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

Case No. A1/2026

- (1) REPORTABLE: No
- (2) OF INTEREST TO OTHER JUDGES: No
- (3) REVISED.

SIGNATURE

DATE: 16 January 2026

In the matter between:

BHEKA MKHWANAZI

Appellant

and

THE STATE

Respondent

JUDGMENT

WILSON J:

- 1 The appellant, Mr. Mkhwanazi, is facing trial in the Regional Court on four counts of attempted murder, five counts of assault with intent to cause grievous bodily harm and four counts of kidnapping. There is also an alternative charge of discharging a firearm in a built-up area or public place. Mr. Mkhwanazi applied for bail on his first appearance in the District Court. On 10 April 2024, that application was refused.

- 2 It was not until 5 December 2025 that Mr. Mkhwanazi issued his notice of appeal against that decision, probably in response to the transfer of his trial to the Regional Court, in which he was formally charged on 19 December 2025. On 15 January 2026, I dismissed Mr. Mkhwanazi's appeal against the District Court's refusal to grant bail. I indicated at the time that I would provide written reasons in due course. These are my reasons.
- 3 The conduct underpinning the offences charged is alleged to have taken place on 25 February 2024. The State's case is that, on that date, three police officers answered a complaint of domestic violence at Mr. Mkhwanzi's residence. The complaint was laid by a Ms. M[...], a friend of a Ms. S[...]. Ms. S[...] was Mr. Mkhwanazi's domestic partner at the time. Shortly after the three police officers arrived at the scene, Ms. S[...] warned them that Mr. Mkhwanazi had a gun in the house. The officers asked Mr. Mkhwanazi to hand the gun over to them. Mr. Mkhwanazi fetched the gun, but that State alleges that, instead of handing the gun over, Mr. Mkhwanazi shot all three police officers and Ms. Mdletshe at close range. It is that conduct which the State alleges amounted to attempted murder. The five assault charges spring from the allegation that Mr. Mkwanzazi beat Ms. S[...] and her children with his fists and a belt before the police arrived.
- 4 In refusing bail, the Magistrate attached particular weight to the degree of violence implicit in these offences, and found that Mr. Mkwanzazi would, if released on bail, present a danger to the individuals he is alleged to have assaulted. This would, in turn, the Magistrate found, create a likelihood of interference with potential witnesses to be called at Mr. Mkhwanazi's

eventual trial (those witnesses being the victims of the assaults charged, and to whom Mr. Mkhwanazi was said to present a danger).

- 5 The Magistrate did not explicitly consider the possibility that appropriate bail conditions might obviate any potential danger to the victims of the offences charged or to the administration of justice more generally. However, it is clear from the Magistrate's judgment that the alleged shooting of the three police officers was relevant to whether appropriate bail conditions could be enforced in this case. It seems to me that the Magistrate was alive to the fact that any bail conditions set could only be enforced by the police, functionaries of which had themselves been injured in the course of interacting with Mr. Mkhwanazi.
- 6 It was common cause that, given the seriousness of the offences charged, the onus was on Mr. Mkhwanazi to adduce evidence showing that the interests of justice favoured his release on bail (section 60 11 (b) of the Criminal Procedure Act 51 of 1977). In other words, it was for Mr. Mkhwanazi to demonstrate to the court below that, the degree of violence implicit in the offences charged notwithstanding, he could be trusted to refrain from harming the complainants or potential witnesses, and that he could be trusted to obey any directions that a police officer might give him while enforcing a bail condition.
- 7 This Mr. Mkhwanazi failed to do. His evidence in the court below was given by way of affidavit. Save for the assertion that he intended "not to plead guilty" to the offences charged and that he did not wish to disclose his defence, Mr. Mkhwanazi did nothing to engage with the conduct alleged

against him. In an ordinary bail application, that might not have made a difference. But in this case Mr. Mkhwanazi had been accused of very serious acts of domestic violence which had been aggravated by serious assaults on three police officers who had been called to bring that violence to an end.

8 In domestic violence cases there is always an element of controlling behaviour. That behaviour brings with it the risk that domestic abusers will seek to take advantage of the control they exercise over their victims to evade accountability for their actions. It was, I think, incumbent on Mr. Mkhwanazi to adduce evidence either that he would probably be acquitted of the domestic violence charges, or that there was no real risk that he would seek to influence his alleged victims. In the absence of such evidence, the Magistrate was right to conclude that Mr. Mkhwanazi had not discharged his onus.

9 Moreover, any credible allegation of a serious assault on a police officer while carrying out their duties naturally gives rise to questions about whether an accused person can be trusted to acquiesce in the administration of justice. Again, the onus being on him, Mr. Mkhwanazi had to adduce evidence capable of addressing those questions. In the absence of such evidence, the Magistrate had nothing on which to find that Mr. Mkhwanazi was a good candidate for bail, subject to appropriate conditions.

10 In these circumstances, the boilerplate allegations set out in Mr. Mkhwanazi's bail affidavit – chiefly that he would not interfere with witnesses; that he would not endanger public safety; that he is not a flight risk; and that he has no previous convictions or other documented history of

violence – were insufficient to demonstrate that the interests of justice permitted Mr. Mkhwanazi's release. The particularity of the very serious offences alleged against Mr. Mkhwanazi called for a response. None was given.

11 Mr. van As, who appeared for Mr. Mkhwanazi before me, emphasised Mr. Mkhwanazi's right to silence in the criminal proceedings taken against him. But the right to silence does not relieve Mr. Mkhwanazi of the obligation to address the allegations against him if that is what is needed to discharge the onus to show that the interests of justice permit his release on bail. In this case, Mr. Mkhwanazi could remain silent on the conduct alleged or he could address it in an effort to demonstrate his entitlement to bail. He could not do both. This choice was obviously a difficult one. But its difficulty does not indemnify Mr. Mkhwanazi from the impact of his election not to deal with the conduct alleged against him on his entitlement to bail (see, in this respect *S v Dlamini*, *S v Dladla and Others*; *S v Joubert*; *S v Schietekat* 1999 (4) SA 623 (CC), paragraphs 94 to 95). In any event, the appropriate point at which to consider the impact of any incriminating admission made during bail proceedings is not in the bail proceedings themselves, but at trial, if and when any such admission is sought to be introduced against an accused person.

12 Mr. van As also emphasised the length of time Mr. Mkhwanazi has been in custody, the fact that his income supported two households prior to his arrest and the fact that Mr. Mkhwanazi has no documented history of violence. The length of time Mr. Mkhwanazi has been detained pending trial does give

cause for concern. However, at least some of that delay is the result of Mr. Mkhwanazi's attempts to induce the Director of Public Prosecutions to withdraw the charges against him. Even were that not so, the length of time spent in pretrial incarceration would at best be the basis for a fresh bail application in the court below brought on new facts – the length of incarceration and the reasons for the delay in bringing Mr. Mkhwanazi to trial being the triggers for a fresh inquiry. The pretrial delays Mr. Mkhwanazi has endured cannot serve to impugn the correctness of a decision to refuse him bail well before any of those delays was triggered.

13 Finally, it weighed with the Magistrate, and it weighs with me, that Mr. Mkhwanazi appears to have no prior record of violence. That fact is certainly relevant to an evaluation of whether Mr. Mkhwanazi presents a risk to his alleged victims, or to witnesses who may be called to give evidence against him. But the lack of any record of violence had to be stacked up against the extremely serious violence alleged against Mr. Mkhwanazi in this case, and which was left conspicuously unaddressed in Mr. Mkhwanazi's bail affidavit. In weighing these facts, I cannot say that the court below was wrong to reach the conclusion it did. But that is what section 65 (4) of the Criminal Procedure Act 51 of 1977 would have required me to say before upholding the appeal.

14 It was for these reasons that I dismissed Mr. Mkhwanazi's bail appeal.

S D J WILSON
Judge of the High Court

This judgment was prepared by Judge Wilson. It is handed down electronically by circulation to the parties or their legal representatives by email, by uploading it to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 16 January 2026.

HEARD ON: 15 January 2026

DECIDED ON: 15 January 2026

REASONS: 16 January 2026

For the Appellant: JC van As
Instructed by Botha-Booyens & Van As Attorneys

For the Respondent: SS Futshana
Instructed by the Director of Public Prosecutions