



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, JOHANNESBURG)**

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

SIGNATURE

DATE: 17 March 2022

Case No: A10/2022

In the matter between:

MBULAHENI MATODZI

Appellant

and

THE STATE

Respondent

JUDGMENT

WILSON AJ:

- 1 On 11 March 2022, I refused the appellant's appeal against the Regional Court's dismissal of his bail application. I indicated that my reasons would follow. These are my reasons.
- 2 On 4 March 2021, the Regional Court convicted the appellant, Mr. Matodzi, on one count of corruption, within the meaning given to that offence in section

3 of the Prevention of Corrupt Activities Act 12 of 2004. On the same day, the Regional Court revoked Mr. Matodzi's application to extend his bail, and remanded him into custody. On 17 March 2021 Mr. Matodzi was sentenced to 8 years' direct imprisonment.

3 The Regional Court refused Mr. Matodzi's application for leave to appeal against conviction and sentence. However, on 26 January 2022, this Court, in an order made by my brothers Dosio J and Matjele AJ, granted Mr. Matodzi leave to appeal against his sentence alone.

4 It was accepted before me that, if Mr. Matodzi intended to pursue an appeal against his conviction further, he was required to petition the Supreme Court of Appeal by 27 February 2022. No such petition was lodged by that date, and an appeal had still not been pursued by the time this matter was argued before me on 11 March 2022.

5 On 14 January 2022, the Regional Court refused a fresh application for bail, which was lodged on the basis that Mr. Matodzi had petitioned this Court for leave to appeal against conviction and sentence. On 7 February 2022, the Regional Court refused a renewed application, this time advanced on the basis that Mr. Matodzi had been granted leave to appeal against the sentence the Regional Court imposed.

6 The principles applicable to an application for bail pending appeal are well-known and straightforward. Mr. Matodzi is required to show that there is "a real prospect" of success in his appeal against conviction or sentence; or that a non-custodial sentence might be imposed on appeal; or that the likely sentence to be imposed on appeal is "such that any further period of detention

before the appeal is heard would be unjustified” (*S v Oosthuizen* 2018 (2) SACR 237 (SCA) paragraph 29).

7 Mr. Matodzi has plainly not shown this. There is presently no application for leave to appeal against conviction. The Regional Court and two Judges of this Court have already refused the applications for leave to appeal that have been brought. Mr. Mukhavela, who appeared for Mr. Matodzi before me, urged that it was still open to Mr. Matodzi to petition the Supreme Court of Appeal for leave to appeal against his conviction. That is plainly not so, because the time available to Mr. Matodzi to do so has now expired. It is, of course, open to Mr. Matodzi to file his application late, and to seek condonation. But that is something different.

8 In these circumstances, it is not open to me to conclude that there is a “real prospect” of success in an appeal against Mr. Matodzi’s conviction.

9 It might still have been possible to grant Mr. Matodzi bail pending appeal, if it could have been shown that he is likely to receive a non-custodial sentence on appeal, or at least a sentence so light as to justify his release after a year of incarceration. But no such case was advanced in Mr. Matodzi’s papers.

10 In fairness, I gave Mr. Mukhavela an opportunity to advance such a case in oral argument. Despite some spirited submissions, the best Mr. Mukhavela could do was suggest that a non-custodial or very light sentences was possible. He urged me to accept that possibility as sufficient to overturn the Regional Court’s refusal of bail, and release Mr. Matodzi forthwith.

11 However, in light of the clear rule laid down in *Oosthuizen*, that course of action is not available. Nor was it open to the Regional Court. Even if I were inclined to accept the possibility that a non-custodial or effective one-year sentence may be imposed on appeal (I am not), that mere possibility is not enough. What is required is a “real prospect” that such a sentence will be imposed.

12 On the material before me, there is no such prospect, which is why Mr.
Matodzi's appeal had to fail.



S D J WILSON

Acting Judge of the High Court

This judgment was prepared and authored by Acting Judge Wilson. It is handed down electronically by circulation to the parties or their legal representatives by email and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be 17 March 2022.

HEARD ON: 11 March 2022

DECIDED ON: 11 March 2022

REASONS: 17 March 2022

For the Appellant: H Mukhavela
Instructed by TV NKhwashu Attorneys

For the Respondent: N Kowlas
Instructed by the National Prosecuting Authority