



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 2026-015504

(1)	REPORTABLE:
(2)	OF INTEREST TO OTHER JUDGES:
(3)	REVISED.
11 / 02 / 2026	
DATE	SIGNATURE

In the matter between:

LOUIS PETRUS LIEBENBERG

Applicant

and

THE STATE

First Respondent

THE MAGISTRATE, BRONKHORTSPRUIT

Second Respondent

JUDGMENT

Flynote

Criminal procedure — Fitness to stand trial — Referral for psychiatric observation —
Sections 77, 78, 79 Criminal Procedure Act 51 of 1977 — Magistrate's discretion —
Preliminary medical report not binding — Delay outweighed by need to ensure fair

trial — Urgent interdict dismissed.

MBONGWE J:

INTRODUCTION

- [1] This urgent application arose from the decision of the Magistrate of Bronkhorstspuit to refer the applicant, Mr Louis Petrus Liebenberg, for psychiatric observation in terms of sections 77, 78 and 79 of the Criminal Procedure Act 51 of 1977 ('the CPA'). The applicant seeks to have set aside the referral order, contending that it was unlawful, unnecessary, and prejudicial to the expeditious finalisation of his criminal trial.
- [2] The application is opposed by the First Respondent. There is absence of proof that the application was served on and was received by the Second Respondent.
- [3] The issue calls upon this Court to consider the scope and application of sections 77(1), 78 and 79 Criminal Procedure Act, 51 of 1977, and whether the Magistrate acted within her powers in ordering a referral of the Applicant / Accused, notwithstanding a preliminary medical report indicating his fitness to stand trial.

FACTUAL BACKGROUND

- [4] The applicant faces approximately 125 criminal charges, including racketeering and money laundering. The matter is due to be transferred to the High Court for trial in October 2026.

- [5] During the bail proceedings of his co-accused wife, the applicant engaged in disruptive and bizarre conduct,¹ including statements of a delusional nature – the trigger to the Magistrate's decision.
- [6] Concerned about his fitness, the Magistrate referred him to the District Medical Officer, whose report concluded that the applicant was able to appreciate and follow proceedings. It is necessary to state that the Magistrate was not bound by the opinion of this officer. More time for the observation of the Accused by psychiatric experts is envisioned in the provisions of section 79 of the Act.
- [7] The Magistrate, unsatisfied, ordered a referral under sections 77–79 of the CPA, and directed the accused's bail and recusal applications would not proceed until a psychiatric report was received.
- [8] The applicant now seeks urgent relief to set aside the referral order, alleging prejudice and delay.

STATUTORY FRAMEWORK

- [9] In terms of section 77(1), if it appears to the court that the accused is not capable of understanding the proceedings, the court shall direct that the matter be enquired into and reported upon.
- [10] In terms of section 78, if it is alleged or appears that the accused was not criminally responsible at the time of the offence due to mental illness or defect, the court shall direct that the matter be enquired into.

¹ S v Kavin 1978 (2) SA 731 (W).

[11] Section 79 provides for referral to a psychiatric hospital and the preparation of a report by psychiatrists.

[12] These provisions safeguard the constitutional right to a fair trial (Section 35 of the Constitution), ensuring that no accused is tried unless fit to understand and participate in proceedings.²

ANALYSIS

[13] It is important to state that this court can place no weight on the argument by the Applicant's counsel critiquing and purporting to gainsay the decision of the Magistrate. Counsel is no expert and could not contribute meaningfully to the issue of the mental state of the Applicant on the occasions that he exhibited the conduct that triggered the concern of the Magistrate. The provisions of section 77 (1) of Act 51 of 1977 lend the exercise of the discretionary authority to make the referral of the Accused for psychiatric assessment exclusively to the presiding Magistrate, who is in a pole position to observe, in real time, the conduct giving rise to the decision for the referral (see *R v Dhlumayo & Another*)³. Not even this court is at liberty to interfere with the discretion of the presiding Magistrate, in the absence of a cogent demonstration of a failure to exercise the discretion judiciously.

THRESHOLD UNDER S 77(1)

[14] The jurisdictional fact is that it must "appear" to the court that the accused may be unfit. This is a low threshold, designed to err on the side of caution for the

² S v Cele 1994 (2) SACR 535 (A).

³ 1948 (2) 677 (A).

ultimate benefit of the Accused. The Magistrate's concern was not frivolous; the applicant's conduct raised legitimate doubt⁴, in my view.

ROLE OF PRELIMINARY MEDICAL REPORT OF DOCTOR LUKHOZI (DISTRICT SURGEON)

- [15] The District Medical Officer's report concluded the fitness of the accused to stand trial. However, that report was not binding on the Magistrate, who retained her discretion, if she remained unsatisfied. The statutory scheme envisages referral to a panel of psychiatrists under s 79 for definitive assessment.

SECTION 78 CONSIDERATIONS

- [16] Given the seriousness of the charges, questions of criminal responsibility may arise. Section 78 requires referral where such doubt exists. The Magistrate's order aligns with this imperative.

SECTION 79 PROCEDURE

- [17] A referral under section 79 ensures a comprehensive report by qualified psychiatrists. This is the proper mechanism to resolve doubts about fitness and responsibility.

PREJUDICE AND DELAY

- [18] The applicant argues that referral causes delay. However, commencing a complex trial only to discover mid-trial that the accused is unfit would cause far

⁴ S v Mabena 2007 (1) SACR 482 (SCA).

greater disruption and delay. The referral prevents future delay and ensures procedural fairness.

CONSTITUTIONAL CONSIDERATIONS

[19] The right to a fair trial under Section 35 of the Constitution encompasses the right to understand proceedings and to participate meaningfully. Courts must ensure that accused persons are fit before trial commences. The Magistrate's order promotes, rather than undermines the applicant's constitutional rights.

CONCLUSION

[20] The Magistrate acted within her powers under sections 77–79 of the CPA. Her decision was rational, lawful, and aimed at safeguarding the applicant's rights to a fair trial. The inconvenience of delay is outweighed by the need to ensure fitness before trial.

ORDER

[21] Consequent to the findings in this judgment, I make the following orders:

1. The urgent application is dismissed.
2. The referral order of the Magistrate is upheld.
3. No order as to costs.


MPN MBONGWE
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

APPEARANCES

For the Applicant Advocate Henzen- du Toit (Ms)
with Advocate Pretorius

Instructed by EC Attorneys Incorporated

For the First Respondent Advocate CP Harmzen (Ms)
with Advocate JP Conradie

Instructed by The State Attorney, Pretoria

Date of hearing: **03 February 2026**

Date of judgement: **11 February 2026**

THIS JUDGEMENT WAS ELECTRONICALLY TRANSMITTED TO THE PARTIES' LEGAL REPRESENTATIVES AND UPLOADED ONTO CASELINE ON 11 FEBRUARY 2026.