eventually dismissed the appeal against sentence and refused special leave to appeal against conviction.

[23] The gist of the applicant's contention is based on the interpretation of section 17(2)(f) of the SCA and the fact that there is some other compelling reason why the appeal should be heard, because there are conflicting judgments under consideration. The further contention is that the SCA, when dismissing the appeal against sentence and striking off the special leave against conviction, exercised authority that it did not possess. The applicant argued that the issue relating to

consideration of “exceptional circumstances” is the realm of the President and the President dealt with such when considering the application in terms of section 17(2)(f) of SCAAct. The judges who dismissed the special leave to appeal were only expected to deal with the merits of the matter and not to repeat the subject matter that had already been determined by the President.

[24] In support of his contention, the applicant placed reliance on the minority judgment in the matter of *Schoeman v Director of Public Prosecutions*,⁸ which states as follows:

“[6] This case presents a direct challenge to the principle recently established by this Court in *Bidvest Protea Coin Security (Pty) Ltd v Mabena (Bidvest)*. The central issue is the proper interpretation of s 17(2)(f) of the Superior Courts Act 10 of 2013 (the Act). It must be decided whether the existence of ‘exceptional circumstances’ is a jurisdictional fact to be determined by the Court hearing the reconsideration application, as *Bidvest* held, or whether it is a matter for the President of this Court to determine when deciding whether to refer a matter for reconsideration.

[7] The President, having been satisfied that exceptional circumstances were present, referred the refusal of the appellant's petition for reconsideration by this Court. *Bidvest* held that, as a preliminary point, the Court must first satisfy itself that exceptional circumstances exist before it can entertain the merits of the reconsideration application. For the reasons that follow, I conclude that *Bidvest* was wrongly decided and its interpretation of s 17(2)(f) should not be followed.”

[25] The majority in *Schoeman* disagreed with the minority and stated as follows:

“[56] I have read the judgment of my colleague (the first judgment). I am not in agreement with its interpretation of s 17(2)(f) of the Superior Court Act 10 of 2013, nor its treatment of the doctrine of precedent. These are matters of importance. Litigants are entitled to a settled regime of rules that govern appeals in this Court. The first judgment is antithetical to this essential requirement of the rule of law.”

⁸ [2025] ZASCA 124.

[26] The SCA, when dismissing the applicant's special leave to appeal conviction and sentence, considered the aspect relating to "exceptional circumstances" and was unable to find that exceptional circumstances exist in the case of the applicant that warrant reconsideration of the decision refusing leave to appeal.

[27] This topic has been a subject matter of litigation and both the SCA and the Constitutional Court have made pronouncements in several cases. In *Motsoeneng v South African Broadcasting Corporation SOC Ltd and Others*,⁹ the SCA held that the court to which the decision refusing leave to appeal is referred, is required, as a threshold question, to determine whether there are exceptional circumstances that warrant a referral for consideration. The SCA in *Bidvest Protea Coin Security (Pty) Ltd v Mabena*,¹⁰ endorsed the portion held in *Motsoeneng* when the following was stated:

"Both the exclusivity interpretation and the jurisdictional fact interpretation have some foundation in the text of s 17(2)(f). As we have observed, the power is conferred upon the President and its exercise is to refer the decision on petition to the Court. That framing supports the exclusivity interpretation. However, the text confers the power upon the President if there are exceptional circumstances, and does not make the determination of those circumstances the exclusive preserve of the President. If the exercise of a power depends upon the existence of a state of affairs (here exceptional circumstances), absent a clear expression to the contrary, the repository of the power will not lightly be found simultaneously to exercise the power and be the only judge as to whether the state of affairs exists that permits of the exercise of such power. Hence, it lies with the Court to which the referral is made by the President to be the ultimate arbiter as to whether the jurisdictional fact for the exercise of the power exists. This reasoning supports the jurisdictional fact interpretation."

[28] The same approach was adopted by the Constitutional Court in *Liesching and Others v The State*.¹¹ The minority in *Liesching* supported the contention made by the applicant. To this end, the contention by the applicant cannot be of merit as he is relying on minority judgments and such cannot be considered to amount to

⁹ (2024) ZASCA 80; 2025 (4) SA 122 (SCA) at para 19.

¹⁰ [2025] ZASCA 23; 2025 (3) SA 362 (SCA) at para 13.

¹¹ [2018] ZACC 25; 2019 (1) SACR 178 (CC); 2018 (11) BCLR 1349 (CC) at para 137.

conflicting judgments which compel the leave to appeal to be heard by the Constitutional Court.

[29] In *Cloete and Another v S; Sekgala v Nedbank Limited*,¹² when dealing with the Constitutional Court's jurisdiction, the Constitutional Court held that:

"This court's jurisdiction is delineated by section 167 of the Constitution. This section requires that a litigant show that the matter raises a constitutional issue or that it raises an arguable point of law of general public importance, and that it is in the interest of justice for leave to be granted. However, that is not the only pre-requisite for this court to be vested with jurisdiction. Section 167(6) of the Constitution states;

'National legislation or the rules of the Constitutional Court must allow a person, when it is in the interests of justice and with leave of the Constitutional Court—

- (a) to bring a matter directly to the Constitutional Court; or
- (b) to appeal directly to the Constitutional Court from any other court." (Footnotes omitted).

[30] The proviso in section 17(2)(f) of the SCAAct has since been amended and substituted by section 28 of the Judicial Matters Amendment Act 15 of 2023, and reads as follows:

"(f) The decision of the majority of the judges considering an application referred to in paragraph (b), or the decision of the court, as the case may be, to grant or refuse the application shall be final: Provided that the President of the Supreme Court of Appeal may, in circumstances where a grave failure of justice would otherwise result or the administration of justice may be brought into disrepute whether of his or her own accord or on application filed within one month of the decision to the court for consideration and, if necessary, variation."

[31] The SCA in terms of this matter at para 21 stated that;

[21] As held by the Constitutional Court in *Liesching and Others v S*, exceptional circumstances envisaged in s 17(2)(f) of the Superior Court's Act are circumstances which give rise to a probability of grave individual injustice,

¹² [2019] ZACC 6; 2019 (4) SA 268 (CC); 2019 (5) BCLR 544 (CC) at para 22.

or the administration of justice might be brought into disrepute if no reconsideration occurs. This formulation has been adopted by the legislature in the amendment to s 17(2)(f) which came into effect on 3 April 2024. Since this matter was referred by the President to the court for consideration on 3 January 2024, the old formulation of s 17(2)(f) still applies.”

[32] Based on the above, it is my considered view that there are no prospects of success of the applicant’s leave to appeal to the Constitutional Court.

[33] The respondent did not file any opposing papers to the personal circumstances as averred in the applicant’s founding affidavit in support of bail. It is for that fact that it is accepted that such are admitted by the respondent. The applicant has been on bail since the commencement of his trial. His bail was extended after the appeal to this court was refused. He is currently on bail and there is no evidence that he defaulted on his bail conditions.

[34] As already indicated, the applicant is sentenced to a period of 20 years imprisonment. The applicant is convicted of a very serious crime of fraud and money laundering, the money that the government intended to assist previously disadvantaged farmers financially with. The applicant, in his capacity as a member of parliament and the Chairperson of the Portfolio Committee on Agriculture, was disqualified from accessing such funds, a fact that was known to the applicant at the time of the commission of the offences that he has been convicted and sentenced of.

[35] I am also alive to the fact that the applicant has surrendered his passport to the Investigating officer. However, there is no possibility of the applicant facing a non-custodial sentence should his leave to appeal to the Constitutional Court be successful against sentence. Granting the applicant bail at this stage will be tantamount to postponing his sentence. The applicant seeks relief that the Constitutional Court remit the matter back to the SCA for determination of the section 17(2)(f) application, meaning that if successful, there will be another delay for him to start serving his sentence.

[36] Based on the above, it is apparent that the applicant failed to adduce evidence that satisfies this court that the interests of justice permit his release on bail. There is no averment made by the applicant that if his bail is not extended, his business will suffer. With the many businesses that the applicant is conducting, it can be inferred that he employed people who can look after his business in his absence. His wife is also unemployed and she can be in a position to safeguard the business affairs of the applicant. The academic qualifications of the applicant's wife were not made available, but taking into account the duration that the applicant has been conducting his businesses, it can be inferred that she can be in a position to assist. The occupation and academic qualifications of his eldest son was also not stated, in light of his age (21 years), he could also be in a position to assist with the applicant's businesses.

ORDER

[37] As a result, the following order is made:

1. Application for bail pending leave to appeal to the Constitutional Court is hereby refused.
2. The applicant is ordered to hand himself over to the clerk of court, Pretoria Magistrates Court (Specialised Commercial Court) within 7 days of this judgment, to start serving his sentence.

M.J MOSOPA
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Appearances:

For the Applicant : Adv Van Niekerk
Instructed by : Krause Attorneys Inc
For the Respondent : Adv A.G. Janse Van Rensburg
Instructed by : Director of Public Prosecutions, Pretoria

Date of Hearing : 16 September 2025

Date of Judgment : 13 October 2025