REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: CC7/23

(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED: YES/NO

25/05/2026 [redacted]
DATE SIGNATURE

In the matter between:

JOSEPH WILLAH MUDOLO Applicant

and

THE STATE Respondent

JUDGMENT

Mosopa, J

[1] The applicant is seeking an order that I recuse myself as the presiding judge in the application brought by the respondent in terms Section 68(1) of Act 51 of 1977 (the Act) for the cancellation of bail of the applicant.

[2] The application in terms of section 68 was initially brought on *ex parte* basis on the 15 May 2026 when the matter was allocated to me by Acting Deputy Judge President (ADJP) Collis. Upon being informed by Ms Rosenblatt on behalf the

respondent, that the application involves cancellation of bail (of the applicant), I informed her that, for me to hear the matter she must first serve the applicant with such application and she left my chambers; so that she can serve the applicant with such an application.

[3] At approximately 15h00 on 15 May 2026, Ms Rosenblatt together with Mr Hlatswayo and Ms Omar, attendant to my chambers and I granted the applicant's legal team an indulgence to first consider the application and answer to such and file their answering affidavit on Saturday, 16 May 2026 and the respondent to file any replying affidavit by 17 May 2026, and that the application in terms of section 68 will be heard on Monday, 18 May 2026. All parties agreed to such arrangement.

[4] On the 18 May 2026, I heard arguments after the respective affidavits were read into records. I raised my concerns with Ms Omar representing the applicant, that the applicant's affidavit answering the section 68 of the act application does not consider critical aspects raised by the state. I then allowed applicant to lead oral evidence in addition to the affidavit he failed. I then raised an issue with Ms Omar about the scheduled appointment that the applicant had with NAC. Ms Omar asked for the indulgence to can file supplementary affidavit.

[5] On the 19 May 2026 after the Supplementary affidavit of the applicant served before me, it became apparent that the confirmatory affidavit of Mr Maor Yehudai, who is the consultant of the applicant, did not form part of the supplementary affidavit and a further indulgence was granted, and matter was adjourned until 20 May 2006 for that purpose. This was done, after this court had already heard submissions from both counsel.

[6] At all material times of the section 68 arguments the applicant was represented by Ms Omar. On the 20 May 2026, Mr Hlatswayo appeared for the applicant and made a request that I allocate the matter to another judge for adjudication. Mr Hlatswayo indicated to me that such request must not be construed as amounting to a recusal application. After indicating to Mr Hlatswayo, the practical impossibility of such a request, he then asked for an indulgence to file papers in

support of a recusal application, and the matter was adjourned to the 22 May 2026 for that purpose.

[7] On the 22 May 2026 I heard arguments in the recusal application and adjourned the matter for judgment to the 25 May 2026.

LEGAL PRINAPLE

[8] In President of the Republic of South Africa and others vs South African Rugby Football Union (SARFU) 1999 (4) SA 147 (CC) at para 10 ,the Constitutional Court made the following pronouncements, that the trial judge whose recusal is sought, should be of a full appreciation of the admonition and that he should not be unduly sensitive and ought not to regard an application for his or her recusal as a personal front. I highly appreciate the fact that there is nothing personal about this application brought by the applicant in exercising his rights to a fair hearing.

[9] Section 165 of the Constitution of Republic of South Africa, makes of the following provision;

"[165] (1) The judicial authority of the Republic is vested in the courts,

(2) The courts are independent and subject only to the Constitution and the law, which they must apply impartially and without fear, favour or prejudice".

[10] The Code of Judicial Conduct (Adopted in terms of section 12 of Judicial Services Commission Act 1994) makes the following provisions;

"[Article 9] Fair Trial

A judge must-

(a) resolve dispute by making finding of the fact and applying the appropriate law in a fair hearing, which includes the duty to-

(i) observe the letter and spirit of the *audi alteram partem* rule,

(ii) remain manifestly impartial, and

(iii) give adequate reasons for any decision,

(b) in conducting judicial proceedings-

(i) maintain order,

(ii) act in accordance with commonly accepted decorum, and

(iii) remain patient and courteous to legal practitioners, parties and the public, and require them to act likewise,

(c) manage legal proceedings in such a way as to-

(i) expedite their conclusion as cost effectively as possible, and

(ii) not shift the responsibility to hear and decide a matter to another judge, and

(iii) not exert undue influence in order to promote a settlement or obtain concession from any party.

[Article 13] Recusal

1. A judge must recuse him or herself from a case if there is a-

(a) real or reasonably perceived conflict of interest, or

(b) reasonable suspicion of bias based upon objective facts and shall not recuse him or herself on insubstantial grounds."

[11] Fair trial rights of an accused person are entrenched in the constitution in terms of Section 35(3) which makes the following pronouncement;

"[35](3) Every accused person has the fundamental right to a fair trial."

[12] In ***SARFU* at paragraph 30**, the following was stated;

"[30] A judge who sits in a case in which she or he is disqualified from sitting because, seen objectively, there exists a reasonable apprehension that such judge might be biased, acts in a manner that is inconsistent with section 34 of

the Constitution, and in breach of the requirements of section 165(2) and the prescribed oath of office."

[13] To pass the test in recusal application, the applicant need not prove actual bias but apprehension of bias or a suspicion of bias. ***(See SARFU).*** The applicant bears onus on the balance of probability to prove apprehension of bias and not actual bias. Section 39 of the Constitution enjoins court when interpreting the Bill of Rights to promote the values that underlie an open and democratic society based on human dignity, equality and freedom, must consider international law and may consider foreign law.

[14] In giving effect to this constitutional consideration, I refer to the matter of ***Livesey v The New South Wales Bar Association*** at page 294, the High Court of Australia when dealing with apprehension of bias in recusal applications, stated,

> "It was common ground between the parties to the present appeal that the principle to be applied in a case such as the present is that laid down in the majority judgment in *Reg. v. Watson; Ex parte Armstrong*; **(1976) 136 CLR 248**, at pp **258-263** . That principle is that a judge should not sit to hear a case if in all the circumstances the parties or the public might entertain a reasonable apprehension that he might not bring an impartial and unprejudiced mind to the resolution of the question involved in it...Although statements of the principle commonly speak of "suspicion of bias", we prefer to avoid the use of that phrase because it sometimes conveys unintended nuances of meaning."

[15] In ***SARFU*** when dealing with the application of the test at paragraph 48, stated,

> "[48] It follows from the foregoing that the correct approach to this application for the recusal of members of this Court is objective and the onus of establishing it rests upon the applicant. The question is whether a reasonable, objective and informed person would on the correct facts reasonably apprehend that the judge has not or will not bring an impartial mind to bear on the adjudication of the case, that is a mind open to persuasion by the evidence and the submissions of counsel. The reasonableness of the apprehension must be assessed in the light of the oath of office taken by the judges to administer justice without fear or favour; and their ability to carry out that oath by reason of their training and

experience. It must be assumed that they can disabuse their minds of any irrelevant personal beliefs or predispositions. They must take into account the fact that they have a duty to sit in any case in which they are not obliged to recuse themselves. At the same time, it must never be forgotten that an impartial judge is a fundamental prerequisite for a fair trial and a judicial officer should not hesitate to recuse herself or himself if there are reasonable grounds on the part of a litigant for apprehending that the judicial officer, for whatever reasons, was not or will not be impartial."

[16] The constitutional court when dealing with what "apprehension of bias" entails in, *Bernett v ABSA Bank Ltd* **[2010] ZACC 28** at paragraph 28, stated

"[28] It is, by now, axiomatic that a judicial officer who sits on a case in which he or she should not be sitting, because seen objectively, the judicial officer is either actually biased or there exists a reasonable apprehension that the judicial officer might be biased, acts in a manner that is inconsistent with the Constitution. This case concerns the apprehension of bias. The apprehension of bias may arise either from the association or interest that the judicial officer has in one of the litigants before the court or from the interest that the judicial officer has in the outcome of the case. Or it may arise from the conduct or utterances by a judicial officer prior to or during proceedings. In all these situations, the judicial officer must ordinarily recuse himself or herself. The apprehension of bias principle reflects the fundamental principle of our Constitution that courts must be independent and impartial. And fundamental to our judicial system is that courts must not only be independent and impartial, but they must be seen to be independent and impartial."

[17] Of fundamental importance is, when alleging apprehension of bias, the applicant ought to prove that there is connection between the view, opinions or experiences of judicial officer and the subject matter they are seized with. (***South African Human Rights Commission obo South African Jewish Board of Deputies v Masuku*** **2022 (4) SA 1** (CC)).

ANALYSIS

[18] This application is premised on the following grounds;

18.1 my handling of prior cases that relates to the applicant;

18.2. the section 342A order I made against the applicant and his wife, who is the accused in the trial matter;

18.3.the conduct of the respondent in approaching this court in the absence of the applicants legal representative, and,

18.4. the judge secretary assisting the state in emailing the section 68 application to legal representatives of the applicant.

[19] The applicant in addition to the grounds provided he is of the view that this court will not bring an objective and independent mind to the outcomes of Section 68 application. Reference was also made to the appeal judgment I penned, when the respondent was appealing against the decision to grant the applicant bail. The gist of the attack is premised on the fact that I referred to the magistrates finding of "limited rights to innocence" but failed short of correcting the wrong principle that was applied by the magistrate in refusing the applicant bail. In that appeal judgment, I refused states appeal in so far as overturning the granting of the applicant bail, but I only interfered with conditions attached to the applicant release on bail. Such remain in place and the applicant has not succeeded in settling such aside.

[20] I agree with Mr Hlatswayo, that I handled serval matters relating to the applicant either brought by him or the respondent. The appeal that was brought by the respondent, section 342A application brought by the respondent,section 63 application brought by the applicant and the current section 68 application. Matters serving in this court are allocated to judges by the Judge President (JP) or Deputy Judge President (DJP) and Judges do not allocate themselves matters.

[21] Appeal matter was allocated to me by the office of the DJP, the section 342 application by the office of the JP. With regards to section 63 application brought by the applicant, the matters was first enrolled on an urgent court roll before Bam

J. After considering the application in consultation with the DJP and the parties the matter was referred to me and Mr Hlatswayo was representing the applicant at that stage. He knew at that stage, that I have dealt with the appeal matter and section 342A application relating to the applicant and no objection was raised by Mr Hlatswayo on my suitability to hear the matter. I must also pause to mention that the above matters did not relate to the same subject matter, but different. I struck off the matter for lack of urgency and did not consider the merits of the application.

[22] The applicant re-enrolled the matter and was allocated to me. I explained to Mr Hlatswayo as the matter was re-enrolled on same subject matter, that the struck off application is not yet finalised and pending and the best for him is to withdraw that pending application and pay the costs of the respondent.That was done. In another consideration Mr Hlatswayo together with counsel representing the respondent approached me in chambers and indicated to me that would I be amenable to hear the matter in the normal course of a criminal roll and I agreed to that suggestion.

[23] The applicant in that application sought an order to amend his bail conditions, mainly an order that he cannot travel beyond the borders of the Republic of South Africa. After hearing this application, I dismissed such application. The respondent on a totality different subject matter brought a section 68 which is currently pending before this court.

[24] Mr Hlatswayo in contention, did not in my considered view, indicate to me how my past sitting in matters relating to the accused, will make me to conduct myself in a manner which is inconsistent with the constitution. Instead, I leaned towards the applicant and granted him serval indulgences when his affidavit did not meet certain requirements, despite objection from the respondent.

[25] But what is important, is our meeting in chambers on 15 May 2026. Mr Hlatswayo was aware of my past involvement in matters relating to applicant but did not ask myself to return the file back to the DJP who allocated it, so that the file can be allocated to another Judge of this division. On 18 May 2026 when the matter was heard my unsuitability to hear the matter was not raised.

[26] In argument, Mr Hlatswayo referred me to the matter of ***R v Silber* 1952 (2) SA 475 (A),** in which it was stated that,an application for recusal can, under certain circumstances, be brought during the course of a trial rather than strictly (*ab initio litis)* at the very beginning, but it can, depending on the circumstance of the case be brought during the trial. I had an opportunity of reading the authority provided by Mr Hlatswayo and I am grateful for his assistance. This matter relates to the attorney who was convicted and sentenced for contempt of court. The court, before it was referred to trial, it went through what was referred to as preparatory examination" and the parties agreed that the same magistrate can preside over the trial matter. It was during the trial that Mr Sibler raised the issue of biasness on the part of magistrate, because of the findings he made in the matter.

[27] This matter is distinguishable from the Sibler matter, because the cause of complain in *casu* did not arise a result of my conduct in presiding the current matter but because of my past sitting in matters that relates to the applicant. That in my considered view should have been raised from the onset, unlike allowing the matter to proceed for two days and on the third day of the hearing to raise such an aspect.

[28] Similarly, the Section 342A application I presided over was in relation to the delay in the matter. The fact that I found against the applicant and in favour of the respondent, does not make me bias and I have not once referred to section 342A orders. I dealt solely with what was before me.

[29] As already stated, Ms Rosenblatt approached me in chambers on 15 May 2026 after the matter was allocated to me by the DJP. I personally raised that aspect on 20 May 2026 when Mr Hlatswayo indicated to me that he intends bringing the recusal application. I was playing open cards with Mr Hlatswayow. When Ms Rosenblatt informed me that it is an application to cancel the bail of the applicant, I enquired from her whether the applicant was served and when the response was no, I said to her that I can only hear the matter if the applicant is served with section 68 application.

[30] In argument for the first time, Ms Rosenblatt informed me that they intended bringing this application on *Ex Parte* basis. That did not reach my attention because our meeting in the presence of my registrar was for a very brief moment. Mr

Hlatswayo in contention referred me to the matter of ***MMV v Khan and Others (M 183/2021) [2021] ZANWHC 84 (26 November 2026)***.I also had the occasion of reading the authority, and once again I am grateful to Mr Hlatswayo. In this matter, the presiding magistrate telephonically contacted a litigant's counsel in the absence of another litigant's counsel and discussed the merits of the matter pending before him.

[31] The facts of the matter are distinguishable from this matter, moreover Mr Hlatswayo is not even near to allege that I discussed the merits of the application with Ms Rosenblatt. But bemoan the conduct of Ms Rosenblatt approaching me in chambers in instances where counsel for the opponent is known.

[32] In an *Ex Parte* application, there was no need to serve the other party and Ms Rosenblatt explained that it is the circumstances that led her to come to my chambers in the absence of Mr Hlatswayo. Ms Rosenblatt did not come to me on her own, but it was after the matter was allocated to me by DJP. Without us, discussing the merits of the case in the absence of Mr Hlatshwayo, I see no point in Mr Hlatswayo raising this as a ground of recusal and his reliance on MMV is misplaced.

[33] The fact that Ms Rosenblatt approach my registrar for assistance in emailing the court papers to Mr Hlatswayo was not brought to my attention and I did not sanction such request. But I fail to understand how such can stand as a conduct amounting to actual or apprehension of bias. This type of assistance is open to any party and members of the public in ensuring access to the court as promoted in the ethos of our constitution and democracy.

33.1. In the morning of the 25 May 2026 before delivering judgment, I called all parties to the chambers as when we adjourned on the 22 May 2026, my registrar indicated to me that it was not correct that she assisted Ms Rosenblatt with emailing court papers.

33.2. After the matter was canvased with the parties in the presence of Ms Omar, representing the applicant, it transpired that the assistance was from the office of the DJP, who has nothing to do with the matter, safe for its allocation.

[34] My engagement with Ms Omar during arguments was not properly related to Mr Hlatswayo, who was not present at that time, and not in the proper context. I did not make any conclusive finding against the applicant in section 68 application as that matter is still pending. I referenced oral testimony of the applicant and what was stated in the respondent's affidavit and made the following remark that "If we believe what is contained in that affidavit, then it means that Mr Mudolo lied under oath."

[35] In that affidavit the manager of NAC indicated that Mr Mudolo's consultant scheduled a meeting on the 13 March 2026 as opposed to what Mr Mudolo said in oral evidence that, the appointment of the 13 March 2026 was a scheduled appointment following a postponed appointment. No conclusive finding was made on that aspect.

[36] In S v Le Grange 2009(2) SA 434 (SCA), it was stated;

"In common usage bias describes "a leaning inclination, bent or predisposition towards one side or another or a particular result". In its application to legal proceedings, it represents a predisposition to decide on issue or cause in a certain way that does not leave the judicial mind perfectly open to conviction."

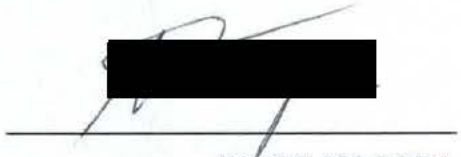
[37] In argument Mr Hlatswayo never criticised me of harbouring any of the above. The judicial oath of office that I took enjoins me to be impartial in my execution of my judiciary duties and most important to preserve the integrity and decorum of the court; to the extent that it is beyond criticism or reproach. Most importantly to ensure that the public's confidence in the judicial system is not eroded and to further ensure that the applicant's rights to a fair hearing are protected as enshrined by the constitution. Impartiality does not translate to neutrality, as in the determination of matters before me, I must rule in favour of a particular party, and the same principle is applicable in *casu.*

[38] This application falls shorts of what is stated in SARFU and all other cases in the Constitutional Court and Supreme Court of Appeal, that deals with recusal application. This application ought not to succeed.

ORDER

[39] In the result, the following order is made;

1. Application for my recusal as a presiding Judge in the Section 68 application, is hereby refused.



JUDGE MOSOPA
JUDGE OF THE HIGH COURT
PRETORIA

APPEARANCES

FOR THE APPLICANT	: MR HLATSWAYO AND MS OMAR
INSTRUCTED BY	: MATOJANE MALUNGANA INC
FOR THE RESPONDENT	: ADV ROSENBLATT TOGETHER WITH ADV VAN DEVENTER
INSTRUCTED BY	: THE DIRECTOR OF PUBLIC PROSECUTION PRETORIA
DATE OF HEARING	: 22 MAY 2026
DATE OF JUDGMENT	: 25 MAY 2026