



**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG**

Not reportable

Case no: CAB 04/2026

Magistrate's Court case no:01/101/25

In the matter between:

**LINDA MATSHEDISO
KOOPMAN**

FIRST APPELLANT

THAPELO CHIRWA

SECOND APPELLANT

RORISANG SEKASHE

THIRD APPELLANT

and

THE STATE

RESPONDENT

Coram: Wessels AJ

Heard: 2 March 2026 and 18 March 2026

Delivered: This judgment was handed down electronically, circulated to the parties' representatives via email, uploaded to CaseLines, and released to

SAFLII. The date and time for the handing down of the judgment are deemed to be 14h00 on 24 March 2026.

Summary: Bail – Jurisdiction – District court hearing bail application on new facts after transfer to Regional court – Section 60(1)(b) of Criminal Procedure Act 51 of 1977 – Once accused appears in receiving court, that court vested with exclusive jurisdiction to entertain bail applications – Referral back to District court exceptional measure, justified only where Regional court lacks capacity (eg sole Regional magistrate) – Absence of referral – District court lacked jurisdiction – Proceedings a nullity – Appeal set aside – Matter remitted to Regional court

JUDGMENT

Wessels AJ

Introduction

[1] This is an appeal against the refusal of bail by the Magistrate, Orkney, Ms L Esterhuizen, on 5 December 2025. The appellants brought a bail application on the basis of new facts as contemplated in s 65(2) of the Criminal Procedure Act¹ ('CPA'). The Magistrate dismissed the application, finding that the appellants had failed to prove the existence of new facts justifying the reconsideration of their release on bail.

¹ Criminal Procedure Act 51 of 1977.

[2] However, before this Court can consider the merits of the appeal, a preliminary jurisdictional question arises. The crisp issue for determination is whether the District Court had jurisdiction to entertain the bail application on new facts at all, given that by the time the application was brought, the appellants' case had already been transferred to the Regional Court for trial and the appellants had already appeared in that court. This issue was not raised by the parties in the District Court, nor was it addressed in the Magistrate's judgment. Nevertheless, it is a question of law that goes to the root of the proceedings and which this Court is obliged to consider.

[3] Before turning to the jurisdictional question, it is necessary to record the procedural history that preceded this appeal. The matter initially served before this Court on 2 March 2026. On that date, it became apparent that the appellants had not complied with the requirements of s 65(3) of the CPA, which mandates that a copy of the notice of appeal must be served on the Magistrate against whose decision the appeal is brought. The matter was accordingly postponed to enable the appellants to rectify this omission. The appeal was properly noted thereafter, and the record was placed before this Court for adjudication.

Background

[4] The relevant chronology is undisputed and may be summarised as follows:

(a) The appellants were arrested on 16 March 2025 on a charge of murder. They made their first appearance in the Magistrates' Court, Orkney, on 25 March 2025.

(b) On 2 April 2025, following a formal bail application, the learned magistrate refused bail. The matter was thereafter transferred to the Regional Court, Stilfontein, for trial. The record reflects that on 17 June 2025, the matter was transferred to the Regional Court, with a first appearance date of 16 July 2025.

(c) On 16 July 2025, the appellants appeared in the Regional Court for the first time pursuant to that transfer. They thereafter appeared in the Regional Court on several occasions.

(d) On 12 November 2025, approximately five months after the matter had been transferred to the Regional Court and after the appellants had made multiple appearances in that court, the appellants brought a second bail application based on new facts. This application was brought before the same District Court Magistrate who had refused the initial bail application. The Magistrate entertained the application and, on 5 December 2025, delivered judgment refusing bail.

[5] Neither the appellants' legal representative nor the State Prosecutor raised any objection to the District Court's jurisdiction to hear the application. The matter proceeded as if the District Court retained jurisdiction to entertain bail applications, notwithstanding the transfer of the case to the Regional Court and the appellants' appearances in that court.

Legal principles

[6] The question of jurisdiction in bail proceedings is governed by s 60(1)(b) of the CPA, which provides:

‘Subject to the provisions of section 50(6)(c), the court referring an accused to any other court for trial or sentencing **retains jurisdiction relating to the powers, functions and duties in respect of bail in terms of this Act until the accused appears in such other court for the first time.**’ (emphasis added)

[7] This provision has received considerable judicial interpretation. In *Director of Public Prosecutions, Eastern Cape, v Louw NO: In re S v Makinana*² the court observed:

‘The words “subject to the provisions of s 50(6)(c) in s 60(1)(b) must be interpreted in conformity with, and in such a way as to promote, the values of the Constitution and the spirit, purport and objects of the Bill of Rights. It must be interpreted, in other words, so that it promotes the value of, and the right to, freedom as well as the right to be “released from detention if the interest of justice permit, subject to reasonable conditions” and the right of access to court.’

[8] The court in *Makinana* granted a declaratory order that a magistrate’s court has exclusive jurisdiction to hear a bail application from the first appearance of the accused until he appears in the higher court to which his matter may be transferred, whereupon such other court shall enjoy jurisdiction to entertain a bail application. Importantly, the court did not declare the higher court to be vested with exclusive jurisdiction to consider bail once the accused has appeared before it. This left open the question of whether jurisdiction becomes concurrent or whether the receiving court’s jurisdiction is exclusive.

² *Director of Public Prosecutions, Eastern Cape, v Louw NO: In re S v Makinana* 2004 (2) SACR 46 (E) para 27.

[9] The authors of *Hiemstra's Criminal Procedure*³ comment on s 60(1)(b) as follows:

‘In cases where the court refers the accused to another court for trial or sentencing, the referring court retains jurisdiction in respect of bail until the accused appears in the other court for the first time. Once the accused appears in the receiving court, the receiving court is vested, to the exclusion of the transferring court, with exclusive jurisdiction in respect of bail applications, unless the receiving court refers the matter back to the transferring court for a bail application.’

[10] This interpretation was affirmed in *S v Seroka*⁴ as follows⁵:

‘Once the accused appears in the receiving court, the receiving court is vested, to the exclusion of the transferring court, with exclusive jurisdiction in respect of bail applications, unless the receiving court refers the matter back to the transferring court for a bail application.’

[11] In *Seroka*, the court considered a situation where the Regional Court had specifically referred the matter back to the District Court for the hearing of a bail application. The Regional Court Magistrate was the sole Regional Magistrate stationed at Groblersdal and was precluded from attending to both the bail application and the trial in the same matter. The District Court Magistrate declined to attend to the bail application, relying on the decision in *Director of Public Prosecutions, Limpopo v Rameez Patel & Another* (unreported, case number REV85/2020, 30 April 2021) (‘Patel’). The court in *Seroka* held that the District Court Magistrate’s reliance on *Patel* was

³ Hiemstra et al *Hiemstra's Criminal Procedure* (Issue 4) chapter 9 at 15.

⁴ *S v Seroka* 2021 (2) SACR 622 (LP).

⁵ *Ibid* para 19.

misconceived, as the matter had been referred back by the Regional Court. The court stated the following⁶:

‘The District Court Magistrate loses sight of the fact that this court in the matter of Rameez Patel distinguished the case on the facts and did not intend to interfere with the current practices in the lower courts where Regional Courts refer cases back to the District Courts for bail applications. The keyword is “referred back to”. It is only in instances where there is an absence of a referral from the receiving court back to the transferring court, or in simple terms from the High Court or Regional Court back to the District Court, that a District Court has no jurisdiction to entertain a bail application once the accused has appeared before such receiving court.’

Referral of bail application

[12] It is important to emphasise that the referral of a bail application from a Regional Court to a District Court is not a general rule or a matter of routine practice. It is an exceptional measure, available only in limited circumstances. As made clear in *Seroka*, the rationale for permitting such a referral is rooted in practical necessity: where a Regional Court has only a single Regional Magistrate, that Magistrate cannot preside over both the bail application and the subsequent trial. To do so would create an obvious conflict and could compromise the fairness of the proceedings. In such circumstances, the referral back to the District Court is a pragmatic solution that ensures the accused’s right to a fair trial is not compromised.

[13] The principle was articulated in *S v Mzatho and Others*⁷, where the court approved of the concurrent jurisdiction approach in appropriate circumstances, particularly where it would be improper for an area’s sole

⁶ *Op cit* fn2 para 20.

⁷ *S v Mzatho and Others* 2007 (2) SACR 309 (T).

Regional Magistrate to hear a bail application as well as the subsequent trial. The discretion of the Regional Court can therefore at best be characterised as narrow.

[14] The principle established is narrow in its operation in that the referral back to the District Court is justified only where there is a practical impediment to the Regional Court hearing the bail application, typically arising from the fact that the Regional Court has only a single magistrate who would be precluded from sitting at the trial if he or she heard the bail application. It is not a general licence for accused persons to bypass the Regional Court and bring bail applications directly before the District Court after the matter has been transferred.

[15] The court in *Seroka* made this clear by distinguishing the matter before it from *Patel*. In *Patel*, the accused had brought a bail application before the District Court after the High Court had already refused bail. There was no referral back from the High Court. The court held that the District court had acted irregularly and had, in effect, sat as a court of appeal. The absence of a referral was critical. In *Seroka*, by contrast, the referral was present and justified by the practical reality of a sole Regional Magistrate.

[16] The distinction between the two scenarios is not merely procedural. It goes to the very foundation of the court's jurisdiction. Where there is a referral back, the District Court's jurisdiction is derived from the referral itself. Where there is no referral, the District Court has no jurisdiction. The fact that an accused may prefer to bring the application before the District Court, or that the District Court may be more convenient or familiar with the facts of the matter, is irrelevant. Jurisdiction is determined by law, not by the convenience of the parties.

Application to the facts

[17] Applying these principles to the facts, the following chronology is determinative:

(a) On 2 April 2025, the District Court refused bail and transferred the matter to the Regional Court for trial.

(b) On 17 June 2025, the matter was formally transferred to the Regional Court for trial, with a first appearance date of 16 July 2025.

(c) On 16 July 2025, the appellants appeared in the Regional Court for the first time pursuant to that transfer. They thereafter appeared in the Regional Court on multiple occasions.

(d) On 12 November 2025, the appellants brought their bail application on new facts before the District Court.

[18] By 12 November 2025, the appellants had already appeared in the Regional Court on several occasions. The receiving court (the Regional Court) was vested with jurisdiction over the trial. Pursuant to s 60(1)(b) of the CPA, read with the authorities discussed above, the Regional Court was vested with exclusive jurisdiction to entertain any bail application, including an application based on new facts, unless the Regional Court referred the matter back to the District Court for that purpose.

[19] There is no evidence that the Regional Court ever referred the matter back to the Regional Court for the hearing of the bail application. The record is silent on any such referral. The Regional Court was not asked to consider

the application, nor did it exercise its discretion to refer the matter back. There is no suggestion that the Regional Court lacked the capacity to hear the application, and neither is there any indication that there was a sole Regional Magistrate who would be precluded from presiding at the trial. The appellants simply bypassed the Regional Court and brought their application directly before the District Court.

[20] The District Court assumed jurisdiction without any referral from the receiving court. In doing so, it acted without authority. The District Court, which had referred the matter to the Regional Court, became *functus officio* in relation to bail upon the appellants' first appearance in the Regional Court. Unless the Regional Court specifically referred the matter back, the District Court had no power to entertain the application.

[21] The fact that the District Court magistrate had presided over the initial bail application is irrelevant to the jurisdictional question. Jurisdiction is not retained by virtue of the magistrate's familiarity with the matter. It is determined solely by the statutory provisions of s 60(1)(b) and the applicable legal principles.

The proper procedure

[22] The proper procedure for an accused who wishes to bring a bail application after the matter has been transferred to a higher court is as follows:

(a) The accused must approach the receiving court (the court where the trial is pending) with the bail application.

(b) If the receiving court is of the view that it cannot properly entertain the application (for example, because the court has only one magistrate who would be precluded from presiding at the trial if he or she heard the bail application), it may, in the exercise of its discretion, refer the matter back to the transferring court for the hearing of the bail application.

(c) Upon such referral, the transferring court acquires jurisdiction to entertain the application.

[23] This procedure ensures that the receiving court retains control over all aspects of the proceedings, including bail, and that the referral back is made only where necessary in the interests of justice. It also avoids the fragmentation that would result if an accused could simply elect to approach either court for bail. It prevents forum shopping and ensures that bail applications are heard by the court best placed to assess all relevant factors, including the progress of the trial and any risks that may have arisen since the transfer.

[24] The procedure was not followed in this case. The appellants did not approach the Regional Court. The Regional Court was not given the opportunity to consider the bail application or to decide whether to refer it back. The District Court assumed jurisdiction without any referral and in doing so, it acted without jurisdiction.

Conclusion

[25] In the result, I conclude that the District Court lacked jurisdiction to entertain the appellants' bail application on new facts. By the time the application was brought on 12 November 2025, the appellants had already

appeared in the Regional Court on multiple occasions. Pursuant to s 60(1)(b) of the CPA, read with *Seroka* and other authorities, the Regional Court was vested with exclusive jurisdiction to entertain any bail application. The District Court became functus officio upon the appellants' first appearance in the Regional Court.

[26] The proceedings before the District Court on 12 November 2025 and 5 December 2025 were conducted without jurisdiction and are a nullity. The magistrate's judgment of 5 December 2025 refusing bail is void *ab initio*.

[27] This Court cannot uphold or dismiss an appeal against a decision that is a nullity. The appropriate order is to set aside the proceedings and remit the matter to the Regional Court for consideration of the appellants' bail application on new facts, should the appellants wish to pursue such an application.

[28] It is not for this Court to express any view on the merits of the alleged new facts. That is a matter for the Regional Court to determine in the first instance. The Regional Court is seized with the trial and is best placed to assess factors relevant to bail, including the strength of the State's case, the risk of interference with witnesses, and any other relevant considerations.

[29] I am mindful that this conclusion may cause further delay in the finalisation of the appellants' bail position. However, jurisdictional questions are fundamental. A court cannot assume jurisdiction it does not have, even if the result is inconvenience or delay. The proper administration of justice requires that proceedings be conducted before the correct forum.

[30] Should the Regional Court be of the view that it cannot properly entertain the bail application (in the exercise of its narrow discretion), it may, in the exercise of its discretion, refer the matter back to the District Court for hearing, as contemplated in *Seroka*. That is a matter for the Regional Court to determine in the first instance. It is not for this Court to anticipate or pre-empt that decision.

Order

[31] In the result, the following order is made:

1. The proceedings before the District Court, Orkney, on 12 November 2025 and 5 December 2025 in respect of the appellants' bail application on new facts are reviewed and set aside in its entirety as having been conducted without jurisdiction.
2. The matter is remitted to the Regional Court, Stilfontein, for consideration of the appellants' bail application on new facts, should the appellants wish to pursue such an application.




M WESSELS

ACTING JUDGE OF THE HIGH COURT
NORTH WEST DIVISION, MAHIKENG

Appearances

For applicant(s)	:Mr Motjope
Instructed by	:Sandile Makhubela Attorneys
	:Klerksdorp
	:c/o Moroenyane M Attorneyss
	:Mahikeng
For respondent(s)	:Adv Mabale
Instructed by	:Director of Public Prosecutions,
	NorthWest
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