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**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

Case No: 096925-2026

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

DATE: 01/05/2026

SIGNATURE

In the matter between:

WILLAH JOSEPH MUDOLO

Applicant

and

THE STATE

Respondent

REASONS FOR ORDER

The judgment and order are published and distributed electronically.

PA VAN NIEKERK, J

INTRODUCTION:

[1] On 30 April 2026 this Court dismissed an application in terms of section 63(1) of the Criminal Procedure Act 51 of 1977 (“CPA”). The application was dismissed after hearing counsel for the Applicant and in the absence of any representation on behalf of Respondent. Due to the urgency pertaining to the matter, as will transpire *infra*, the order was made after reading the application filed in support of the relief claimed and after hearing counsel for the Applicant and this Court then indicated that reasons for the order will follow.

[2] In the Notice of Motion Applicant seeks an order in the following terms:

“1. *That the forms, service and time periods prescribed by the Uniform Rules of the court be dispensed with and that this application be heard as one of urgency in*

terms of section 63 of the Criminal Procedure Act read together with the Uniform Rules of the Honourable Court.

2. *That the bail conditions attached to the applicant's bail be amended, and are hereby amended to read as follows:*

- 2.1 *The applicant is permitted to depart the Republic of South Africa on or before the 30th of April 2026 until the 3rd of May 2026 for purposes of attending to his mother who is gravely ill in Zambia;*

- 2.2 *The investigating officer in the criminal proceedings instated(sic) against the applicant is directed to provide the applicant with his passport at least a day before his departure to attend to his mother who is dying to see him;*

- 2.3 *The investigating officer is directed to be provided with the applicants(sic) physical address and telephone numbers of the applicant(sic) close relatives during his temporary visit in Zambia;*

- 2.4 *The applicant's departure from the Gauteng Province shall not be for more than the time of five days as stated above, Provide that:*

- 2.4.1 *During the applicant's absence in Gauteng Province, he shall be excused from reporting to SAPS and shall report on his return on the following reporting day being Monday or a Friday, whichever comes first;*

2.4.2 *The applicant shall return his passport to the investigating officer within 48 hours of his return from travel.*

3. *In addition, the bail conditions attached to the applicant's bail be amended, and are hereby amended to read as follows:*

3.1 *Ad Condition 1 – the accused no 1 bail condition not to travel outside of the borders of Gauteng is amended in that he can travel outside of the borders of Gauteng on conditions that:*

3.2 *Condition 2 – the investigating officer in the criminal proceedings instituted against the accused is informed in writing of the accused intended travel at least 7 days prior to his departure;*

3.3 *Condition 3 - the investigating officer is to be provided with the accused itinerary of his planned travel;*

3.4 *Condition 4 – the accused departure from Gauteng Province shall not be for more than 14 days at a time;*

3.5 *Condition 5 – During the accused absence in Gauteng Province, he shall be excused from reporting to the South African Police Service ('SAPS') police station in Sandton and shall report on his return on the following reporting day being Monday or a Friday whichever comes first".*

[3] The application was enrolled in this Court as an urgent application in the following manner:

[3.1] In the Notice of Motion the respondent (“State”)(sic) was provided with the following notice:

“KINDLY TAKE FURTHER NOTICE THAT if you intend opposing this application you are required to:

(a) Notify the applicant’s attorney of record in writing on or before 29 April 2025 at 11:30H00 (sic) of your intention to oppose the relief sought herein.

(b) File your answering affidavit, if any, on or about 29 April 2026 at 14H00.”

[3.2] Applicant attached a “*proof of service*” to the affidavit which appears to be a copy of an email letter dated Wednesday 29 April 2026 at 11h25, sent from the Applicant’s attorneys of record to *inter alia* the State Attorney, Pretoria, an unidentified recipient at “*n[...]*” (presumably the National Prosecuting Authority). This email purports to be proof of service of the Notice of Motion and annexures and is identified in the index to the application on caselines as “proof of service”. This email reads:

“In terms of the Rule 41A(c) of the Uniform Rules of Court, which provides the service of documents and notices to be effected by electronic mode.....please find attached for your attention.....”

This sentence is then followed by a description of the notice of motion and ancillary documents.

- [3.3] A further email which refers to the application, dated 29 April 2026 at 11h34 from a certain [Kf...](#) which reads “*Good day much appreciated*” is attached to the application. This, according to the Applicant, constitutes proof of service;
- [3.4] The Respondent in the application is identified as “*State*”. There is no indication that the application was served on the prosecutors in the criminal proceedings which will be referred to *infra*, or on any duly authorised representative of the National Prosecuting Authority.
- [4] On an analysis of the aforesaid it is therefore clear that the application was launched by sending an email of the Notice of Motion and annexures, addressed to the “*State*”, to certain unidentified recipients, providing them literally 5 minutes’ notice to file a notice of intention to oppose, and 2 hours to file an opposing affidavit.
- [5] When the application was called at 10h00 before this Court on 30 April 2026, there was no appearance for the Respondent. Considering the manner in which the application was served on the Respondent as set out *supra*, I must add that I am not surprised that there was no appearance on behalf of the Respondent. I however indicated to the Applicant that the application should proceed.
- [6] The issue whether there was proper service of the application on the relevant affected functionaries will be referred to *infra*.

BACKGROUND TO THE APPLICATION:

- [7] Applicant stands trial on serious fraud related charges. In the founding affidavit the Applicant avers that he was “*admitted to bail with stringent bail conditions ...*” after his

arrest which *inter alia* prohibited him from travelling inside and outside the borders of Gauteng and the Republic of South Africa. Applicant proceeds to aver:

“... I then launched more than one application seeking amendment to my bail conditions. Notably, in January 2022 I caused an application for the amendment of bail conditions in which I requested to be permitted to travel outside the borders of the Republic and also to visit other provinces in South Africa. That application served before the Regional Magistrate Theledi, on 8 March 2022, who after hearing the matter granted the relaxation order of the bail conditions”.

- [8] Applicant further avers that, on 15 September 2022, this Court on appeal, *coram* Musopa J. overturned the aforesaid decision of the Magistrates Court which amended the bail conditions and the stringent bail conditions as originally imposed thus still apply.

- [9] Applicant further avers that the criminal trial was supposed to commence on 19 January 2026 but was postponed in order to allow interlocutory applications, including a review and the removal of the prosecutors, to be finalised. These applications served before Ishmael J. in this division who dismissed those applications on 2 April 2026. The Applicant thereafter filed an application for leave to appeal against the judgment and orders of Ishmael J. on 24 April 2026. What Applicant fails to pertinently aver, is the fact that these interlocutory applications, including the review and removal of the prosecutors, are all applications launched by the Applicant which resulted in the finalisation of the trial to be delayed. This fact results therein that this court must be alive to the possibility that Applicant attempts to avoid prosecution.

[10] The Applicant avers that the trial is set to commence on 4 May 2026. It therefore implies that the Applicant intends to seek an amendment of the bail conditions which would allow the Applicant to exit the Republic of South Africa 3 days before the trial is set to commence and, according to the Applicant, to return thereto one day before the trial will commence.

[11] In support of the Applicant's reasons why the Applicant now needs to travel outside the Republic of South Africa, the factual averments upon which the Applicant relies for that request can conveniently be summarised as follows:

[11.1] Applicant's mother, who is 76 years old, and who lives in Zambia, has a medical condition which critically deteriorated to a point where the treating doctor has recommended surgery;

[11.2] The Applicant's mother requested the Applicant from her "death bed" (as stated by Applicant) that he should come as a matter of extreme urgency before she "joins her ancestors";

[11.3] In support of the aforesaid averments, the Applicant annexed an affidavit from his sister who also resides in Zambia and a medical note from the Ministry of Health in Zambia. Applicant further annexed a medical certificate by the treating doctor which state that her condition has changed and that she needs urgent surgical intervention to insert a stent and improve her ejection fraction. Not one of those documents contains any evidence in support of the conclusion that the Applicant's mother is terminally ill. The information, objectively viewed, indicated the need for surgery to insert a stent.

- [12] When the matter commenced I requested the Applicant's counsel to address me on the issue of urgency by virtue of the fact that the affidavit of the Applicant's sister, on which the Applicant materially relies for the relief claimed in the notice of motion, is dated 30 March 2026 and signed by the Applicant's sister on 1 April 2026. I questioned why the application was brought on such extreme short notice in circumstances where the affidavit in support of the application was signed 1 calendar month earlier and was then informed by Applicant's counsel that it is urgent that the Applicant travel to Zambia in order to sign the necessary consent documents for the operation on his mother.
- [13] This stated ground for the relief, which goes to the merits of the application as well as the issue of urgency, does not appear in the founding affidavit, nor does it appear in the affidavit signed by the Applicant's sister. I further requested Applicant's counsel to indicate whether there are any reasons disclosed why the Applicant's sister cannot sign such consent (notwithstanding the fact that this issue is not raised in the founding affidavit) and could obtain no proper explanation supported by any evidence.
- [14] In the founding affidavit, applicant avers that he has provided substantial security, that he has never contravened any bail conditions, and that he is not a flight risk.
- [15] In the context of the facts as set out in the affidavit, the application should be considered with due regard to the relevant empowering provision and legal principles.

SECTION 63 OF CPA:

- [16] Section 63 of the Criminal Procedure Act ("*CPA*") reads:

"AMENDMENT OF CONDITIONS OF BAIL

- (1) *Any court before which a charge is pending in respect of which bail has been granted may, upon the application of the prosecutor or the accused, increase or reduce the amount of bail determined under section 59 or 60 or amend or supplement any condition imposed under section 60 or 62, whether imposed by that court or any other court, and may, where the application is made by the prosecutor and the accused is not present when the application is made, issue a warrant for the arrest of the accused and, when the accused is present in court, determine the application.*
- (2) *If the court referred to in subsection (1) is a superior court, an application under that subsection may be made to any judge of that court if the court is not sitting at the time of the application”.*

[17] On an analysis of section 63 of CPA, it is clear that the amendment or supplement of conditions of bail is a discretionary remedy. In *Tsao v DPP Johannesburg*¹ Fisher J held as follows:

“[12] *The inquiry as to whether there should be a relaxation of the conditions entails the court exercising a discretion on the basis that it is required to balance the constitutional right to freedom of movement with the interests of the State in the prosecution of offences and the public interest in such prosecution.”*

[18] In *Lifman v The State*² Montzinger AJ held as follows:

¹ *Tsao v DPP Johannesburg (2024/052869)[2024] ZAGPJHC 576 (2024) at paragraph 12.*

² *Lifman v The State 2022(1) SACR 241 (WCC)*

[17] *It seems to me that when a court is requested to amend an accused's bail conditions the inquiry resolved itself into the primary consideration whether it is in the interest of justice to do so. This is apparent from a mere reading of s 60(12) that requires a court to attach bail conditions that are in the interest of justice. This approach was echoed in State v Savoi³ where the Supreme Court of appeal said that the lower court primarily had to consider the interest of justice whether an amendment of the bail conditions was necessary.*

[18] *Ultimately to determine what would be in the interest of justice requires of this Court to exercise a judicial discretion in the form a value judgement balancing the right of the accused with that of the public. In undertaking this discretionary exercise, the Court is allowed to be guided by the checklist of relevant factors provided in ss 60(4) as particularised in ss (5) to (9). In this instance the relevant factors will be the factors in ss 60 (4)(b) and (6)."*

[19] In support of that conclusion arrived at in the *Lifman* judgment in paragraph [18] as quoted *supra*, that Court *inter alia* referred to the authorities of *State v Schietekat*.⁴

[20] It is established law that the party seeking the amendment of bail conditions bears the onus, on a balance of probability, that the amendment of the bail conditions will give credence to, and be in the best expression of the interest of justice.⁵

³ *State v Savoi* 2012 (1) SACR 438 (SCA) at para 47.

⁴ *State v Schietekat* 1999 (2) SACR 51 (CC) para 46.

⁵ *Lifman* judgment *supra*, para [90] and authorities quoted therein.

[21] The exercise of this Court's discretion whether the Applicant's bail conditions should be amended as prayed for in the notice of motion should therefore be considered in the context of the aforesaid principles.

EXERCISING DISCRETION:

[22] I declined to exercise a discretion in favour of the Applicant to amend the bail conditions as prayed for in the notice of motion or at all. My refusal to exercise the discretion afforded to this Court under section 63 of CPA are based on the following considerations:

[22.1] At the time when the Magistrates Court considered an application for bail and imposed stringent conditions on the Applicant's bail, including a restriction to travel outside the province and the Republic of South Africa, and to surrender his passport, that decision was arrived at during an investigation conducted by the court which considered all relevant evidence. In my view, such stringent bail conditions would not have been imposed, had the learned Magistrate not found on the available evidence that the interest of justice required such stringent bail conditions. That view is confirmed by the subsequent proceedings on 15 September 2022 when a judge of this division, on appeal, set aside a later amendment of the bail conditions as referred to in paragraph [7] *supra*. Before this Court the Applicant failed to provide the reasons why such stringent bail conditions were imposed and this Court is therefore not in a

position to exercise a proper discretion whether the present circumstances permit a change of those stringent bail conditions;⁶

[22.2] The manner in which this application was launched has engineered a situation where an important functionary of the state, namely the Director of Public Prosecutions (“DPP”), was not joined in the proceedings and/or provided a reasonable opportunity to place before this court any relevant information which may influence this court’s decision whether or not the interests of justice requires an amendment of bail conditions. The important role that the state prosecutor (a delegated functionary of the DPP) fulfils in not only prosecuting the accused, but also in all stages of bail related proceedings, is amply illustrated by a perusal of *inter alia* the provisions of sections 60, 62 and 63 of CPA. I am of the view that it is incumbent on an applicant, when approaching the Court to amend bail conditions in terms of section 63 of CPA, to give proper notice the DPP and the prosecutor tasked with the prosecution of the matter. This view is confirmed by a perusal of chapter 9 of CPA which illustrates that the prosecutor plays an important part in the investigation conducted by a Court in determining whether the interests of justice is served in granting bail and/or amending bail; In *casu*, Applicant failed to serve the application in terms of the rules (an issue which will be dealt with *infra*) and provided an extremely unreasonable limited time for any state functionary (having served the application on “State”) to do the necessary to identify what the matter is about, and to consider and protect the public interest. I decline to

⁶ Compare Tsao judgment *supra*, para [17].

exercise any discretion afforded to this court in terms of section 63 of CPA under those circumstances.

[22.3] *Prima facie*, the reasons advanced by Applicant in the founding affidavit why he should be allowed to travel outside the Republic of South Africa as set out in the founding affidavit did not correspond with the reasons advanced by Applicant's counsel which were conveyed in Court, as set out in paragraphs [12] and [13] *supra*. This *lacuna* in the founding affidavit creates serious doubt on the bona fides of the Applicant, because it will be reasonably expected that such a compelling reason (that Applicant must go and sign the necessary forms to enable his mother to undergo an operation, and that he is the only person competent to sign those documents) would have been pertinently stated, with clear supporting evidence, instead of being (improperly) tendered by Counsel from the bar when the proverbial shoe pinched.

[22.4] Applicant has employed various remedies, the effect of which was to prevent the trial from proceeding. These remedies are now exhausted, having been overturned on appeal, and the fact that Applicant now, on the proverbial eve of the trial, seeks an extension of bail conditions which includes the right to leave the borders of the Republic of South Africa, gives rise to concern. In my view this consideration strongly mitigates against the exercise of a discretion in favour of the Applicant.

[23] As far as the service of this application on "State" is concerned, there was no proper service of the Application. Applicant's reliance on Rule 41A(c) authorising service of the application via email (see paragraph [3.2] *supra*) is ill conceived. There is no such rule.

Insofar as Applicant intended to rely on Rule 4A(1)(c), it is also ill conceived because that rule provides for service of **subsequent** documents per email, in terms of an agreement between the parties. This application is not interlocutory but substantive, and falls under the service provisions of Rule 4(1)(viii) because the DPP is the responsible functionary of an organ of state, created in terms of section 2 of the National Prosecution Authority Act 32 of 1998 as subsidiary legislation under section 179 of the Constitution of the Republic. The DPP is tasked with all matters prosecutorial, including bail. Failure to have served this application on the relevant functionaries in terms of the rules is a material bar to the relief claimed.

In the result, the application was dismissed.

**P A VAN NIEKERK
JUDGE OF THE GAUTENG DIVISION,
PRETORIA**

APPEARANCES:

FOR APPLICANT

INSTRUCTED BY

MATOJANE MALUNGANA INC.

FOR RESPONDENT:

No appearance.

