

IN THE HIGH COURT OF SOUTH AFRICAGAUTENG DIVISION, JOHANNESBURGCASE NO: A93/2026DATE: 15.01.2026

DELETE WHICHEVER IS NOT APPLICABLE
 (1) REPORTABLE: NO
 (2) OF INTEREST TO OTHER JUDGES : NO
 (3) REVISED



SIGNATURE

15 January 2026

In the matter between

10 EDWIN OBIRI

and

THE STATE

J U D G M E N T E X T E M P O R E

WILSON, J: The appellant, Mr Obiri, is a Ghanaian national and a South African permanent resident. He is charged in the Reginal Court at Alexandra with two counts of fraud and one of uttering. He was granted bail pending
 20 his trial on various conditions, one of which was that he surrender his passport.

In early 2025 Mr Obiri applied in the court below to vary that condition. Applications to vary bail conditions are governed by section 63 of the Criminal Procedure Act 51 of 1977, which in substance requires an applicant for a

variation of bail applications to show that circumstances have materially changed since the condition was set.

The magistrate below, after a careful evaluation of the evidence placed before them, considered that Mr Obiri had not shown that there was a material change in his circumstances between the time at which the bail condition was set and the time that the application was heard before the magistrate.

Mr Obiri now appeals to me against the magistrate's
10 decision. The primary question before me is whether the magistrate overlooked evidence of a material change in circumstances which would have justified the amendment of the bail condition Mr Obiri wishes to be relaxed.

There was some suggestion that Mr Obiri's business affairs in Ghana require him to be permitted to travel there, and for that reason the relevant bail condition should be relaxed. It is clear, however, that there has been no real change in Mr Obiri's business affairs in Ghana that would justify the relaxation of the condition that he surrender his
20 passport. The court that set the bail condition knew about Mr Obiri's business dealings in Ghana and no change in the nature of those dealings was identified before the magistrate below.

The bulk of Mr. Obiri's case rested on the proposition that Mr Obiri's mother, an 82-year-old woman, is gravely ill.

The problem with that submission is that there was no evidence before the magistrate below of Mr Obiri's mother's medical condition, and no attempt to compare that medical condition with the evidence adduced of Mr Obiri's mother's condition before the bail court.

In other words, there was nothing before the magistrate below that showed or tended to show that Mr Obiri's mother's condition had deteriorated between the point at which bail was granted and the point at which the
10 application for the variation of the bail condition was brought.

I asked Mr Khoza, who appeared for Mr. Obiri, why no evidence of Mr Obiri's mother's medical condition has been adduced, whether before the magistrate below or before me. Mr Khoza cited Mr Obiri's mother's right to medical confidentiality.

There is no doubt that Ms. Obiri has such a right, but that right does not extend as far as it would need to in order to allow Mr Obiri to simply assert before me and the
20 magistrate below that his mother's medical condition had deteriorated. The onus is on Mr Obiri to adduce concrete evidence of his mother's condition that suggests that her condition has changed since bail was granted.

While that position appears to have struck Mr Khoza as unfair, it is what is required in cases of this nature. The

magistrate below was correct to conclude that no substantial evidence of Mr Obiri's mother's medical condition had been placed before them. Still less had it been demonstrated that Mr Obiri's mother's condition had deteriorated since Mr. Obiri was directed to surrender his passport.

Mr Khoza suggested that the fact that money has been paid to a hospital by Mr Obiri on Ms. Obiri's behalf is evidence of Ms. Obiri's medical condition and the
10 deterioration in it. That proposition only needs to be stated to be rejected. The mere fact that money has been paid to a hospital tells us nothing about the condition of a patient in that hospital. The mere fact that Mr Obiri has paid money to a hospital that treated his mother tells us nothing about his mother's overall medical condition.

I cannot detect either in Mr Khoza's argument or on the record any other basis on which it is suggested that circumstances have changed such that the condition that Mr Obiri surrender his passport should be relaxed or interfered
20 with in any way.

It follows that the magistrate's conclusion that there had been no material change in circumstances that would justify relaxation of the bail condition was correct. There is no basis on which I can interfere with the magistrate's decision on appeal.

This does not leave Mr Obiri without remedy. It is open to him to apply again to the court below with concrete evidence of his mother's medical condition and to argue on the basis of that evidence that his mother's condition has deteriorated to such an extent that the bail condition should be relaxed.

If that is so, the court below would be hard pressed, depending on the quality of the evidence then adduced, not to at least consider whether Mr. Obiri should be allowed to
10 travel to Ghana.

The appeal is dismissed.



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WILSON, J
JUDGE OF THE HIGH COURT
15.01.2026

