

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

**Case Number: SS 063/2016
A104/2021**

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES /NO
(3)	REVISED: YES /NO
	05/01/2026 [REDACTED]
	DATE SIGNATURE

In the matter between:

DUBE, JEREMIAH NYASHA MUSUWACH & OTHERS

Applicant

and

THE STATE

Respondent

JUDGMENT

Nieuwoudt, AJ

- [1] This is an application for bail pending an appeal to the Supreme Court of Appeal brought by the Applicant in person. The matter was heard by me on the 19th of December 2025, and judgement was reserved for the 5th of January 2026.

- [2] During the hearing of the matter on the 19th of December 2025 the court raised the issue of the Applicant's status, i.e. what is his status in terms of being able to stay in the Republic of South Africa if he is to be released on bail.
- [3] The Court gave both the Applicant and the Respondent permission to file supplementary heads of argument to address the issue raised by the Court.
- [4] At the start of the hearing I asked why the trial judge was not dealing with this application as it would be that trial judge that would usually deal with any bail pending appeal applications. Both the Applicant and the Respondent confirmed that it was on the request of the Applicant that the matter was to be heard by another court than the trial court. This approach by the Applicant is unfortunate, the trial court would be best suited to deal with this kind of application as it was steeped in the trial that ran from August 2018 to April 2024 and will have intimate knowledge of all relevant factors.
- [5] The following is common cause between the parties –
- a) The Applicant was arrested on 31 July 2015.
 - b) The trial started in August 2018, and the Applicant was sentenced in April 2024.
 - c) In April 2024 the Applicant was inter alia found guilty on charges of money laundering, VAT fraud, corruption and possession of illegal identity documents. The Applicant was sentenced to direct imprisonment of effectively 65 years.

- d) The Applicant since his arrest in July 2015 has never received bail and has therefore been in prison for the past 10 years. First as awaiting trial prisoner and now as a sentenced prisoner.
- e) During the trial the Applicant brought numerous applications for bail which was all refused including his application to the Supreme Court of Appeal for bail.
- f) This application for bail follows an order by the Supreme Court of Appeal dated 2 May 2025 in which the Supreme Court of Appeal referred the Applicant's leave to appeal application for oral argument.
- g) The Applicant a Zimbabwean citizen is not in possession of a valid passport not a legal permit to be in the country. The Applicant's special permit expired in December 2017 and his passport in October 2022.
- h) During the duration of the trial there was numerous interlocutory applications by the Applicant, all dismissed due to a lack of merits. The Court also note that the Constitutional Court 'closed' the doors of that court for the Applicant following what they deemed an abuse of process by the Applicant.

[6] In court and in his supplementary heads of argument the Applicant submitted that the fact that he does not have a valid passport nor a valid permit to stay in the Republic, should not play a role in the Court's consideration of bail as he could just go to the Zimbabwean Embassy and get a new passport and after that getting a permit should also not be a problem as he was previously given one.

[7] The Applicant further submits that the Court should not look at Section 60 of the Criminal Procedure Act, Act 51 of 1977 that deals with bail but only Section 321 of the Criminal Procedure Act. The Court cannot agree with this submission.

[8] Section 321 deals with the suspension of sentences and reads as follows:

The execution of the sentence of a superior court shall not be suspended by reason of any appeal against a conviction or by reason of any question of law having been reserved for consideration by the court of appeal, unless the superior court from which the appeal is made or by which the question is reserved thinks fit to order the accused be released on bail or that he be treated as an unconvicted prisoner until the appeal or the question reserved has been heard and decided.

[9] Nothing in this Section suggests that it is the only section that finds application when a bail application after sentencing, is considered. On my reading of the section the opposite is true: the court must first decide if a person is to be given bail and only then does Section 321 come into play.

[10] To decide if a convicted person is entitled to bail pending an appeal a Court must still turn to Section 60 of the Criminal Procedure Act and more specifically Section 60(4) of the Criminal Procedure Act which can be summarized as follows –

- a. Will the person when released on bail endanger the safety of the public or commit a Schedule 1 offence; or
- b. Will the person if released on bail evade his or her trial or *in casu*, report to Correction Services to serve his sentence; or

- c. Will the person attempt to influence or intimidate witnesses; or
- d. Is there a likelihood that the person will undermine or jeopardise proper functioning of the criminal justice system; or
- e. Is there a likelihood that the person will disturb the public order

[11] In casu the two questions flowing from Section 60(4) which the Court must answer are the following –

- a. Will the Applicant stand his trial or report for serving of his sentence if his appeal is not successful and
- b. Will the Applicant be committing a Schedule 1 offence if released on bail

[12] The Applicant has been in prison since 2015 following various Courts refusal to give him bail. Various Courts have therefore in my opinion answered this question negatively, i.e. they were not sure that the Applicant will stand his trial. This was while the Applicant was still awaiting trial. The Applicant was sentenced to 65 years direct imprisonment and the question therefore: will the Applicant if released on bail and his appeal is unsuccessful report to the prison to serve a 65-year direct imprisonment sentence. The Applicant's willingness to not evade his trial or now his sentence has never been put to the test. This Court can only look at the facts place before it by the Applicant and the Respondent and the Court is not convinced on a balance of probabilities that the Applicant will report to prison if his appeal is unsuccessful.

[13] The Applicant in paragraph 99 page 01-42 of Caselines and further sets out his personal circumstances which the Court needs to consider in applying Section

60(4) of the Criminal Procedure Act. The Court is however not convinced by these submissions for the following reasons -

- a. The Applicant is not a permanent resident at the address stated in his affidavit. Firstly, he has been a prisoner for the past 10 years and therefore not residing at this address and secondly, he is illegally in the Republic of South Africa and therefore not capable of residing permanently anywhere in South Africa.
- b. The Applicant is not self employed and involved in various community projects. The Applicant is unemployed and have been so for the past 10 years while incarcerated awaiting his trial and now as a sentenced prisoner.
- c. The Applicant is not the primary caregiver of the minor child and has not been that for the past 10 years. The Applicant has been in prison since this minor was seven years old. During this time the Applicant could not have been the primary caregiver of the child and the fact that the Applicant is a father of the minor does not make him the primary caregiver which must be considered when bail is considered.
- d. The Applicant's children except for the one minor are all major and not dependant on him. The fact that they reside in South Africa would not prohibit him from leaving the country.

[14] There is therefore nothing in the personal circumstances of the Applicant that convinces the Court to grant the Applicant bail.

- [15] The Respondent states that the Court should not believe the Applicant. In 2015 he was a flight risk when he was arrested and there is nothing to indicate that that risk has dissipated. There is nothing keeping him South Africa if released and he can easily leave the country to return to Zimbabwe. The Applicant on his own version, confirms that it would be very easy for him to get a new passport with the embassy and that he can do so without even handing in his old passport thereby confirming the submissions of the Respondent that he is a flight risk if released on bail.
- [16] If the Applicant does not get a new passport and is released on bail he would not be in possession of a valid visa or permit to stay in the Republic. The Applicant in his supplementary heads of argument refers to a ZEP permit which according to him has been automatically renewed when the Minister of Home Affairs extended the validity of ZEP permits by way of circular to May 2027 and therefore as he was a holder of this ZEP permit when he was arrested his permit would have been extended to May 2027 in terms of the circular and that he is therefore not illegally in the country.
- [17] The Court is however of the opinion that the Applicant is exempted from this extension for the fact that he is excluded due to non-compliance on his part with the provisions of the special amnesty offered to people who obtained illegal South African citizenship based on fraudulent documents. An offence that the Applicant was found guilty of. Therefore the Court agrees with the submissions put forward by the Respondent in his supplementary heads of argument that the visa that the Applicant had, expired and cannot be renewed in terms of the current extension published by the Department of Home Affairs. This would

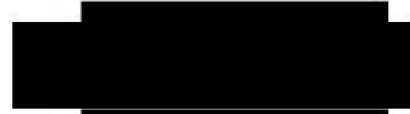
mean that if the Applicant is released on bail, he would without any valid documents giving him the right to stay in the Republic and he would therefore be committing a Schedule 1 offence contrary to the provisions of Section 60 of the Criminal Procedure Act.

- [18] The Applicant in his submissions relayed heavily on the order of the Supreme Court of Appeal dated May 2025 indicated that the mere fact that the SCA made the order indicated that there is prospect of success which equates to exceptional circumstances which would entitle him to bail pending appeal.
- [19] The matter before the Supreme Court of Appeal is however not the appeal but merely the leave to appeal. The Applicant must therefore still convince the Supreme Court of Appeal that the appeal should be heard and that his argument that there are prospects of success which equates exceptional circumstances is not correct. If the Supreme Court of Appeal grants leave to appeal the Applicant's argument might be valid but now based on the evidence before me, this current argument is flawed and can therefore not be considered. Should the SCA grant him Leave to Appeal, the Applicant would be in a better position to forward this Argument and apply for Bail pending Appeal.
- [20] The Applicant for this application relayed heavily on the alleged irregularities of the trial proceedings and more specifically the conduct of the trial judge. It is not for this Court to make a judgement on the merits of the application pending before the Supreme Court of Appeal. This Court can only look at the allegations made in as much as it might impact the granting of bail and ask the question if the allegations raised by the Applicant proofs his case on a balance of

probabilities. The Applicant's submissions do not satisfy the Applicant's onus to convince the Court to release him on bail.

[21] I therefore make the following order –

1. The Applicant's application is dismissed.
2. No order as to costs.

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NIEUWOUDT, E
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Date of Hearing: 19 December 2025

Date of Judgment: 5 January 2026

Appearances:

For the Applicant: Mr Dube

Instructed by: In person

For the Respondent: Adv J J Sereme

Instructed by: Office of the Director of Public Prosecutions