



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

CASE NO: 2026-070472

In the matter between:

UGOCHUKWA BALDWIN NWACHUKU

First Applicant

K[...] M[...]

Second Applicant

and

THE REGIONAL COURT MAGISTRATE,

SPECIALISED COMMERCIAL CRIME COURT, BELLVILLE

First

Respondent

THE STATE

Second Respondent

Corum: Fortuin J et Lekhuleni J

Summary: Bail — Review against refusal to extend bail pending imposition of sentence — Effect of s 58 of Criminal Procedure Act 51 of 1977– Consideration of bail after conviction but before sentence – Discretion of the trial court - Presumption of innocence.

Heard: 2 April 2026

Delivered (electronically): 13 April 2026

JUDGMENT

LEKHULENI J (FORTUIN J Concurring):

Introduction

[1] This is an application brought on an urgent basis in terms of Rule 6(12) of the Uniform Rules of Court, in which the applicants seek an order reviewing and setting aside the cancellation on 2 March 2026 of the first and second applicants' bail and the refusal by the first respondent to reinstate the applicants' bail. The applicants also seek an order granting them bail for an appropriate amount, subject to the necessary conditions, pending the passing of sentence by the first respondent. In addition, the applicants seek an order that their release on bail shall endure up to and including the trial court passing sentence and, in any appeal brought against conviction or sentence.

Background facts

[2] The applicants stood trial in the Specialised Commercial Crime Court in Bellville. The two applicants were charged together with other three accused before the court a quo. From the record, they were all legally represented. The second applicant's husband, who, from the record, appears to be a Nigerian national, was accused 2 at the trial, absconded during the trial, and he is still at large. A warrant for his arrest has been authorised against him. The charge sheet reveals that the applicants faced 24 counts of essentially fraud, theft and money laundering in relation to donations received in the context of the business of the International Church with which they were associated. On 02 March 2026, the trial court gave an elaborate judgment on the merits. The court a quo convicted the applicants on one count of money laundering. However, it acquitted them on all the other counts levelled against them.

[3] After the court gave judgment on the merits, it invited the legal representatives of the applicants to address it on the accused's position regarding bail. For the purposes of this judgment, I will confine myself to the submissions that were made by the legal representatives of the two applicants before the court and the argument that the state presented. Mr Johnston, who appeared for the first applicant, submitted before the trial court that the matter had been on the regional court roll for eleven years and that his client, who was on warning, had attended court without fail

ever since he was released. Mr Johnston implored the court a quo to release his client on warning, or, in the alternative, on such terms and conditions as the court deemed fit.

[4] Mr Liddell, who appeared on behalf of the second applicant, made a similar request to the trial court. However, in addition to his request, Mr Liddell informed the court that the second applicant was a South African citizen and a single parent. Counsel explained to the court a quo that the second applicant was a mother of three minor children and was their primary caregiver. One of the minor children was in grade 10, the other was in grade 5, and the youngest was five years old. Mr Liddell further submitted that should the second applicant not return home, the children would be left without a parent. Counsel implored the trial court to extend the second applicant's bail.

[5] The State advocate, Mr Agulhas, opposed the defence's request and submitted that the accused were found guilty of a serious offence. Mr Agulhas submitted before the magistrate that the minimum sentence was applicable and that it would not be in the interest of justice to permit their further release either on bail or on warning. Counsel implored the court to revoke their bail and to remand them in custody.

[6] After listening to both parties, the court postponed the matter to 10 April 2026 for presentence reports and further proceedings. The court revoked the accused's bail and found, inter alia, that one of the accused had already absconded. The court considered that the accused attended court regularly. It noted that their status had changed, as they had now been convicted. The court further considered that the Criminal Law Amendment Act 105 of 1997 is applicable and stated that the bad outweighs the good. The court cancelled the bail and remanded the applicants in custody for further proceedings. It is this order that the applicants seek to review and set aside in this Court.

The present application

[7] As foreshadowed above, the applicants seek an order that the regional magistrate's decision revoking their bail be reviewed and set aside. Mr Liddell, who

appeared on behalf of the applicants, submitted that the regional magistrate misdirected herself in respect of the second applicant in that she did not engage nor consider the fact that the second applicant was a custodian or primary caregiver of the three minor children. Notwithstanding that this aspect was raised with the court, counsel submitted that the court a quo overlooked it and thus committed an irregularity by cancelling the second applicant's bail.

[8] The applicants asserted in the founding affidavit that their bail history was exceptional in that the offence for which they were convicted did not fall within either Schedule 5 or Schedule 6 of the Criminal Procedure Act 51 of 1977 ('the CPA'). Furthermore, the applicants contended that they have a clean record and have favourable personal circumstances. It was their submission that they were released on bail 11 years ago and, during that period, attended court without fail. They also stated that the trial court had no qualms about amending the bail conditions for some of them to travel abroad, without demur from the state and without any negative consequences to the bail system. According to the applicants, the 11-year period during which they have been on bail and have attended court without fail must carry considerable weight in their favour.

[9] The applicants acknowledged that, pursuant to their conviction, the presumption of innocence no longer applies to them. However, they implored the court to set aside the trial court's order and reinstate their bail pending sentencing proceedings.

The alleged legal lacuna in the CPA

[10] The applicants also raised a novel question for this Court's consideration. The applicants contended that there is a lacuna in the CPA. According to the applicants, the CPA does not address the precarious position that they now find themselves in. The applicants contended that s 60 of the CPA provides a remedy for a deserving candidate to apply for and be granted bail **before conviction**. At the other end of the process, s 307 of the CPA allows an applicant to apply for and be granted bail **after sentence**. The applicants asserted that there is simply not a legal mechanism shaped to come to the assistance of an accused person who requires bail **after conviction but before sentence**, when the extension of bail was denied. This is

exactly where the applicants now find themselves in this matter. In the applicants' view, they are in limbo, as they cannot apply for bail before the trial court because the presiding magistrate is *functus officio*.

[11] The applicants further averred that the idea is captured in s 35(1)(f) of the Constitution, which provides that every arrested person has the right to be released from detention if the interest of justice permits, subject to reasonable conditions. However, the reality is that the legislature sought to concretise the idea by creating mechanisms for pre-trial release on bail, during the trial, and even after conviction and sentence, but not between conviction and sentence. To this end, the applicants note that the shadow hangs over those accused who, like the applicants, have been convicted but not yet sentenced.

[12] The applicants point out that the interlude between conviction and sentence may be lengthy, depending on various factors that may reasonably arise; yet this period prevails without the accused having access to a ready statutory remedy. The applicants further submitted that the accused, in such a situation, remains in a no-man's land, suspended, in the shadow and remediless. The applicants opine that such an accused person must simply await his appeal.

[13] It was further submitted that the legislative assistance to the one (bail before trial/ conviction) and also the other (bail after sentence), while leaving those such as the applicants (after conviction but before sentence) in limbo, is a legislative omission which is a breach of the applicants' constitutional right to equality. In the present matter, the applicants submitted that pre-sentencing reports for the two applicants where the judgment exceed 100 pages would take a minimum of 6 to 7 weeks to complete. Considering the estimated time required to obtain the necessary pre-sentence reports, along with the subsequent preparation by legal counsel, it appears that the upcoming trial court date of 10 April 2026, would be unachievable if the applicants choose to utilise the benefits that a thorough pre-sentencing report could provide.

[14] To this end, the applicants implored the court to exercise its inherent jurisdiction in terms of s 173 of the Constitution to fill the lacuna and prevent grave injustice. The

applicants beseeched the court to restore them to their rightful place (by reinstating their bail) as litigants who should have every reason to expect a superior court to come to their assistance.

[15] Mr Agulhas, counsel for the state, opposed the applicants' submissions and contended that, considering the seriousness of the charges and the fact that the applicants face direct imprisonment, the state applied for the withdrawal of the applicants' bail upon conviction. The regional magistrate afforded the applicants and their counsels an opportunity to respond to the application, which they did. After hearing all the parties, the regional magistrate exercised her powers under s 58 of the CPA and revoked the bail of the applicants.

[16] The state also relied on the decision of *S v Maloutzi* 2015 (2) SACR 341 (CC) para 31, where the Constitutional Court ruled that the inherent power to regulate process does not apply to substantive rights but rather to adjectival or procedural rights, that the power must be used sparingly, otherwise there would be legal uncertainty and potential chaos. The Court also noted that the High Court cannot use this power to assume jurisdiction that it does not otherwise have. Mr Agulhas submitted that the applicants have not made out a case for this court to exercise its inherent jurisdiction to reinstate their bail. Counsel prayed the court to dismiss the applicants' application.

Discussion

(a) Urgency in bail proceedings

[17] Before I can address the disputed issues discussed above, I deem it proper to address the preliminary issue raised by this Court with the parties at the hearing of this application. This matter appeared in the urgent court, and the applicants had to satisfy the requirements of Rule 6(12) of the Uniform Rules of Court. Mr Liddell, appearing for both applicants, submitted that the deprivation of liberty presently endured by the applicants constitutes ongoing and immediate prejudice which is incapable of adequate redress in due course. Counsel asserted that the urgency of the matter is grounded in the principle that liberty once infringed cannot be

retrospectively restored, and any delay in judicial intervention perpetuates irreparable harm. Moreover, counsel pointed out that the applicants' circumstances fall within the category of inherently urgent matters, in which the court is required to act as the upper guardian of constitutional rights. Counsel emphasised that the applicants have no alternative effective remedy and cannot obtain substantial redress at a hearing in due course.

[18] I agree with the views expressed by the applicants' counsel. All bail applications and bail appeals are *per se prima facie* urgent. Where an accused or an appellant is in custody because of the denial of bail, the appeal is, by virtue of that fact alone, *prima facie* so urgent that it must be heard as quickly as is reasonably possible. See *Prokureur-General, Vrystaat v Ramokhosi* 1997(1) SACR (O) at p.143D-F. All the available machinery for the hearing of the matter, must be brought into operation without delay. In *Magistrate, Stutterheim v Mashiya* 2003 (2) SACR 108 (SCA) para 16, the SCA stated:

'[I]t is evident that finalising an application for bail is always a matter of urgency. Though the accused may not be entitled to be released – since the Constitution permits bail only if the interests of justice permit – he or she is certainly entitled at first instance to a prompt decision one way or the other. And if bail is refused, the decision can be appealed. The right to a prompt decision is thus a procedural right independent of whether the right to liberty actually entitles the accused to bail. (footnotes omitted)

[19] For these reasons, I am of the view that this matter is urgent. I now turn to consider the applicants' application on the merits.

(b) Bail after conviction but before sentence (the alleged lacuna)

[20] In considering the granting or the revocation of bail after conviction but before sentencing, it is instructive for the court to consider the provisions of s 58 of the CPA, which deals with the effect of bail and provides as follows:

'The effect of bail granted in terms of the succeeding provisions is that an accused who is in custody shall be released from custody upon payment of, or the furnishing of a guarantee to pay, the sum of money determined for his bail, and that he shall appear at the place and on the date and at the time appointed for his trial or to which the proceedings relating to the offence in respect of which the accused is released on bail are adjourned, *and that the release shall, unless sooner terminated under the said provisions, endure until a verdict is given by a court in respect of the charge to which the offence in question relates*, or, where sentence is not imposed forthwith after verdict *and the court in question extends bail, until sentence is imposed*: Provided that where a court convicts an accused of an offence contemplated in Schedule 5 or 6, the court shall, in considering the question whether the accused's bail should be extended, apply the provisions of section 60(11)(a) or (b), as the case may be, and the court shall take into account—

- (a) the fact that the accused has been convicted of that offence; and
- (b) the likely sentence which the court might impose.'(emphasis added)

[21] Section 58 of the CPA envisages that against the payment of the bail money or provision of a guarantee, the accused shall be released from custody and must appear before the trial court at the place, on the date, and at the time appointed for his trial as directed by the court. Bail, or the release of an accused on warning, endures until judgment has been given. Simply put, bail lapses by operation of law upon conviction, unless the trial court extends it. In terms of s 58, an accused's release from custody lasts until a verdict is pronounced, and the bail granted lapses *ex lege* at conviction.

[22] Should the sentence not immediately follow upon conviction; the court retains a discretion whether to extend bail until sentence is passed. Such an extension does not follow automatically but must be requested from the trial court. Once bail is extended after conviction, the presiding officer becomes *functus officio* for purposes of bail until the bail lapses after the passing of sentence. See *S v Maritz* [2021] JOL 54965 (FB) paras 16 and 17. In other words, once extended, bail remains in effect until a sentence is imposed, and the trial court cannot unilaterally revoke it. In addition, when the presiding officer decides to revoke the bail or not to extend it, he also become *functus officio* in relation to the bail aspect.

[23] Deciding whether to extend bail pending sentencing depends on the specific circumstances at the time of conviction. In this enquiry, the court must weigh the seriousness of the offence against the likely sentence, while remaining mindful that public confidence in the administration of justice is a double-edged sword. This confidence is undermined not only when a court refuses to detain where it is justified, but equally when it orders detention where it is not. Consequently, bail must not be revoked unless specific facts clearly justify it. This ensures that a person's liberty is not taken away without a valid legal cause.

[24] Axiomatically, the court will also consider the likelihood of the accused absconding. When a court has convicted an accused of an offence falling under schedule 5 and 6 and considers whether the accused's bail should be extended pending the imposition of sentence, the court will apply the provisions of s 60(11)(a) or (b) and shall take into account the proviso in s 58 namely; the fact that the accused has been convicted of that offence; and the likely sentence which the court might impose. See *S v Doorewaard and Another* (CAB33/2018) [2018] ZANWHC 87 (6 December 2018) para 16.

[25] Section 58 underscores the judicial necessity of balancing public interest and social protection against the fundamental rights of the accused when considering the revocation or extension of bail. In other words, s 58 regulates the consideration of whether bail should be extended upon conviction and before sentence. Thus, s 58 serves as a vital procedural safety valve. It guarantees that any decision to revoke bail is the result of a careful balance between the interests of justice and the accused's right to freedom. Evidently, the trial court is endowed with a discretion to extend the bail or to allow the bail to lapse by the operation of law. Expressed differently, the trial court seized with the trial, may after considering all the competing interests, decide whether to extend the bail that had lapsed *ex lege* upon conviction. However, if the decision to refuse bail is based on capricious grounds, an accused person may impugn that decision in the High Court, which exercises supervisory power over the conduct of proceedings in the magistrates' courts in both civil and criminal matters.

[26] In my opinion, the applicants' argument regarding a perceived gap in the CPA related to bail applications for convicted persons, specifically those whose bail has been revoked or has lapsed automatically, as well as those seeking to apply for bail for the first time after conviction while awaiting sentencing, lacks merit. I accept that an application for bail is premised on the provisions of section 60(1)(a) of the CPA, which provides:

‘An accused who is in custody in respect of an offence shall, subject to the provisions of section 50 (6), be entitled to be released on bail *at any stage preceding his or her conviction in respect of such offence*, if the court is satisfied that the interests of justice so permit.

[27] It must be stressed that once an accused person is convicted, the presumption of innocence falls away. Different considerations arise in granting bail after conviction from those relevant to granting bail pending trial. The trial court retains the discretion to extend the bail or where necessary, to grant bail in the interest of justice. For instance, in *S v Engelbrecht* 2003 (2) SACR 544 (W), the accused had been convicted of the murder of her husband after pleading guilty. Sentencing was postponed for three months to enable the defence to consult with and procure reports from, inter alia, a psychiatrist or psychologist, probation officers or correctional services officers. The accused had been in custody for 14 months when the matter was heard. After conviction, the accused applied for bail pending sentencing. The court considered the accused's application notwithstanding that she was convicted of murder. The court dismissed the application as the accused was facing an offence that attracted the minimum sentence as envisaged in the Criminal Law Amendment Act 105 of 1997.

[28] In summary, the suggestion that there is a *lacuna* in the CPA cannot be correct. The CPA addresses the relevant concerns effectively, leaving no room for the alleged deficiency. Significantly, the trial court seized with the matter and having been steeped in the atmosphere of the case retains the discretion to extend or to grant bail pending the sentence proceedings where the interests of justice so demands.

[29] Even if I err in my expression above, I believe that the concern raised by the applicants is effectively addressed by the role of higher courts and appellate courts. These courts help maintain 'quality control' within the magistrates' courts and even within the High Courts. Furthermore, the High Court's judicial supervision of the lower courts is vital for reviewing and rectifying any mistakes or injustice that may occur. See *S v Steyn* 2001 (1) SACR 1146 paras 17 to 20. This conclusion is demonstrated by the decision of the full court in *S v Maritz* [2021] JOL 54965 (FB), in which the appeal court reinstated a bail of an accused person after conviction which the trial court extended and subsequently revoked stating that it was revoked by the operation of law.

(c) Did the trial court err in not extending the applicants' bail

[30] The applicants contended that the trial court misdirected itself by failing to extend their bail pending sentencing. The applicants also asserted that they attended court without fail for 11 years and complied with all bail conditions. It is common cause that the applicants were convicted of one count of money laundering upon finalisation of their trial, and they no longer enjoy the presumption of innocence. The presumption of innocence they enjoyed operated in their favour until the trial court established their guilt. Accordingly, as foreshadowed above, different considerations arise in granting bail after conviction from those relevant to granting bail pending trial. In *S v Rohde* 2020 (1) SACR 329 (SCA) para 5, Nicholls JA pointed out, in a minority judgment, that in a bail application pending an appeal against conviction, the appellant has a 'difficulty' because of his 'changed status': The stark reality is that the presumption of innocence no longer operates in his favour. See also *S v Zondi* 2020 (2) SACR 436 (GJ) para 31.

[31] It is worth emphasising that the decision whether to grant bail is entrusted to the trial court, as it is the person best equipped to deal with the issues, having been steeped in the atmosphere of the case. See *S v Masoaganye & another* [2011] JOL 27516 (SCA) para 15. Therefore, there is a limit to what this court can do. This court has to defer to the exercise of the trial court's discretion unless that court failed to bring an unbiased judgment to bear on the issue, did not act for substantial reasons,

exercised its discretion capriciously or upon a wrong principle. This principle was aptly underscored in *S v Barber* 1979 (4) SA 218 (D) at 220E – F, where the court stated:

'It is well known that the powers of this Court are largely limited where the matter comes before it on appeal and not as a substantive application for bail. This Court has to be persuaded that the magistrate exercised the discretion which he has wrongly. Accordingly, although this Court may have a different view, it should not substitute its own view for that of the magistrate because that would be an unfair interference with the magistrate's exercise of his discretion. I think it should be stressed that, no matter what this Court's own views are, the real question is whether it can be said that the magistrate who had the discretion to grant bail exercised that discretion wrongly.'

[32] In revoking the bail, the magistrate exercised a judicial discretion in the true sense. In *Trencon Construction (Pty) Ltd v Industrial Development Corporation of South Africa Ltd and Another* 2015 (5) SA 245 (CC) paras 83, (*'Trencon'*) the Constitutional Court observed that in order to decipher the standard of interference that an appellate court is justified in applying, a distinction between two types of discretion emerged in our case law. That distinction is now deeply rooted in the law governing the relationship between appeal courts and courts of first instance. The Court noted that the proper approach on appeal is for an appellate court to ascertain whether the discretion exercised by the lower court was a discretion in the true sense or whether it was a discretion in the loose sense. The distinction between the two is made for the purposes of determining the extent of an appellate court's power to substitute its own determination for that of the court a quo where the decision in point is accepted to have involved the exercise of 'a discretion'. See *S v Tafeni* 2016 (2) SACR 720 (WCC) para 6.

[33] In *Media Workers Association of South Africa and Others v Press Corporation of South Africa Ltd* 1992 (4) SA 791 (A) at 800E, the Court defined a discretion in the true sense as follows:

‘The essence of a discretion in [the true] sense is that, if the repository of the power follows any one of the available courses, he would be acting within his powers, and his exercise of power could not be set aside merely because a Court would have preferred him to have followed a different course among those available to him.’

[34] A discretion in the true sense is found where the lower court has a wide range of equally permissible options available to it. See *Trencon (supra)* para 85. The lower court has an election of which option it will apply, and any option can never be said to be wrong, as each is entirely permissible. In contrast, where a court has a discretion in the loose sense, it does not necessarily have a choice between equally permissible options. A discretion in the loose sense means no more than that the court is entitled to have regard to a number of disparate and incommensurable features in coming to a decision. See *Knox D'Arcy Ltd and Others v Jamieson and Others* 1996 (4) SA 348 (A) at 361I.

[35] In *National Coalition for Gay and Lesbian Equality and Others v Minister of Home Affairs and Others* 2000 (2) SA 1 (CC) para 11, the Constitutional Court emphasised that when a lower court exercises a discretion in the true sense, it would ordinarily be inappropriate for an appellate court to interfere unless it is satisfied that this discretion was not exercised judicially, or that it had been influenced by wrong principles or a misdirection on the facts, or that it had reached a decision which in the result could not reasonably have been made by a court properly directing itself to all the relevant facts and principles.

[36] As I see it, the decision of the court a quo is unimpeachable. It cannot be said that the decision of the regional magistrate, in respect of the four accused, to refuse to extend their bail, was taken capriciously. It is apparent from the reasons she has furnished that she has taken the relevant factors into account and given due consideration to each. She considered that the said accused save for the second applicant are foreigners, and that the likelihood of absconding is overwhelming. She noted it as a fact that one of the accused has absconded. She considered that the applicants had attended court regularly, but stated that they are now convicted. The magistrate observed that the bad outweighs the good.

[37] In my view, this court ought to be slow to substitute its own decision solely because it does not agree with the permissible option chosen by the lower court. In *S v Porthen and Others* 2004 (2) SACR 242 (C), Binns-Ward AJ, as he then was, reminded us that even when a discretion in the wider sense 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. I agree with this proposition.

[38] I am mindful that from the engagement of the trial court and the second applicant's legal representative, the court was informed that the second applicant has a grade 10, a grade 5, and a five-year-old child. I am also cognisant of the fact that the court was informed that the second applicant is the children's primary caregiver, after their father absconded. Her eldest child was born in 2006. Mr Liddell argued that the court *a quo* did not consider who would look after the children in second applicant's absence. According to counsel, the continued detention of the second applicant, without an inquiry into the welfare of her minor children, has serious implications for her children.

[39] The paramountcy of the child's best interests is well established in our law. It is indeed true that the matter regarding the second applicant's minor children was presented for consideration to the court *a quo*. In rejecting the second applicant's request to extend bail, the court was alive to the plight of the second applicant's children. The fact that she does not specifically mention them in her judgment does not mean that she did not consider their interests.

[40] I am fortified in this conclusion because, when the magistrate was addressed to extend the second applicant's bail, Mr Liddell mentioned that the applicant had two children. It was the magistrate who pointed out to him that the documents in her possession showed that the second applicant actually had more children. I also hasten to add that the issue regarding the children will be addressed during the sentencing proceedings. If indeed the second applicant is the primary caregiver of

her minor children, it is expected that the trial court will conduct the necessary inquiry in terms of the guidance that the Constitutional Court provided in *S v M (Center for Child Law as Amicus Curiae)* 2008 (2) SA 232 (CC).

Order

[41] Given all these considerations, I would propose the following order:

The applicants' application is hereby dismissed.

LEKHULENI JD
JUDGE OF THE HIGH COURT

I agree and it is so ordered:

FORTUIN C
JUDGE OF THE HIGH COURT

APPEARANCES:

For the applicants: Adv Liddell
Instructed by: Mathewson Gess Inc

For the First respondent: No appearance
For the Second respondent: Adv Agulhas