

THE REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

[WESTERN CAPE DIVISION, CAPE TOWN]

High Court Reference Number: 277 / 2026

Case Number: 2 WRC 37 /2024

In the matter between:

NELISIWE BUDA

APPLICANT

and

THE STATE

RESPONDENT

Coram: Le Grange, ADJP et Wille, J

Delivered: 6 August 2026

Warrant Enquiry: A 'warrant enquiry' is often a colloquialism for Section 67 (forfeiture) or Section 170 (failure to appear after adjournment). By summarily sentencing the applicant for contempt of court, the judicial officer conflated administrative forfeiture with a substantive criminal prosecution. Summary procedures for non-appearance are sometimes necessary; but they must be conducted in a manner that does not infringe upon the accused's right to a fair trial. The failure of the judicial officer to explain the nature of the enquiry or the potential for a criminal conviction directly contradicts the procedural safeguards established,

JUDGMENT

WILLE, J (Le Grange ADJP, concurring):

INTRODUCTION

[1] This matter finds me by way of a special review from the lower court. For the purposes of clarity and ease of reference, the 'parties' to this review application shall be referred to as the applicant and the respondent, as cited above.¹

[2] This is a review proceeding and process in terms of section 304(4) of the Act.²

THE FACTUAL MATRIX

[3] The applicant was arrested and charged with murder and thereafter sought to be released on bail. The respondent did not oppose bail, and after a formal application the applicant was granted bail.³

[4] Other than the payment of the bail, the applicant was warned to attend all further court hearings and the following additional bail conditions were imposed upon her:

- (a) She was placed under house arrest save for work and religious purposes.
- (b) She was prohibited from interfering with the respondent's witnesses.
- (c) She was not to commit any further offences while awaiting trial.

¹ The applicant was the accused in the lower court.

² In terms of the provisions of section 304 (4) of Act 51 of 1977 (the "CPA").

³ In the sum of R1000,00.

(d) She was obliged to report to the local police station during certain hours.⁴

[5] The applicant failed to appear before the lower court as directed, and on the date of the first non-appearance, the applicant's bail was cancelled, and her bail deposit was provisionally forfeited to the respondent.⁵

[6] Thereafter, a warrant for her arrest was authorised by the judicial officer due to her non-appearance and the matter was postponed. On the return date of the provisional forfeiture order, the applicant again failed to appear in court.⁶

[7] As a direct result of the applicant's failure to appear in court on the return date, her bail deposit was finally forfeited to the respondent.⁷

[8] The applicant was eventually arrested about a year later, detained and brought before a judicial officer in the lower court.⁸

THE ENQUIRY

[9] When the applicant appeared in court having been brought to court in terms of the warrant for her arrest, her bail had been cancelled, and her deposit had been finally forfeited to the respondent.⁹

[10] This notwithstanding, the prosecutor requested the judicial officer in the lower court to hold a 'warrant enquiry' – as she put it. This was at the stage when a warrant of arrest had already been issued and executed by the police.¹⁰

[11] The judicial officer in the lower court obliged and proceeded with a warrant enquiry.¹¹

⁴ She had to report on Mondays and Saturdays between the hours of 08h00 and 20h00 at the local police station.

⁵ Correctly so.

⁶ She had not yet been arrested on the warrant issued for her arrest.

⁷ Her bail deposit was finally forfeited to the respondent.

⁸ She was arrested on the bench warrant issued.

⁹ This was common cause.

¹⁰ This is when the procedure followed became conflated.

¹¹ Presumably in terms of Section 27 of the CPA.

[12] The applicant was legally represented and explained why she did not attend court, as she went to another province to see her child, who was staying with her uncle and aunt. Her child fell ill, and she wanted to attend to her child. She attempted, via a third party, to inform the investigating officer of her predicament, but this attempt failed.¹²

[13] The prosecutor then asked the judicial officer to find the applicant:

*‘...guilty on the warrant...’*¹³

[14] The judicial officer then, without any further consideration or explanation, proceeded to summarily sentence the applicant to contempt of court to a fine of R300,00 or 30 days imprisonment.¹⁴

CONSIDERATION

[15] What is of immediate concern to me is that the prosecutor in the lower court never ever informed the applicant that she was being charged and prosecuted for contempt of court.¹⁵

[16] It must be so that a charge sheet should have been drawn up and a formal trial held in terms of Section 67A of the CPA.¹⁶

[17] Section 67A does not empower a court to enquire in a summary manner whether Section 67A has in fact been contravened. I also hold the view that prosecution of an accused person for a contravention of section 67A should preferably not take place before the judicial officer who was involved in the section 67 proceedings, which may have resulted in any adverse findings of credibility regarding the accused¹⁷

¹² This explanation was not accepted by the magistrate.

¹³ This procedure was incorrect.

¹⁴ This summary procedure was wrong.

¹⁵ This was procedurally irregular.

¹⁶ S v Mabuza 1996 (2) SACR 239 (T).

¹⁷ By way of a proper and fair trial procedure.

[18] In addition, the fact that the applicant's bail money had been finally forfeited in favour of the respondent should, as a matter of logic, play a significant role as a mitigating factor when the fine was imposed on the applicant.¹⁸

[19] A trial for the purposes of establishing a conviction and sentence for a contravention of Section 67A is a completely discrete process from an enquiry in terms of Section 66 and Section 72 of the CPA.¹⁹

[20] We live in a democratic and constitutionally infused society where all human rights should be vigorously protected by all persons, especially judicial officers. It is critically important to draw an accused person's attention to the charges he or she faces and the rights that an accused person possesses to challenge and defend the charges he or she may face.²⁰

[21] Section 67A of the CPA does not provide for a summary enquiry. I am mindful that confusion may have arisen with reference to section 72(4) of the CPA. Section 72(4) expressly empowers a judicial officer to 'enquire in a summary manner' into an accused person's failure to appear when they have been released on warning.²¹

[22] The legislature's decision to exclude similar 'summary' language from Section 67A is a clear signal that the standard protections of a criminal trial must apply in the latter case. The prosecutor's request for a 'warrant enquiry' and the subsequent finding of 'guilty on the warrant' in a summary manner highlight a common but legally flawed practice. Put another way, a 'warrant enquiry' is often a colloquialism for Section 67 (forfeiture) or Section 170 (failure to appear after adjournment).²²

¹⁸ This following the principals of sentencing.

¹⁹ S v Williams 2012 (2) SACR 158 (WCC) at para [4]

²⁰ S v Tong [1287] [2012] ZAWHC 169.

²¹ This enquiry may be done in a summary manner.

²² These are discrete procedures.

[23] By summarily sentencing the applicant for contempt of court, the judicial officer conflated administrative forfeiture with a substantive criminal prosecution. I say this because of the jurisprudence in *Singo*. In this matter, the court held that while summary procedures for non-appearance are sometimes necessary, they must be conducted in a manner that does not infringe upon the accused's right to a fair trial. The failure of the judicial officer to explain the nature of the enquiry or the potential for a criminal conviction directly contradicts the procedural safeguards established in *Singo*.²³

[24] Similarly, in *Mamabolo*, the court cautioned that summary procedures are a drastic departure from ordinary criminal mechanisms and should be reserved for exceptional circumstances where the administration of justice is under immediate threat.²⁴

[25] Finally, Section 35(3) of the Constitution guarantees the right to be informed of the charge with sufficient detail (section 35(3)(a)) and the right to be presumed innocent and remain silent (35(3)(h)). Regrettably, the lower court's procedure effectively bypassed these protections.²⁵

[26] In addition, the summary procedure that followed in this case deprived the applicant of the opportunity to raise the forfeiture of her bail money as a factor in a properly constituted sentencing hearing, potentially raising issues of fairness regarding the cumulative penalties for the same acts inextricably linked to and with each other. It may be suggested that the applicant was punished twice for the same breach of her bail conditions.

[27] In the result, I am of the view that the following order falls to be granted:

1. That the conviction and sentence of the applicant on the charge of *contempt of court* was not in accordance with justice.

²³ S v Singo 2002 (4) SA 858 CC.

²⁴ S v Mamabolo [CCT 44/100] [2001] ZACC 17.

²⁵ These rights were never explained.

2. That the conviction and sentence of the applicant for *contempt of court* is hereby reviewed and set aside.

WILLE, J

I agree, and it is so ordered:

LE GRANGE, ADJP