

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 017071/2026

DATE: 20.02.2026

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED

In the matter between:

10 **LUCAS PONTO MATLAKALE**

Applicant

and

**NATIONAL PROSECUTING AUTHORITY,
THE STATE**

Respondent

J U D G M E N T

MOULTRIE, J: This matter comes before me in the Urgent Court, broadly under the following circumstances.

20 The applicant was convicted in the Regional Court on three counts, two of fraud and one of corruption. He was subsequently sentenced in November 2023 to periods of imprisonment of 15 years and 7 years respectively on the fraud convictions, and to 7 years on the corruption conviction, all to run concurrently.

The applicant sought leave to appeal against both the conviction and the sentence, and for bail pending appeal. When those applications were refused in the Regional Court, he petitioned this Court for leave to appeal, initially on both conviction and sentence.

While that petition remained pending, the applicant applied to this Court on two occasions to be granted bail. It seems to me that those applications were, on both occasions, "bail
10 appeals" properly-so-called, in the sense that they were appeals against the Regional Court's decision not to grant bail pending the outcome of the petition for leave to appeal.

In the first of these applications, Mudau J (correctly in view view) indicated that the matter should be dealt with through the procedure laid down for bail appeals in this Court's practice directive. Undeterred, the applicant then launched a second application, which came before Bester AJ. Although it is not apparent to me whether this was in the "ordinary"
20 urgent court, or whether was allocated to him by some other means, it was treated as a bail appeal.

Although Bester AJ considered that there may potentially be grounds for the grant of bail pending the determination of the petition for leave to appeal in view of the lenient sentence

imposed upon the applicant's alleged co-conspirator, Mr Perreira, he dismissed the bail appeal in the absence of further information regarding Mr Perreira's conviction and sentence. (see **Matlakale v S (A70/2024) [2024] ZAGPJHC 764 (30 July 2024)**)

In due course, the petition for leave to appeal came before two judges of this division. On 24 November 2025, Kuny and Mkhabela JJ granted leave to appeal, but only in respect of
10 sentence. (I pause to note that the decision on the petition does not specify which of the sentences leave to appeal was granted against and I thus assume in favour of the applicant that it was in respect of all three sentences). The learned judges deferred a decision on the question of leave to appeal on conviction pending the delivery of a more complete record of the evidence that served before the trial court.

As I have indicated, the applicant now applies in the "ordinary" Urgent Court for bail pending the determination of
20 the appeal. In considering whether I should entertain the matter on an urgent basis, I wish to say at the outset that I acknowledge (as does the respondent) the urgency of bail as a general principle. Urgency, however, is a matter of degree. The urgency with which any matter can and should be treated must be considered in its factual context. In the current

matter, that context briefly is this. Subsequent to the decision of Kuny and Mkhabela JJ in November 2025, the applicant deposed to a founding affidavit on 22 December 2025 in anticipation of this urgent bail application.

For reasons that are not apparent to me, the application itself was then only launched on 28 January 2026, setting the matter down for hearing in the Urgent Court in the week of Tuesday, 17 February 2026, and giving the respondent only
10 2 court days (until 10h00 on 2 February 2026) within which to deliver a notice of intention to oppose and a further 4 court days (until 10h00 on 6 February 2026) to deliver an answering affidavit.

The respondent did deliver a notice of intention to oppose but delivered an unsigned answering affidavit. Ms Morton, who appeared for the respondent advised me that the reason why the answering affidavit was unsigned had to do with concerns in the office of the Director of Public Prosecutions as to
20 whether the procedure for the determination of this bail application was the correct one. I will return to that shortly.

Having been enrolled in the week of 17 February 2026, the application was allocated to me on Thursday, 12 February 2026, whereupon I noticed that the papers were not available

on CaseLines. I issued directions on the afternoon of 12 February 2026 that this be attended to. Unfortunately, when the matter was called on Tuesday, 17 February 2026, there were still no papers available on CaseLines, and I had consequently not been able to read into the matter. By agreement, the application was adjourned to 10h00 on Friday, 20 February 2026.

Although the applicant's representatives then made the
10 application papers available to me on Caselines, further documents were uploaded onto CaseLines in the period between 17 and 20 February. These included an amended notice of appeal dated 11 February 2026. (Although the implications of this document are not clearly apparent to me, they are of some concern: whereas the affidavit in the bail application states that the applicant does not pursue his appeal on conviction, there is no indication that there has been a formal amendment of any notice of appeal to exclude the application for leave to appeal the conviction, and it
20 would appear that Judges Kuny and Mkhabela are still to consider further the application for leave to appeal on conviction, having called upon the applicant to furnish them with the record relating to the evidence of Mr Hanyani). Furthermore, the applicant's counsel has uploaded amended heads of argument.

These procedural difficulties that I have faced in preparing are aggravated by the fact that the respondent raises what appears to me to be a complex and somewhat novel *point in limine* regarding the jurisdiction of this Court to consider a bail application under the current circumstances.

In response to this *point in limine*, Mr Young refers to the provisions of section 309(3) read with section 304(2)(c)(vi) of the Criminal Procedure Act, 51 of 1977 and also to the judgment of the Free State Division in **S v Sello 2023 (2) SACR 399 (FB)**, in which His Lordship Mr Daffue concluded that the High Court had jurisdiction to consider a bail application under what appear to be very similar circumstances. The Court's reasoning appears to have been founded in the common law inherent jurisdiction of the High Court and to build on the line of cases which has its origins in the case of **S v Hlongwane 1989 (4) SA 79 (T)**.

Ms Morton, on the other hand, submitted that this Court has no jurisdiction to consider a bail application under the current circumstances, and that the Court with jurisdiction is in fact the Trial Court. Ms Morton submits that the provisions of section 321 of the Criminal Procedure Act apply, although I should say immediately that I have my doubts as to the

correctness of that submission, in view of the fact that the applicant is not currently serving a sentence imposed by a "Superior Court".

However, I am also doubtful that the conclusion of Daffue J as to the source of the Court's power to consider a bail application under the current circumstances are correct. It seems to me, at least at a *prima facie* level (and I wish to make it clear that I do not intend to express any final view in this regard), that the source of a High Court's jurisdiction to hear a bail application in the current circumstances is section 309(3) read with 304(2)(c)(vi), and that that there is no need for the court to invoke any common law jurisdiction.

More importantly, it would seem to me (and again, I say this without deciding), that "such court" to be convened for the purposes of considering such an application under section 305(2)(c)(vi) would have to be one sitting "as a court of appeal", as expressly provided for in section 304(2)(a). Although the bail application is not itself an appeal, it makes logical sense to me that it would be High Court sitting as a Court of appeal pursuant to the grant of leave to appeal that would have jurisdiction to consider the question of bail pending the determination of the appeal pending before it.

Although none of what I have set out above detracts from the overall principle of the urgency of bail applications, I am not satisfied that this is a matter that should and can properly be entertained and decided by me in the Urgent Court this week. I have already adverted to the relatively short time periods within which the application was brought. I have already adverted to what appears to me to be a complex and novel question of law.

- 10 In addition, it appears to me that the question is one that raises issues of judicial policy and requires careful and mature consideration on the basis of detailed submissions by duly-prepared counsel, before a duly-prepared Court.

I do not consider myself to be in that position today and (without casting any dispersions on either of the practitioners who appeared before me under difficult circumstances this week) I do not think it would be fair to their clients for the issue of jurisdiction to be decided in the Urgent Court under
20 the current circumstances.

Finally, I should point out that, apart from the "general" urgency of bail, the specific urgency relied upon by the applicant is the somewhat speculative submission that if his 15-year and 5-year sentences in respect of the two

convictions for fraud were to be reduced to 5 years on appeal, he would shortly be entitled to apply for parole. While I take this submission seriously, I am cognisant of the fact that the applicant is also serving a sentence of 7 years in respect of his conviction on a third count of corruption, which is not obviously impacted by the "parity principle", upon which he relies upon as the primary basis for the current bail application. This is a further reason why I do not consider that there is a pressing and immediate reason why this
10 application should be dealt with by me today.

Before closing, while I propose to order that the application is removed from the urgent roll for lack of sufficient urgency, I wish to make it clear that I do consider the matter to be urgent in principle, as with any other bail matter.

Furthermore, while I am not in a position to direct the Acting Deputy Judge President to undertake any procedural step, I wish to record that it is my considered view that this
20 application raises an important, difficult and complex question of jurisdiction and that it would be appropriate that it be enrolled for hearing before a bench comprising at least two, if not three, judges of this division.

The matter is removed from the roll.


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MOULTRIE, J**JUDGE OF THE HIGH COURT****DATE OF JUDGMENT: 20 February 2026****REVISED: 27 February 2026**