



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN**

Case no: A2026-128618

In the matter between:

STHEMBISO ZONDI

APPELLANT

and

THE STATE

RESPONDENT

ORDER

On appeal from: The Durban Magistrates' Court:

1. The proceedings before the Durban Magistrates' Court on 7 and 10 April 2026, in respect of the appellant's bail application, are reviewed and set aside in their entirety as having been conducted inadequately.
2. The matter is remitted to the Durban Magistrates' Court for consideration of the appellant's bail application *de novo* before a different magistrate.

JUDGMENT

Sibisi AJ

Introduction

[1] This is an appeal against the refusal of the District Magistrate at Durban to grant bail to the appellant.

[2] The appellant is charged with one count of impersonating a police officer and another count for possession of police blue lights. These offences fall within the provisions of Schedule 1 of the Criminal Procedure Act 51 of 1977. With Schedule 1 bail applications, the onus rests on the State to prove that it is not in the interests of justice to release an accused person.

[3] The appellant relies on the grounds stated in the notice of appeal, dated 1 June 2026,

“1. First Ground of appeal

i. The learned Magistrates failed to order the release of the Appellant on bail and found that it is not in the best interest of justice when it fact it was in the best interest of justice that the Appellant be released on bail.

1.1 The learned magistrate erred, misdirected and failed to properly apply his mind and found that it was not in the interest of justice to release the Appellant by relying on an extremely speculative, unsubstantiated and unreliable opposing affidavit of the Investigating Officer, Cst Roland Joshua Winkler and found that the “**conduct**” of the Appellant undermines the public confidence in the law enforcement and the administration of justice.

1.2 Section 60(4)(e) read with section 60(8A)(e) provides that a court when considering the provisions of section 60(4)(e) may take into account whether the release of the accused will undermine or jeopardise public confidence in the criminal justice system.

1.3 The operative words are “**whether the release**” and not “**whether the conduct**” undermine or jeopardise public confidence.

1.4 The enquiry in terms of section 60(4)(e) read with section 60(8A)(e) is therefore whether such release of the accused will undermine or jeopardise public confidence in the criminal justice system it is not an enquiry on the conduct of the accused in respect of the alleged offence.

1.5 In holding an enquiry into the conduct of the accused falls exclusively within the jurisdiction of the trial court not the bail court and such enquiry makes a finding on the merits

and guilt of the accused. The learned magistrate erred and misdirected himself in failing to properly apply the provisions of section 60(4)(e) read with section 60(8A)(e).

1.6 The learned magistrate accordingly failed to correctly exercise his discretion judicially. The learned magistrate demonstrated a fundamentally flawed approach to the understanding of the basic principles underpinning the question of section 60(4)(e) read with section 60(8A)(e) and bail generally.

1.7 The learned magistrate exercise of discretion was influenced by incorrect legal principles and reached a conclusion that no reasonable learned magistrate properly applying his mind could have arrived at.

1.8 In the circumstances and based on the misdirection, the High Court will grant bail.

2. SECOND GROUND OF APPEAL

i. The learned Magistrates made findings that the release of the Appellant on bail raises the reasonable apprehension that the Appellant may interfere with witnesses or the ongoing investigation.

2.1 The learned magistrate erred, misdirected and with utmost respect failed to apply his mind when he made a finding that the release of the accused on bail would interfere with witnesses or the ongoing investigation.

2.2 In failing to apply his mind when he found that it would not be in the interest of justice to release the Appellant on bail although there was no sherd of evidence that there was a likelihood to even suggest that the factors set in section 60(7) of the CPA exist.

2.3 Even if there was a likelihood that the Appellant if released on bail he would interfere with witnesses or the ongoing investigation, there is a remedy to curtail the contact of the Appellant and witnesses by imposing bail conditions that restrict the Appellant from contacting, intimidating, threatening the witnesses and interfering with the ongoing investigation.

2.4 The learned magistrate further misdirected himself and failed to apply his mind and impose reasonable bail conditions that were proposed by the legal representative of the Appellant instead of denying bail.

2.5 Instead of denying bail, the learned magistrate ought to have permitted the release of the Appellant on bail with stringent conditions to easily monitor the movement of the Appellant and restrict the interference of the Appellant in respect of the ongoing investigation.

2.6 With respect, the learned magistrate erred, misdirected himself and violated the doctrine of ***stare decisis*** by disregarding a binding judgment in dealing with bail applications despite the principles established in ***S v BRANCO 2002 (1) SACR 531 (W)***).

2.7 The learned magistrate failed to apply the principles of **BRANCO** that it must be born in mind that any court seized with a problem as to whether or not to release a detainee on bail must approach the matter from the perspective that freedom is a precious right protected by the constitution. Such freedom should only be lawfully curtailed if the interest of justice so required. Sec 35(1)(f) of the Constitution, which entitles any arrested or detained person to be released from detention if the interest of justice permit subject to reasonable conditions.

2.8 The learned magistrate misdirected himself and failed to properly apply the **doctrine of stare decisis** binding to him of **BRANCO** that a Court will always grant bail where possible and will lean in favour of not against the liberty of the subject provided that the interest of justice will not be prejudiced.

2.9 Finally, the learned magistrate failed to apply the principles of **BRANCO** that a court could should always consider suitable conditions as an alternative to the denial of bail. Conversely, where no consideration is given to the application of suitable conditions as an alternative to incarceration, this may lead to a failure to exercise a proper discretion.

2.10 Had the learned magistrate correctly applied the **S V BRANCO** principle and properly directed himself to the relevant facts and law, he would have not refused bail.

2.11 This being the case and with great respect, the learned magistrate accordingly failed to exercise his direction judicially and such exercise was influenced by incorrect legal principles and reached a conclusion that no reasonable learned magistrate properly applying his mind could have arrived at.

2.12 In the circumstances and based on the misdirection, the High Court will grant bail.

3. THIRD GROUND OF APPEAL

i. The learned Magistrates made findings of guilt against the Appellant during bail proceedings

3.1 The learned magistrate erred, misdirected and with utmost respect failed to apply his mind when he made a finding of guilt against the Appellant by finding that:

i. The conduct attributed to the applicant demonstrates a deliberate and calculated misrepresentation of authority.

i. In the present matter the applicant's ability to gain access to a crime scene and participate in official processes is a real concern that if released ...[indistinct] conduct thereby posing a risk to the public. The applicant has already demonstrated an ability to integrate himself into a police operation.

iii. The present matter is distinguishable from ordinary impersonation cases. The alleged conduct occurred in the context of violent crimes and involved the assumption of senior police rank. The Court is of the view that such conduct reflects to a degree of boldness and deception which raises serious concern regarding the applicant's respect of the law.

3.2 The learned magistrate findings were misguided by his failure to exercise his discretion judicially and such exercise was influenced by incorrect legal principles.

3.3 The learned magistrate misdirected himself and failed to properly apply the binding Constitutional Court precedent of ***S v Dlamini; S v Dladla and Others; S v Joubert; S v Schietekat*** [1999] ZACC 8; 1999 (4) SA 623 (CC) at paragraph 11

“In a bail application the enquiry is not really concerned with the question of guilt. That is the task of the trial court. The Court hearing the bail application is concerned with the question of possible guilt only to the extent that it may bear on where the interests of justice lie in regard to bail. The focus at the bail stage is to decide whether the interests of justice permit the release of the accused pending trial; and that entails in the main protecting the investigation and prosecution of the case against hindrance.”

3.4 With respect, the conclusion is inescapable that in dealing with the bail application, the learned magistrate completely failed to properly analyse and understand the law at his disposal. He also showed a complete lack of basic knowledge of the law and its application. He clearly did not acquaint himself with the relevant law that defines and establishes the different enquiries to be held in bail proceedings and trial proceedings. Had he been diligent he would not have arrived at the conclusion he did

3.5 In the circumstances and based on the misdirection, the High court will grant bail.

4. FOURTH GROUND OF APPEAL

i. The Learned Magistrate disregarded the irreparable prejudice that the Appellant will suffer as a result of the Learned Magistrate’s refusal of bail as referred to in Section 60(9) of Act 51 of 1977

4.1 The learned magistrate erred, misdirected himself and failed to simply consider, weigh and give regard to the fact that the Appellant will suffer irreparable harm if he is detained in custody.

4.2 The learned magistrate erred, misdirected himself and failed to simply consider that the Applicant will suffer financial loss owing to his detention while he was still innocent.

4.3 Had the learned magistrate correctly considered and applied the provisions of section 60(9) of the CPA and properly directed himself to the relevant facts and law, he would have not refused bail.

4.4 In the circumstances and based on the misdirection, the High Court will grant bail.

5. FIFTH GROUND OF APPEAL

i. The Learned Magistrate refused bail on reason that do not exist in law.

5.1 The learned magistrate erred, misdirected and failed to apply his mind and found that the refusal for bail would be in the best interest of justice simply based on the fact that:

- i. There is a real risk to the public.
- ii. The seriousness and circumstances of the offence weight heavily against the risk.

5.2 The above two reasons cannot be lawful reasons to refuse bail, given that they do not exist in law. The provisions of section 60(4)(a) up to (e) make no reference to the two above circumstances. Had the learned magistrate correctly considered and applied the law and properly directed himself to the relevant facts and law, he would have not refused bail.

5.3 In the circumstances and based on the misdirection, the High Court will grant bail.

6. SIXTH GROUND OF APPEAL

7. The learned Magistrates failed to order the release of the accused on bail and violated the doctrine of *stare decisis* by disregarding binding judgments

7.1 The learned magistrate erred, misdirected herself and failed to respect the doctrine of *stare decisis* and apply the High Court binding principles established in **S v BRANCO** which entitles any arrested or detained person to be released from detention if the interest of justice permit subject to reasonable conditions.

7.2 **S v ACHESON** that bail should not be refused as a form of anticipatory punishment.

7.3 As required by the principle, the learned magistrate ought to give reasons on his departure from the binding judgment, the learned magistrate has failed to give reasons on why he deviates from the binding judgments in respect of bail.

7.4 Had the learned magistrate correctly applied the **S v BRANCO** & **S v ACHESON** principles and properly directed himself to the relevant facts and law, he would have not refused bail.

7.5 In the circumstances and based on the misdirection, the High Court will grant bail.

8. THE HIGH COURT WILL REASONABLY COME TO THE CONCLUSION THAT:

8.1 The interests of justice permitted the release of the Appellant on bail.

8.2 Accordingly, the Appellant has proven its case that the learned magistrate erred and misdirected himself therefore the High court can upset the findings of the learned magistrate and the Applicant shall be admitted to bail with reasonable conditions in the High Court."

[4] On 7 April 2026, the appellant brought an application to be released on bail. The State opposed the bail application by way of an affidavit deposed to by the Investigating Officer, Mr Roland Joshua Winkler. This affidavit deals with, *inter alia*, the details of how the offences are alleged to have been committed, the personal

circumstances of the appellant and the grounds for opposing bail. The allegations contained in the affidavit of the State may be summarised as follows:

- (a) the appellant on the 2nd, 5th and 25th March 2026, and on other unspecified occasions, introduced himself and acted as a police officer in the rank of Lieutenant Colonel;
- (b) the appellant was involved in a theft of a motor vehicle police operation and attended another crime scene under SAPS Pinetown CAS No. 48/3/2026;
- (c) the appellant's car was found with stop lights and security lights suggesting involvement in suspicious activities and when the stop lights were turned on, they were blue and had a police SAP number, which meant that those lights were allocated to a police vehicle; and
- (d) the appellant continued to represent himself as a police officer but failed to produce his appointment certificate nor his persal number.

[5] The affidavit of the State was read into the record and thereafter handed up to the magistrate so that it could be marked as an exhibit. Before the affidavit was marked as an exhibit, after the request by the prosecutor, the appellant's legal representative Mrs Zulu was not clear as to whether she had an objection to the affidavit being marked as an exhibit and the following exchange between the magistrate and Mrs Zulu ensued:

COURT: Okay, just one second. Mrs Zulu, do you have any objection that this affidavit can be marked and accepted as an exhibit of the Court?

MRS ZULU: Yes.

COURT: You have an objection. What is your objection?

MRS ZULU: I think it will, if I can communicate it in my arguments.

COURT: This affidavit you are saying it must not be marked and accepted as an exhibit of the Court.

MRS ZULU: No.

COURT: I cannot hear you.

MRS ZULU: No, Your Worship.

COURT: You are saying no, ... [indistinct]

MRS ZULU: No, Your Worship.

COURT: Is that what you are saying?

MRS ZULU: No, it should not be marked as evidence...[intervention]

COURT: Should I mark it as an exhibit of the Court?

MRS ZULU: No... [intervention]

COURT: Can you please raise your voice? Are you saying yes or are you saying no, now I am getting confused. What is your submission – no, do not sit down, you are still on the floor. Do you have any objections? I am repeating this for the third or fourth time. Do you have any objections if this affidavit which was handed by the State, Mrs Zulu can be marked and accepted as an exhibit of the Court?

MRS ZULU: No objections, Your Worship.

COURT: Thank you very much. The affidavit, the IO's affidavit is marked EXHIBIT A and will form part of the court record.'

[6] The respondent did not call any other witness after handing up the affidavit and then closed its case. The following transpired in court when Mrs Zulu attempted to deal with the appellant's case for bail.

"So on the first appearance Your Worship 26 April the State had mentioned to us that, well "that they had the right to remand him for seven days pending their investigations" and that did transpire. On the second appearance, Your Worship which was last week, it was on 2 April we appeared again and the State stated that they needed further time to proceed with the investigations and they gave reasoning stating that they felt my client was a flight risk."

Now, Your Worship just as an opinion, because I have also received this today which is just an affidavit from Mr Winkler, I, I am a little bit disturbed in the fact that we can submit a statement and it has its facts, but it, it, if we are being technical it paints a picture of the client is already convicted and already guilty and anything that has been brought forth already paints a bad picture of him ... [intervention]

COURT: From what?

MRS ZULU: The statement.

COURT: Who was convicted? Who found this applicant guilty?

MRS ZULU: Your Worship ...[intervention]

COURT: He is assisting here, because it is for the first time to bring this bail application. Now you are telling me about your client being convicted and who found your client guilty, Mrs Zulu? Please do not ...[indistinct] are you addressing the Court or are you reading the affidavit for this applicant? You are confusing me now, ma'am, please. Exactly what are you doing? Are you addressing the Court or are you reading the affidavit, then address later? From where I am sitting it seems as if you are supposed to read the affidavit of your client first before you can address and you know, what are you addressing me for, because you never read your client's affidavit. If you read your client's affidavit or you want

to put him in the box you must put your client in the box. Now you are just addressing, I do not know on what and now you are saying something about conviction and guilty now I am confused, because I have never done any of those. So now I am just listening. I am trying to apply the rule of *audi alterum* (sic) *partem*. Now you are saying your client has been convicted. By whom? I am confused now. Let us stand down this matter.

MRS ZULU: Your Worship, may I, may we, may we go off record?

COURT: No, no, let us not go off record. Everything must be recorded.

MRS ZULU: Okay

...

MRS ZULU READS STATEMENT INTO RECORD: In continuation of my affidavit, Your Worship.

“On the second appearance that we made the State stated that they were still busy with investigations and that the applicant was a flight risk. This was on 2 April 2026.”

As it stands, Your Worship my instructions are that the accused is, they are in possession of his vehicle, his licenses, ID, passport and laptops and driver license. Those are my instructions, Your Worship and considering this, Your Worship there is no way possible that he could possibly use that as his passports are in possession of the State. So I do not see it as a reason from the State to use to say that it is to a point where he will cross the country. My instructions, Your Worship are that for the past seven years, the client has, well my client has not been outside of the country and that he has no previous convictions and we are dealing with a Schedule 1 offence.

Your Worship, my client is resident in South Africa with three kids as stated by the State during their affidavit and at the moment he is living with his wife, well has been living with his wife. They are married with three kids. This is not a person that is going to run out of the country and skip. I am using these... [indistinct] as my basis for the Court to understand that he is not a flight risk.

Secondly, Your Worship we were advised by our client and because I cannot deal with the actual affidavit as yet...[intervention]

COURT: Yes.

MRS ZULU: We were advised by our client that he had only started receiving the medication that we had discussed on the first appearance on Friday which is last week Friday. I think it was on 3 April and he was transported to the hospital, et cetera. So that was a bit of a, an uncomfortable setting, because we were under the impression that he was on his medication the entire time. Be that as it may, my submissions are, Your Worship that my client is in no way trying to...[intervention]

...

MRS ZULU: Sorry. The accused is in no way trying to evade the law and we are dealing with the matter as it stands, but the State can continue with their investigation on, while he is on bail and if need be, if we feel that the Court is, is feeling that it is of a very high importance matter we are amenable to state that it is fine, have strict conditions for example where he has to sign, where has to on house arrest... [intervention]

COURT: Wait, like what?

MRS ZULU: Strict conditions.

COURT: Yes

MRS ZULU: That can be posed on his bail, for example if him being bailed out with funds, is not enough then the Court can out forward strict conditions to say maybe he needs to sign on a weekly basis. If there is anything that needs to be done we are amenable to that, but I do not see why it should be that the client is still inside ...[intervention]

COURT: All right, Mrs Zulu, okay, it is fine.

...

COURT: You can just, you know this affidavit outline why bail is opposed, right. Have you read this affidavit, this IO affidavit have you...[intervention]

MRS ZULU: Yes, Your Worship.

COURT: Have you read the, the basis ...[intervention]

MRS ZULU: I have ...[intervention]

COURT: For bail opposition?

MRS ZULU: Yes

COURT: One of, one of the bail opposition is that he has no assets. I think that one is in paragraph 23. You are saying something about medication, but here in paragraph 23 they are saying he is of good health. I do not know whether had you read paragraph 23?

MRS ZULU: I have, Your Worship.

COURT: Where they said the health of this applicant is good. It is what he told them when they asked him and also they said the applicant has no proof of stable employment or income, so his financial situation is unclear. He is of sound health, he is unemployed and he does not have any fixed assets and many recent addresses and potential ties to Gauteng also increasing the risk of flight. Have you, have you noted that?

MRS ZULU: I have seen that, Your Worship.

COURT: Yes, so now... [indistinct] or if I may, if I may just enquire to if I can say to this accused he is released on bail today

MRS ZULU: Yes.

COURT: But then if he is a flight risk, because he has got no fixed asset, he is unemployed and they say here with potential ties to Gauteng.

MRS ZULU: Your Worship, that is ...[intervention]'

[7] The above exchange demonstrates that the appellant's representation was inadequate in a number of respects. Mrs Zulu who appeared for the appellant does not seem to have understood the points that had to be dealt with and how she was supposed to deal with the bail application in the face of opposition. This is demonstrated by the submissions made on behalf of the appellant, the form that those representations took and the apparent confusion. Some of the basic submissions were made by Mrs Zulu after being probed by the magistrate.

[8] The right to legal representation entrenched in s 35(3)(f) of the Constitution imports more than the mere presence of a representative in court. As held by the Constitutional Court in *S v Dlamini*,¹ '[a]n accused, ideally assisted by competent counsel, conducts the defence substantially independently and has to take many key decisions',² including whether and how to adduce evidence in support of a bail application.³ The Constitutional Court's warning that 'an uninformed choice is indeed no choice' places a corresponding responsibility on the legal representative, and, where necessary, on the presiding officer, to ensure that an accused's choices in the conduct of such an application are properly informed.

[9] In *S v Ntuli*,⁴ the court held that 'the minimum required of counsel is to prepare and present a proper argument on behalf of his or her client',⁵ failing which 'the right to a fair trial and the right to a fair appeal may be negated'.⁶ On the record before this Court, Mrs Zulu did not even meet that threshold. She was unable to give the magistrate a clear answer as to whether she objected to the Investigating Officer's affidavit being marked as an exhibit; she conflated her address to the court, did not properly put facts before the court; and she required repeated prompting before engaging with the substantive grounds of opposition set out in paragraph 23 of the State's affidavit.

¹ *S v Dlamini; S v Dladla and Others; S v Joubert; S v Schietekat* [1999] ZACC 8; 1999 (4) SA 623 (CC).

² *Ibid* para 94.

³ *Ibid*.

⁴ *S v Ntuli* 2003 (1) SACR 613 (WLD).

⁵ *Ibid* para 16.

⁶ *Ibid*.

[10] These are not failures of the kind contemplated in *S v Halgryn (Halgryn)*,⁷ where Harms JA distinguished between '[t]he failure to take certain basic steps, such as failing to consult', on the one hand, and 'the decision to call or not to call a particular witness', a matter properly falling within 'counsel's discretion' where 'the scope for complaint is limited', on the other. Per *Halgryn*, the constitutional right to legal representation is 'real and not illusory' and an accused is entitled 'in principle...to a proper, effective or competent defence', assessed objectively, 'usually, if not invariably, without the benefit of hindsight', and from a standpoint of counsel who must 'make decisions, often with little time to reflect'. Mrs Zulu's apparent unfamiliarity with the basis on which bail was opposed and her inability to take a clear position on the admissibility of the affidavit of the State as an affidavit are basic and essential failures of preparation of the kind *Halgryn* places on a different footing from legitimate strategic choice.

[11] As was held in *S v Chabedi*,⁸ the omissions of an accused's representative 'cannot simply be swept aside as bona fide misunderstanding or an error in judgment'⁹ where they result in material aspects of the accused's case going uncontested. In the present matter, the confusion that is evident on the record means that neither the grounds advanced by the appellant for release, nor the substance of the State's opposition, were properly ventilated before the magistrate.

[12] It is not for this court to express any view on the merits of the application and the steps that Mrs Zulu ought to have taken in dealing with the bail application. It is unfortunate that the conclusion I reach here is going to cause further delays in the finalisation of the appellant's bail application. However, what arose in the court *a quo* is fundamental and it affects the proper administration of justice.

Order

[13] In the circumstances, I grant an order in the following terms:

1. The proceedings before the Durban Magistrates', on 7 and 10 April 2026, in respect of the appellant's bail application, are reviewed and set aside in their entirety as having been conducted inadequately.

⁷ *S v Halgryn* 2002 (2) SACR 211 (SCA) para 14.

⁸ *S v Chabedi* 2004 (1) SACR 477 (W).

⁹ *Ibid* para 22.

2. The matter is remitted to the Durban Magistrates' Court for consideration of the appellant's bail application *de novo* before a different magistrate.

Sibisi AJ

Appearances

Matter heard on: 1 July 2026

Judgment delivered: 7 August 2026

For the appellant: M Mthimkhulu
MC Luthuli Attorneys, Durban

For the respondent: G Xulu
Office of the Deputy Director of Public Prosecutions,
Durban