



OFFICE OF THE CHIEF JUSTICE
REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MIDDELBURG (LOCAL SEAT)

CASE NO.: RC12/2025

BEFORE THE HONOURABLE JUSTICE LANGA (J) e/t MALANGENI (AJ)

Date: 20TH FEBRUARY 2026

In the matter between:

THE STATE

And

MARIO GREYVENSTEIN

SANDILE KHOZA

COURT ORDER

The Judge received the matter on 4th December 2025 and electronically circulated judgment on the 20th February 2026, gave and order in paragraph "39" as follows:

[1] I therefore propose the following order:

The Greyvenstein Matter

1. That the order of striking off the matter from the roll is reviewed and set aside.
2. That the case be re-enrolled and proceed before any magistrate including the Magistrate who made the order.



The Khoza Case

3. That the granting of bail by the court *a quo* is declared irregular.

That the accused's release on bail remains extant





IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MIDDELBURG

REVIEW NO: RC12/2025

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED.
20-02-2026	
DATE	M. MALANGENI

In the matter between:

THE STATE

and

MARIO GREYVENSTEIN

SANDILE KHOZA

REVIEW JUDGEMENT

Malangeni AJ

[1] At the request of the Senior Public Prosecutor, Magistrate TWP Makhunga of the Ermelo Magistrates' Court referred the following two cases on special review:

- 1.1 A529/2024 (State versus Mario Greyvenstein); and
- 1.2 A76/2025 (State versus Sandile Khoza).

[2] In respect of the first case ("the Greyvenstein Case"), the brief history is that:

2.1 The matter was postponed for trial for 4 April 2025. On that date, the state prosecutor realised that a foreign interpreter was required and asked for a postponement for that purpose.

2.2 A date of postponement was agreed upon between the state prosecutor and the defence attorney. The court did not seem happy with the issue of an interpreter. Whilst the Prosecutor was addressing the issue of the interpreter further, the court indicated that it had already removed the matter from the roll.

2.3 The view of the Senior Public Prosecutor is that the Court's decision was irregular, which is why the matter has been sent for a special review.

[3] In respect of the second case ("the Khoza Case"), the brief history is that:

3.1 The case was postponed to 16 April 2025 for a formal bail application. On that date, the state prosecutor advised that it was an opposed Schedule 5 formal bail application, that the investigating officer was before the court and further that the bail application could proceed.

3.2 However, due to the congestion of the roll, a remand of the case was sought.

3.3 This request received an objection from the defence Attorney.

3.4 Instead, the court fixed bail in the amount of R1000.00 (one thousand rand).

3.5 The Senior Public Prosecutor is of the view that the court had no discretion to fix bail, which is why the matter has been referred for special review.

[4] The two matters first served before Phahlamohlaka AJ, as he then was. He asked for an opinion from the DPP's Office in terms of these matters.

[5] The matters then served before Langa J, who noticed that Judge Phahlamohlaka's order in terms of the DPP's opinion was not complied with. He then postponed the matters for such compliance.

[6] Currently, this court is in possession of the opinions from the DPP's Offices (Middleburg and Mbombela) in respect of both cases, and I highly appreciate their kind assistance herein.

The opinions by advocates from DPP's offices

[7] There are three sets of opinions received herein. The first two address the issue of the striking off of the case from the roll ("the Greyvestein case"). The first one was compiled by Advocates Molefe and Molokoane. They referred the court to section 168 of the Criminal Procedure Act 51 of 1977 ("the CPA"). They submit that the learned Magistrate decided to strike the matter off the roll without hearing the Prosecutor first. They opine that he prematurely struck the matter off the roll and that his action is not in the interest of justice, especially if one considers the fact that the matter had not been long on the roll.

[8] In the second opinion Advocates Maoke and Magwanyana submitted that the matter had not been long on the roll and it was its first postponement for the purpose of trial. They also point out that the postponement was by consent between the prosecutor and the legal representative of the accused and that the seriousness of the charge, (assault with intent to do grievous bodily harm), weighs heavily against such a premature striking off done while the prosecutor was still addressing the court, and without conducting the mandatory enquiry required under section 342A of the CPA. They stated that by striking the matter off the roll in this manner, the Magistrate acted in contravention of section 168, which empowers the court to adjourn proceedings when necessary or expedient. They ask that the Magistrate's decision be reviewed and set aside, and further that it be re-enrolled or reinstated on the trial roll.

[9] Advocates Mtsweni and Molokoane submitted an opinion regarding the Khoza case. They submit that section 60(11) of the CPA governs when and how bail can be granted in serious offences, mainly in Schedules 5 and 6 offences. They assert that It limits the Magistrate's discretion to fix bail and sets a higher threshold before bail can be granted. In Schedule 5 cases, section 60(11)(b) of the CPA provides that the accused must satisfy the court that the interests of justice permit release. The

Magistrate's action of fixing bail on behalf of the accused was irregular as it is in direct contravention of section 60(11), and the formal procedure to be followed in accordance with the provisions of that section. They further submit that the bail granted by the magistrate be declared invalid and set aside, and the accused be detained pending a lawful bail application before another magistrate.

The Greyvenstein Case

[10] It is common cause that there had not been numerous postponements for trial purposes of this matter. It would have been the first postponement by the state for a foreign language interpreter. It is clear that the state was willing to call Ms Zikalala, the Senior Interpreter, to explain this administrative issue to the court. It is further common cause that the issue of postponement was already agreed upon by the parties, and as such, they had already secured a date for a postponement. Lastly, the accused was not in custody as he was before the court under J175 (Summons).

[11] The crux of these review proceedings is whether the striking off of the case from the roll was necessary and in accordance with law. It is trite that the striking off must happen on proper grounds; for example, when there have been numerous postponements by the state which the court finds unreasonable, and which delay the finalisation of the case, thereby prejudicing the accused. There was therefore a need to investigate the matter and determine if the requested postponement would cause an unreasonable delay that would negatively affect the accused. This is in line with the view that the accused has a right to a speedy trial. Section 35(3)(d) of the Constitution provides that: "Every accused person has a right to a fair trial, which includes the right to have their trial begin and conclude without unreasonable delay."

[12] The suitable method in the investigations of this nature is to apply the provisions of section 342A of the CPA.

[13] This section provides:

"(1) A court before which criminal proceedings are pending shall investigate any delays in the completion of proceedings which appears to the court to be unreasonable

and which could cause substantial prejudice to the prosecution, the accused or his or her legal adviser, the State or a witness...

...

(2) In considering the question whether any delay is unreasonable, the court shall consider the following factors:

- (a) The duration of the delay;
- (b) the reasons advanced for the delay;
- (c) whether any person can be blamed for the delay;
- (d) the effect of the delay on the personal circumstances of the accused and witnesses;
- (e) the seriousness, extent or complexity of the charge or charges;
- (f) actual or potential prejudice caused to the state or the defence by the delay, including a weakening of the quality of evidence, the possible death or disappearance or non-availability of witnesses, the loss of evidence, problems regarding the gathering of evidence and considerations of costs;
- (g) the effect of the delay on the administration of justice;
- (h) the adverse effect on the interests of the public or the victims in the event of the prosecution being stopped or discontinued;
- (i) any other factor which in the opinion of the court ought to be taken into account.

(3) If the court finds that the completion of the proceedings is being delayed unreasonably, the court may issue any such order as it deems fit in order to eliminate the delay and any prejudice arising from it or to prevent further delay or prejudice, including an order-

- (a) refusing further postponement of the proceedings;
- (b) granting a postponement subject to any such conditions as the court may determine;
- (c) where the accused has not yet pleaded to the charge, that the case be struck off the roll and the prosecution not be resumed or instituted *de novo* without the written instruction of the attorney-general;

...

(f) that the matter be referred to the appropriate authority for an administrative investigation and possible disciplinary action against any person responsible for the delay."

[14] In the proceedings under consideration, the Magistrate did not investigate the cause or reason for the case not proceeding on that day. He failed to listen to the state

prosecutor's request to have Ms Zikalala (Senior Interpreter) before the court so as to explain the reason why the Chinese interpreter was not paid for the services she had rendered for that court previously. The Magistrate was supposed to listen to Ms Zikalala and then consider how the absence of the interpreter would prejudice the accused. No evidence was adduced before the court *a quo* as to how the absence of that interpreter prejudiced the accused.

[15] I do understand that the absence of foreign language interpreters in our courts is a serious challenge. It disturbs the proper functioning of our courts, as such absence delays the progress of justice.

[16] However, the accused was on warning and it was the first day that the matter could not proceed.

[17] I cannot find justifiable reasons for the Magistrate to rush for the striking of the matter off the roll under these circumstances. In my view the court had the option of postponing the matter in order to grant the State the opportunity to procure the attendance by the interpreter. The court could have at least given the State a warning that should it fail to get its ducks in a row the matter may be struck off the roll.

[18] In *Myburgh Transport v Botha t/a SA Truck Bodies*,¹ it was said that the discretion as to whether to grant a postponement should be exercised judiciously and not capriciously. It was held that a trial court should be slow to refuse a postponement where the reason is not due to delaying tactics by a party. In the circumstances of this case, postponement would be a good option.

[19] The Magistrate did not exercise his decision judiciously by considering not only the right of the accused to a speedy trial but also the rights of other affected persons including the victims and family members and the State.

[20] The accused was facing an offence of assault with intent to cause grievous bodily harm. This is a serious offence, and surely the victim or the complainant wanted to know the outcome of the case, as by laying a charge with the police, the complainant

¹ *Myburgh Transport v Botha t/a SA Truck Bodies* 1991 (3) SA 310 (NmS).

wanted his or her case to be decided in a court of law. Section 34 of the Constitution provides that:

"Everyone has the right to have any dispute that can be resolved by application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum."

[21] Therefore, the order of striking the matter from the roll infringed the right of the complainant in terms of section 34, as his or her case has not been decided by a court of law.

[22] It is clear from the record that the interpreter refused to come to court as she had not been paid previously. It follows that the non-attendance of the court by the interpreter was an administrative issue. This cannot be regarded as a delaying tactic by the State.

[23] By striking the matter from the roll without having made an investigation in terms of section 342A of the CPA, the Magistrate committed an irregularity which warrants the intervention of this court.

[24] It would be in the interests of justice to order that the matter be reinstated before the court *a quo* so as to ensure justice is done in his or her case. I must also point out that that this is a matter which the State could have re-enrolled for trial without the need for a review.

The Khoza Case

[25] In this case, the big question is whether the court *a quo* applied the law in granting the accused bail without hearing evidence.

[26] Bail is a constitutional right. Section 35 of the Constitution provides that:

"(1) Everyone who is arrested for allegedly committing an offence has the right—
...

(f) to be released from detention if the interests of justice permit, subject to reasonable conditions.”

[27] Furthermore, the Constitution guarantees an arrested person the right to be released on bail. Section 12(1) provides that:

“(1) Everyone has the right to freedom and security of the person, which includes the right –

...

(b) not to be detained without trial.”

[28] The circumstances of each individual case are factors that help the court in deciding whether to grant or refuse bail. In *S v Dlamini; S v Dladla and others; S v Joubert; S v Schietekat*,² Kriegler J remarked as follows:

“What is of importance is that the grant or refusal of bail is under judicial control, and judicial officers have the ultimate decision as to whether or not, in the circumstances of a particular case, bail should be granted.”

[29] It is common cause that the offence the accused is facing falls within the ambit of Schedule 5. This section is governed by section 60(11)(b) of the CPA. It states the following:

“(11) Notwithstanding any provision of this Act, where an accused is charged with an offence –

...

(b) referred to in Schedule 5, but not in Schedule 6, the court shall order that the accused be detained in custody until he or she is dealt with in accordance with the law, unless the accused, having been given a reasonable opportunity to do so, adduces evidence which satisfies the court that the interests of justice permit his or her release.”

[30] In *Smith and Another*,³ it was held that “the Court will always grant bail where possible, and will lean in favour of, and not against, the liberty of the subject, provided that it is clear that the interests of justice will not be prejudiced thereby”.

² *S v Dlamini; S v Dladla and others; S v Joubert; S v Schietekat* 1999 (2) SACR 51 (CC) para 74.

³ *Smith and Another* 1969 (4) SA 175 (N) at 177E-F.

[31] Subsection 11(b) makes clear that the onus rests on an accused person to satisfy the court that the interests of justice permit his release on bail. This then means that a court cannot informally grant bail to an accused person without the accused having adduced evidence. Or to put it differently, it is peremptory for the accused to give or adduce evidence in a Schedule 5 offence.

[32] In the consideration of bail for the accused, the court should be mindful of the fact that it must follow the proper procedure used in determining bail. In *S v Mabena and Another*,⁴ it was held that bail is not competent in the absence of a proper enquiry being made in terms of the CPA. The judge had no legal authority to grant bail; his order was a nullity. The order granting bail was set aside. An order was issued for the arrest of the accused persons. This helps the court to make an informed decision.

[33] The prosecutor plays a major and active role in bail proceedings. A prosecutor must be given an opportunity to address the court on whether bail is opposed or not. In *Director of Public Prosecutions, Gauteng Local Division, Johannesburg v The Magistrate: Kagiso and Another*,⁵ it was held that a bail court's failure to give the prosecutor an opportunity to oppose bail constitutes an irregularity which required that the granting of bail had to be set aside.

[34] In the proceedings under consideration, there had been non-compliance with section 60(11)(b) in that the accused was not given an opportunity to adduce evidence satisfying the court that the interests of justice permit his release. The unanswered question is what evidence caused the court *a quo* to grant bail in favour of the accused.

[35] Secondly, neither the state nor the defence was invited to make submissions on the issue of bail. I mean to say that even the defence did not move or apply for bail; instead, he objected to a postponement.

⁴ *S v Mabena and Another* 2007 (1) SACR 482 (SCA).

⁵ *Director of Public Prosecutions, Gauteng Local Division, Johannesburg v The Magistrate: Kagiso and Another* [2017] ZAGPJHC 23 para 3.

[36] In my view, the only remedy available to the court *a quo* was to refuse postponement and order that the bail hearing should proceed. The Magistrate was not empowered by law to grant bail.

[37] By granting bail in the circumstances of this case, the court *a quo* committed an irregularity. Although irregular, I am of the view that it does not warrant a reversal as a reversal would mean re-arresting the accused who was not complicit in the granting of bail irregularly. The accused is not the author of this irregularity, as he never participated in the proceedings. The Magistrate *mero motu* granted him bail.

[38] Nothing suggests that the administration of justice has been compromised. The bail granted in favour of the accused does not negatively affect the complainant in any manner; in other words, the release of the accused on bail does not prejudice the complainant. It will not be in the interests of justice to revoke the accused's bail and order him into custody.

Order

[39] I therefore propose the following order:

The Greyvenstein Matter

1. That the order of striking off the matter from the roll is reviewed and set aside.
2. That the case be re-enrolled and proceed before any magistrate including the Magistrate who made the order.

The Khoza Case

3. That the granting of bail by the court *a quo* is declared irregular.
4. That the accused's release on bail remains extant.



M MALANGENI
ACTING JUDGE OF THE HIGH COURT
MPUMALANGA DIVISION, MIDDELBURG

I agree, and it is so ordered



MGB LANGA
JUDGE OF THE HIGH COURT
MPUMALANGA DIVISION, MIDDELBURG

RECEIVED ON THE 04TH of DECEMBER 2025
DELIVERED ON THE 20TH of FEBRUARY 2026