

REPUBLIC OF SOUTH AFRICA



GAUTENG DIVISION
PRETORIA
(REPUBLIC OF SOUTH AFRICA)

CASE NO: 56570/14

27/08/2014

In the matter between:

MALALA GEOPHREY LEDWABA

APPLICANT

AND

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

05/09/2014

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THE REGIONAL MAGISTRATE,

FIRST RESPONDENT

MR T.P MODAU

THE MINISTER OF JUSTICE AND

SECOND RESPONDENT

CONSTITUTIONAL AFFAIRS

THE DIRECTOR OF PUBLIC PROSECUTIONS

THIRD RESPONDENT

GAUTENG NORTH(PRETORIA)

JUDGMENT

BAQWA J

- [1] I do not wish to reiterate the background to this case in detail as that is contained in the papers which have been filed. This is an application against the withdrawal of bail by the Regional Magistrate Mr T.P Mudau which had been earlier granted to the applicant Malala Geoffrey Ledwaba. Briefly summarised it is as narrated below.
- [2] The applicant was after a plea of not guilty found guilty of theft and and fraud from a total of 15 counts. The matter has since been postponed several times at the request of the applicant. On the date he was convicted the case was adjourned to 28 March 2014 pending a pre-sentence report.
- [3] On 1 August 2014 the applicant appeared in the court **a quo** for pre-sentence proceedings and on that date applicant informed the court that the defence had decided to dispense with the pre-sentence report and the matter was postponed to 21 August 2014.
- [4] On 21 August 2014 bail was withdrawn by the Magistrate on the basis that the applicant was no longer in practice as an advocate.
- [5] It is common cause that the
- (a) Applicant was out on R10,000 bail.

(b) That applicant had attended court at least on the dates I have mentioned and was therefore not in contravention of his bail conditions.

(c) It is also common cause that when bail was withdrawn the accused had already been convicted on offences contemplated in Schedule 5 or 6 of the Criminal Procedure Act 51 of 1977.

(d) It is common cause also that despite that conviction, the Magistrate extended the applicant's bail.

[6] Mr Van Rensburg for the respondents submits that the discretion to extend or withdraw bail in terms of the proviso to section 58 of the Criminal Procedure Act continues even where bail is extended.

[7] He further submits that the Regional Magistrate merely exercised that discretion when he withdrew bail on 21 August as per entitlement in terms of that section.

[8] Whilst that submission may be correct, it is trite, in my view that the discretion ought to be exercised judiciously and not capriciously. This implies that the Magistrate ought to indicate the basis on which the discretion is exercised.

[9] From the papers before me and the address by counsel for the respondents it would seem that the withdrawal was based on the fact that the applicant was no longer in practise as an advocate. It is conceded by counsel for the respondents that he had not contravened his bail conditions. Mr Potgieter for the applicant submits and the record shows that the Magistrate was aware that applicant was not in practice even on 1 August 2014 when the case was previously postponed and that that could therefore not be a valid basis for withdrawing bail on 21 August 2014. The circumstances under which applicant had been further released had not changed.

[10] Another point raised against the applicant is his previous dilatory behaviour in asking for numerous postponements. That also would not in my view serve as a basis for withdrawing bail. Mr Potgieter submits and I accept that section 342A of the Criminal Procedure Act 51 of 1977 provides ample provisions for dealing with such cases.

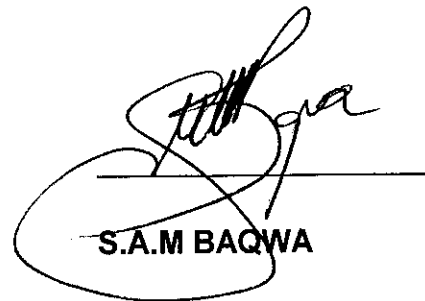
[11] In his address Mr Van Rensburg submitted that the bail withdrawal could be justifiable on the grounds of 'interests' of justice. I cannot imagine how the fact that applicant was no longer in practice could compromise the interests of justice. In my view therefore that ground also cannot serve as a rationale for bail cancellation.

[12] Having read the documents filed including heads of argument by counsel, having listened to counsel and having considered the matter, I am not persuaded that the first respondent exercised his discretion judiciously against the applicant.

[13] In the circumstances I have come to the conclusion that the cancellation of bail which had been granted to the applicant was wrong.

In the result:

- (1) The order of the Regional Magistrate T Mudau cancelling bail granted to the accused made on 21 August 2014 is hereby reviewed and set aside.
- (2) Bail of R10,000 and conditions on which it was originally granted is hereby reinstated and it is further ordered that as soon as same is paid the applicant be released on similar conditions.

A handwritten signature in black ink, appearing to read 'S.A.M. Baqwa', is written over a horizontal line. The signature is stylized with loops and a large 'S' at the beginning. Below the signature, the name 'S.A.M BAQWA' is printed in a bold, sans-serif font.

S.A.M BAQWA

**(JUDGE OF THE HIGH
COURT)**