



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable

Case no:2026-001854

In the matter between

DIMAKATSO ANNAH MASHEANE

FIRST APPLICANT

MASENTLE MASHEANE

SECOND APPLICANT

and

THE STATE

RESPONDENT

Neutral citation: *Masheane and Another v S* (2026-001854) [2026] ZAFSHC 108 (19 March 2026)

Coram: DANISO J

Heard: 6 FEBRUARY 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 09h00 on 19 March 2026.

Summary: Bail on new facts – onus on the applicant to adduce evidence establishing new and relevant facts not presented at the earlier unsuccessful bail application – principles applicable restated.

ORDER

The application for bail on new facts is dismissed.

JUDGMENT

Daniso J

[1] This is an opposed application for bail on new facts after the applicants bail pending trial was dismissed by the magistrate of the district court, Thabo Mofutsanyane, on 20 June 2025.

[2] The applicants were arrested during March 2024 on various charges including murder, arson and defeating the administration of justice. The charges emanate from an incident which occurred 22 October 2023. According to the charge sheet, the applicants and their co-accused as a group of ten people, acting in common purpose, shot and killed Mr Masheane Abel Modipa (count 1), incinerated his body by burning down his shack (count 2) with the intention to destroy evidence (count 5). The testimony of the investigating officer, sergeant Lefa Hendrik Letlojane alluded to the fact that the deceased was targeted because he was a member of the the community Anti-Stock Theft Unit. The crimes were witnessed by other members of the community who were also attacked by the applicants and their co-accused when they tried to intervene.

[3] In the court *a quo*, it was common cause that given the nature of the offences which the applicants were charged with, bail had to be determined in terms of s 60(11)(a) of the Criminal Procedure Act 51 of 1977 (the CPA) in that, the applicants were not entitled to be released from custody pending trial unless they adduced evidence to convince the court on a balance of probabilities that exceptional circumstances exist which in the interests of justice permit their release on bail. Aggrieved by the magistrate's refusal to admit them to bail, the applicants launched an appeal which suffered the same fate upon dismissal by Opperman J on 1 October 2025.

[4] On 16 October 2025, the court *a quo* transferred the matter to the high court sitting in Harrismith for pre-trial proceedings. The matter was remitted back to the court *a quo* on 1 December 2025 on the basis that the matter was not trial ready as the applicants' co-accused's bail application was still pending. The applicants and their co-accused are due to re-appear in the high court, Harrismith, on 11 May 2026. On 30 January 2026, approximately a month after the matter was referred back to the court *a quo*, the applicants returned to this court for bail on new facts. The application served before Chesiwe J who postponed the matter until 06 February 2026.

[5] The new facts upon which this renewed bail hearing is predicated are the delay in the commencement of the trial, the impact of prolonged incarceration on the applicants' livelihood, family ties including health and safety in custody. The application is supported by the applicants' mother, siblings including the first applicant's minor child and employees. It is the applicants' case that there has been an extreme delay in progressing this matter in the court *a quo*. They have been in custody awaiting trial for almost a year. Due to the long and unjustifiable remands arising from issues such as the unavailability of electricity and at some stage the magistrate was also unavailable, their initial bail application also lasted over a year.

[6] The first applicant is a single mother and the sole primary caregiver to her minor child. In terms of s 28(1)(b) of the Constitution,¹ a child has a right to family or parental care. Since her incarceration, her child is emotionally distraught and struggling to cope with his studies and this fact was duly canvassed in the court *a quo*. At the time of her arrest, the first applicant was operating various profitable businesses in farming, catering and tailoring. From that income, she provided for her family and paid wages to over 80 employees. Since her incarceration, the farming business is no longer making profit and some of the livestock have died as a result, her family has been rendered financially destitute. Her employees' salaries have also been adversely impacted. Her release from custody will alleviate her family and employees' financial burdens.

[7] The second applicant is the first applicant's younger sister. In addition to managing

¹Section 28 (1) (b) of the Constitution provides that every child has the right to family care or parental care, or to appropriate alternative care when removed from the family environment.

the first applicants' farming business, she also took care of their diabetic father and assisted the first applicant with transporting the first applicant's child. She suffers from a chronic ailment and, although she does receive treatment in custody, she is of the view that the care she receives outside prison is better than what she receives in custody. Referring to the provisions of s 28(1)(b), the second applicant avers that despite her adulthood, she remains a child to her parents; therefore, the child's best interests principle applies to her as well.

[8] The applicants contend that they are also treated very badly in custody. They have been assaulted and injured by the police in an attempt to force them to plead guilty. Complaints have been lodged and cases have also opened against the implicated officers under Cas numbers 86/08/2025 and 87/08/2025.

[9] The applicants' counsel, Mr Nengwekhulu, adds that he is well aware of the trite principle that the court that is well placed to assess and determine whether the facts relied upon by an applicant in a renewed bail is the court which heard the initial bail. In this matter, the applicants cannot go back to the court *a quo* as that court is in shambles and it is in that regard that when dismissing the bail appeal, Opperman J also granted the applicants leave to enroll their application for bail on new facts in this Court, if the matter is delayed. The State's case against the applicants is weak and based on all these reasons, the applicants have made out a case for their release on bail. If bail is granted, they will be able to raise an amount of R15 000 (fifteen thousand rand) each.

[12] The respondent's counsel, Mr Mabala, countered that Opperman J's ruling was rendered *ex tempore* with a proviso that parties may obtain a transcribed record of the judgment. To justify their decision to launch the renewed application in this Court instead of the court *a quo*, which is better placed to assess whether the facts relied upon by the applicants in this renewed application are indeed new facts which have come to light after refusal of bail, the applicants have relied on a provision of the Opperman J judgment in terms of which leave was granted to the applicants to approach this Court for bail on new facts if the matter is delayed. As at the hearing of this matter, the applicants have still not filed the transcribed record of the judgment relied upon. In any case, there have been no unreasonably long delays in the progression of this matter. The applicants have already appeared in the high court; the matter was only referred back to the court *a quo* for the

finalization of the bail applications involving the other accused. The next date of their appearance in the high court is 11 May 2026. Not all the delays are attributable to the state; some delays resulted from the unavailability of the applicants' own attorney after he was suspended from practice by the Legal Practice Council, electricity outages and the magistrate's unavailability due to her being away to attend a course.

[13] Furthermore, the issues raised by the applicants as new facts have already been determined by the court a quo during the initial bail proceedings. The applicants are not entitled to recycle old facts and present them as new facts. The subsequent appeal was also dismissed by this Court, as per Opperman J. This Court being of equal standing, cannot revisit Opperman J's order. The matter is thus *res judicata*.

[14] As regards the ill treatment in custody, on the applicants' own version, they have lodged criminal cases against the implicated police and they are also receiving medication for their respective ailments. If they continue to receive no joy with the manner in which these issues are addressed, there are proper channels for reporting ill-treatment by the police, namely by lodging complaints with the Independent Police Investigative Directorate (IPID). For all these reasons, the application ought to be dismissed.

[15] It is trite that an applicant who relies on new facts in order to be released on bail, bears the onus of satisfying the court that the new facts relied upon are facts which came to light after refusal of bail.² Such facts must be sufficiently different in character from the facts presented at the earlier unsuccessful bail application and cannot constitute a mere reshuffling of old evidence or an embroidery upon it.³ As correctly pointed out by counsel for the respondent and also conceded by the applicants' counsel, the court that is well placed to assess and determine whether the facts relied upon by the applicants in this renewed bail meet the so called 'new-facts' threshold, is the court which heard the initial bail application.

[16] Despite the applicants' unsubstantiated contention that leave was granted by Opperman J for the renewed bail to be heard by this Court,⁴ I am, however, enjoined to

² *S v Mohamed* 1999 (2) SACR 507 (C) at 511F-J.

³ *S v Petersen* [2008] ZAWCHC 11; 2008 (2) SACR 355 (C) para 57.

⁴ The Opperman J order merely reads: 'The appeal in terms of section 65 of the Criminal Procedure Act 51 of 1977 against the refusal of bail for the first, second and third appellant is dismissed.'

hear this application within the purview of s 60(1)(b) of the CPA in terms of which this Court retains jurisdiction relating to bail because the applicants have since appeared before the high court.

[17] Granted, a trial delayed for a lengthy period of time can bring the application within the ambit bail on new facts however, in this matter the magistrate has painstakingly sketched all the dates, the duration and reasons for the postponements (see record page 650 to 655). The reasons recorded ranged from at least four postponements due to the unavailability of the applicants' legal representatives, two postponements due to the unavailability of the public prosecutors and a month's unavailability of the magistrate whilst attending training for the newly appointed magistrates. The rest of the postponements are attributed to malfunctioning of the recording machine, no electricity and some of the accused abandoning bail and thereafter reapplying. In total, there are ten accused in this matter and they were not arrested on the same day. Their bail applications were also not heard during the same period by the same magistrate. It is important to point out that the applicants and their co-accused are due to re-appear in the high court for pre-trial proceedings on 11 May 2026. I am thus not persuaded that the delay in advancing the matter to trial is extreme or even unjust under these circumstances.

[18] The examination of the court a quo's record of the bail proceedings⁵ also reveals that the aspects relating to their financial predicament, which in turn has had an effect on their family and employees, their personal circumstances including their family responsibilities were determined by the court *a quo* in the initial bail hearing. The applicants' abuse of proceedings by reshuffling of old evidence cannot be countenanced. The second applicant's reliance on s 28(1)(b) of the Constitution which clearly provides for the protection of children whilst she is an adult, is unsound and quite astonishing.

[19] Section 35(2)(e) of the Constitution guarantees every arrested detainee the right not to be subjected to inhumane treatment which includes being assaulted and denied medical care whilst in custody. No right, however, is absolute. The applicants' rights in this instance cannot override all other legitimate rights, namely, the interests of justice

⁵ Paginated page 664 to 668 and 672 to 674 is the judgment of the court *a quo*.

which do not permit the release on bail where an applicant failed to prove the existence of exceptional circumstances justifying her release on bail. That aside, on the applicants' own submission, criminal charges have been laid against the implicated officers. This application does not meet the so called 'new facts' threshold, it must accordingly fail.

Order

[20] In the premises, I make the following order:

The application for bail on new facts is dismissed.



The Honourable Justice
2026-03-19
N.S. DANISO
JUDGE OF THE HIGH COURT

Appearances

On behalf of applicants:

T Nengwekhulu

Instructed by:

Nengwekhulu Attorneys INC, Bloemfontein

On behalf of respondent:

P Mabale

Instructed by:

Director: Public Prosecutions, Bloemfontein