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

CASE NO: A18/2026

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: NO
- (2) OF INTEREST TO OTHERS JUDGES: NO
- (3) REVISED
03/03/2026

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DATE

SIGNATURE

In the matter between:

T[...] M[...]

Appellant

and

THE STATE

Respondent

JUDGMENT

NEMAVHIDI AJ:

Introduction

[1] This is an appeal against the refusal of bail by the Magistrates' Court for the District of Booyens, Case No: 61/7/2026, handed down on 9 January 2026. The appellant appeared before the learned Magistrate, Mr M.F. Moropane, on a charge of assault, which is domestic in nature and falls under the ambit of Schedule 5 to the Criminal Procedure Act 51 of 1977 ("the CPA").

[2] The appellant was arrested on 3 January 2026 and made his first appearance on 5 January 2026. On 9 January 2026, he formally applied for bail. The application was refused. A subsequent application for bail on new facts was dismissed on 4 February 2026. The present appeal is directed only at the refusal of bail on 9 January 2026.

[3] The appeal is brought in terms of section 65 of the CPA. The appellant contends that the learned magistrate erred in fact and in law in refusing bail, and that the interests of justice permit his release.

Background facts

[4] The appellant and the complainant, E[...] T[...] M[...], are married in community of property. Three children were born of the marriage. At the time of the incident, the appellant was not residing at the matrimonial home. He had moved out in April 2025 after an interim protection order was served on him. Although that protection order was later dismissed, the appellant remained living with his sister in Soweto.

[5] On the day of the incident, the appellant received a call from his minor son, who complained that there were no cold drinks in the house. The appellant purchased cold drinks and proceeded to the matrimonial home to deliver them. Upon entering the

house, he found an unknown man sitting on a chair. An argument ensued. The appellant then ran to his car to fetch a stick. When he returned, the burglar door had been locked, preventing his re-entry. He left the premises.

[6] The complainant's version, as set out in her affidavit, is that the appellant struck the man on the shoulder, that she observed the tip of a knife in the appellant's back pocket, that she removed the knife, and that a scuffle ensued during which she sustained an injury to her hand. She also alleged that the appellant pushed her, causing her to strike a kitchen drawer. These events occurred in the presence of the minor children.

[7] The appellant denies having assaulted the complainant. He concedes that he went to fetch a stick but states that his intention was merely to scare the unknown man. He further denies having possessed a knife.

The bail proceedings

[8] The appellant, who was legally represented by Ms Matlala, elected not to testify viva voce. Instead, he tendered an affidavit in support of his bail application, which was admitted as Exhibit A. The affidavit dealt primarily with his personal circumstances, including his employment, his lack of previous convictions, and his willingness to abide by bail conditions.

[9] The appellant also called his adult son, H[...] M[...], to testify. The son's evidence related to the challenges he faced following his circumcision and his need for his father's guidance. He was not present at the time of the incident and could not assist the court on the merits of the bail application.

[10] The State opposed bail and tendered affidavits from the investigating officer (Exhibit B) and the complainant (Exhibit C). The investigating officer deposed that the appellant was violent, that he had forced entry into the complainant's home despite having been told to stay away, and that he posed a risk to the complainant's safety. The complainant expressed fear for her life and stated that the appellant had threatened her with a knife.

[11] In argument, Ms Matlala submitted that the appellant had discharged the onus resting on him, that he had a fixed address, that he would not evade trial, and that suitable conditions could be imposed to address any concerns.

[12] The prosecutor submitted that the safety of the complainant and the children was paramount, and that bail should be refused.

The magistrate's reasoning

[13] In his judgment, the magistrate correctly identified that the matter fell under Schedule 5 and that the appellant bore the onus to satisfy the court that the interests of justice permitted his release.

[14] The magistrate expressed concern regarding the appellant's conduct on the day in question. He noted that the appellant, having chosen to move out of the matrimonial home, returned not merely to deliver cold drinks but became embroiled in a confrontation that escalated to the point where he fetched a stick from his car. The magistrate posed the rhetorical question: what would have happened if the burglar door

had not been locked? His answer was that the appellant might well have been facing more serious charges.

[15] The magistrate found that the appellant's behaviour suggested anger issues and that there was a likelihood that, if released on bail, he would endanger the safety of the complainant and the witness (the unknown man), and would commit a Schedule 1 offence. This finding was rooted in section 60(4)(a) of the CPA.

[16] The magistrate further found that no condition could adequately protect the complainant. He observed that the appellant had voluntarily left the matrimonial home but had, on the day in question, acted in a manner inconsistent with that decision. He concluded that the complainant needed protection and that bail should be refused.

The appeal

[17] The appellant's notice of appeal raises numerous grounds, which may be summarised as follows:

17.1 The magistrate misdirected himself in finding that the appellant had not discharged the onus.

17.2 The magistrate placed undue emphasis on the protection of the complainant.

17.3 The magistrate erred in finding that the appellant would commit a Schedule 1 offence.

17.4 The magistrate failed to consider that conditions could be imposed to address any risks.

17.5 The magistrate failed to make a finding on the strength of the State's case.

17.6 The magistrate adopted a criminal trial approach rather than a bail approach.

[18] The appellant's heads of argument expand on these grounds and invoke the presumption of innocence, the right to liberty, and the principle that bail should be granted unless the interests of justice dictate otherwise.

[19] The respondent, in its heads of argument, submits that the magistrate's decision was correct, that the appellant failed to discharge the onus, that the magistrate properly applied section 60(4)(a), and that there is no basis for interference on appeal.

Legal principles

[20] Section 35(1)(f) of the Constitution guarantees every arrested person the right to be released from detention if the interests of justice permit, subject to reasonable conditions.

[21] However, that right is not absolute. Where an accused is charged with a Schedule 5 offence, section 60(11)(b) of the CPA imposes an onus on the accused to adduce evidence which satisfies the court that the interests of justice permit his or her release. The standard of proof is a balance of probabilities.¹

[22] Section 60(4) lists the grounds upon which the interests of justice do not permit release. These include, in paragraph (a), the likelihood that the accused, if released, will endanger the safety of the public or any particular person, or will commit a Schedule 1 offence.

[23] In evaluating whether bail should be granted, the court must weigh the interests of the accused against the interests of justice, which include the safety of the complainant and the community.²

[24] An appeal against the refusal of bail is governed by section 65(4) of the CPA, which provides that the appeal court shall not set aside the decision unless it is satisfied that the decision was wrong. This court does not sit as a court of first instance. It may not interfere merely because it would have come to a different conclusion. Interference is warranted only if the magistrate misdirected himself on the facts or the law, or exercised his discretion improperly.³

[25] In *S v Barber*⁴, it was held that the powers of a court of appeal in bail matters are limited. The question is not whether the appeal court would have granted bail, but whether the magistrate, in the exercise of his discretion, acted wrongly.

[26] Where the accused elects not to testify and relies solely on an affidavit, the evidentiary weight of that affidavit is diminished, as it is not open to testing by cross-examination.⁵

Evaluation

[27] I pause to consider the magistrate's findings in light of the evidence and the applicable law.

[28] The appellant's version, as set out in his affidavit, contains several troubling features. He admits that, upon finding an unknown man in his house, he argued with the

man and then ran to his car to fetch a stick. He does not explain what he intended to do with the stick, other than to say that he wished to "scare" the man. The magistrate was entitled to view this conduct as indicative of a propensity for violence.

[29] The magistrate's rhetorical question — what would have happened if the burglar door had not been locked? — was not an exercise in speculation. It was a logical inference drawn from the appellant's own admission. The appellant armed himself with a stick and returned to the house. Only the locked door prevented his re-entry. In those circumstances, the magistrate's finding that the appellant would have committed a Schedule 1 offence is entirely reasonable.

[30] The complainant's affidavit, while untested, provides further support for the magistrate's concerns. She alleges that the appellant struck the man, that he had a knife, and that she was injured in the ensuing scuffle. She expresses fear for her life. In bail proceedings, where the enquiry is not a trial, the court is entitled to have regard to such evidence.⁶

[31] The appellant submits that the magistrate failed to consider the strength of the State's case. However, the strength of the State's case is only one factor to be considered. In any event, the magistrate did refer to the need to consider whether the State had a strong case. He did not make an express finding, but his judgment as a whole reflects his view that the evidence against the appellant was sufficient to raise concerns regarding the risk of re-offending.

[32] The appellant also submits that the magistrate failed to consider that conditions could be imposed to address any risks. This submission overlooks the magistrate's express finding that no condition would stop the appellant from further abusing the complainant. That finding was based on the appellant's own conduct: he had chosen to leave the matrimonial home but nonetheless returned and behaved in a violent manner. The magistrate was entitled to conclude that conditions would not be effective.

[33] The appellant's reliance on his son's evidence is misplaced. The son's evidence, while sympathetic, had no bearing on the issues relevant to bail. The magistrate correctly observed that there was nothing to balance from that evidence.

[34] I am not persuaded that the magistrate misdirected himself. On the contrary, his judgment reflects a careful and conscientious evaluation of the evidence. He identified the applicable legal principles, applied them correctly, and gave clear reasons for his decision.

[35] This court is not at liberty to substitute its own view for that of the magistrate merely because it might have reached a different conclusion. The question is whether the magistrate's decision was wrong. In my view, it was not. The magistrate was confronted with a Schedule 5 offence, an appellant who admitted to arming himself with a stick, a complainant who expressed fear, and a lack of persuasive evidence from the appellant to discharge the onus resting on him. In those circumstances, the refusal of bail was justified.

[36] It follows that the appeal cannot succeed.

Order

[37] I make the following order:

1. The appeal against the refusal of bail by the Magistrates' Court for the District of Booyens, Case No: 61/7/2026, handed down on 9 January 2026, is dismissed.
2. The decision of the Magistrates' Court refusing bail is confirmed.
3. The appellant remains in custody pending the finalisation of his trial.

B NEMAVHIDI

**ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG**

For the appellant: Adv S Maziba instructed by KG Matlala Attorneys

For the respondent: Adv M.M. Rampyapedi, Office of the Director of Public Prosecutions, Gauteng Local Division, Johannesburg

Date of hearing: 03 MARCH 2026

Date of judgment: 03 MARCH 2026

Footnotes

¹ *S v Bruintjies* 2003 (2) SACR 575 (SCA) at 577e-g.

² *M.K and Another v S* (A312/2022) [2025] ZAGPPHC 439.

³ *S v Rawat* 1999 (2) SACR 398 (W) at 400F-G.

⁴ *S v Barber* 1979 (4) SA 218 (D).

⁵ *S v Mathebula* 2010 (1) SACR 55 (SCA) at 59b-c.

⁶ *S v Dlamini* 1999 (2) SACR 51 (CC) at para [11].

