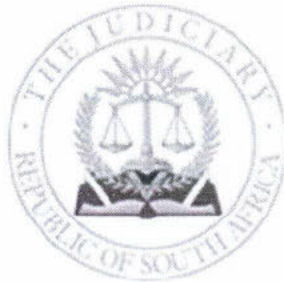
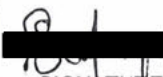


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: A04/2026

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
	23/01/2026
SIGNATURE	DATE:

in the matter between:

HERMANUS JOHANNES MOSTERT

Appellant

and

THE STATE

Respondent

JUDGMENT

Mfenyana J:

[1] This is an appeal against the decision of the regional court refusing bail pending the finalisation of a petition by the appellant to the Judge President of this Division. The appeal is brought pursuant to the provisions of section 65 of the Criminal Procedure Act (the Act).¹

[2] The appellant stood trial on charges of (1) driving under the influence of intoxicating liquor in contravention of section 65(1) of the National Road Traffic Act and (2) corruption arising from a payment of R600.00 to a police officer to secure his release from custody, in contravention of section 3 of the Prevention and Combating of Corrupt Activities Act. His co-accused who was tried together with him on separate charges, being common assault and *crimen injuria*, was also convicted. This appeal is only in respect of the appellant.

[3] On 12 November 2025, the appellant was sentenced to three years' imprisonment for driving under the influence of intoxicating liquor, with one year suspended on condition that he was not convicted of the same offence. His driver's licence was suspended for a period of six months. In respect of the corruption charge, he was sentenced to 18 years' imprisonment. The sentences were ordered to run concurrently. He was, thus, sentenced to an effective 24 months' imprisonment.

[4] The appellant immediately brought an application for leave to appeal against his conviction and sentence, which was refused by the court *a quo*.

[5] On 13 November 2025, he applied for bail pending his petition for leave to appeal to this court. The court *a quo* refused bail, citing a lack of prospects of success.

¹ Act 51 of 1977.

[6] In his affidavit, filed in support of his bail application, which was read into the record, the appellant states, among others, that he is employed as a director at Midcity 4 Motors in Klerksdorp. He further stated that prior to his incarceration, he resided at 16 Frangipani Street, Doornkruin, Klerksdorp, in a three-bedroom house he had been renting for the past three years. He lives alone. He is divorced and has two minor children for whom he pays maintenance. He also contributes financially towards his disabled sister, his mother and his father.

[7] In opposing the bail application, the investigating officer filed an affidavit, which was also read into the record. He states that :

“ I am opposing bail for the following reasons:

It will not be in the interest of justice, because the complainant and the community at large expect the Accused to serve their sentences.

Accused 2 is a Zambian national. He is a flight risk.

Both have been sentenced on serious charges.

I am of the view that they are not going to succeed with their appeal.”

[8] The judgment of the court *a quo* is crafted in general terms and records that there is no law preventing the imposition of direct imprisonment for first offenders, which the appellant is. The court *a quo* acknowledged that the applicant had been granted bail and was still on bail when he was convicted, *“but circumstances have changed. Now they have been sentenced and they know their sentence and I need to add that the sentences imposed on the two applicants are not shocking. They were imposed after the Court has taken into consideration their personal circumstances, interest of society, and the seriousness of their offences, without overemphasising one factor above the others.”* (sic)

[9] Apart from merely stating this, the court *a quo* paid lip service to these findings, and provided no basis for them, whether factual or legal.

[10] There is also a dispute between the state and the defence over whether the corruption charge for which the appellant was convicted falls within Schedule 5, with the state contending that it does. The appellant denies this. Consequently, the provisions of section 60(11)(b), which require the appellant to demonstrate that exceptional circumstances exist that he be admitted to bail, do not find application, the appellant further argues. I agree with this submission. The reasons can be located in the provision itself.

[11] Schedule 5 states in relevant part:

“ Any offence relating to exchange control, extortion, fraud, forgery, uttering, theft or any offence referred to in Part 4, or section 17, 20, or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 –

(a) Involving amounts of more than R500 000,00;

(b) ...

(c) ...

(own emphasis)

[12] The payment attributed to the appellant in respect of count 2, where he made payment to a police officer to secure his release from custody is an amount of R600.00, which does not meet the threshold stipulated in the Schedule.

[13] In terms of section 65(4), ‘a court or judge hearing an 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...’. Equally relevant is section 60(4) which prohibits the release of an accused person on bail if the accused person would pose danger to the public or a person related to the offence, or if he would evade trial, or attempt to influence or intimidate the witnesses or conceal evidence, or

undermine the proper functioning of the justice system, or disturb public order or undermine public peace and security.

[14] None of these requirements holds true in respect of the appellant who has already stood trial while on bail, which bail was extended after conviction. Moreover, the judgment of the court *a quo* sheds no light in this regard as it glibly deals with some and not others. It does not meaningfully engage with any of these requirements, which are prerequisites for the granting or denial of bail.

[15] To the contrary, the argument on behalf of the appellant is that none of the requirements have been met. In addition, the appellant has already stood trial while on bail; as such, there are no witnesses who can be intimidated or threatened by the appellant; the risk of evading trial is non-existent, or concealment of evidence. In this regard, the court is enjoined to consider relevant circumstances pertaining to the accused, including their family or occupational ties, their assets, means of travel. The risk of the appellant not filing the petition is misplaced as the record clearly indicates that the petition has already been lodged with this court under case no: P59/2025. The contention by the state that there is no petition has no legitimate basis and is not supported by any evidence. There is no reason why the state should not enquire from the registrar, should there be any doubt. In addition, Mr Zuma admitted that the petition documents were served on them.

[16] It was submitted on behalf of the state that the record shows that the appellant has no fixed address, in that he admits that he is renting the house he lives in and has no property of his own. Thus, he is at liberty to move. I understand this submission to mean that the appellant is a flight risk. There is no record of this in the judgment of the court *a quo*. Even if the issue was properly raised, there is no reason why this cannot be addressed by imposing appropriate conditions for the appellant.

[17] As submitted on behalf of the appellant: 'where there is no real risk of absconding and refusal of bail may render a successful appeal futile because the

sentence will already have been served, (as in the present case), it is sufficient that the appeal is reasonably arguable and not manifestly doomed to failure.²

[18] While prospects of success on appeal play a role in the determination of this appeal, they are not decisive of the issue.

[19] Both counsel argued that the interests of justice should play a pivotal role in the determination by this court. For the state this translates to the appellant being refused bail for the aforesaid reasons. Conversely, the appellant's gripe is that the interests of justice would not be served were the appellant to be refused bail, only to be successful on appeal. By that time, he would have served a sentence he ought not to have served, which would cause him prejudice. On the contrary, if the appellant were to be admitted to bail and be unsuccessful on appeal, he would resume serving his sentence.

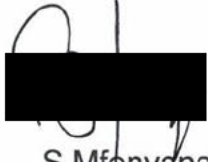
[20] That, in my view, should be the end of the matter. The interests of justice will be better served if the appellant is admitted to bail pending the outcome of his petition for leave to appeal and the appeal, if any.

Order

[21] In the result, I make the following order:

- a. The appeal is upheld.
- b. The order of the court *a quo* is set aside and substituted with the following:
“ The appellant is granted bail in the amount of R10 000.00 (ten thousand rand), pending the finalisation of the petition for leave to appeal”.
- c. The appellant must inform the investigating officer of any changes in his residential address prior to the changes taking place.

² *S v Anderson* 1991 (1) SACR 525 (C).


S Mfenyana
Judge of the High Court

Date heard: 21 January 2026

Date of judgment: 23 January 2026

This judgment was handed down electronically by circulation to the parties' representatives by email and by uploading the judgment onto Caselines. The date of delivery of the judgment is deemed to be 23 January 2026.

Appearances:

For the appellant:

Counsel: A May

Instructed by Dawid Senekal Incorporated

For the respondent:

Counsel: N Zuma

Instructed by DPP. Johannesburg