

(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: YES / NO  
(2) OF INTEREST TO OTHER JUDGES : YES / NO  
(3) REVISED

In the matter between

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R K THAKA AND ANOTHER

Applicant

and

NATIONAL DIRECTOR OF PUBLIC PROSECUTION Respondent

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**J U D G M E N T**

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**CRUTCHFIELD, J:** This application came before me in the urgent court on Saturday, 19 March 2022. The application was proposed by the first respondent, the Director Public Prosecutions, Gauteng Local Division, Johannesburg (“NDPP”). The second respondent ...[indistinct] the regional magistrate Baloyi N O furnished his reasons for the ...[indistinct] that were granted by him on 18 March 2022, and referred, and referred to herein below.

The first applicant was Kthlane ...[indistinct](spelt)  
10 Rubin Thoka and the second applicant was ...[indistinct]  
Mgwakao (spelt) Johannes(spelt) Mashabathlakaga(spelt). Both applicants ...[indistinct] before the regional court ...[indistinct] on and were convicted on Friday, 11 March 2022 by the second respondent. The applicants argue that ...[indistinct] the second respondent was ...[indistinct] a gross justifying ...[indistinct] of this Court on an urgent basis. The bail was revoked by the second respondent on 18 March 2022 under the circumstances set out hereunder.

Before me, the applicants sought relief in the following  
20 ...[indistinct].

...[Indistinct] justice and correctional services pending determination of the relief sought in part B of the application.

That the bail paid by the applicants initially be reinstated with immediate effect.

That the applicants be released ...[indistinct] until their appearance ...[indistinct], ...[indistinct] the Magistrate's Court ...[indistinct] April 2022.

The costs be reserved to determination by the Court dealing with the relief sought in part B of the application.

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  
10 second respondent on 18 March 2022, in the ordinary course in terms of plight B of the relief being sought.

The factual background ...[indistinct] this matter is that the applicants applied for bail upon their arrest in the amount of R1 000 each. They remained on bail until 18 March 2022. It was ...[indistinct] in the NDPP that the applicants were convicted on both charges ...[indistinct] March 2022. ...[Indistinct] 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,  
20 the second respondent, I recall that. On a later 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 to order that 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 granted by the Court, on 18 March 2022, the second respondent ...[indistinct] was ...[indistinct] the provision section 51(1) of the Criminal Procedure Act dealing with the cancellation of bail. Thus ...[indistinct] the reverting of the bail was a gross irregularity ...[indistinct] the provisions of section 22 ...[indistinct] Act ...[indistinct] 10 of 2013, entitling this Court into being an authorised ...[indistinct] applicants, 10 the reinstatement of their bail conditions ...[indistinct] dealings in the Magistrate Court.

The learned magistrate did not ...[indistinct], 2022, referring only to his substantive reasons for revoking the applicants ...[indistinct].

...[Indistinct] perusal by the applicants argument and the applicants conduct in approaching this Court urgently and the relief sought by them were ill, were ill conceived as they could apply for bail in the forthcoming week in the magistrate's court.

...[Indistinct] the applicants may have been incarcerated 20 unlawfully.

Contrary to the applicants, ...[indistinct] such ...[indistinct], ...[indistinct] the second respondent's handwritten notes of the proceedings, demonstrated that the applicants ...[indistinct] applied for bail on 11 March 2022 but that their bail was extended pending sentence. An application

for bail, in the light of the applicants having been convicted of schedule ...[indistinct] offences, would have provided both applicants ...[indistinct] the course of the ...[indistinct], which they did not do.

I was not furnished with the electronic transfer, in 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 avail. ...[Indistinct], the matter of the relief sought resulted in  
10 the respondent's ...[indistinct].

In the event that the applicants hold the view that the initial court committed an ...[indistinct] by the Court violating the ...[indistinct] then the provisions of Rule 53 are available to the applicants.

The urgent Court is not in a position to deal and determine what is effectively a bail application, particularly in instances ...[indistinct]. However, there is no provision ...[indistinct] "after hours" bail in such matters. However, it is well established that civil courts do not likely become enrolled  
20 ...[indistinct] in proceedings in criminal cases, save in exceptional ...[indistinct] which this matter is not. The applicants ...[indistinct] and entitled and they remain to date ...[indistinct] in accordance with the provisions of the Criminal Procedure Act 51 of 1977, on the first available court date.

In my view, the applicants are obliged by law to

...[indistinct] for bail within the confines of the established statutory mechanisms. The applicant cannot avoid the provisions of section 65 ...[indistinct] of the Criminal Procedure Act by approaching ...[indistinct] court and ...[indistinct] motion court proceedings.

In the event that the “bail applications” in the regional court ...[indistinct], the applications are free to lodge appeal proceedings to this court against that denial of bail.

In the circumstances I am of the view that the  
 10 application ...[indistinct] and I grant the following order:

The application is dismissed with costs.

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**CRUTCHFIELD, J**

**JUDGE OF THE HIGH COURT**

**DATE:** .....