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

**CASE NO:
A68/2025**

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED

30 JANUARY 2026

In the matter between:

DANNY JOHN FORTUIN Appellant

And

THE STATE Respondent

JUDGMENT

DOSIO J:

Introduction

- [1] This is an appeal against the refusal of bail by the Alexandra Regional Court on 4 September 2025.
- [2] The appellant was arraigned in the court a quo as accused 1, together with 4 other accused on a charge of motor vehicle theft, in respect of which he had been arrested on the 07th of August 2025

- [3] It is common cause that the bail application fell within the ambit of a schedule 5 offence and that the appellant was burdened in establishing that it is in the interest of justice that he be released on bail.
- [4] The appellant was legally represented during the bail application.
- [5] The appellant initially placed his evidence before the court *a quo* by means of an affidavit, however, after being apprised of the contents of the two affidavits placed before the court *a quo* by the State, namely that of the investigating officer warrant officer Swart and warrant officer Van der Mescht, the appellant then placed a supplementary affidavit before the court *a quo*. The appellant then testified and called a witness, namely, Keith Peterson who also testified *viva voce*.
- [6] The appellant's counsel argued that the court *a quo* exercised its discretion wrongly in denying the appellant bail.
- [7] The appellant has accordingly raised the following issues as grounds of appeal, namely that:
- (a) the court *a quo* erred in finding that the State had a strong *prima facie* case,
 - (b) the appellant had deliberately misled the investigating officer with regards to his address,
 - (c) the appellant had pending cases against him,
 - (d) there was a real likelihood that the appellant would commit further offences if released on bail,
 - (e) the court *a quo* erred in asking various questions about the appellant's previous convictions and cases that had been withdrawn.
- [8] It was argued by the appellant's counsel that the mere evidence of previous convictions is not a statutory bar to being released on bail. Furthermore, it was contended that in terms of section 38 of the Criminal Procedure Act 51 of 1977 ("Act 51 of 1977"), the purpose of pre-trial arrest is solely to ensure that

the suspect appears at trial and that the suspect is not deprived of his right to freedom as stated in section 12(1)(a) of the Constitution.

- [9] The respondent's counsel argued that the court a quo did not misdirect itself and that the appellant failed to discharge the onus resting upon him to prove that it was on the interests of justice to be released on bail.

Legal principles

- [10] Section 60(11)(b) states:

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.”

- [11] Presumption of innocence is an important consideration, but a court needs to look holistically at all circumstances presented in a bail application.

- [12] In terms of section 65(4) of the Act 51 of 1977, the court hearing an appeal shall not set aside the decision against which the appeal is brought unless such court is satisfied that the decision was wrong.¹

- [13] The onus in respect to a schedule 5 offence, rests upon the applicant.²

Evaluation

¹ *S v Rawat* 1999(2) SACR 398 (W).

² *S v Moeti* 1991(1) SACR 46 2(B) and *S v Bruintjies* 2003(2) SACR 575 (SCA) at 577 e-g.

[14] The appellant's personal circumstances placed before the court *a quo* are as follows, namely that he is:

- (a) a 46-years-old male with identity number 7[...], a South African citizen without a passport and with no relatives or assets outside the Republic of South Africa. He has no travel documents. He completed grade 12 in 1996 and has no tertiary education;
- (b) residing at 3[...] D[...] Drive, B[...], Johannesburg, with his family home is at 2[...] F[...] Street, K[...] W[...];
- (c) married and has been married for 5 years in terms of Islamic law with three children, two of whom are still minors. His one son is studying engineering at the University of Cape Town and he still supports his son financially. The other son who is wheelchair bound lives with him and his wife. He pays maintenance towards his other daughter who lives with her mother. His wife also has a daughter of 15 years old from a previous marriage who lives with him. He has a car sales business and is also a director of ISA Construction Solutions (Pty) Limited, earning an income of approximately R16 000,00 per month and his wife also earns an income; and
- (d) owning a house valued at R2,7 million, where he pays a bond repayment of R24 000, 2 vehicles (V300 Mercedes Benz and a 2023 Volkswagen Golf GTI) and personal furniture valued at R400 000 and effects.

[15] The appellants counsel placed the following previous conviction before the court *a quo*, namely, that:

- (a) in 2004 he was convicted of motor vehicle theft and sentenced to 4 years' imprisonment, not "carjacking" as alleged by the investigating officer,
- (b) in 2008 he was convicted of driving a motor vehicle whilst his blood/alcohol percentage exceeded the legal limit in respect of which a fine of R500,00 was imposed,
- (c) in 2009 he was convicted of armed robbery, possession of unlicensed firearms and ammunition as well as fraud. In respect of all of these convictions, he was sentenced to an effective 18 years' imprisonment. In respect to this sentence he is presently on parole, and the parole expires

in 2029. He was sentenced to 5 years imprisonment to the four counts which was wholly suspended for 5 years.

[16] The court must consider all relevant factors and determine whether individually or cumulatively they warrant a finding that the interests of justice warrant the appellant's release.

[17] The provisions of ss60(4)-(9) of Act 51 of 1977 apply. These subsections must be construed consistently with s35(1)(f) of the Constitution, which guarantees the right of an arrested person to "to be released from detention if the interests of justice permit, subject to reasonable conditions".

[18] In the matter of *S v Smith and Another*³, the court held that:
"The Court will always grant bail where possible, and will lean in favour of and not against the liberty of the subject provided that it is clear that the interests of justice will not be prejudiced thereby."⁴

[19] In the matter of *S v Dlamini*⁵, the Constitutional Court held that:
"The interests of justice in regard to the granting or refusal of bail therefore focus primarily on securing the attendance of the accused at the trial and on preventing the accused from interfering with the proper investigation and prosecution of the matter".⁶

[20] Section 60(4) of Act 51 of 1977 states that:
"The interests of justice do not permit the release from detention of an accused where one or more of the following grounds are established:
(b) Where there is the likelihood that the accused, if he or she were released on bail, will endanger the safety of the public, any person against whom the offence in question was allegedly committed, or any other particular person or will commit a Schedule 1 offence; [Para. (a) substituted by s. 4 (c) of Act 85 of 1997 and by s. 4 (c) of Act 12 of 2021
(a) where there is the likelihood that the accused, if he or she were released on bail, will attempt to evade his or her trial; or

³ *S v Smith and another* 1969 (4) SA 175 (N).

⁴ *Ibid* page 171 para e-f.

⁵ *S v Dlamini* 1999 (2) SA SACR 51(CC).

⁶ Superior Courts Act of 2013, Section 1 (definition of "appeal").

- (b) where there is the likelihood that the accused, if he or she were released on bail, will attempt to influence or intimidate witnesses or to conceal or destroy evidence;
- (c) where there is the likelihood that the accused, if he or she were released on bail, will undermine or jeopardise the objectives or the proper functioning of the criminal justice system, including the bail system; or
- (d) where in exceptional circumstances there is the likelihood that the release of the accused will disturb the public order or undermine the public peace or security.”

[21] Section 60(5) of Act 51 of 1977 states that

- “(5)In considering whether the grounds in subsection (4) (a) have been established, the court may, where applicable, take into account the following factors, namely-
- (a) the degree of violence towards others implicit in the charge against the accused;
 - (b) any threat of violence which the accused may have made to a person against whom the offence in question was allegedly committed or any other person;
 - (c) any resentment the accused is alleged to harbour against a person against whom the offence in question was allegedly committed or any other person;
 - (d) any disposition to violence on the part of the accused, as is evident from his or her past conduct;
 - (e) any disposition of the accused to commit-
 - (i) offences referred to in Schedule 1;
 - (ii) an offence against any person in a domestic relationship,
 - (iii) as defined in section 1 of the Domestic Violence Act, 1998; or an offence referred to in-
 - (aa) section 17 (1) (a) of the Domestic Violence Act, 1998;
 - (bb) section 18 (1) (a) of the Protection from Harassment Act, 2011; or
 - (cc) any law that criminalises a contravention of any prohibition, condition, obligation or order, which was issued by a court to protect the person against whom the offence in question was allegedly committed, from the accused, as is evident from his or her past conduct;
 - (f) the prevalence of a particular type of offence;
 - (g) any evidence that the accused previously committed an offence-
 - (i) referred to in Schedule 1;
 - (ii) against any person in a domestic relationship, as defined in section 1 of the Domestic Violence Act, 1998; or
 - (iii) referred to in-
 - (aa) section 17 (1) (a) of the Domestic Violence Act, 1998;
 - (bb) section 18 (1) (a) of the Protection from Harassment Act, 2011; or
 - (cc) any law that criminalises a contravention of any prohibition, condition, obligation or order, which was issued by a court to protect the person against whom the offence in question was allegedly committed, from the accused, while released on bail or placed under correctional supervision, day parole, parole or medical parole as contemplated in section 73 of the Correctional Services Act, 1998; or
 - (h) any other factor which in the opinion of the court should be taken into account.”
- [my emphasis]

[22] The investigating officer’s alleged so-called outstanding and pending_cases against the appellant are randomly mentioned in his affidavit and can chronologically be listed as follows:

- (a) Eldorado Park CAS 1053/11/2007 – possession of stolen property which was withdrawn;
- (b) Eldorado Park CAS 437/11/2009 – possession of stolen property which was not placed on the roll;
- (c) Westville 69/7/2011- theft of a motor vehicle which was withdrawn;
- (d) Honeydew CAS 823/3/2021- robbery and kidnapping which was withdrawn; and
- (e) Mondeor 129/9/2022- contravention of the Arms and Ammunition Act which was withdrawn.

[23] It was argued by the appellant's counsel that the investigating officer mentioned the following matters against the appellant which are not pending matters against the appellant, namely:

- (a) Bedfordview CAS 264/4/2025, which is a charge of motor vehicle theft where the appellant is allegedly linked by means of fingerprints;
- (b) Rustenburg CAS 372/12/1999, which is a charge of motor vehicle theft;
- (c) Alberton CAS 278/7/25 and Sandton CAS 502/7/2025 which are charges of motor vehicle theft.

[24] In respect to the above- mentioned cases, the respondent's advocate stated as follows:

- (a) As regards Eldorado Park CAS 1053/11/2007, the owner of the motor vehicle could not be traced and this is why it was withdrawn.
- (b) As regards Eldorado Park CAS 437/11/2009, this matter was not placed on the roll due to insufficient evidence.
- (c) As regards Westville CAS 69/7/2011, this matter was withdrawn due to insufficient evidence.
- (d) As regards Honeydew CAS 823/3/2021, this matter was withdrawn as the complainant passed away before the matter could start.
- (e) As regards Bedfordview CAS 264/4/2025, the investigating officer of the matter in casu, stated he tried to get the Bedfordview docket from that investigating officer, however, that investigating officer was not forthcoming.

- (f) As regards Rustenburg CAS 372/12/1999, the investigating officer in the matter in casu, asked for the docket but he does not have it yet.
- (g) As regards the Alberton CAS 278/7/25 and Sandton CAS 502/7/2025, the respondent's counsel stated that the appellant is still to be charged in respect to these matters. Counsel for the respondent stated that both these matters were committed in July 2025, before the matter in casu. The respondent's counsel stated that the video footage has now been downloaded. He stated that the same modus operandi was used in these two matters as was used in the matter in casu. The same landline number was used to lure the complainants to believe that it was tracker who needed to check their vehicles. It appears there is someone within the tracker business who is supplying the appellant with information pertaining to certain types and class of vehicles and their price. The suspects then approached the victims who were informed not to be close to the vehicle so that they would not know where the microchip was placed. The suspects then drove off with the vehicles. There are always two cars used. The victim's car will be the third car. In the Alberton matter, the Toyota Prado valued at R1.4 million was not recovered. In the Sandton matter, the Audi valued at an amount of R3.5 million was not recovered. The vehicle in the matter in casu, namely, a Toyota Prado, valued at an amount of R1.2 million was recovered.

- [25] It is clear from the previous convictions that the appellant has been found guilty previously of theft of motor vehicles. Furthermore, he has a previous conviction of armed robbery where the owner of that car was held up by the appellant using a firearm and the victim's car was robbed.
- [26] The fact that the two matters of Eldorado CAS 1053/11/2007 and Honeydew CAS 823/3/2021 were withdrawn is clearly not due to lack of evidence, but due to no complainants to prove ownership of the cars.
- [27] Due to the serious previous convictions and a multitude of similar cases of motor theft that were pending against the appellant, some which are still to be prosecuted, namely Alberton CAS 278/7/25 and Sandton CAS 502/7/2025, as

well as the potential that the two other cases, namely Bedfordview CAS 264/4/2025 and Rustenburg CAS 372/12/1999, may still be prosecuted, it is clear the appellant has a propensity to commit schedule one offences.

[28] The appellant's counsel raised an objection to the additional information, pertaining to the pending cases, being placed before this court a quo.

[29] The question of whether a superior court can accept new evidence at the stage of a bail hearing engages fundamental principles of criminal procedure, the constitutional right to fair trial, and the courts' inherent jurisdiction to prevent injustice. While bail proceedings are governed by section 60 of Act 51 of 1977, Superior courts retain a residual discretion to admit new evidence in exceptional circumstances.⁷ The Constitutional Court's judgement in *Liesching and Others v S*,⁸ although primarily concerning the reconsideration of refused leave to appeal under section 17(12)(f) of the Act, provides authoritative principles that by analogy support the proposition that new evidence can be admissible in bail hearings where the interests of justice so demand.

[30] In the matter of *Liesching and Others v The State and Another*, the Constitutional Court referred to the provisions of s19 of the Superior Courts Act 10 of 2013 which states that:

"The Supreme Court Appeal or a Division exercising appeal jurisdiction may, in addition to any power as may specifically be provided for in any other law-

(a) dispose of an appeal without the hearing of oral argument;

(b) receive further evidence;

(c) remit the case to the court of first instance, or to the court whose decision is the subject of the appeal, for further hearing, with such instructions as regards the taking of further evidence or otherwise as the Supreme Court of Appeal or the Division deems necessary; or

(d) confirm, amend or set aside the decision which is the subject of the appeal and render any decision which the circumstances may require." [my emphasis]

⁷ Superior Court Act 10 of 2013, (definition of appeal)

⁸ *Liesching and Others v The State and Another* [2016] ZACC41

[31] The appellant's counsel in this case relies on Rule 4. 13 of the Uniform Rules of Professional Ethics- General Council of the Bar which states:

"It is improper for counsel to attempt to place any further material, of whatever nature, before the court after judgement has been reserved without the consent of his opponent. Such consent should not be unreasonably withheld, particularly when the request made is to refer the court to authorities which will assist it in giving a correct judgement. Nonetheless, if consent is refused, the proper course is to request the court, through the Registrar, to receive the further material or, where appropriate, to make an application to re- open the case."⁹

[32] The reliance on Uniform Rule 4. 13 by defence counsel, while directed at the conduct of legal practitioners, underscores a foundational procedural principle: a court must be empowered to receive material necessary for a correct judgement, especially where justice demands it. This ethical rule finds its substantive counterpart in the courts' inherent jurisdiction to the control their own process and prevent miscarriages of justice. This jurisdiction is not ousted by the specific statutory regimes governing bail or appeals.

[33] Accordingly, this court finds sufficient reasons why this court of appeal should consider this evidence placed before the court by the respondent's counsel pertaining to the pending matters

[34] Section 60(6) of Act 51 of 1977 states that:

"(6) In considering whether the ground in subsection (4) (b) has been established, the court may, where applicable, take into account the following factors, namely-

(a) the emotional, family, community or occupational ties of the accused to the place at which he or she is to be tried;

(b) the assets held by the accused and where such assets are situated;

(c) the means, and travel documents held by the accused, which may enable him or her to leave the country;

(d) the extent, if any, to which the accused can afford to forfeit the amount of bail which may be set;

(e) the question whether the extradition of the accused could readily be effected should he or she flee across the borders of the Republic in an attempt to evade his or

⁹ General Council of the Bar of South Africa Uniform Rules of Professional Ethics (2023) r 4.13.

her trial; (f) the nature and the gravity of the charge on which the accused is to be tried;

(g) the strength of the case against the accused and the incentive that he or she may in consequence have to attempt to evade his or her trial;

(h) the nature and gravity of the punishment which is likely to be imposed should the accused be convicted of the charges against him or her;

(i) the binding effect and enforceability of bail conditions which may be imposed and the ease with which such conditions could be breached; or

(j) any other factor which in the opinion of the court should be taken into account.”

[my emphasis]

[35] The State relied on the largely hearsay evidence contained in an affidavit by the Investigating Officer, Warrant Officer Swart who received the docket on the 08th of August 2025. The charge was one of possession of a stolen motor vehicle.

[36] According to the affidavit, the complainant Dr van der Merwe, on 07 August 2025 received a complaint that there was a difficulty with the tracker in her in her vehicle. Her receptionist showed the person the vehicle and just after 14h00 she received a call that her Toyota Prado had been stolen.

[37] Five suspects were later arrested by SAPS Tracker and CAT Security teams. According to the affidavit, the driver of the stolen vehicle informed the SAPS that the appellant had told him to drive the Prado.

[38] The appellant re-opened his case and testified that he gave no such instruction. The appellant also handed in an affidavit obtained from Mr Temba Ntumba, who is accused four, who denies that he informed any person that he had been instructed by the appellant to drive the Prado.

[39] The investigating officer`s statement alleged that two other vehicles were involved, namely a Polo and a Toyota rental, the last mentioned being driven by the appellant with his passenger, being Sithole, (accused 3), in which vehicle, a Tracker clipboard was found as well as a toolbox with which a

suspect, Thalano Jones, (accused 2), had apparently entered the clinic where the complainant's vehicle was.

[40] In reply the appellant denied that a clipboard and toolbox had been found in the Toyota Starlet, and added that if this was the case, accused 3's bail would also have been opposed who was with him in the vehicle.

[41] According to the affidavit by Warrant Officer Van der Mescht, the owner of the house situated at No. 7[...] S[...] C[...], had allegedly mentioned that the two baby seats found at his house had been left with him by Dannyboy, namely, the appellant.

[42] The appellant, additionally called as a witness the owner of 7[...] S[...], R[...] R[...]. Mr Keith Peterson to testify viva voca.

[43] Mr Keith Peterson testified that he knows the appellant as Danny Fortuin as he grew up in front of him. He had been residing at 7[...] S[...], R[...] R[...] for 39 years. In August the appellant had visited him there but appellant didn't bring him anything. He lives alone in the house. He has no wife on the premises.

[44] The appellant's counsel argued that the court a quo only briefly referred to the evidence of Mr Keith Peterson who denied that the police had visited him at No. 7[...] S[...] C[...] without any proper assessment of the relevance of his evidence as compared to the affidavit of Warrant Officer Van der Mescht.

[45] The respondent's counsel after consultation with the investigating officer addressed this court that there are two sections to the property at S[...], there is a section 7[...]A and 7[...]B. The respondent's counsel stated that even though there was no statement from Allistair Venter, that Allistair Venter's attorney had phoned the investigating officer to explain that a statement would be sent by Allistair Venter and that the baby seats were brought to his house by the appellant.

- [46] The respondent's counsel also stated that the statement of the receptionist in the matter in casu is also still outstanding but will be obtained.
- [47] The appellant's counsel argued that the oral evidence of the appellant should have been given greater value, as well as his witness, as compared to the affidavits of the two witnesses for the respondent who did not subject themselves to cross-examination. Further that the Court a quo erred in accepting that the trip log dated 5 August of the appellant's rental vehicle was at Midstream clinic without any trip log having been placed before the court a quo. Further, that the court a quo erred in accepting the affidavit of the respondent's witness stating that a tool box was found in the vehicle used by Thalano Jones.
- [48] In the matter of *S v Dlamini; S v Dladla and Others; S v Joubert; S v Schietekat*¹⁰, the Constitutional Court explained that bail proceedings are inquisitional, not a trial and that the purpose is not to determine the guilt of an accused or credibility of any witnesses. The Constitutional Court held that: "Furthermore, a bail hearing is a unique judicial function. It is obvious that the peculiar requirements of bail as an interlocutory and inherently urgent step were kept in mind when the statute was drafted. Although it is intended to be a formal court procedure, it is considerably less formal than a trial. Thus the evidentiary material proffered need not comply with the strict rules of oral or written evidence. Also, although bail, like the trial, is essentially adversarial, the inquisitorial powers of the presiding officer are greater. An important point to note here about bail proceedings is so self evident that it is often overlooked. It is that there is a fundamental difference between the objective of bail proceedings and that of the trial. In bail application the enquiry is not really concerned with the question of guilty. That is the task of the trial court. The court hearing the bail application is concerned with the question of possible guilt only to the extent that it may bear on where the interests of justice lie in regard to bail. The focus at the bail stage is to decide whether the interests of justice permit the release of the accused pending trial; and that entails in the main protecting the investigation and prosecution of the case against hindrance."¹¹

¹⁰ *S v Dlamini, S v Dladla and Others; S v Joubert; S v Schietekat* (CCT21/98, CCT22/98, CCT2/99 CCT, CCT4/99 [1999] ZACC 8; 1999 (4) SA 623; 1999 (7) BCLR 771 (3 JUNE 1999).

¹¹ Ibid para 11.

[49] As a result a bail application is not aimed at finally resolving factual disputes. It is only necessary for the respondent to have established prima facie evidence against the appellant, which it did.

[50] Accordingly, this court finds no misdirection in the findings of the court a quo that there is a strong prima facie case against the appellant.

[51] Considering the previous conviction of the accused, the sentence that the appellant may receive is direct imprisonment.

[52] Section 60(7) of Act 51 of 1977 states that:

“(7) In considering whether the ground in subsection (4) (c) has been established, the court may, where applicable, take into account the following factors, namely-

(a) the fact that the accused is familiar with the identity of witnesses and with the evidence which they may bring against him or her;

(b) whether the witnesses have already made statements and agreed to testify; (c) whether the investigation against the accused has already been completed;

(d) the relationship of the accused with the various witnesses and the extent to which they could be influenced or intimidated;

(e) how effective and enforceable bail conditions prohibiting communication between the accused and witnesses are likely to be;

(f) whether the accused has access to evidentiary material which is to be presented at his or her trial;

(g) the ease with which evidentiary material could be concealed or destroyed; or

(h) any other factor which in the opinion of the court should be taken into account.”

[my emphasis]

[53] The respondent’s counsel stated that Allistair Venter was nervous to make a statement and furthermore that the address where the receptionist works and who still had to make her statement is known to the appellant and his co-accused. Taking into consideration the appellant’s previous conviction of robbery with aggravated circumstances it is clear that he has a past disposition to violent behaviour.

[54] Section 60(8) of Act 51 of 1977 states that:

“(8) In considering whether the ground in subsection (4) (d) has been established, the court may, where applicable, take into account the following factors, namely-

(a) the fact that the accused, knowing it to be false, supplied false information at the time of his or her arrest or during the bail proceedings;

(b) whether the accused is in custody on another charge or whether the accused is on parole;

(c) any previous failure on the part of the accused to comply with bail conditions or any indication that he or she will not comply with any bail conditions; or

(d) any other factor which in the opinion of the court should be taken into account.”

[my emphasis]

[55] The respondent’s counsel addressed this court that the appellant did not disclose his conviction on an offence of fraud and defeating the ends of justice or his alternative address.

[56] It appears that when questioned by the police the appellant provided his residential address as 2[...] F[...] Street, K[...] W[...], however, the investigating officer revealed that the appellant was in fact the owner of a mortgaged property situated at 3[...] D[...] Drive, B[...].

[57] The appellant’s counsel argued that the appellant did not deliberately withhold this address as this is the house where his wife and children stay and he did not want the police to visit this address. This explanation given is very strange because it is in fact another property where the appellant could stay and whether or not he wanted the police not to go there it should have been disclosed upfront.

[58] The respondent’s counsel also argued that the appellant had violated his parole condition by travelling in Midrand which is outside the jurisdiction of Johannesburg. The appellant’s counsel argued that the appellant was never informed that Midrand does not fall under the jurisdiction of Johannesburg. The fact remains that the appellant was arrested outside the magisterial district of Johannesburg. The onus was on the appellant to check which areas he was allowed to drive to or not. To place the blame on others and

suggesting he was never informed is nonsensical. The investigating officer clearly checked with Mr Bond from the Correctional Service Parole Office what the condition of the appellant's parole was and so should've the appellant.

[59] This court does not find that the questioning by the court *a quo* of the appellant was irregular. Bail proceedings are more inquisitorial in nature as opposed to a trial. A presiding officer may accordingly take a more active role in the proceedings. The appellant's counsel referred this court to the matter of *S v Mafu*¹² to support the contention that the court *a quo* descended into the arena and that accordingly misdirected itself. The matter of *S v Mafu*¹³ is distinguishable from the matter in *casu*. Firstly, the matter in *casu* was a bail application and not a trial as in the case of *S v Mafu*. As stated previously, a court presiding over a bail application takes a more active role as opposed to a trial. Even if the court asked questions to apprise itself of the pending matters against the appellant, this court does not find such questioning irregular.

[60] After a perusal of the record of the court *a quo*, this court finds no misdirection on the part of the court *a quo*. The appellant did not successfully discharge the *onus* as contemplated in S60(11)(b) of Act 51 of 1977.

[61] Accordingly, there are no grounds to satisfy this court that the decision of the court *a quo* was wrong.

Order

[62] In the result, the appellant's appeal is dismissed.

¹² *S v Mafu and Others* (A1105/2005) [2008] ZAGPHC 38; 2008 (2) SACR 653 (W); [2008] 2 All SA 657 (W) (14 February 2008)

¹³ *Ibid.*

D. DOSIO
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

*This judgement was handed down electronically by circulation to the parties' representatives via e-mail, by being uploaded to Caselines and by release to SAFLII.
The date and time for handed- down to be 13h00 on 30 January 2026.*

APPEARANCES

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Instructed by BDK Attorneys

ON BEHALF OF THE STATE:

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