



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MAKHANDA)**

CASE NO.: A619/25

APPEAL CASE NO.: CA&R33/26

Heard: 22 May 2026

Delivered: 22 May 2026

In the matter between:

NOMONDE BEAUTY CHRISTMAS

Appellant

and

THE STATE

Respondent

JUDGMENT: BAIL APPEAL

MOLONY AJ:

Introduction

- [1] The appellant in this matter faces 34 counts of fraud, stemming from 110 active funeral insurance policies for which the applicant was allegedly listed as the policyholder, beneficiary and premium payer. According to the State further fraud charges may yet be added to the 34 counts.
- [2] It is not in dispute that the offences fall under schedule 5 of the Criminal Procedure Act 51 of 1977 ('the CPA').
- [3] The bail application in this matter was heard on 19 December 2025 in the Magistrates' Court sitting at Nxuba (Cradock). The presiding magistrate refused the application for bail and hence the appellant now appeals to this court in terms of section 65 of the CPA.

Relevant Law

- [4] Section 65(4) of the CPA states that:

'The court or judge hearing the appeal shall not set aside the decision against which the appeal is brought, unless such court or judge is satisfied that the decision was wrong, in which event the court or judge shall give the decision which in its or his opinion the lower court should have given.'

- [5] Section 60(4) of the CPA states as follows:

'(4) The interests of justice do not permit the release from detention of an accused where one or more of the following grounds are established:

- (a) Where there is the likelihood that the accused, if he or she were released on bail, will endanger the safety of the public, any person against whom the offence in question was allegedly committed, or any other particular person or will commit a Schedule 1 offence;
- (b) where there is the likelihood that the accused, if he or she were released on bail, will attempt to evade his or her trial; or
- (c) where there is the likelihood that the accused, if he or she were released on bail, will attempt to influence or intimidate witnesses or to conceal or destroy evidence; or
- (d) where there is the likelihood that the accused, if he or she were released on bail, will undermine or jeopardise the objectives or the proper functioning of the criminal justice system, including the bail system;
- (e) where in exceptional circumstances there is the likelihood that the release of the accused will disturb the public order or undermine the public peace or security.'

[6] The standard of proof is on a balance of probability, and the onus is upon the appellant to adduce the necessary evidence.

[7] Sections 60(9) and 60(10) of the CPA provide further that:

'(9) In considering the question in subsection (4) the court shall decide the matter by weighing the interests of justice against the right of the accused to his or her personal freedom and in particular the prejudice he or she is likely to suffer if he or she were to be detained in custody, taking into account, where applicable, the following factors, namely—

- (a) the period for which the accused has already been in custody since his or her arrest;
- (b) the probable period of detention until the disposal or conclusion of the trial if the accused is not released on bail;
- (c) the reason for any delay in the disposal or conclusion of the trial and any fault on the part of the accused with regard to such delay;
- (d) any financial loss which the accused may suffer owing to his or her detention;
- (e) any impediment to the preparation of the accused's defence or any delay in

obtaining

legal representation which may be brought about by the detention of the accused;

- (f) the state of health of the accused; or
- (g) any other factor which in the opinion of the court should be taken into account.

(10) Notwithstanding the fact that the prosecution does not oppose the granting of bail, the court has the duty, contemplated in subsection (9), to weigh up the personal interests of the accused against the interests of justice: Provided that the interests of justice should be interpreted to include, but not be limited to, the safety of any person against whom the offence in question has allegedly been committed.'

[8] Section 60(11)(b) of the CPA provides that:

'(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;...'

Evidence

[9] During the bail hearing both the appellant and the State produced evidence by way of affidavit.

[10] The appellant's affidavit disclosed, *inter alia*, the following:

(a) That she was born on 12 June 1966 and was, at the time of the bail application, 59 years of age. She is currently 60 years of age.

(b) She has a fixed address where she resides with her mother and children.

(c) She is a self-employed pensioner, with her business relating to cash loans, and it was averred that she would be able to afford a sum of R 5000.00 in regard to bail. During argument this court was advised that the appellant could still pay the aforementioned amount.

(d) She has been in custody since her arrest on 18 December 2025.

(e) She intends to plead not guilty to the charges against her and declined, on legal advice, to disclose the basis of her defence at this stage. She disputed the strength of the State's case against her.

(f) She is a first offender and has no pending cases against her, as well as no outstanding warrants of arrest.

(g) She takes care of her mother, who is 84 years old, and the appellant herself requires medication for high blood pressure.

(h) She owns property, the value of which is in excess of R 1 million.

[11] The affidavit deposed to by the investigating officer in this matter, who is Detective Captain Potgieter ('the IO'), was to the following effect:

(a) On 12 July 2023 Sanlam Sky initiated an investigation in regard to allegedly fraudulent insurance claims submitted by the appellant.

(b) There is a sworn statement from Sanlam which confirmed that funeral policies were taken out on the lives of persons to whom the policyholder (that being the appellant) had no familial relationship. Information received under oath from a Sanlam forensic investigator revealed that Sanlam records listed the appellant as the policyholder in regard to 110 active funeral insurance policies, with a monthly premium payable of R42,457.

(c) There were several sworn statements obtained from individuals whose, lives were insured under said policies, under circumstances where they had no familial relationship with the appellant and had expressed shock upon learning that such policies existed.

- (d) The actual financial loss incurred thus far was R 649 451.18, with a potential loss of approximately R1 329 920.00. The investigation was yet to be finalised.
- (e) The appellant's personal circumstances in regard to her fixed address, pensioner status, that she was a first offender with no pending cases and that she had lived in Nxuba for many years, was not in dispute.
- (f) Bail was being opposed because, according to the IO, there was a likelihood that if the appellant was released on bail she could influence or intimidate witnesses, as the appellant is aware of the identity of the persons whose lives are insured.
- (g) It was also alleged that if the appellant was released on bail, it would induce a sense of shock or outrage in the community. The IO stated that he had received numerous messages since the arrest of the appellant (although the number of such messages was not disclosed) informing him that the community was relieved and felt secure with the appellant in custody.
- (h) The IO was of the view that the State has a very strong case against the appellant, as statements of four forensic investigators had been obtained in

regard to this matter. If found guilty the appellant could face a long term of imprisonment.

- (i) The IO stated that he had secured a conviction on 9 December 2025, in another matter of funeral policy fraud, where five years' imprisonment was imposed in regard to each count (the number of counts in that matter were not disclosed, nor further information provided in regard to the circumstances surrounding that matter).

[12] At the hearing of the bail application the appellant's legal representative tendered the handing over of the appellant's passport for safekeeping, either by the court or by the police. The presiding magistrate appeared more concerned with the income generated from the appellant's business on a monthly basis, and so this aspect was not (as far as can be gleaned from the record) considered any further.

Reasons for refusing bail

[13] A reading of the presiding magistrate's judgement on bail demonstrates that the presiding magistrate had the following views:

(a) If the appellant was released it would be easy to intimidate the witnesses in the matter to withdraw the charges, as the appellant was aware of their identities.

(b) There was a likelihood, if the appellant were released on bail, that it would induce a sense of shock or outrage in the community.

(c) It was stated in the judgement:

‘And it seems that the IO has also received numerous messages since the arrest of the accused and the Court can also confirm that in the past three years there were lots of queries and investigations that was done by this Court of people complaining about this fraud involving policies.’¹

And:

‘Now, this thing of people taking out policies to get quick money has been going on for a very long time in [inaudible] and the accused is not the only person in Cradock doing it. At this stage there is a special task team looking at all the policies, looking at all the inquest we are getting to see for this fraud because in a short while this thing has just gone crazy in this town.’²

(d) That the State has a very strong case against the appellant and, if found guilty, she would serve a very long term of imprisonment. Whilst the appellant

¹ See p. 35 of the record at lines 15 – 20.

² See p. 36 of the record at lines 13 – 19.

was facing 34 charges on the day of the bail application it was noted that this could be increased because the appellant is the policy holder of '110 cases'.

(e) It was furthermore stated that the appellant has travelling documents, and so could easily leave the country or the borders because she has 'got money'.

(f) That the appellant being released on bail would undermine or jeopardise the proper functioning of the criminal justice system, as:

'...the community has been complaining at this Court for a very long time about this thing of people taking policies out on their name.'³

(g) It was noted that the statement of the IO disclosed that he had already received messages from people thanking him for arresting the appellant and bringing her before court.

[14] The presiding magistrate, having considered all of the evidence, was of the view that there was a likelihood that the bail system could be jeopardised, there was a possibility that the appellant was going to intimidate witnesses and that it would not be in the interests of justice if the court granted bail.

The Grounds of Appeal

³ See p. 37 of the record at lines 22 – 24.

[15] The appellant has submitted, in essence, that the presiding magistrate's stated reasons for refusing bail were based on speculation, that the presiding magistrate did not appropriately consider the personal circumstances of the appellant (including that she has no previous convictions or pending cases and that she is not a flight risk), and over emphasised the prevalence of the relevant offences.

[16] It was further submitted that any concerns could be alleviated by imposing appropriate bail conditions, and that the magistrate had not had sufficient regard to the principle that an accused person is presumed innocent until proven guilty.

Analysis

[17] This court is required to approach the appeal on the assumption that the decision of the court *a quo* was correct. This court may only interfere if satisfied that the decision was wrong. As stated in *S v Mbele*⁴:

'...the Court of appeal is required to uphold the order made by the court below until enough has been done to persuade and satisfy the Court of appeal that the order was wrong, and, in the ordinary course, it is for the appellant to do whatever has to be done in that regard.'

[18] The reasoning of the presiding magistrate (in my view) touched, to some extent, on all of the factors listed in section 60(4) of the CPA, and so the factors to be

⁴ 1996 (1) SACR 212 (W) at 221h-j.

considered when assessing whether or not one (or more) of the aspects listed in section 60(4) was established, were carefully considered when this judgment was prepared.⁵

[19] It is readily apparent, from the affidavit of the IO, that he did no more than state the view that there was a likelihood that the appellant could interfere with the investigation or intimidate witnesses. No factual foundation was provided to substantiate this opinion, and there was no allegation that the appellant had not cooperated with the police at any point or made any threats to anyone.

[20] Similarly, he pointed to shock or outrage on the part of the community should the appellant be released on bail, but appeared to base it on the fact that the surrounding community felt relief and felt secure given the arrest of the appellant. This would obviously fall short of the likelihood of disturbing the public order or undermining the public peace or security, as contemplated in section 60(4)(e) of the CPA.

[21] I was invited, during argument, to take judicial notice of the fact that fraudulent schemes (relating to funeral policies), which form the basis of the charges against the appellant, often lead to the untimely death of those who are the victims of such schemes, in order to allow the perpetrators to claim from the funeral policies.

⁵ See section 60(5) to (8) of the CPA.

[22] The basis upon which this court could take such judicial notice was not readily apparent from the record and, even could such notice be taken, none of the current charges against the appellant allege any form of violence on the part of the appellant, nor is it mentioned by the IO.

[23] In her judgement the presiding magistrate recorded the appellant's age incorrectly, stating that she was 39 years of age (despite being a pensioner) as opposed to 59 years of age.

[24] The presiding magistrate furthermore made no mention of the appellant's tender to hand over her passport, choosing instead to utilise the existence of travel documents and the fact that the appellant 'had money' against the appellant.

[25] The presiding magistrate clearly accorded undue weight to the alleged prevalence of such matters in the area, and from the record it can be inferred that it was presumed that the appellant was guilty of the offences in question.⁶

[26] The appellant is a first offender who has no pending cases, owns property of substantial value, is a long-standing member of the community, and has a fixed address. She is also a pensioner who is 60 years of age and is not being charged with an offence involving any element of violence. There is no actual

⁶ When it was stated that: '...the accused is not the only person in Cradock doing it.' See p. 36 of the record at lines 13 – 19.

evidence (save for the IO's unsubstantiated opinion) to suggest that she will flee, interfere with witnesses, or interfere with the investigation (which has been underway since 2023) in any way.

[27] Having considered all of the above it is clear, in my view, that the reasons for refusing bail were based upon speculation, and I am satisfied that the presiding magistrate's decision was clearly wrong.

[28] The appellant has appropriately demonstrated that her release on bail would be in the interests of justice, and that bail conditions would adequately address any potential further concerns in this regard.

Order

The following order is accordingly issued:

1. The appeal is upheld.
2. The appellant is granted bail in the amount of R 5 000.00, subject to the following conditions:
 - (a) The appellant, should the bail amount be paid and the appellant released from custody, is to hand her passport, and any other travel documentation in

her possession, to the investigating officer in this matter within 24 hours of her release from custody.

(b) The appellant is to report to the police station nearest to her home once a week, between Monday and Friday and between the hours of 08h00 and 17h00.

(c) The appellant is not to have any contact in any form, whether directly or indirectly, with any witnesses, including any potential witnesses, in this matter.

(d) The appellant is not to leave the Nxuba area without the prior knowledge and permission of the investigating officer.

N MOLONY

ACTING JUDGE OF THE HIGH COURT

Counsel for the appellant : Mr Mgangatho

Instructed by : Mgangatho Attorneys

Makhanda

Counsel for the respondent : Mr Mtsila

Instructed by : Office of the Director of Public Prosecutions

Makhanda