

[1] This is a bail appeal in which the accused is alleged to have unlawfully encroached into the home of his former girlfriend (the “complainant”), to have discovered her in the company of a friend (the “second complainant”), and to have attacked them both. It is alleged that he strangled the complainant, repeated several times that he intended to kill her, assaulted the friend, and that after his initial assault upon the second complainant, he broke free from the police to continue his assault upon the second complainant . He is charged with assault with intent to do grievous bodily harm, theft, housebreaking with intent to assault and assault with intent to do grievous bodily harm and malicious injury to property in respect of both complainants.

[2] He was denied bail by the Magistrate and appealed - primarily on the basis that his personal interests were not properly balanced against other considerations - as required by subsection 60(9) of the Criminal Procedure Act (51 of 1977).

[3] Held - the provisions of the Criminal Procedure Act relating to bail must - under subsection 39(2) of the Constitution - be interpreted in accordance with the rights in the Constitution.

[4] Held further that, in accordance with the decision in *Carmichele v Minister of Safety and Security (Centre for Applied Legal Studies Intervening)* 2001 (4) SA 938 (CC), an interpretation must be placed upon the relevant considerations so as to give effect to the right, in particular, to substantive gender equality.

[5] Held further that, when a dispute of fact arises, which may include facts which are common to the criminal charges – section 60(2)(c) permits a court to adopt a view of the disputed facts in determining whether to grant bail provided that any findings of fact as they may relate to the criminal charges are considered only for bail purposes and be determined on the standard appropriate to a bail application: a balance of probabilities.

[6] Held further that – in the circumstances, it appeared on a balance of probability, that the accused was stalking the complainant, was impervious to physical barriers, had defied even the physical restraints of police, had declared his intention unequivocally to kill the complainant. Held further that he had continued stalking the complainant after the attack and even while she was hospitalised, and had in addition sought to intimidate her.

[7] Held further that, including the interests of the accused, that the Magistrate had correctly taken account of his personal interests and that there was no basis on which to permit the appeal.

[8] Held further that, when interpreted in light of section 39(2) of the Constitution, and following, as this court must, the decision in *Carmichele*, the relevant bail provisions require of this Court a special duty of care to woman who are under threat and that this must inform the decision whether to grant bail.

[9] Held that, in all the circumstances, it appeared on balance, that the accused posed a substantial danger to the complainant and that, in light of section 39(2) and of *Carmichele*, the court was not permitted to take that risk. Appeal refused.

*Seemle* – the Court clarified that it accepted that it was discriminating against the accused on grounds of gender, but that this was required – and that, if the complaint had been a male person, the decision may, possibly, have been different.