



**THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

- (1) REPORTABLE: Yes ☒ / No ☐
(2) OF INTEREST TO OTHER JUDGES: Yes ☒ / No ☐
(3) REVISED: Yes ☒ / No ☐

Date: 28 April 2026

Case no 2026/00055

In the matter between:

NEO PRINCE HLATSHWAYO

Applicant

and

THE STATE

First Respondent

**DIRECTOR OF PUBLIC
PROSECUTIONS, GAUTENG
DIVISION**

Second Respondent

**THE INVESTIGATING OFFICER,
SANDTON POLICE STATION: SGT
MAHANKE N.O. (Investigating Officer
under Cas No: 550/04/2026)**

Third Respondent

MAGISTRATE SYTA PRINSLOO N.O.

Fourth Respondent

**THE HEAD OF JOHANNESBURG
CORRECTIONAL CENTRE (SUN
CITY)**

Fifth Respondent

Keywords: Bail — postponement of bail proceedings — section 50(6)(d) of the Criminal Procedure Act 51 of 1977 — section 60(3) — inherent jurisdiction of High Court to intervene in uncompleted bail proceedings — rare and exceptional

circumstances — grave injustice — section 12(1)(a) of the Constitution — section 35(1)(f) of the Constitution — section 39(2) of the Constitution

JUDGMENT

DU PLESSIS J

Introduction

[1] The applicant, a 29-year-old employed South African citizen, seeks urgent relief following the postponement of his bail hearing in the Alexandra Magistrates' Court to 30 April 2026. The applicant contends that his continued detention constitutes an ongoing infringement of his constitutional rights that warrants intervention from this Court.

[2] The matter was enrolled for hearing on 28 April 2026 at 09h00. The respondents, having been served after hours on 24 April 2026, did not file answering affidavits. The matter accordingly proceeds on the applicant's papers alone. For the reasons set forth below, the application is dismissed.

Background

[3] The applicant was arrested by members of the South African Police Service ("SAPS") (Sandton Police Station) at approximately 16h00 on 22 April 2026 on a charge of possession of a suspected stolen or hijacked motor vehicle. The vehicle was a company vehicle assigned to him by his employer, Davidzo Trading, which allegedly purchased it in December 2024. The applicant avers that he had no knowledge that the vehicle had previously been reported stolen in 2016.

[4] Despite his attorney requesting on the evening of 22 April 2026 that the applicant be formally charged so that bail could be addressed, the police refused to charge the applicant until approximately 11h00 on 23 April 2026. Although the courts were still in session at that time, the applicant was not brought before a court on 23 April 2026 and only made his first appearance on 24 April 2026.

[5] At his first appearance, the State applied for a postponement of the bail hearing on three grounds: the absence of the Investigating Officer and the lack of a statement confirming address verification; the absence of any indication from the Investigating Officer as to whether bail would be opposed; and the absence of verification of the applicant's previous convictions. The applicant's attorney opposed the postponement.

[6] The Magistrate granted the postponement to 30 April 2026, presumably accepting the State's reasons and, on the applicant's papers, without invoking section 60(3) of the Criminal Procedure Act¹ ("CPA") or requiring evidence to be placed before the court for such a postponement. The applicant was transferred to the Johannesburg Correctional Centre (Sun City), where he remains.

[7] The applicant avers that he has no previous convictions, no pending charges, stable employment, a permanent and verifiable residential address, and strong family ties within South Africa.

[8] On the applicant's uncontested version, the period between arrest and first appearance is not without concern. He was charged at 11h00 on 23 April 2026, with court still in session, yet only appeared before a magistrate the following morning. If his account is correct, this would not sit easily with the requirement in section 50(1) that he be brought before court as soon as is reasonably possible, as emphasised in *Mashilo and Another v Prinsloo*.² The lawfulness of that period of detention is not for decision in this application. Still, the chronology, on the applicant's version, does raise constitutional concerns, which one can hope the Magistrate will take into account on 30 April 2026.

[9] This is because the constitutional rights implicated in bail proceedings are well established and must be kept firmly in view. Section 12(1) of the Constitution of the Republic of South Africa, 1996 ("the Constitution") provides that everyone has the right to freedom and security of the person, including the right not to be deprived of freedom arbitrarily and the right not to be detained without trial.

¹ 51 of 1977.

² 2013 (2) SACR 648 (SCA).

[10] Section 35(1)(d) – (f) of the Constitution guarantees that every arrested person has the right to be brought before a court as soon as reasonably possible, but not later than 48 hours after arrest or the end of the first court day after the expiry of the 48 hours if those hours expire outside ordinary court hours or on a day which is not an ordinary court day; at the first court appearance, to be charged or to be informed of the reason for continued detention, or to be released; and to be released from detention if the interests of justice permit, subject to reasonable conditions.

[11] Section 39(2) of the Constitution requires that every court, when developing the common law or interpreting legislation, must promote the spirit, purport and objects of the Bill of Rights. Thus, when interpreting the CPA, every judicial officer is obliged to ensure that the constitutional guarantees are complied with.

[12] The State has the burden of justifying continued detention as set out in section 60(1)(a) of the CPA, which entitles an accused person charged with a Schedule 1 offence to be released on bail unless the State establishes that the interests of justice do not permit such release. Read with sections 12(1)(a) and 39(2) of the Constitution, the right to personal liberty remains the default position, and any deprivation of freedom must be justified by adequate reasons.

[13] The process is set out in section 50. Section 50(1) of the CPA requires that an accused who has been arrested be brought before a lower court as soon as reasonably possible. Section 50(6)(a) requires that at the first appearance, the court inform the accused of the charge, the reason for continued detention, and the right to apply for bail.

[14] Section 50(6)(d) governs the postponement of bail proceedings. It provides:

"The lower court before which a person is brought in terms of this subsection may postpone any bail proceedings or bail application to any date or court, for a period not exceeding seven days at a time, on the terms which the court may deem proper and which are not inconsistent with any provision of this Act, if —

- (i) the court is of the opinion that it has insufficient information or evidence at its disposal to reach a decision on the bail application.
- (iv) it appears to the court that it is necessary to provide the State with a reasonable opportunity to-
 - (aa) procure material evidence that may be lost if bail is granted; or
 - (bb) perform the functions referred to in section 37; or
- (v) it appears to the court that it is necessary in the interests of justice to do so"

[15] Three important principles are evident from this. Firstly, a postponement may not exceed seven days at a time. This implies that the detention of an accused person for a period exceeding seven days for bail proceedings or for a bail application is unlawful when it is reasonably possible to proceed with or hear the bail application. Second, the decision to postpone is entrusted exclusively to the presiding officer and must represent an honest and proper exercise of judicial discretion: the magistrate must apply their mind to whether grounds, such as insufficient information or evidence, actually exist. Third, the grounds advanced by the State for a postponement are not simply for the asking; it is incumbent on the State to substantiate the grounds, ideally with evidence.

[16] Section 60 deals with what the magistrate must consider during the hearing. Section 60(1)(a) provides that an accused in custody is entitled to be released on bail at any stage preceding conviction if the court is satisfied that the interests of justice so permit.³ Section 60(3) imposes an inquisitorial duty on the court. It provides that where the court is of the opinion that it does not have sufficient information or evidence at its disposal to decide on the bail application, it shall order such information to be placed before the court. A bail application is inquisitorial in character, and the presiding officer bears ultimate responsibility for the management and fairness of the proceedings.

[17] That then leads me to what the role of the High Court is in all this. In *Wahlhaus v Additional Magistrate, Johannesburg*,⁴ the Court confirmed that while a High Court

³ Section 60(4) identifies the factors relevant to determining whether the interests of justice permit release on bail, including: the likelihood that the accused will endanger the safety of the public or any person, abscond, interfere with witnesses or evidence, undermine the criminal justice system, or disturb public order.

Section 60(9) sets out the considerations that may weigh in favour of release: the interests of justice are not to be considered in isolation from the accused's right to personal freedom, the period of detention already served, the effect of detention on the accused's employment and dependants, and the accused's right to prepare a defence.

⁴ 1959 (3) SA 113 (A).

has the inherent power to restrain illegalities in inferior courts, this power is to be exercised sparingly. This was echoed in *Majali v The State*⁵ where the court held that the High Court has inherent jurisdiction to intervene in uncompleted bail proceedings commenced in a magistrate's court and also has supervisory power over the conduct of proceedings in the magistrates' courts in both civil and criminal matters. That jurisdiction exists at common law and subsists under the Constitution. However, the court clarified that the power to intervene in unconcluded bail proceedings is "rarely exercised" and "only exercised in very special and peculiar cases" where "a grave injustice could occur if there is no lawfully justifiable reason to detain an arrested person".⁶

[18] *Majali* further confirmed that the common law inherent jurisdiction to grant bail must be exercised consistently with section 39(2) of the Constitution, which enjoins courts to develop the common law in a manner that promotes the constitutional rights to liberty encapsulated in sections 12(1)(a) and 35(1)(f).

[19] On the merits of a section 50(6)(d) postponement, *Majali* held that the presiding officer is enjoined to evaluate and weigh the cogency of the proffered reasons predicated the postponement, and to balance these against the liberty of the applicant and the basic objectives of the institution of bail, thereafter making a value judgment whether it would be in the interests of justice to accede to the postponement. The State is not entitled to detain an accused for purposes of investigation in a manner that frustrates the accused's constitutional right not to be detained without lawful and just cause.

[20] In *Magano v The District Magistrate of Johannesburg, Johnson NO*,⁷ the court held that once an accused person disputes the correctness of the State's stated grounds for a postponement, it is incumbent on the State to adduce evidence to substantiate those grounds. Unsworn statements from the bar are insufficient where the accused contests the basis for postponement. Because the State in *Magano* called no evidence at all to justify continued detention, even though the investigating officer

⁵ [2011] ZAGPJHC 74.

⁶ Para 14.

⁷ 1994 (2) BCLR 125 (W).

was present in court, the court found that the magistrate ought to have refused the postponement and granted bail.

[21] In *Hans v District Court Magistrate, Cape Town*,⁸ the court held that a postponement of a bail hearing for a period exceeding seven days is unlawful when it is reasonably possible to proceed. A magistrate is required to apply their mind honestly to whether the statutory prerequisite for postponement exists. *Hans* further emphasised that "managerial preference for specialised bail application courts, and the consequent overcrowding of court rolls in those courtrooms, should not be allowed to trump the constitutional rights of those detained who seek an audience with a court, to challenge the lawfulness of their continued detention within the prescribed limits".⁹

[22] In *Magistrate, Stutterheim v Mashiya*,¹⁰ the Supreme Court of Appeal confirmed that a High Court has inherent supervisory jurisdiction over bail proceedings in the magistrates' courts.¹¹ Cameron JA held that "finalising a bail application is always a matter of urgency".¹² Even where an accused is not necessarily entitled to be released, they are entitled at first instance to a prompt decision one way or the other; that right to a prompt decision is a procedural right independent of whether the right to liberty ultimately entitles the accused to bail.

[23] That recognition is important. A postponement of a bail application is not a routine administrative step. It prolongs detention without a decision having been made, and for that reason, courts must remain alert to the constitutional significance of every delay in finalising bail. A court must therefore approach such matters with real sensitivity to the position of an accused person who remains in custody awaiting a decision on liberty.

[24] But *Mashiya* is equally important for what it says about restraint. Cameron JA held that, although intervention may in a suitable case be warranted, the power to intervene in unconcluded proceedings remains one to be exercised only in rare cases.

⁸ 2020 (2) SACR 362 (WCC).

⁹ Para 15.

¹⁰ 2003 (2) SACR 106 (SCA).

¹¹ Para 13.

¹² Para 16,

He held that the order granted in that matter was unjustified because no case had been made out in that case for subjecting the magistrate to so closely prescribed and "demeaning" time limits. Orders of that kind are "unprecedented" and require "very cogent justification".

[25] The judgment is a reminder that two constitutional values must be held together in instances like this. The first is the accused's entitlement to a prompt and deliberative decision on bail, which is within the jurisdiction of the magistrates' courts. The second is the need for a High Court, even when supervising the lower courts, to avoid unnecessarily constricting the functioning and decisional space of the magistrate's court while its own process is still underway. *Mashiya* teaches that where intervention is warranted, a court should prefer less intrusive measures where possible rather than substituting itself for the court below before the case has reached the stage of grave injustice.

[26] This approach is relevant to the current case. The ongoing detention of the applicant, coupled with his complaint regarding the postponement, understandably raises concern. However, such concerns alone do not warrant intervention if it undermines the appropriate institutional respect due to the lower court. The duty to protect liberty coexists with a duty to respect the processes of the magistrate's court until the threshold for exceptional intervention has truly been crossed.

[27] Which leads me to whether this is such a case. The starting point in determining whether to grant the relief sought is to identify the precise nature of the High Court's jurisdiction. The applicant invokes the rare and exceptional power recognised in *Majali* to intervene in bail proceedings that have not yet been completed in the magistrates' court. He finds grounding in section 173 of the Constitution. I agree, based on the authorities cited above, that the High Court has the power to intervene. The question is whether, on these facts, the discretion to exercise that jurisdiction is engaged.

[28] The applicant submits it has, by setting out the cumulative effect of his treatment from the moment of arrest: the refusal to charge him on the evening of 22 April despite his attorneys' repeated requests; the failure to bring him before court on 23 April after he was charged at 11h00 with five court hours remaining; the denial of

police bail under section 59 of the CPA despite this being a Schedule 1 offence; and, finally, the postponement of his bail hearing on the unsworn and unsubstantiated word of an unprepared prosecutor. Taken together, he submits, the pattern constitutes precisely the kind of grave injustice that *Majali* contemplated, and the appropriate remedy is for this Court to assume jurisdiction and hear bail itself, not to review the postponement or direct the magistrate to make the decision (as in *Mashiya*).

[29] In assessing that submission, the difficulty is twofold. First, every element of that pattern rests solely on the applicant's version. Although the respondents were served, they did not, in the limited time available, place their version before me. On this one-sided record, it would be inappropriate to make definitive, cumulative findings of unlawful conduct at each stage. Second, and most importantly, the bail proceedings remain alive in the magistrate's court, and will continue in two days.

[30] That then leaves the only real question of whether these irregularities rise to the level of "very special and peculiar circumstances" causing a "grave injustice", to justify the exceptional intervention of this Court in the incomplete proceedings below. That answer is no.

[31] The applicant was brought before the court within 48 hours of arrest. The Magistrate heard submissions from the parties and postponed the matter. The postponement was to a definite date of 30 April 2026, six days after the first appearance. Although the intervening period includes a weekend and the Freedom Day public holiday on 27 April, the postponement falls within the seven-day outer limit prescribed by section 50(6)(d). The magistrate's court remains seized with the bail application. The decision to postpone is not under review, and thus stands.

[32] The conclusion I reach is not easy to reach. I am mindful that courts must be careful not to normalise postponements that keep an accused in custody without a proper and prompt bail determination, or without adequate reasons based on substantive reasoning by the State. The 48 hours and the seven days are the outer limits of what is acceptable.

[33] This judgment should also not be regarded as a denial of the impact that even short periods of pre-trial detention have on an accused person's life. The outcome in this application turns not on a lack of appreciation for that reality, but on the limits of this Court's power to intervene before the case has reached the point of *Majali's* "grave injustice".

[34] That is because not every troubling or even irregular postponement justifies intervention by a higher court. The power to intervene is reserved for cases where the prejudice has assumed a different and graver quality: where there is no near prospect of a proper bail hearing in the lower court, where the right to be heard is being systemically denied, or where the delay is of such duration or character that justice cannot adequately be attained by ordinary means. That threshold has not yet been crossed on these papers.

Order

[35] Accordingly, the following order is made:

1. The application is dismissed.
2. No order is made as to costs.


WJ du Plessis
Judge of the High Court Gauteng Division,
Johannesburg

Date of hearing: 28 April 2026

Date of judgment: 28 April 2026

For the applicant: L Moela instructed by Mathlwana
Attorneys