



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)
JUDGMENT**

Case No: 241/26

THE STATE

And

JECONIAH WILLIAMS

ACCUSED 1

MARKO BESTBIER

ACCUSED 2

Coram: Thulare, J et Gxashe, AJ

Delivered: 1 September 2026

Summary: Review -section 304 (4)- failure of the accused – on bail to appear- section 67 (1) and (2) Act 51 of 1977- bail provisionally cancelled- bail money provisionally forfeited to the state-accused appeared within 14 days of the issue of the warrant of arrest under subsection (1)- accused failed to satisfy

the court that failure was not due to fault on his part- provisional cancellation of bail and provisional cancellation of bail money confirmed- conviction in terms of section 170 (1) - criminal procedure act- confirmation of provisional cancellation of bail and bail money- does not affect the accused right to bring a new application- in terms of section 60 CPA- court duty bound to explain the rights to apply for bail after enquiry- after confirmation- provisional cancellation of bail and forfeiture of bail money- court erroneously sentenced the accused- sentence void and legally invalid - set aside.

ORDER

1. The sentence is set aside

JUDGMENT

GXASHE, AJ

Introduction

[1] This matter is placed before this Court for review in terms of section 304(4) of the Criminal Procedure Act 51 of 1977 (the CPA). The accused were arraigned before the Bellville Magistrate's Court for theft out of a motor vehicle and possession of suspected stolen property in contravention of section 36 of the General Law Amendment Act 62 of 1955. The reasons for submitting this matter for special review are encapsulated in the magistrates covering letter.

[2] The cover letter reads as follows: '[a]ccused one had been released on warning whilst accused two on bail. The two accused failed to appear in court on the postponement date and later appeared in court on warrants of arrest, following which enquiries as to their absence were held'. Following his explanation, accused number one was convicted for contravening the provisions of section 170(1) of the CPA and sentenced to a fine of R300.00 (three hundred rands) or ten days imprisonment. Subsequently, the magistrate proceeded with the enquiry in respect of accused two and confirmed the provisional cancellation of bail and forfeiture of his bail money. The magistrate then sentenced the accused to a fine of R300 (three hundred rands) or ten days imprisonment. On hindsight, the magistrate realised that the proceedings should not have proceeded beyond the confirmation of the cancellation and forfeiture in terms of section 67 of the CPA and referred it to this court for review.

Factual matrix

[3] The two accused were arraigned before Bellville Magistrate's Court for theft out of a motor vehicle and possession of suspected stolen property in contravention of section 36 the General Law Amendment Act 62 of 1955. Following a bail application, accused one was released out on warning and accused two was granted bail at R500 (five hundred rands). Ultimately, the matter was postponed to 21 November 2025. However, both failed to appear before the court and, as a result, warrants of arrests were authorised to be issued immediately against both of them. In addition, the court ordered the cancellation of accused two's bail and the provisional forfeiture of his bail money. The return date was 5 December 2025.

[4] On 1 December 2025, both accused appeared on warrants of arrest and the court held an enquiry regarding their failure to appear on 21 November 2025. Consequently, accused one was found guilty for contravening the provisions of section 170(1) of the CPA and was sentenced to R300 (three hundred rands) or ten days imprisonment. In addition, the court confirmed the provisional cancellation of bail and provisional forfeiture of accused two's bail money. Subsequently, the court erroneously sentenced accused two to a fine of R300 (three hundred rands) or ten days imprisonment and remanded both accused in custody.

Applicable law

[5] Section 67(1) of the CPA provides as follows:

‘(1) If an accused who is released on bail–

(a) fails to appear at the place and on the date and at the time –

(i) appointed for trial; or

(ii) to which the proceedings relating to the offence in respect of which the accused is released on bail are adjourned; or

(b) fails to remain in attendance at such trial or such proceedings, the court before which the matter is pending shall declare the bail provisionally cancelled and the bail money provisionally forfeited to the State and issue a warrant for the arrest of the accused.

(2) (a) If the accused appears before court within fourteen days of the issue under subsection (1) of the warrant of arrest, the court shall confirm the provisional

cancellation of the bail and the provisional forfeiture of the bail money, unless the accused satisfies the court that his failure under subsection (1) to appear or remain

(3) in attendance was not due to fault on his part.’

Discussion

[6] It can be gleaned from the record that the magistrate received such evidence to satisfy herself that the accused failed to appear on 21 November 2025. In evidence, accused two testified that on the said day he travelled by uber with his mother to fetch accused one. However, the driver refused to let his co-accused be conveyed in the vehicle. As a result of the driver’s refusal, accused two disembarked from the vehicle and consequently failed to appear as ordered by the court. It then transpired during his evidence that he was merely 3.5 km away from the court at the time. Evidently, the record reflects no plausible explanation why he did not proceed to court on foot given this short distance. Following this, the court correctly found that failure to appear was due to fault on his part and confirmed the provisional cancellation of bail and provisional forfeiture of bail money.

[7] In *casu*, the cause of complaint is the sentence imposed by the magistrate after she confirmed the cancellation of bail and forfeiture of bail money. Notably, section 67 is an enquiry envisaged to investigate whether the accused’s failure to appear before the court was due to fault on his part. In addition, the section provides for the confirmation of provisional cancellation of bail and forfeiture of bail money. Certainly, the statute does not make provision for the imposition of a sentence because the accused is not tried for committing a criminal offence. It stands to reason that the court was not justified to impose a sentence in these

circumstances, and the error on the part of the magistrate renders the sentence void and legally invalid.

[8] This is in line with *Xaliphi v Cape Town Regional Magistrate and Another*,¹ (383/23) [2024] ZAWCHC 85 para 10 where this Court held that:

‘Section 67 deals with the provisional cancellation of bail and forfeiture of bail money. Proceedings as envisaged in section 67 is a summary enquiry and not a formal trial. Its consequences may be loss of liberty and forfeiture of bail money, but does not result in a conviction and a sentence could not be imposed [*S V Williams* 2012 (2) SACR 158 (WCC) at para 3]. The procedure in section 67 differs from the one in section 67A, which criminalized failure to appear or to comply with a bail condition. For purposes of section 67A proceedings, a charge sheet must be drawn and a formal trial held [*S v Mabuza* 1996 (2) SACR 239 at 243e -245c]. The State did not prosecute the applicant’s failure to appear in the ordinary way and did not put him on trial. The State did not trigger section 67A proceedings and a conviction and sentence were thus incompetent.’

[9] Furthermore, it is also apparent from the record that both accused were arrested on warrants of arrest and were unrepresented during the enquiry. Ultimately, they were remanded in custody after sentencing without being apprised of their right to reapply for bail. Nonetheless, upon the appointment of legal representation, the matter was postponed for a formal bail application in respect of accused two. Accused one unequivocally abandoned bail.

[10] The purpose of the warrant issued in terms of section 67 is to bring the accused before the court. It is not a method of securing the accused’s detention until the completion of the trial. In other words, it is not an act done in execution of

¹ *Xaliphi v Cape Town Regional Magistrate and Another* (383/23) [2024] ZAWCHC 85 (19 March 2024) para 10.

an imposed sentence of imprisonment for an indefinite term, which depends on the contingency until the completion of the trial.²

[11] Since the advent of our constitutional dispensation, an accused enjoys a right to be released from detention if the interests of justice permit, subject to reasonable conditions.³ In addition, section 60(1)(a) of the CPA provides that:

‘An accused who is in custody in respect of any offence shall, subject to the provisions of section 50 (6), be entitled to be released on bail at any stage preceding his or her conviction in respect of such offence, if the court is satisfied that the interests of justice so permit.’

[12] This statutory right does not preclude the accused whose bail has been finally cancelled and bail money forfeited to the State, or the accused who is convicted and sentenced for contravening the provisions of section 170 of the CPA for that matter from reapplying to be released from detention. This is evidenced by the clear wording of section 60(1)(a) of the CPA, which stipulates that the entitlement to be released from detention shall be exercised at any stage preceding the accused’s conviction. Notably, the accused in this matter were not convicted at that stage and were in custody thus falling within the category of those who are entitled to be released from detention should the interests of justice so permit.

[13] In *S v Nkosi en Andere*, the court held that:⁴

‘According to section 60, an accused may apply for bail at his first appearance or at any stage thereafter. The Legislature could hardly have used a broader concept than the one

² *S v Nkosi en Andere* 1987 (1) SA 581 (T).

³ Section 35(1)(f) of the Constitution of the Republic of South Africa, 1996.

⁴ *Ibid* fn 2.

cited. The word ‘any’ is in its ordinary context a concept without limitations. . .In the Barnard case⁵ it was decided that section 60 only refers to case where bail has not previously existed. That conclusion cannot be derived from the so-called ‘inner logic’ of the ‘scheme’ of section 60 read together with section 67. I prefer to take a broader approach.’

[14] It is important to note that *S v Nkosi* was decided prior to our constitutional dispensation, and the court adopted a purposive and expansive interpretation of section 60 rather than a restrictive approach. In my mind, restricting the interpretation of this section to accused persons not yet admitted to bail would be inconsistent with the constitutional imperatives and would defeat the legislative purpose as well. Of importance is the fact that section 60 no longer refers to ‘first appearance’ but extends to any stage in the proceedings prior to conviction.

[15] Based on this analysis, it is untenable to conclude that the accused whose bail has been cancelled and bail money forfeited to the State in terms of section 67 cannot be subjected to bail. A revocation of bail and forfeiture of bail money in terms of the mandatory provisions of section 67 (1) and (2) of the CPA does not render a new application for bail in terms of section 60 inadmissible. The fact that the bail has been revoked will, however, be a relevant fact that may be taken into account when considering the new application for bail.⁶

[16] To sum up on this point, magistrates are duty bound to explain the right to apply for bail following confirmation of bail cancellation and forfeiture of bail money to unrepresented accused, to enable them to make an informed decision

⁵ *S v Barnard and Another* 1985 (4) SA 439 (W).

⁶ *S v Nkosi* en Andere supra

whether to bring an application to be released from detention or not. This equally applies to the accused who is convicted of contravening the provisions of section 170 of the CPA, thereby safeguarding the constitutional right of fairness throughout the criminal proceedings.

Order

[17] In the result, the court makes the following order:

- (a) The sentence imposed in respect of accused two is set aside.

N GXASHE

Acting Judge of the High Court

I agree, and it so ordered.

D THULARE

Judge of the High Court