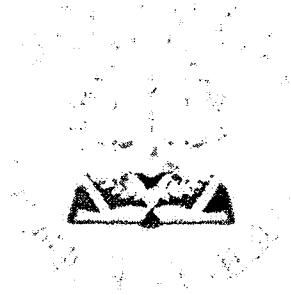


(Inlexso Innovative Legal Services) fvs



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

CASE NO: 10016/2022

DATE: 2022.03.28

DELETE WHICHEVER IS NOT APPLICABLE (1) REPORTABLE: NO (2) OF INTEREST TO OTHER JUDGES : NO (3) REVISED <i>OK</i>

In the matter between

20

KGASHANE REUBEN THOKA

First Applicant

NGWAKO JOHANNES MASHABATHAKGA

Second Applicant

and

NATIONAL DIRECTOR OF PUBLIC

PROSECUTIONS, GAUTENG LOCAL DIVISION,

JOHANNESBURG

First Respondent

REGIONAL MAGISTRATE BALOYI N.O Second Respondent

J U D G M E N T

CRUTCHFIELD, J: This application came before me in the urgent court on Saturday, 19 March 2022. The application was opposed by the first respondent, the National Director of Public Prosecutions, Gauteng Local Division, Johannesburg (“NDPP”). The second respondent, Regional Magistrate
10 Baloyi N O, furnished his reasons for the impugned order granted by him on 18 March 2022, and referred to herein below.

The first applicant was Kgashane Reuben Thoka and the second applicant was Ngwako Johannes Mashabathakga. Both applicants stood trial before the Regional Court Roodepoort on charges of attempted murder and kidnapping of which they were convicted on Friday 11 March 2022 by the second respondent.

The applicants argued that the lapse of their bail on 18
20 March 2022 by the second respondent was a gross irregularity in terms of s 22 of the Superior Courts Act 10 of 2013, justifying the intervention of this Court on an urgent basis. The bail was revoked by the second respondent under the circumstances set out hereunder.

Before me, the applicants sought relief in the following

terms:

- 1.1 That they be released from the custody of the Department of Justice and Correctional Services pending determination of the relief sought in part B of the notice of motion.
- 1.2 That the bail paid by the applicants initially be reinstated with immediate effect.
- 1.3 That the applicants be released on the same bail conditions until their appearance in Court 1, Roodepoort Magistrates' Court on 25 April 2022.
- 1.4 That the costs of part A of the application be reserved for determination by the court dealing with the relief sought in part B thereof.

The applicants sought urgent interim relief in terms of part A of the application in the terms set out above and non-urgent relief constituting a review of the decision taken by the second respondent on 18 March 2022, in the ordinary course in terms of part B of the application.

The factual background to this matter is that the applicants applied for and were granted bail upon their arrest in the amount of R1 000 each. They remained out on bail until 18 March 2022. It was common cause between the applicants

and the NDPP that the applicants were convicted on both charges on 11 March 2022. Furthermore, that on the said date, 11 March 2022, after finding the applicants guilty of the offences, the second respondent extended the applicants' bail until sentencing on 18 March 2022. On the latter date, the applicants sought a postponement of the sentencing in order to procure a pre-sentencing report that they had not applied for on 11 March 2022. The second respondent postponed the sentencing to 25 April 2022 and ordered that
10 the applicants be held in custody pending sentence.

The applicants contended that on the 11 March 2022 they brought a bail application for bail pending sentence that was granted by the court. Thus, on 18 March 2022, the second respondent's cancellation of their bail was unlawful in that it violated the audi alteram partem rule and the provisions of section 68(1) of the Criminal Procedure Act 51 of 1977 ('CPA') dealing with the cancellation of bail. Thus, the revoking of the bail was a gross irregularity as envisaged by the provisions of s 22 of the Act entitling this Court to intervene and authorise
20 the release of the applicants and the reinstatement of their bail conditions pending finalisation of the sentencing proceedings in the Regional Court.

The second respondent did not deal in his reasons with the procedure adopted by the court on 11 or 18 March 2022, referring only to his substantive reasons for revoking the

applicants' bail.

I heard the matter urgently due to my concern that the applicants may have been incarcerated unlawfully.

The NDPP opposed the relief sought by the applicants arguing that the applicants' conduct in approaching this Court urgently and the relief sought by them were ill-conceived as they could apply for bail during the forthcoming week in the magistrates' court.

Contrary to the applicants, the NDPP alleged that the
10 record of the proceedings comprising the second respondent's hand written notes, demonstrated that the applicants did not apply for bail on 11 March 2022 but that their bail was extended pending sentence. An application for bail would have required both applicants to give evidence in that they stood convicted of schedule 5 offences, which they did not do.

I was not furnished with the electronic transcript, being the electronic record, of the proceedings in the regional court and thus could not determine the position. Furthermore, these being urgent proceedings the respondent's averments must prevail.

20 In the event that the applicants hold the view that the regional court committed an irregularity capable of review, then the provisions of Rule 53 are available to the applicants.

[2] The urgent court is not in a position to deal with and determine what is effectively a bail application, particularly in

instances of schedule 5 convictions. Moreover, there is no provision permitting 'after hours' bail in such matters.

Moreover, it is well established that civil courts do not lightly become involved in pending proceedings in criminal cases save in exceptional instances, which this matter is not. The applicants were convicted and entitled and remain entitled to apply for bail in accordance with the provisions of the Criminal Procedure Act 51 of 1977, on the first available court date.

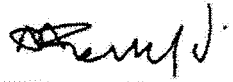
10 In my view, the applicants are obliged by law to bring their applications for bail within the confines of the established statutory mechanisms. The applicants cannot avoid the provisions of s 65(1)(a) of the CPA by approaching the urgent court and invoking motion court proceedings,

In the event that the applicants' bail applications in the regional court are denied, the applicants are free to launch appeal proceedings to this court against that denial of bail.

In the circumstances I am of the view that the application must fail and I grant the following order:

The application is dismissed with costs.

I hand down the judgment.



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CRUTCHFIELD, J

JUDGE OF THE HIGH COURT

DATE: 28 March 2022