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CASE Number: A33/2026

(1)	<u>REPORTABLE: YES / NO</u>
(2)	<u>OF INTEREST TO OTHER JUDGES: YES/NO</u>
(3)	<u>REVISED.</u>
..... DATE	 SIGNATURE

In the matter between

OUPA BROWN MOGOTSI

Appellant

and

THE STATE

Respondent

Delivery: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be on **29 July 2026**.

J U D G M E N T

MALI J:

Introduction

- [1] This is an appeal against the refusal by the Regional Magistrate, Johannesburg, to admit the appellant to bail on the basis of alleged new facts.
- [2] The charges arise from an incident that allegedly occurred on 3 November 2025. The State alleges that the appellant deliberately discharged a firearm at the motor vehicle he was driving in order to create the false impression that an attempt had been made on his life. It is further alleged that he subsequently made false statements under oath concerning the incident.
- [3] As a consequence, the appellant faces the following charges:
- (a) **Count 1:** Unlawful possession of a firearm, in contravention of section 3 read with sections 1, 103, 117, 120(1)(a) and 121 read with Schedule 4 of the Firearms Control Act 60 of 2000, further read with section 250 of the Criminal Procedure Act 51 of 1977 ("the CPA") and section 51(2) of the Criminal Law Amendment Act 105 of 1997;
 - (b) **Count 2:** Unlawful possession of ammunition, in contravention of section 90 read with sections 1, 103, 117, 120(1)(a) and 121 of the Firearms Control Act;
 - (c) **Count 3:** Unlawful discharge of a firearm in a built-up area or public place, in contravention of section 120(7) read with the relevant provisions of the Firearms Control Act;
 - (d) **Count 4:** Defeating or obstructing the administration of justice;
 - (e) **Count 5:** Perjury, alternatively contravention of section 9 of the Justices of the Peace and Commissioners of Oaths Act 16 of 1963.
- [4] The appellant's initial application for bail was refused on 4 June 2026. A subsequent application founded on alleged new facts was likewise refused on 29 June 2026. The present appeal is directed against the latter decision.

Background

- [5] The bail application falls under Schedule 5 to the Criminal Procedure Act (CPA). In terms of section 60(11)(b) of the (CPA), the appellant bore the onus of satisfying the court that the interests of justice permitted his release.
- [6] A central issue throughout both bail applications concerned the appellant's residential address.
- [7] It is common cause that, after being contacted by the investigating officer ("the IO"), the appellant failed to provide either his residential or business address. The investigating officer independently obtained three addresses from previous records relating to the appellant. Upon visiting those addresses, he was unable to verify that the appellant resided at any of them.
- [8] Following the appellant's arrest, he still failed to furnish a complete residential address. It was only when he appeared in court on 18 May 2026 that he supplied the address as **4[...] M[...] Street, Unit 1[...], M[...]**. The address appeared in documentation furnished by his wife, Ms Dorothy Lekhoaba.
- [9] On 20 May 2026, the I.O attended the address for verification. He established that house number 4[...] was not situated in Moshu Street but in Mohatla Close. At that address he interviewed Ms Thandiwe Senokwane, who stated under oath that the appellant had never resided there.
- [10] On 22 May 2026 the appellant furnished the investigating officer with a Google Maps pin location. When the officer attended the location on 26 May 2026, it led him to a property in Mohatla Close without a visible municipal number. Ms Lekhoaba informed him that the house number was **4[...]1**, and not **4[...]**, as reflected in the appellant's affidavit.
- [11] Ms Lekhoaba produced a written lease agreement purporting to relate to the property. The agreement described the leased premises as **4[...] M[...] Street, Unit 1[...]**. Although the commencement date was recorded as 1 July 2024 and

the expiry date as 1 July 2027, the signatures on the agreement were dated **1 July 2026**, well after the commencement of the lease. Furthermore, while the agreement reflected Mr Albert Moisakgosi as landlord, the signature appearing on behalf of the landlord was that of **L. Dikgopo**.

[12] The I.O subsequently obtained information from the Mahikeng Local Municipality. According to the municipal records, the property identified by the appellant formed part of municipal housing and was lawfully leased to **A.T. Nkgodi**. Utility accounts for the property were likewise issued in that person's name.

[13] The initial bail application was thereafter refused.

The Alleged New Facts

[14] The appellant thereafter launched a fresh bail application on the basis of alleged new facts.

[15] He contended that, at the time of the first application, neither he nor his legal representatives had access to the contents of the police docket and that information relating to his previous accommodation had not been disclosed.

[16] An affidavit by Mrs Memorie Catherina Jacoba Herholdt confirmed that the appellant had previously stayed at her property for approximately thirteen months while on parole. However, she made it clear that it had not been his permanent residence.

[17] The appellant further relied upon an affidavit by Mr Maxwell Senokwane, who stated that he had pointed out the appellant's residence to the investigating officer. The investigating officer disputed this assertion and denied that Mr Senokwane had accompanied him or identified the property during the investigation.

[18] The appellant therefore contended that the Google Maps pin location, together with the additional affidavits and supporting documents, constituted new facts demonstrating that he had a verifiable residential address.

The Decision of the *Court a quo*

- [19] The *court a quo* rejected the application, finding that the alleged new facts did not qualify as new evidence but amounted merely to a rearrangement of material already before the court. The court held that the address at **4[...]1 M[...] C[...]** had already featured prominently during the initial bail proceedings. The Google Maps location, the wife's affidavit and the Wi-Fi account did not alter the factual position previously considered.
- [20] The *court a quo* further held that the affidavit of Mr Maxwell Senokwane likewise did not constitute a new fact because it did not resolve the central difficulty, namely that the appellant had failed to establish a verifiable residential address.

The Issue

- [21] The sole issue on appeal is whether the regional magistrate misdirected himself in concluding that no new facts had been established which justified reconsideration of bail.

Applicable Legal Principles

- [22] Section 60(11)(b) of the Criminal Procedure Act 51 of 1977 (CPA) provides that an accused charged with a Schedule 5 offence shall remain in custody unless he adduces evidence satisfying the court that the interests of justice permit his release.
- [23] The principles applicable to bail applications founded on new facts are well established. They include the following:
- (a) New facts are facts which came into existence after the refusal of bail or circumstances that have materially changed thereafter.

(b) The facts must be genuinely new and not merely additional evidence concerning issues already ventilated.

(c) The new facts must be relevant to the determination of bail.

(d) The court considering the second application must evaluate the alleged new facts together with all the evidence presented during the earlier application.

(e) Evidence that was available to an accused during the first application but was not presented cannot ordinarily be relied upon as constituting new facts.

See *S v Mpofana* 1998 (1) SACR 40 (Tk); *S v Le Roux en Andere* 1995 (2) SACR 613 (W); *S v Petersen* 2008 (2) SACR 355 (C); *S v Yanta* 2000 (1) SACR 237 (Tk); and *Davis and Another v S*.

Analysis

[24] The *court a quo* concluded that the appellant had merely reshuffled evidence previously placed before the court. Having considered the record, I am unable to disagree.

[25] The appellant's principal contention is that the Google Maps location and related documentation establish his residential address. That argument cannot be sustained.

[26] The address forming the subject of the alleged new facts is precisely the address that featured in the initial bail application. The appellant simply sought to reinforce his earlier version through additional affidavits and documents.

[27] More importantly, the underlying difficulty remains unresolved. The lease agreement upon which reliance is placed contains significant inconsistencies. The identity of the landlord is uncertain; the signatures do not correspond with the stated parties; and the dates appearing on the agreement are internally contradictory. No satisfactory explanation was provided for these anomalies.

- [28] Municipal records further demonstrate that the property is lawfully leased to A.T. Nkgodi and not to either the appellant or his wife. These objective records materially undermine the reliability of the lease agreement.
- [29] The Wi-Fi account similarly does not advance the appellant's case. At best it demonstrates that an internet service may have existed at a particular address. It does not establish lawful occupation of the premises nor does it verify that the appellant resides there.
- [30] Likewise, the affidavit of Mr Maxwell Senokwane adds little. Even if accepted, it does not overcome the objective difficulties arising from the municipal records, the contradictory lease agreement and the sworn denial by Ms Thandiwe Senokwane that the appellant resided at the address in question.
- [31] Counsel for the appellant criticised the investigating officer for allegedly failing to undertake further enquiries. That submission overlooks the fact that the burden in a Schedule 5 bail application rests squarely upon the appellant. It was incumbent upon him to satisfy the court that his release would be in the interests of justice, including that he had a fixed and readily verifiable place of residence where he could be located should the need arise.
- [32] One of the fundamental purposes of bail is to secure the attendance of an accused at trial. A reliable residential address is therefore of obvious significance. Where uncertainty persists regarding the very address at which the accused can be located, the court is entitled to regard that factor as militating against release.
- [33] In the present matter, the appellant has failed to establish a verifiable residential address. The alleged new evidence merely attempts to reinforce an explanation that was fully considered and rejected during the initial bail proceedings.
- [34] I accordingly agree with the court a quo that the appellant did not place genuinely new facts before the court. The application amounted to no more than a re-packaging of evidence previously considered.

[35] No material misdirection has been demonstrated. In the absence of such misdirection, an appellate court should not interfere with the exercise of the magistrate's discretion.

Order

[36] The following order is made:

1. The appeal is dismissed.

NP MALI

JUDGE OF THE HIGH COURT

APPEARANCES

For the Appellant : Adv. N Mahomane

And : Mr W Sekgatja

Instructed by : Radasi Sekgatja and Associates inc

For the Respondent : Adv. Mpekana

National Director of Public Prosecution.

Hearing Date : 24 July 2026

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