



**IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPETOWN**

CASE NO: A65/2026

In the matter between

L SIGIDI

Appellant

And

THE STATE

Defendant

Corum: PETERS AJ

Heard: 7 August 2026

Delivered electronically: 27 August 2026

ORDER

The appeal against the Bellville District Court's refusal of bail on new facts is refused

JUDGMENT

[1] This is an appeal against the refusal of the Appellant's application for bail on new facts, by the Bellville District Court.

[2] The Appellant was arrested and charged with the contravention of section 3 and 90 of Act 60 of 2000 (unlawful possession of a firearm and ammunition). He first applied for bail on 27 November 2025, which was refused on 8 December 2025. It was common cause that the bail application resonated under Schedule 6 of the Criminal Procedure Act, 51 of 1977.

[3] The reason provided by the learned Magistrate for the refusal of the Appellant's application for bail, was the fact that he had a similar pending matter at Khayelitsha, where he was released on bail. It was found that there was a likelihood that the Appellant, if released on bail, would endanger the safety of the public or commit a Schedule 1 offence. It needs further mention that when the application was heard on 27 November 2025, the State led evidence that the Appellant also had a similar pending matter at Philippi. On 8 December 2025, however, before judgment, the court was informed that that matter was withdrawn because witness statements and the ballistics report was outstanding.

[4] The application for bail on new facts was heard on 25 February 2026. The new fact being that the Khayelitsha matter was withdrawn on the 8 February 2026. The application was refused on the same basis as before.

[5] The grounds of appeal relied on are:

- (a) The pending matter at Khayelitsha was struck off the roll on 8 February 2026,
- (b) The current case no longer falls under Schedule 6 but now under Schedule 5,
- (c) The factors in section 60(4) of the Act are now non-existent, and
- (d) The right of the Appellant to his personal liberty outweighs the interest of justice.

[6] The Respondent, in its heads of argument, expressed the view that, the fact that the Phillippi and Khayelitsha matters were withdrawn, does not take away from the fact that the Appellant was arrested three times in 2025 on similar charges.

[7] In *Yanta v S*¹ the following was stated in relation to bail applications on new facts:

¹ *Yanta v S* 2023 (2) SACR 387 (WCC).

"15. The CPA does not prescribe or define what constitutes new facts and there is no prescribed procedure for renewed bail applications, but it appears with reference to case law, that certain general principles have been identified as relevant, when a court is faced with an application for an accused's release on bail based on new facts. This can be summarized as:

15.1 Whether the facts came to light after the bail was refused. Such facts can include circumstances which have changed since the first bail application was brought as the period that an accused had been incarcerated;

15.2 Whether the facts are 'sufficiently different in character' from the facts presented at the earlier unsuccessful bail application in the sense that it should not simply be a 'reshuffling of old evidence';

15.3 Whether the alleged new fact(s) are relevant in the sense that if received by the court, it would per se or together with other facts already before the court from the initial bail application assist the court to consider the release of an accused afresh;

15.4 A court hearing an application based on new facts, must determine, with reference to the evidence previously presented in the unsuccessful bail application, whether such facts are indeed new; and

15.5 Where evidence was known and available to a bail applicant but not presented by him at the time of his earlier application, such evidence can generally not be relied upon for purposes of a renewed bail application as 'new facts'"

[8] The fact that the Appellant had pending matters during his first bail application which was later withdrawn indeed constituted a new fact warranting fresh adjudication of bail. The learned Magistrate found that the withdrawal of those matters did not alter the basis on which bail was initially refused. Was the Magistrate correct?

[9] Although the Appellant identified four grounds of appeal, it all relates to the withdrawal of the Khayelitsha matter. The Appellant's argument that the Khayelitsha and Philippi matters were withdrawn or struck off the roll due to insufficient evidence is simply not the truth. On page 46 of the record Mr Nsindane who appeared for the Appellant in the first bail application initially placed on record that the Philippi matter was withdrawn due to insufficient evidence. He however immediately corrected himself and indicated that it was withdrawn due to the fact that the investigation was

not complete, the ballistics report and witness statements being outstanding. Similarly, on the Khayelitsha matter, the Appellant himself stated in his affidavit (page 62 of the record) that the matter was stuck off the roll due to the investigation being incomplete.

[10] The fact that the Philippi and Khayelitsha matters were withdrawn or struck off the roll, is in my opinion of no consequence. It does not change the fact that the Appellant was arrested three times for allegedly committing the same type of offence, the possession of firearms, during 2025.

[11] The withdrawal of those matters might now mean that the Appellant is facing a Schedule 5 offence as opposed to Schedule 6, but it does not change the likelihood that the Appellant would commit a Schedule 1 offence or endanger the safety of the public, if released on bail. If the court has regard to the reasons why those matters were withdrawn or struck off the roll, it is almost a foregone conclusion that those matters will, at some stage, be placed back on the court roll. The fact that those matters were withdrawn and/or struck off the roll does not mean that that is the end of it. It happens on a regular basis, in courts around the country, that matters are withdrawn or struck off the roll for technical reasons (outstanding witness statements, ballistics and/or forensic reports) and later re-enrolled as soon as those defects are cured. The Appellant should not be allowed to benefit from the fact that the matters were withdrawn or struck off the roll under the circumstances that they were.

[12] The assertion by the Appellant that the factors in section 60(4) of the Act are now non-existent due to the withdrawal of the Khayelitsha matter, is misplaced. The risks, found by the learned Magistrate to have existed, for refusing the first bail application and the one on new facts, did not change and are still real.

[13] The right of the Appellant to his personal liberty does not outweigh the interest of justice.

[14] It cannot be found that the learned Magistrate exercised his discretion wrongly in refusing the bail application on new facts. The appeal ought to be dismissed.

ORDER

[14] In the result the following order is made:

"The appeal against the Bellville District Court's refusal of bail on new facts is refused"

PETERS AJ
WESTERN CAPE HIGH COURT

¹ Yanta v S 2023 (2) SACR 387 (WCC).

APPEARANCE:

APPELLANT:

ADV DONDOLO

STATE:

ADV. R UYS