



IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
04/12/2025	
DATE	SIGNATURE

Case Number: A296/25

Magistrate Court Case No: A16/463/2025

SAMUEL DUMISANI KHUMALO

1ST APPLICANT

NOZIPHO PRECIOUS MADONDO

2ND APPLICANT

MAPEREMISA JOSIAS LEKALAKALA

3RD APPLICANT

AND

THE STATE

RESPONDENT

This judgment was handed down electronically by circulation to the parties' and or the parties' legal representatives by email and by being uploaded to CaseLines. The date for the hand down is deemed to be 4 December 2025.

JUDGMENT

1. The three applicants' application is for the following order to be granted by this court:
 - a. Condonation of the late filing of the notice of bail appeal and costs against the respondent in the event the condonation application is opposed;
 - b. The bail condition imposed by the Learned Magistrate Mahlangu (court *a quo*) that the appellants are prohibited from being at any premises of Crime Intelligence within the Republic of South Africa while their criminal trial is pending be set aside.
2. The respondent 's opposition is confined solely to the relief sought in 1(b).
3. The bail proceedings to which this appeal relates pertains to the criminal prosecution of the three appellants, together with four co-accused, in the Pretoria Magistrates' Court.
4. The three appellants are each charged with the following offences and the proceedings are still pending at the Pretoria Magistrate 's court:
 - a. Count 2- Contravening the provisions of S3(b) of the Prevention and combatting of Corrupt Activities Act 12 of 2004 read with S1,2,24,25,26(1)(a)(ii) and 26(3) of the Act and further read with Section 269A of the Criminal Procedure Act 51 of 1977(CPA).
 - b. Count 4- Contravening the provisions of S4(b) of the Prevention and combatting of Corrupt Activities Act 12 of 2004 read with S1,2,24,25,26(1)(a)(ii) and 26(3) of the Act and further read with Section 269A of the Criminal Procedure Act 51 of 1977(CPA).
 - c. Count 7- Fraud read with the provisions of S51(2) of the Criminal Law Amendment Act 105 of 1997.

5. The appellants are all officers in the South African Police Service (SAPS). The first appellant holds a rank of a Lieutenant General Head (Divisional Commissioner, Crime intelligence, the second appellant is a Major General (Component Head: Intelligence Analysis and Co-ordination, Crime intelligence) and the third appellant is a Major General (Provincial Head: Crime Intelligence, Gauteng Province).

AD CONDONATION

6. The bail judgement forming the subject of this appeal was granted on the 27th of June 2025. The appeal process was initiated by the appellants on 07 November 2025.
7. Subsequent to the filing of the notice of appeal, the applicants filed an application for condonation on 19 November 2025 deposed to by the second applicant on behalf of all the applicants.
8. She states on paragraph 8 of the condonation application that she was advised that in terms of Rule 51A (3) that the appeal should have been noted within 14 days of the judgement dealing with bail. There is no Rule 51A (3) in the Uniform rules of Court.
9. Appeal of bail conditions in the High Court is in terms of S65(1) of CPAⁱ as well as Clause 8.4.2 of the Practice Manual of Gauteng Local Division, the latter states that states that once the bail proceedings and the magistrate's judgment have been transcribed, the Director of Public Prosecutions must be approached to arrange the enrolment of the appeal. The Director of Public Prosecutions will then request the Deputy Judge President, or if unavailable, the senior judge on duty, to allocate a date and time for the appeal hearing. After a date and time have been set, the Director of Public Prosecutions must notify all parties accordingly.

10. The transcriber 's certificate indicates that the transcription was completed on 21 October 2025, 17 calendar days before the appeal was lodged.
11. I find that the application for condonation was unnecessary, as the application was brought within a reasonable period after receipt of the transcribed records. There is no order as to costs.

GROUND OFS OF APPEAL

12. The grounds of appealing the bail condition imposed by the court *a quo* that the appellants are prohibited from being at any premises of Crime Intelligence within the Republic of South Africa while their criminal trial is pending are that:
- 12.1 The learned Magistrate wrongly and unnecessarily imposed the aforesaid condition when same was unnecessary;
- 12.2. The respondent i.e. the State, did not seek to impose such a condition;
- 12.3. There was no evidence to suggest that the appellants had or would interfere with witnesses who may be members of the South African Police Services ("SAPS"), Crime Intelligence;
- 12.4. The court did not take into consideration that no evidence was led in respect of any allegation that any of the appellants had or would interfere with potential State witnesses;
- 12.5. The learned Magistrate failed to consider in imposing such a condition that there was no evidence to the effect that the appellants would destroy or tamper with evidence;
- 12.6. The court failed to consider that the respondent failed to lead any evidence to the effect that it would not be in the interest of justice for the

appellants, high ranking members of the SAPS, to return to their duties as members of Crime Intelligence;

12.7. The court failed to take into consideration that no evidence was led by the respondent to the effect that the appellants would utilise the resources at their disposal, being members of the Crime Intelligence Unit, in any unlawful manner or a manner which would amount to defeating or obstructing the course of justice giving the charges that they were facing;

12.8. The court did not consider, at all, the effect of the condition imposed which as akin to effectively suspending the appellants from their place of employment and more especially in light of the fact that their employer, the SAPS had not suspended them and did not seek to impose restrictions similar to that imposed by the court;

12.9. The learned Magistrate imposed a condition which is vague and appears contradictory in that the court imposed a restriction prohibiting the appellants from being at any premises of Crime Intelligence which would appear to suggest any police station which has a Crime Intelligence Unit or component but, on the other hand, the court imposed a condition that the appellants make contact with the investigating officer in order that they remove any matters or items of a personal nature which they may have left at their premises of employment which would appear to suggest the office or centre where they were based as opposed to any Crime Intelligence office within the entire country.

13. The state is opposing the application. In the filed heads of argument, the above grounds of appeal are addressed as follows:

- a. The respondent 's counsel denies that it was a misdirection for the court *a quo* to impose bail conditions on its own volition without a request from the prosecutor. It is submitted that the court *a quo* is empowered by S60(2) of CPA to impose appropriate conditions whenever releasing an

accused on bail, provided such conditions are necessary to ensure that the interests of justice are upheld.

14. According to the State, the absence of a specific request from the prosecution does or not limit the court's authority to act proactively in safeguarding the proper administration of justice. Therefore, the imposition of the conditions in question cannot be regarded as wrong unnecessary.
15. The respondent further submits that the imposed conditions were in the interest of justice as:
 - they aimed at ensuring the ongoing investigations were not hampered or interfered with by the appellants and their co-accused;
 - They were a balancing act which was aimed at ensuring that the interests of justice are attained.
 - They were not aimed at and did not result in the suspension of the three appellants from their employment or infringe their rights in their individual capacity or as employees. (bolding own emphasis)
16. Proceedings in the court *a quo* relevant to this application:
 - 16.1 It is common cause that the offences the appellants are charged with, fall under Schedule 5 of the CPA. Consequently, bail could be granted bail only if they demonstrated to the Court that their release would be in the interests of justice. In this context, Section 60(11)(b) of the CPA placed the burden on them to prove, on a balance of probabilities, that their release on bail was justified.
 - 16.2 They submitted their bail application by way of affidavits. It is not necessary for purposes of this appeal set out what was stated on the affidavits.
 - 16.3 The State did not oppose the application, nor did it request the court *a quo* to impose any bail conditions. The State Advocate informed the court that the State was not opposing bail because the residential addresses and employment details of all the accused had been verified. **The investigations**

were complete, and the State did not consider the accused to be flight risks. ⁱⁱⁱ.
(bolding own emphasis)

16.4 The Magistrate sought clarification from the State on the reasons it had given for not opposing the bail application.^{iv}

17. The following extractions of the engagement between the state and the Magistrate are worth mentioning (bolding own emphasis):

17.1 Court: Let me hear your witnesses, are they individual citizens, ordinary citizens? Who are they? I do not need their names. I just need to know.

17.2 Prosecutor: Our worship, the witnesses in this matter, Your Worship, most of them, they are also in the employ of the SAPS based in crime intelligence. So, they are not just members of the public.

17.3 Court: You say most of them. What about the list of them?

Prosecutor: There are very few that are members of the public, you Worship.

17.4 Court: Yes, that is why I am saying, what about the list of them? Am I not endangering them?

17.5 Prosecutor: Your worship, we do not intend to publish their names at this stage, your worship, because we do not want to endanger them.

17.6 Court: What about the list of members of the public, not members of the SAPS? Are they. the profile of their safety?

17.7 **Prosecutor: Your worship, at this stage, the State is not going to list the witnesses because there are other investigations still ongoing.**

17.8 Court: I thought the investigations are complete.

17.9 Prosecutor: Not this matter, your worship, on other matters where some of the accused are involved.

17.10 Court: You are speaking like in Biblical times, you know [indistinct] to understand some cases, some...[intervenes]

17.11 Prosecutor: There are other cases that are ongoing investigations are still ongoing, Your worship.

17.12 Court: Yes.

17.13 Prosecutor: And some of the accused before court they are implicated in those matters. That is why I am saying we are not going to adduce the names of the witnesses.

17.14 Court: The accused. Let me put it in a proper context so that you- The State says you do not oppose bail, that the seven accused be released on bail. Beautiful. But I have to know the sway that they hold in relation to their high ranking. I do not know what, senior management over the juniors or those that will be witnesses without knowing their names are safe. And those that are in the public sphere, are not in the South African Police service, are equally safe when they are released. That is the context of my question.

17.15 Prosecutor: Okay, Your Worship. For accused number 1.2.3.4.6 & 7, they are in the executive management on the entire crime intelligence in South Africa. Yes. So far the members of the crime intelligence or their colleagues, it would be dangerous for us to enlist their names now as witnesses, because they have to be protected, Your worship.

17.16 Court: So if they have to be protected, then they are in danger, but what we...[intervenes].

17.17 Prosecutor (Mr Serunye): We did not view the witnesses to be in danger, but we...[intervenes]

17.18 Court Pleases Your Worship, what we are trying to portray to the Court is that the accused being in senior positions and in management, and we are having witnesses in the same department, and there are other investigations that are ongoing in relation to other matters, some of the accused being subject of those. We do not want to compromise these other pending investigations by listing the names of the witnesses involved in this case. However, we are confident that the witnesses are not in danger..[intervenes]

17.19 Court: What informs the confidence?

17.20 Prosecutor: The investigations that we have done and the mechanisms that we have put in place to ensure their safety, Your Worship. But then, if we list them, put their names up, then we are compromising that safety. That is why we would rather not list their names.

17.21 And what our issue is, if we are asking the Court that the accused should not have contact with certain witnesses or with witnesses, then we would have been compelled to issue the list and say to the court, we asked the Court to make an order that the accused should not communicate and/or contact witness one, two, three, four, five. This does not arise in this case. That is why we are saying, because of these other pending investigations, we are of the view that to list them would lead this eventually that we put them in a position where we do not want to. The issue of the list of witnesses does not necessarily arise in this application, Your Worship. We have put up our own measures to ensure their safety. And we can guarantee the court that based on the mechanisms that we have put, and I am not speaking on behalf of the accused. That they are not in a position to harm or cause any danger to our witnesses. But if we are to list them, then we will be compromising investigations.

18. Heads of argument filed and submissions made in court

- 18.1 Advocate Jorgensen appearing for the appellants submitted that the Magistrate's discretion to impose the bail condition was not supported by facts or evidence led by the appellants. At the time the bail application was heard, the investigations in the matter had been concluded, from which it may be inferred that the witnesses had given their statements and the police were in possession thereof. There was no indication which of the seven accused were under investigation for other matters.
- 18.2 Advocate Serunye submitted that the appealed bail condition was imposed because some of the witnesses were the appellants' colleagues and ongoing investigations in other cases would not be hampered with.
- 18.3 Both counsel agree that the court did not seek submissions from them about the condition it intended to impose.

19. Analysis of the appeal

- 19.1 Section 65(4) of the CPA sets out how an application under section 65(1) must be handled. It provides that:
- 19.2 "The court or judge hearing the appeal may not overturn the decision being appealed unless satisfied that the decision was incorrect. If the court or judge is so satisfied, it must then issue the decision that, in its view, the lower court should have made."
- 19.3 The legal issue to determine in these proceedings namely whether the Magistrate erred in imposing the bail condition must be assessed based on the material that was before him and the way he dealt with that information or evidence.
- 19.4 The respondent has requested that I consider that the bail condition did not result in the suspension of the appellants as they allege, and they have not been prejudiced in any manner.
- 19.5 I was referred to previously decided cases, but without any context regarding what had been placed before those courts that led them to conclude that a

similar bail condition was not vague, ambiguous, or prejudicial to the appellants in those matters^v. The facts in those cases are distinguishable to this one in that this bail condition was not sought by any of the litigants from the court *a quo*.

- 19.6 The *ex tempore* judgment of the court *a quo* provides no reasons for the imposition of the condition being appealed. The Magistrate further indicated in the notice filed on 12 November 2025 that he has nothing to add to the reasons for the bail conditions stated in the judgment. All the parties (myself included) in the bail appeal ended up having to infer from the record which of the four circumstances contemplated in section 60(4) of the CPA the Magistrate intended the condition to cover.
- 19.7 Judges and Magistrate are expected to give reasons to ensure accountability, transparency, fair appeals, guidance in future cases, and the public's access to justice, even though the Constitution does not explicitly require it.^{vi} Where a condition is imposed without any party requesting it, the reasons should be recorded so parties understand the decision. Stating reasons deters unnecessary appeals and helps the appellate court assess the correctness of the decision.
- 19.8 The respondent submits in the heads of argument as well as in court that the court *a quo* is empowered by section 60(12)(a) of CPA to release an accused on bail subject to conditions which in the court 's opinion is in the interest of justice. The words 'in the court 's opinion' in the subsection denotes that the law gives the court *a quo* the authority to determine, based on his own opinion or satisfaction, whether the condition it imposes when granting bail is in the interest of justice.
- 19.9 The Magistrate Court is a creature of statute, it has only the jurisdiction and powers expressly or implicitly granted to it by statute. "Jurisdiction" refers to the court's legal authority to hear and determine a matter. Although powers can be implied, they exist only where necessary to give effect to the jurisdiction expressly conferred. If the Act is silent, the court has only those ancillary powers implied by the grant of jurisdiction.^{vii}

- 19.10 The Court 's opinion on a condition to impose which is in the interest of justice, must someone be guided by the empowering provision namely S60(4) of the CPA. It lists circumstances in which the interests of justice do not permit an accused's release on bail. The court applies the same factors in assessing whether the applicant has discharged the onus of demonstrating that the interests of justice warrant that bail be granted.
- 19.11 These include situations where release would likely endanger the public, lead to evasion of trial, result in interference with witnesses or evidence, jeopardise the functioning of the criminal justice system, or under exceptional circumstances disturb public order or undermine public peace or security.
- 19.12 As mentioned above, Advocate Serunye submitted that the appealed bail condition was imposed because some of the witnesses were the appellants' colleagues and ongoing investigations in other cases would not be hampered with (underlining won emphasis). The State knew, when it decided not to oppose bail, which witnesses it intended to call in the prosecution of the appellants, including the fact that some of those witnesses were the appellants' colleagues. It was further not indicated to the Magistrate which of the accused appearing for the bail application were still under investigation for other offences.
- 19.13 The prosecution expressly stated more than once to the Magistrate that the investigations in the matter before court were complete and that measures had been implemented to prevent any interference with witnesses. The Magistrate was informed that the State regarded these measures as adequate. Any doubt on the Magistrate's part about their adequacy could only have arisen if those measures had been set out in detail to him which was not done.
- 19.14 The Supreme Court of Appeal in the case of *Four-Wheel Drive CC v Leshni Rattan NO* discouraged courts from *mero muto* dealing with disputes not raised by parties. It stated that our adversarial system for resolving legal disputes is a procedural framework in which parties are free to present their case fully before an independent decision-maker. A key aspect of this system is that the parties define the issues for determination, present their arguments, and leave the court to act as a neutral arbiter of the matters raised^{viii}.

19.15 Although the court in *S v Diale and another*^{ix} dealt with refusal of bail, what was stated thereon is equally applicable to this matter. It was held that there can be no reliance on vague or unidentified risks, nor on the mere possibility that one of the consequences listed in section 60(4) of CPA may occur. The court must make a finding based on probabilities. It cannot speculate or operate in the dark, as justice is not served through conjecture. Unless it can be shown that one or more of those consequences will probably occur, continued detention is not in the interests of justice, and the accused ought to be released.

19.16 Same applies here, if the Magistrate believed that a consequence was likely to occur and that this justified imposing the bail condition, he ought to have raised the issue with both parties before delivering judgment, allowing them an opportunity to respond.

19.17 I am unable to find any judicial basis, on the evidence and submissions before the court *a quo*, for the bail condition that was imposed. In exercising his judicial discretion, the Magistrate did not confine his assessment to the facts presented before court.

20. Finding:

20.1 The court *a quo*'s decision to impose the bail condition appealed against was made without identifying any supporting facts, it is arbitrary and incorrect, and does not reflect a proper exercise of judicial discretion.

21. I issue the following order:

(a) The appeal is upheld.

(b) The bail condition imposed Acting Chief Magistrate Mahlangu that the appellants are prohibited from being at any premises of Crime Intelligence within the Republic of South Africa while their criminal trial is pending is set aside.



RABORIFE AJ

JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Counsel for the Appellants:

Adv J Jorgensen

Instructed by:

MR Hlongwane Attorneys

Counsel for the Respondent:

Adv P Serunye

Instructed by:

The State Attorney

Date heard:

3 December 2025

Date of judgement:

4 December 2025

ⁱ (a) An accused who considers himself aggrieved by the refusal by a lower court to admit him to bail or by the imposition by such court of a condition of bail, including a condition relating to the amount of bail money and including an amendment or supplementation of a condition of bail, may appeal against such refusal or the imposition of such condition to the superior court having jurisdiction or to any judge of that court if the court is not then sitting.

ⁱⁱ '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.'

ⁱⁱⁱ S60(1)(d)- In bail proceedings the court- shall, where the prosecutor does not oppose bail in respect of matters referred to in subsection (11)(a) and (b), require of the prosecutor to place on record the reasons for not opposing the bail application.

^{iv} In bail proceedings the court –

(b) may, in respect of matters that are not in dispute between the accused and the prosecutor, acquire in an informal manner the information that is needed for its decision or order regarding bail;

^v Ntsasa v S (A61/2023) [2023] ZAFSHC 218 (29 May 2023), South African Municipal Workers Union obo Tumelo Makofane v Matjabeng Municipality & Another, case number (JA 122/21) [2023] ZALAC 22 (17 August 2023).

^{vi} Mphahlele v First National Bank of South Africa Ltd 1993(3) BCLR 253 at par 12

^{vii} Ndamase v Functions 4 All 2004 (5) SA 602 (SCA).

^{viii} (1048/17) [2018] ZASCA 124 (26 September 2018) at par 22.

^{ix} 2013 (2) SACR 85 (GNP).'