



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN**

CASE NO: A2025-212266

In the matter between:

ZAMAQHINGA JIMMY NGXOLO

APPELLANT

and

THE STATE

RESPONDENT

ORDER

On appeal from: The Magistrates' Court for the District of eThekweni, held at Durban
(Mr S Zuma sitting as court of first instance):

The appeal is dismissed.

JUDGMENT

OLIFF AJ:

[1] This is an appeal against a decision by the District Court Magistrate sitting in Durban against the refusal to release the Appellant on bail.

[2] The Appellant and Accused 2 were charged with Murder (read with the provisions of Section 51(2), 52(2), 52A and 52B of the Criminal Law Amendment Act 105 of 1997).

[3] The State moved to hear the bail application in terms of schedule 5.

[4] In terms of schedule 5, the onus on the accused to prove that 'the interest of justice' permit their release.

[5] The bail application proceeded on 27 February 2025, and evidence was presented by affidavits by both the Accused and Detective Sergeant Ngobese.

[6] Pursuant to the evidence, the Magistrate heard argument before delivering judgment.

[7] The Magistrate records that both Accused in a very brief manner, addressed the Court with regard to the absence of any of the likelihoods listed in section 60(4)(a) to (b) of the *Criminal Procedure Act*, No. 51 of 1977.

[8] The Magistrate records that the State is relying on false statements by both Accused to the police officer citing that the death of the deceased was an accident

which occurred while he was dancing and fell, injuring himself on the head and as a result he died.

[9] The second ground the Magistrate accepted was the both the accused's, had left and fled the area.

[10] And finally, the Magistrate considered that there was a likelihood of interference with witnesses of the State.

[11] As Mr *Mema* correctly points out, the Magistrate does not deal with the circumstances of either of the Accused, remaining silent on whether the Accused poses a flight risk. There is no reasoning with respect to the either Accused's personal circumstances other than to state that the Accused, in a very brief manner, addressed the Court regarding the absence of any of the likelihoods listed in section 60(4)(a) to (h) of the Criminal Procedure Act. Unfortunately, the Accused's personal circumstances are not put forward in any great detail. The first Accused's family reside at an undisclosed address in the Eastern Cape. Similarly, we have a bold and unsubstantiated statement regarding the first Accused's net earnings per month.

[12] There is also difficulty with the Magistrate's acceptance that both Accused had 'fled the scene'. On the State's version, the witness had come forward in January 2025. Only after this unspecified date, would the Accused have been considered a person of interest. The Accused were arrested on 12 February 2025. Detective

Ngobese's affidavit lacked the necessary details regarding what attempts were made to locate the Accused post obtaining the witness statement.

[13] Mr *Buthelezi* correctly conceded that there was no evidence to suggest the release of the Accused on bail, was likely to incite violence between Zulu and Xhosa (it was also recorded the violence would be between Zulu and Pondo) while the Magistrate records this averment, it does not form any part of the reasoning of the judgment.

[14] Mr *Mema* argued that the Magistrate's finding that 'there was no question ... as to the strength of the *prima facie* case the State has presented', did not consider that the State's case was based on a single uncorroborated eyewitness. However, the discovery of the golf club, as the alleged murder weapon provides the independent corroboration of the witness version. In my view, the Magistrate came to the correct conclusion regarding the strength of the State's case.

[15] The final reason for the Magistrate's refusal was the false statement furnished to the police by the Accused's and inferred effects of this false statement. Mr *Buthelezi* argued that this misinformation showed a propensity to interfere or steer the investigation, in an incorrect direction. The Accused have elected to remain silent on this action as they are entitled to remain silent. The unchallenged evidence is therefore that the Accused actively sought to provide misinformation to the investigating officer.

[16] The Appellant bears the onus to discharge on a balance of probabilities that the interests of justice permit their release on bail.

[17] In weighing up the Appellant's personal circumstances that are lacking in particularity against the strength of the State's case, coupled with the Appellant's active role in attempting to steer the investigation in a different route, I am not satisfied that the Appellants have discharged the onus.

[18] I am unable to find that the Magistrate misdirected himself regarding the strength of the State's case, nor the weight given to the false statement provided to the police.

[19] It is trite law that a Court on appeal¹ can only interfere with the decision of the Court *a quo* to refuse bail if it is found that the decision was wrong.²

[20] In *S v Monyane and Others*, Ponnann JA re-stated the test as follows:

'This court's powers to interfere on appeal with the findings of fact of a trial court are limited. . . . In the absence of demonstrable and material misdirection by the trial court, its findings of fact are presumed to be correct and will only be disregarded if the recorded evidence shows them to be clearly wrong (*S v Hadebe and Others* 1997 (2) SACR 641 (SCA) at 645e – f).'

¹ Section 65(4) of Criminal Procedure Act No. 51 of 1977.

² *S v Barber* 1979 (4) SA 218 (D) at 220 E – G.

[21] In *S v Porthen and Another, Bins-Ward AJ* (as he then was) focuses on the appeal court's right to interfere with the discretion of the court of first instance in refusing bail when he held:

'When a discretion. . . is exercised by the court a quo, an appellate Court will give due deference and appropriate weight to the fact that the court or tribunal of first instance is vested with a discretion and will eschew any inclination to substitute its own decision unless it is persuaded that the determination of the court or tribunal of first instance was wrong.'

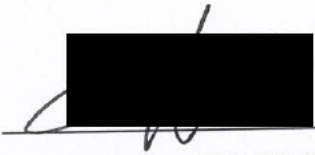
[22] The Appellant, in not presenting *viva voce* evidence, is forced to stand and fall by the submitted affidavit and the bald allegation. The failure to create a dispute regarding the false statement given to the police makes it difficult to draw the same conclusion of concern regarding interference in the investigation.

[23] In the absence of a material misdirection, the decision of the Magistrate was wrong. This Court is not at liberty to interfere with the ruling.

Order:

[24] As a result, the following order is made:

24.1 the appeal is dismissed with costs.


ACTING JUDGE OLIFF

CASE INFORMATION

Date of Hearing: 30 January 2026
Date Judgment delivered: 04 February 2026

Appearances

Counsel for the Appellant: Mr S Mema

Instructed by: S Mema & Associates
Suite 302B, 3rd Floor
Doone House
379 Anton Lembede Street
DURBAN

Ref: ---
Tel: 067 027 3013

Email: sipho@smemalaw.co.za

Counsel for the Respondent: Mr T W Buthelezi

Instructed by: Deputy Director of Public Prosecutions
Fourth Floor
Southern Life Building
88 Joe Slovo Street
DURBAN

Ref: ---
Tel: 031 334 5218 / 063 146 5696

Email: tbuthelezi@npa.gov.za