

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: **A67/2025**

(1)	REPORTABLE: YES
(2)	OF INTEREST TO OTHER JUDGES: YES
(3)	REVISED: NO
27 October 2025	
_____ DATE	 _____ SIGNATURE

In the matter between:

VUSIMUZI MATLALA

Applicant

and

THE STATE

Respondent

BAIL APPEAL JUDGMENT

PJ DU PLESSIS AJ

[1] This Court acknowledges the high public profile of the Appellant and the intense media scrutiny surrounding this matter, particularly in the context of broader allegations against the Appellant and the criminal justice system. However, in fulfilling its solemn judicial oath, this judgment is delivered solely on a dispassionate and objective analysis of the facts as presented in the record, the relevant case law, and the legal principles governing bail set out in the Criminal Procedure Act. This adherence to the Constitution and the law ensures that the

integrity of the judicial process is maintained, and that justice is administered to all parties without fear, favour, or prejudice, uninfluenced by public opinion or any considerations outside the law.

BACKGROUND OF THE MATTER

- [2] The Appellant's and State's affidavits indicate that the he will be charged with conspiracy to commit murder, attempted murder, and money laundering.
- [3] Advocate Hodes prepared for the bail application in the court a quo, believing it would be heard under Schedule 6 of the Criminal Procedure Act, which places a heavier burden on the appellant to prove, with evidence, that his release is in the interests of justice due to the existence of **exceptional circumstances**.¹ However, at the start of the proceedings, Adv Hodes, on behalf of the Appellant, and Adv le Roux, for the State, confirmed their agreement that the application should be heard under the less stringent Schedule 5, which only requires the applicant to adduce evidence to show his release is **in the interests of justice**.²
- [4] Adv Hodes, apologetic for having drafted his application on a Schedule 6 basis, was then allowed to present it, as is, without correction.
- [5] Existing reported case law is clear that while parties in a bail application may make submissions on the applicable schedule, and even indicate an agreement, as in the present matter, it remains the **presiding officer's duty** at every bail hearing to **determine the schedule, make such a ruling**, and let the process run from there in accordance with this court ruling, and not the parties' agreement.³ The only exception being section 60 (11A) (c)⁴ where a written confirmation by the Director of Public Prosecutions having jurisdiction, is *prima facie* proof upon production thereof at the application or proceedings of the charge to be brought.

¹ Section 60 (11) (a) Act 51 of 1977

² Section 60 (11) (b) Act 51 of 1977

³ **S v NEL AND OTHERS 2018 (1) SACR 576 (GJ) – par 7** “In the ordinary course of an application for bail, a timeous **ruling** should be made **on the applicable schedule or section**, whether placed **in dispute or not**.”

⁴ Criminal Procedure Act 51 of 1977

[6] Ignoring this binding authority and then allowing the bail application to proceed in the wrong format (a Schedule 6-prepared affidavit when it should have been Schedule 5) is a recipe for confusion, which did occur, and must never be allowed by any presiding officer in bail proceedings.

[7] Due to this error by the Regional Magistrate, who otherwise wrote a well-considered judgment, the opening line in her judgment defeats all the hard work and considerations, as it reads: “This is a bail application brought in terms of Schedule 6 of the Criminal Procedure Act 51 of 1977.” An obvious and immediate misdirection, which is the appellants first ground of appeal, and which was immediately conceded by the State (Respondent).

[8] The Regional Magistrate concluded, in refusing bail, that the Appellant, bearing the onus, did not satisfy the court on a balance of probabilities that “**exceptional circumstances exist**” to justify his release. Basing these findings on the facts that, Appellant is:

8.1 a flight risk,⁵

8.2 he didn’t dispel the risk of interfering with witnesses or obstructing justice, ⁶

8.3 that the nature and seriousness of the offences demonstrates a clear danger to community safety,⁷ and

8.4 that the State’s case cannot be described as weak.⁸

[9] The approach to a bail appeal is governed by section 65(4) of the Criminal Procedure Act 51 of 1977 (CPA) which provides that:

“The court or judge hearing the appeal **shall not** set aside the decision against which the appeal is brought, **unless** such court is satisfied that **the decision was wrong**, in which event the court

⁵ Section 60 (4) (b)

⁶ Section 60 (4) (c) & (d)

⁷ Section 60 (4) (a)

⁸ Section 60 (4) (b)

or judge shall give the decision which in its opinion the lower court should have given.”

[10] In **S v Barber 1979 (4) SA 218 (D)** the above was probably best articulated by Heher J (as he then was) when he held:

“... the powers of this Court are largely limited where the matter comes before it on appeal ... This Court has to be persuaded that the magistrate exercised the discretion which he has wrongly. ... 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.**”

[11] The Regional Magistrate's use of the wrong schedule constituted a clear misdirection on a point of law. Any court considering bail and refusing it, which places a higher legal burden than required by law on an applicant, *prima facie* failed to properly exercise its judicial discretion, and its decision will most likely be viewed by a court of appeal as wrong, and should be replaced with the decision that should have been given.

[12] It however needs to be remembered that Sections 60 (11) (a, b and c) of the CPA all, respectively, places an onus on an applicant that must be discharged through evidence on a balance of probability. Section 60 (11) (b) does so by requiring evidence which satisfies the court that the interests of justice permit release.

[13] Retired Justice Kriegler, writing on behalf of a unanimous Constitutional court bench in **S v Dlamini, S v Dladla and Others; S v Joubert; S v Schietekat (CCT21/98, CCT22/98 , CCT2/99 , CCT4/99) 1999 (4) SA 623**, concluded that the term “the interests of justice” is a broad but expressive phrase used to articulate a **value judgment of what constitutes a fair and just outcome for all parties involved.**⁹

[14] The Apex court also found the term “interest of justice” is used inconsistently throughout Section 60 of the CPA. It bears a **broad meaning** in some

⁹ Paragraph 46

subsections, where it signifies the overall value judgment of fairness that includes the accused's liberty rights, thus mirroring the constitutional norm for bail. However, in other crucial subsections concerning the bail evaluation process, namely subsections (4), (9), and (10), it must be given a narrower meaning that is similar to the "interests of society" or the State's interests, specifically so that it can be logically weighed against the accused's right to personal freedom in determining whether bail should be granted.

[15] The Constitutional Court further, by interpreting Section 35(1)(f))¹⁰ found that the ultimate conclusion in our Constitution is that, a detained person does not have an automatic right to be released on bail; instead, the burden is on the accused to establish that the interests of justice permit their release.¹¹

[16] Based on *Dlamini supra*, this Court will proceed from the premise that, due to a misdirection on a point of law and concessions made by the State, as well as new submissions introduced on the presented facts, the totality of evidence supporting the refusal of bail must be re-assessed to determine if the bail refusal can still be sustained.

SUMMARY OF THE EVIDENCE IN THE REGIONAL COURT

[17] The Appellant, is a 48-year-old married man who supports nine children, is self-employed as a director of four companies (CAT VIP Protections, Lux of Africa Investments, Black AK Trading, and Medi Care 24 Tshwane) that pays 94 employees almost R2 million in wages per month. He earns a combined monthly income of approximately R250,000, with movable and immovable assets exceeding R13 million. He has a prior conviction from 2001 for housebreaking and theft, for which he served four years imprisonment. His only foreign interest is the Wacko and JR Trust registered in Mauritius in January 2025. All of these details related to his personal circumstances are common cause.

¹⁰ 35. Arrested, detained and accused persons (1) Everyone who is arrested for allegedly committing an offence has the right ... (f) to be released from detention if the interests of justice permit, subject to reasonable conditions

¹¹ Paragraph 45 where it held: "whereas previously the starting point was that an arrestee was entitled to be released, the position under s 35(1)(f) is more neutral. Now, unless there is sufficient material to establish that the interests of justice do permit the detainee's release, his or her detention continues."

[18] A key point of dispute is the Wacko and JR Trust in Mauritius, which was recently opened to invest in Mauritius, and which investment the Appellant undertook to suspend until the matter is finalised. The State contends this foreign trust information was initially hidden and only provided after the State's evidence revealed the trust's existence after finding it on the confiscated cellular phone of the appellant. They also allege the appellant has a boat in Mauritius and owns a private jet, which is denied.

[19] The State further presented evidence of a WhatsApp message on 18 March from the phone of appellant requesting his wife (accused 4) a photo of his Eswatini identity card. Official records reflect that this identity card, which displays the name Vusimuzi **Dlamini**, is not only irregularly issued and fraudulent but was also used for departing to Eswatini in February and on 19 April 2024 "on foot," with no record of return after 19 April 2024. The Appellant said in court the investigation team has his passport, and he used it to enter and return from Eswatini on 19 April 2024 and 20 April 2024, respectively, denying the existence of the Eswatini identity card. This identity card reflects the same birth date as Appellant and carries a picture of him, the police could however never find the original, and only have the WhatsApp picture thereof. The prosecutor was unaware if the investigating team had the Appellant's passport.

SUMMARY OF DOCKETS

[20] Regarding the three dockets at issue the following:

20.1 The Thobejane Case (Sandton CAS 436/10/2023) — Attempted Murder

Incident: 17 October 2023, Bryanston. Ms. Tebogo Thobejane was the target of a shooting, and her passenger, Anele Malinga, was wounded and left paralysed. They were three in the vehicle.

State's Evidence (Financial Link): The State relies on a voice note between Accused 1 and 2 mentioning the Appellant's nickname and company name ("CAT") in the context of needing "work." The State produced bank statements showing the Appellant transferred R20,000 and R15,000 to Accused 5's account on 12 October 2023. Critically, an amount of R100,000 was transferred on 18

October 2023 (the day after the shooting), of which R50,000 was subsequently moved to Accused 2's account by Accused 5. The State alleges this was payment/funding for the shooting.

State's Evidence (Interference): Ms. Thobejane feeling threatened fled the country after receiving calls from individuals allegedly aligned with the Appellant, warning her of his dangerousness and urging her to withdraw the charges.

Appellant's Defence: The Appellant denied any communication with his co-accused during the relevant period of the voice note. He explained the payments as legitimate financial support to Accused 2's family, asserting the R100,000 was for funeral costs of Accused 2's late mother. She always gave him emotional support and was involved in his upbringing, therefore the contribution. The State challenged this, arguing the payment was made before the deceased passed and that the funeral invoice supplied as proof was backdated (issued in a 2025 invoice book for a 2023 service) to conceal the true purpose of the payment.

20.2 The Lyttelton Case (Sibanyoni) — Attempted Murder

Incident: 10 August 2022. Mr. Sibanyoni, a prominent taxi businessman, and others, was shot at from a white BMW outside a Centurion golf estate.

State's Evidence: Ballistic evidence linked a recovered rifle (found in a stolen vehicle on Accused 1's premises) to the shooting scene. The white BMW used is linked to Accused 5 the daughter of accused 2. The Appellant allegedly arranged for this BMW to be kept overnight in his former girlfriend's garage shortly after the shooting.

Motive: The Appellant's company, CAT Security Services, provided protection to a rival (Mr. Jotham Zanemvula Msibi) of Mr. Sibanyoni in the taxi industry.

Appellant's Defence: The Appellant denies any involvement, emphasising his lack of connection to the taxi industry and the rivalry therein.

20.3 The Pretoria West Case (Mokubong "DJ Wetties") — Attempted Murder

Incident: January 2024. Mr. Mokubong ("DJ Wetties") was the victim of a shooting incident.

State's Evidence (Admission): The State confirmed evidence of a conversation where the Appellant allegedly **admitted** to the complainant (Mr. Mokubong) that he was responsible for orchestrating the attempted murders in all three cases (Thobejane, Sibanyoni, and Mokubong).

Appellant's Defence: The Appellant unequivocally denies making any such admission or confession to Mr. Mokubong.

SUBMISSIONS ON APPEAL

- [21] The appellant, at the bail appeal hearing, abandoned the alternative request to refer the matter back to the court *a quo* for reconsideration under Schedule 5. The Appellant submitted that the appeal court should, due to the lower court's misdirection, replace the Regional Magistrate's wrong decision by granting bail. The State concurred only on the misdirection—that the wrong schedule was applied—but contended that bail should still have been refused regardless of whether Schedule 5 was correctly applied.
- [22] Adv Hodes explained the unfairness of the situation in the facts of this matter. He submitted there are 5 accused. They are accused 1 – Musa Kekana; accused 2 – Tiega Floyd Mabusela (father of accused 5); **accused 3 – Vusimuzi "CAT" Matlala (Appellant)**; accused 4 – Tsakani Matlala (appellants wife), accused 5 Nthabiseng Nzama (daughter of accused 2).
- [23] Accused 1 and 2 were arrested respectively on 23 April 2024 and 14 May 2024 and remained in custody until the matter against them was removed from the roll, on 08 November 2024 due to an outstanding ballistic report. Gauteng Organised Crime Unit took over the docket and re-enrolled it on 31 March 2025 through summons using J175, meaning accused 1 and 2 came on own accord to court and was released on warning. They are the two gunmen in this matter, according to the State, facing attempted murder charges which fall under Schedule 5, yet they were not arrested, but summoned and released on warning.

- [24] The CPA is abundantly clear that where an accused is charged with schedule 6, 5 and section 59 (1) (a) (ii) or (iii) offences¹² “the court **shall order** that the accused be detained in custody until he or she is dealt with in accordance with the law”
- [25] There is also the case of **S v Hewu and Others 2017 (2) SACR 67 (ECG) (6 April 2017)** a judgment of Revelas J where it was held in par 23 “.... Once again it will all depend on the facts. Mr Marais gave the example of instances where charges are provisionally withdrawn against an accused for purposes of awaiting forensic test results. If the tests are positive and the prosecution has a case to prosecute, there is no reason why the re-arrest of the accused should be impermissible, simply because the accused had appeared in court before.”
- [26] I quoted the above, because the appellant now argues the unfairness of this situation where accused 1 and 2 the two “gunmen” with direct evidence against them, are on warning. Yet, the evidence against him, so admitted by the State, is circumstantial, meaning evidence that indirectly suggests a fact, rather than directly proving it.¹³ He further submits this circumstantial evidence will not stand admissibility and constitutional challenges at trial and will lead to his acquittal. His wife accused 4 was granted R20 000 bail and accused 5, R10 000 bail. He therefore feels bail must be granted to him also.
- [27] The other submissions made before me in the appeal was the voice note he had no part of and was between accused 1 and 2 will be inadmissible against him.
- [28] He gave his full cooperation to the investigating team since he became aware of the case in December 2024 and was always found by them either at home or at work.
- [29] He submits the investigating officer misled the court *a quo* on three aspects. That he 1 - owns a boat in Mauritius; and also 2 - a private jet. He denies this and basically says if the State places no probative evidence of such allegations

¹² Section 60 (11) (a-c)

¹³ Circumstantial evidence has specific requirements before it can be accepted, in simple terms for a person to be found guilty based *only* on circumstantial evidence, the evidence must be completely consistent with their guilt and must leave no other reasonable possibility other than their guilt. (**R v Blom 1939 AD 188**)

before court, how will he be able to disprove an unsubstantiated and false allegation.

[30] The 3rd and biggest false allegation against him by the investigating officer, according to the appellant, is the payments of R20 000 on 12 October 2023 and R100 000 on 18 October 2023 made into the account of accused 5 apparently for the “hit” on Ms Thobejane. The State alleges the R100 000 payment made at 11h39 was made BEFORE the passing, which they allege was at 12h36; and that the invoice he provided is a 2023 invoice which was generated in a 2025 invoice book, because the invoices just before and just after his are 2025 dates, an alleged forgery to give substance to his explanation.

[31] The Appellant on this point has, however, shown in the appeal hearing, and it was conceded by the State, that there are two affidavits in the docket the State disclosed to them, that confirm the passing of Accused 2's mother at between 02:30 and 03:00 on the morning of 18 October 2023. He therefore made the R100 000 funeral contribution payment at 11:39, well after the death, and not before it, as the State alleges.

[32] Due to this concession, the “invoice” as is referred to by the State actually fades into insignificance, according to the Appellant, for two reasons. It is not an “invoice”, but actually a receipt requested from the Elegance Funeral Group due to this matter. They issued this receipt from their currently in-use booklet as proof of the money they received and that according to him explains the situation which the State regards as suspicious and fraudulent.

[33] The appellant indicated he can afford R100 000 as bail and if more is fixed he has family that can assist. He is also prepared to submit to any bail conditions including house arrest, where he has surveillance cameras, to which he is amenable to giving the police full access to, for monitoring purposes.

[34] The state re-iterated that they agree the schedule used by the Regional Magistrate was wrong, but that the findings to refuse bail was not. They submitted that if the facts in the regional court and those raised in the appeal are considered under schedule 5, bail should still be refused.

- [35] The State says even under schedule 5 the onus remains on the Appellant to show through evidence the averments he makes. He says he has a chronic medical condition of asthma and tonsillitis for which he uses chronic medication and he fears for his health in prison suggesting the State can easily verify same. The state doesn't need to as he has to show it is so.
- [36] The state says it is untrue that he gave his co-operation in the matter since December 2024. His narrative has always been that the police was malicious and acted unlawfully entering his home without warrants and even stealing his Rolex watches, a matter that was never taken further. He also communicated with his then attorney, asking if he could "come out of hiding." This was in the period when his security services company was being scrutinised by the police for compliance especially in regard to the firearms they possess.
- [37] The state further submits his unsigned first bail affidavit disclosed to them, but not presented didn't indicate his trust in Mauritius, clearly intent on hiding that fact from the court if he didn't see in the states disclosed affidavit they knew about it, finding the evidence on his cellular phone. This phone is also where they found the picture of the fraudulent Eswatini identity document which he denies and allege was planted by the police. They however submit as per their evidence the request that he made on WhatsApp to his wife was answered by her within a minute and that is visible on both devices. The devices show also communication activity after this interaction and the State submit there is no technology they know of that can implant such communication on two phones in and on a specific date to falsely implicate the appellant.
- [38] The State conceded the time of death issue indicated above as a "mistake", but still remains suspicious about the receipt and how it was issued.
- [39] The State asserts that the appellant's possession of a cell phone while incarcerated for this matter, combined with the fact that the phone's contact list contained names of individuals relevant to the Madlanga Commission (The Judicial Commission of Inquiry into Criminality, Political Interference and Corruption in the Criminal Justice System), points to his connections, disregard for the law and his ability to communicate with outside parties. This unauthorised

access is a serious concern, as it directly poses a risk of witness intimidation, threats, or the coordination of harm relevant to this matter.

[40] They submit the appellant will most probably eventually face 11 counts of attempted murder 5 from the Sibanyoni matter, 3 from Wettie and 3 from Thobejane.

[41] It was conceded that the State's case is circumstantial and may face various admissibility challenges, but it was submitted that the bail appeal court should only concern itself with whether there is a case, and not try to evaluate evidence, which remains the duty of the trial court.

[42] The reply by the Appellant to the above was basically a restatement of what was already tendered, apart from stating that the State's concession on the reason for the R20 000 and R100 000 payments disproved their own theory that it was money paid for the "hit." It therefore on the Thobejane matter leaves them without any direct or circumstantial evidence against the appellant and they will also not be able to prove money laundering as a result. They reiterated their call for bail, alluding again to the unfairness of the gunmen, against whom direct evidence exists, being on warning, yet the Appellant is in custody in a matter that they are sure they will be acquitted on.

RE-EVALUATION OF ALL THE EVIDENCE

[43] This Court will adopt the premise established in paragraph 15, namely that "a detained person does not have an automatic right to be released on bail; instead, the burden is on the accused (appellant) to establish that the interests of justice permit his/her release." Consequently, the Court will apply Section 60(11)(b) of the CPA, using the evidence presented before the court *a quo* (lower court), along with the submissions and concessions made in this Court, to determine if the release is in the interests of justice. This determination will consider both the broad and narrower interpretations of "the interests of justice" as enunciated by the Constitutional Court in Dlamini *supra*.

[44] As indicated the Regional Magistrate's judgment demonstrates a structural compliance with Dlamini *supra* by balancing principles, but fundamentally fails to

comply with the framework by applying the wrong, higher standard constituting a fatal misdirection in law. On the structural compliance she correctly canvassed and recorded the accused's very strong personal circumstances which should be given significant weight. However, by focusing on the *exceptional* standard, the Magistrate may have ignored the *Dlamini* principle of proportionality, failing to determine if the facts warranted release on Schedule 5's lower standard, perhaps with stringent bail conditions.

- [45] She systematically addressed and made findings on the key factors weighing against release, concluding that the accused failed to dispel the risks indicated in 8.1 - 8.4 supra. This was done unaware of the concession the State made on the money transfer aspect before this court, which to my mind makes a very big difference to her factual findings on the Thobejane matter.
- [46] She didn't mention the medical condition the appellant raised before her on affidavit and again before this court. I also see no consideration of the issue that Accused 3–5 were arrested to be brought before the court and had to apply for bail, whilst Accused 1 and 2, who have direct evidence implicating them in these crimes, were summoned to court and then warned.
- [47] All these issues that should have been determined at trial arose because there has already been full disclosure of the dockets involved in this matter and centralisation was granted. This led to the Magistrate being bombarded with evidence that may or may not hold up at trial or may or may not be admissible as per the appellant's submissions in challenging the strength of the State's case.
- [48] The bail court's duty in assessing the strength of the State's case is to adopt a *prima facie*, common-sense approach focused on the nature, availability, and ostensible reliability of the evidence,¹⁴ as presented by the prosecution. The bail court treats the Applicant's version as evidence that must be evaluated for its inherent probability and credibility in the context of the specific bail inquiry, but it

¹⁴ S v Kula 2023 (2) SACR 52 NWM at 56 and S v Panayiotou Unreported ECG CA 06/2015 (28 July 2015) par 53

does not treat it as a decisive defence to be tested beyond a reasonable doubt, as only a balance of probability suffices¹⁵.

[49] A bail application is not a trial, and the bail court must not usurp the trial court's function by definitively ruling on issues of admissibility, legality (e.g., search warrants), or complex credibility disputes.¹⁶ Ultimately, the strength of the State's case is but one factor used to inform the central constitutional value judgment¹⁷ of what constitutes a fair and just outcome for all parties involved having considered the tendered evidence.

[50] Courts hearing bail applications must be careful in not entertaining a "mini-trial". In this matter full disclosure was made according to the submissions made to this court. I however note from the Appellants affidavit that when it was drawn that was not the case (Paragraph 29 Caselines 004-7). The Appellant however decided to embark on a path that was cautioned about many times before in our case law – challenging the supposed "frail" State's case.

[51] The matter of **Mathebula v S 2010 (1) SACR 55 (SCA)** is apposite, as in paragraph 12 thereof is held: "But a state case supposed in advance to be frail may nevertheless sustain proof beyond a reasonable doubt when put to the test. In order successfully to challenge the merits of such a case in bail proceedings an applicant needs to go further: he must prove on a balance of probability that he will be acquitted of the charge: *S v Botha* 2002 (1) SACR 222 (SCA) at 230h, 232c; *S v Viljoen* 2002 (2) SACR 550 (SCA) at 556c. Thus it has been held that until an applicant has set up a prima facie case of the prosecution failing there is no call on the state to rebut his evidence to that effect: *S v Viljoen* at 561f-g." Adv. Hodes did submit this matter is not applicable as it relates to Schedule 6 "exceptional circumstances" I however disagree and find it applicable in all matters, especially those in which an onus exists.

[52] It must be emphasised, and noted as often overlooked, that Section 60(4) of the CPA clearly states: "The interests of justice do not permit the release from

¹⁵ *S v Panayiotou* Unreported ECG CA 06/2015 (28 July 2015) par 53

¹⁶ *S v Udeobi* (unreported, ECG case no 158/2018, 13 July 2018) at [9] and *S v Mququ* 2019 (2) SACR 207 (ECG) at [19]

¹⁷ *S v Dlamini*, *S v Dladla and Others*; *S v Joubert*; *S v Schietekat* 1999 (4) SA 623 (CC) at [8] and *S v Kula* 2023 (2) SACR 52 NWM at [56]

detention of an accused where **one** or more of the following grounds are established.” It is therefore the logical conclusion that the use of the negative phrase (“do not permit the release”) means that once the court has concluded, after weighing all factors in Section 60(4) against Section 60(9), that a single ground for refusal has been established, the court's discretion ends, and the result is a refusal of bail.

[53] The ultimate logical conclusion is that the accused's constitutional right to freedom (Section 35(1)(f)) is legitimately curtailed when the interests of justice are shown to be in greater peril. The entire phrase represents the constitutional balance point established by the CPA: **Personal freedom is permitted unless it conflicts with a fundamental interest of justice.**

[54] The question all bail courts must ultimately ask themselves is: “Will the accused stand trial if granted bail?” This is a decision (value judgment) left **solely** in the hands of the bail court as section 60 (1) (a) clearly states: “An accused who is in custody in respect of an offence shall, subject to the provisions of section 50(6), be entitled to be released on bail at any stage preceding his or her conviction in respect of such offence, if **the court is satisfied** that the interests of justice so permit.”

[55] This is strengthened by Section 60 (10) of the CPA, that states: “Notwithstanding the fact that **the prosecution does not oppose the granting of bail**, **the court has the duty**, contemplated in subsection (9), to weigh up the personal interests of the accused against the interests of justice: Provided that the interests of justice should be interpreted to include, but not be limited to, the safety of any person against whom the offence in question has allegedly been committed.”

[56] It is therefore not strange to find that a court exercising this duty it holds, often, even if the State is not opposing bail or change their attitude in regard to bail during the application,¹⁸ will still refuse to grant bail.

[57] It is clear that the Regional Magistrate considered the mosaic of evidence presented to her, and adequately dealt with it, although she applied the wrong

¹⁸ Chilwane v S (A43/2025) [2025] ZAGPJHC 690 Dosio J at [41]

test. She considered the appellants grounds which were; Family and personal ties; Business interest and employment; Assets; Passport and foreign interests; Prior conviction being old; The various disputes the appellant has with the facts of the State's case, versus, the grounds on which the State was opposing bail which were: The seriousness of the charges; Flight risk; Unlawful communications with cell phone in prison; Potential interference with witnesses; The strength of the State's case; Danger to the community.

[58] I am unable to differ with her findings in the judgment made in regard to the appellant being a flight risk and specifically the conclusion where it was stated: "... the applicant (appellant) has both the means and the potential opportunity to evade trial."¹⁹

[59] When the evaluation of the interference with witnesses and the administration of justice was considered, there were three considerations: previous threats, discovery of a cell phone in the Appellant's possession whilst in custody, and in relation to the "Wetties" matter, the denied admissions made. She then concluded that: "Taken cumulatively, these circumstances create a material risk that, if released, the applicant would have both the motive and the means to interfere with witnesses or to obstruct the administration of justice. The applicant's denials and explanations do not sufficiently dispel the reasonable concerns raised by the State."²⁰ The only criticism of this finding, with which I concur, would be that she should have held: "... these circumstances create a **likelihood**"²¹ that, if released, ..."

[60] In evaluating the danger to the community, she correctly concluded that the trial court will be better positioned to deal with the state's allegations and appellants denials whilst stating: "The pattern of allegations across three separate incidents - the Thobejane shooting, the Sibanyoni shooting, and the Mokubong (DJ Wetties) shooting - suggests a repeated modus operandi involving targeted violence. Even accepting that the applicant (appellant) disputes the allegations, the gravity and consistency of the State's version

¹⁹ Caselines 006-13

²⁰ Caselines 006-14

²¹ In line with the CPA wording in section 60 (4) (a-e) which all refer to a "likelihood"

create a substantial risk that his release would endanger the safety and security of the complainants and the wider community.”²² The only criticism of this finding, with which I concur, would be that she should have held: “...the gravity and consistency of the State's version create a likelihood ²³ that his release ...”

[61] She then concludes: “This Court is therefore not persuaded that the applicant has established exceptional circumstances which overcome the presumption that his release would pose a danger to the community.” Here there is a clear misdirection in the onus used as indicated supra, but this court finds that if the “interest of justice” onus is used on these conclusions, the finding of being a danger to the community if released is correct.

[62] The Regional Magistrate then evaluates the strength of the State’s case against the applicant (appellants) version by looking at the Thobejane, Sibanyoni and Mokubong (JJ Wetties) matters respectively, and concludes that: “... the State’s case cannot be described as weak or without substance ...”.

[63] Despite the concession by the State before this Court on their “mistake” made on the time of death, which gives credence to the Appellant's version that the money paid was for medical and funeral purposes, which may remarkably influence the State’s case against him in the Thobejane matter, I agree with the conclusion that: “On a cumulative assessment, the State’s case cannot be described as weak or without substance. ... The Applicant’s (Appellant’s) denials and explanations will properly be tested during trial, but at this stage they do not suffice to discharge the onus resting on him.”²⁴ The Regional Magistrate used the “exceptional circumstances” onus and not the correct one, which would have been the “interests of justice” onus, but despite this misdirection, I find that if the correct onus had been used, the same conclusion would have been reached. See also my remarks supra in paragraph 51.

[64] Although the appellants medical condition was raised in the papers, she didn’t specifically deal with it. Probably because the Appellant didn’t provide onus-

²² Caselines 006-15

²³ In line with the CPA wording in section 60 (4) (a-e) which all refer to a “likelihood”

²⁴ Caselines 006-16

displacing proof of these chronic ailments, and it remains an unsupported averment, as that of the State about the boat and jet. It is however trite that “a medical condition on its own, cannot be the only factor to grant bail, especially if there are other remedies available to the appellant.”²⁵ This is also my finding on the medical condition issue raised presented.

[65] The final consideration is the “unfairness” in that the two accused the State clearly has the strongest case against, accused 1 and 2, who is on warning after being summoned to court. This, whilst the Appellant (Accused 3), his wife (Accused 4), and Accused 5 (who is Accused 2's daughter), against whom it would seem only circumstantial evidence exists, were arrested to be joined and had to bring bail applications.

[66] I have dealt with this issue extensively in paragraphs 25 and 26 supra and can merely add, yes, the appearance of unfairness is there, however the State secures attendance of accused at court by acting in accordance with sections 38 (1) and (2) of the CPA. The case of *Hewu* supra, is to my mind authority for the fact that accused 1 and 2 could have been arrested to be re-enrolled, however that was the choice of the State to summon them. Although, with the charges they are facing, I doubt if any Magistrate on a proper application made in terms of Section 43 (for an offence that is Schedule 5 or 6 or Section 59(1)(a)(ii) – domestic relationship related – or (iii) – where an order for protection has already been issued to protect a complainant) would have refused to sign such a warrant applied for by a Director of Public Prosecutions, a delegated public prosecutor, or a commissioned police officer.

[67] There is the case of *Minister of Safety and Security v Sekhoto and another*²⁶ which dealt with arrest without a warrant and held that the principle of “least evasive way” is accommodated in the second jurisdictional requirement for a lawful arrest: the exercise of discretion.

[68] **Sekhoto** clarifies that the police official does not have an **absolute duty** to use the least evasive method if they reasonably believe it will not be effective. If the

²⁵ Chilwane v S (A43/2025) [2025] ZAGPJHC 690 Dosio J at [38]

²⁶ 2011 (1) SACR 315 (SCA)

officer reasonably suspects the person may flee, interfere with evidence, or not respect a summons, then an arrest becomes the necessary and least evasive way to ensure court appearance. This is clearly what the police decided in relation to the arrests of the Appellant and accused 4 and 5.

[69] In essence, to my mind, the "least evasive way" must be interpreted as a judicial and administrative instruction to the police to minimise the infringement on an individual's liberty when fulfilling their duty to bring the accused to justice, by employing methods proportional to the risk of non-compliance.

CONCLUSION

[70] My finding is that despite the Regional Court Magistrate using the wrong onus ("exceptional circumstances") to decide this matter, which was a misdirection, using the correct onus ("interests of justice") will not disturb most of the rulings she made, as per my findings herein.

[71] In balancing the reasons for the refusal of bail, with the Section 60 (9) (a-g) CPA factors, weighing the interests of justice against the right of the Appellant to his personal freedom and in particular the prejudice he likely to suffer, I conclude that on a balance of probability the interest of justice will not be served by the release of the Appellant.

ORDER

[72] I accordingly make the following order:

1. The appeal against the denial of bail by the court a quo is dismissed



PJ DU PLESSIS
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

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Heard:

20 October 2025

Judgment:

27 October 2025