

Reportable:		NO
Circulate to Judges:	NO	
Circulate to Magistrates:		NO
Circulate to Regional Magistrates:		NO

Editorial note: Certain information has been redacted from this judgment in compliance with the law.



**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG**

CASE NUMBER: CAB 04/2024

MAGISTRATES CASE NUMBER: KLD713/2023

In the matter between:-

E[...] M[...]

APPELLANT

AND

THE STATE

RESPONDENT

BAIL APPEAL

CORAM : PETERSEN J

DATE HEARD: 24 MAY 2024

DATE OF JUDGMENT: 06 JUNE 2024

ORDER

The appeal against the refusal of bail is dismissed.

JUDGMENT

PETERSEN J

Introduction

- [1] This is an appeal by the appellant against the refusal of bail by the Magistrate, Klerksdorp ('court *a quo*').
- [2] The appellant is presently appearing in the Regional Court, Klerksdorp charged with seven (7) offences in contravention of the Prevention and Combatting of Trafficking in Persons Act 7 of 2013 ('TIP'), which offences include: contravening section 4(1) of TIP (counts 1, 4 and 7) – trafficking in persons; contravening section 6 of TIP (counts 2 and 5) – possession, destruction, confiscation,

concealment of or tempering with documents of a victim in trafficking; and contravening section 7 of TIP (counts 3 and 6) – use of the services of a victim of trafficking.

The applicable bail schedule and onus

[3] It was common cause between the State and defence in the court *a quo* that the bail application resorts within the ambit of section 60(11) (a) read with Schedule 6 of the Criminal Procedure Act 51 of 1977 (“the CPA”), by virtue of counts 1, 4 and 7. Schedule 6 lists “*Any offence referred to in section 4 and involvement in these offences as provided for in section 10 of the Prevention and Combating of Trafficking in Persons Act, 2013.*”

[4] Section 60(11)(a) of the CPA provides that:

“Notwithstanding any provision of this Act, where an accused is charged with an offence —

(a) referred to in Schedule 6, the court shall order that the accused be detained in custody until he or she is dealt with in accordance with the law, unless the accused, having been given a reasonable opportunity to do so, adduces evidence which satisfies the court that exceptional circumstances exist which in the interests of justice permit his or her release;..”

The grounds of appeal

[5] The grounds of appeal as set out in the Notice of Appeal are formulated as follows:

- “1. The learned magistrate erred in finding that the appellant did not prove the existence of exceptional circumstances in order to find that it is in the interest of justice for her to have been granted bail.
2. In refusing bail for the appellant, the magistrate erred in that he kept the appellant in custody as anticipatory punishment for an offence of which she has not been convicted of.
3. The magistrate ought to have found that the personal circumstances of the appellant, the fact that she is not a flight risk, that she has a shared fixed property in South Africa registered in her name, that she is married and her husband is gainfully employed in South Africa, that she is the mother of minor children who are residing in South Africa, the fact that she has been validly residing in South Africa for a considerable period of time and the fact that the State does not have a strong case against her cumulatively constitute exceptional circumstances in order to find that it is in the interest of justice for her to be granted bail.
4. The magistrate further erred in that he did not consider the imposition of stringent bail conditions as an alternative for dismissing her application for bail.
5. The magistrate erred in finding that the appellant is a flight risk due to the fact that she had exited the country before and as a result of the fact that she faces a sentence of life imprisonment.
6. The magistrate erred in that he overemphasized the seriousness of the offence and the possibility that the appellant might not stand at trial without good reasons to have done so.

7. The magistrate should have granted bail to the appellant with suitable bail conditions.”

The appeal in this Court

[6] An appeal against the refusal of bail is governed by section 65(4) of the CPA, which provides that:

“The court or judge hearing the appeal shall not set aside the decision against which the appeal is brought, unless such court or judge is satisfied that the decision was wrong, in which event the court or judge shall give the decision which in its opinion the lower court should have given.”

[7] The sentiments expressed in *S v Barber* 1979 (4) SA 218D at page 220 E-H are apposite:

“It is well known that the powers of this Court are largely limited where the matter comes before it on appeal and not as a substantive application for bail. This Court has to be persuaded that the magistrate exercised the discretion which he has wrongly. Accordingly, although this Court may have a different view, it should not substitute its own view for that of the magistrate because that would be an unfair interference with the magistrate’s exercise of his discretion. I think it should be stressed that, no matter what this Court’s own views are, the real question is whether it can be said that the magistrate who had the discretion to grant bail exercised that discretion wrongly.’

(emphasis added)

The evidence adduced at the bail hearing

[8] The appellant and the State chose to adduce evidence at the bail hearing by way of affidavit.

The evidence of the appellant

[9] The evidence of the appellant deposed to in her affidavit in support of bail may be succinctly summarised as follows. She is a Congolese citizen in possession of a Permanent Residence Permit and formal recognition of refugee status. The appellant takes issue with the charges proffered against on a contention that she cannot understand same, when she has never held the complainants' hostage nor withheld or confiscated their travel documents at any time.

[10] The appellant is married to Y[...] M[...] since 16 June 2015 which marriage still subsists. Her husband also possesses a formal recognition of refugee status in the Republic of South Africa. They have three (3) minor children who are similarly vested with refugee status. Her husband is employed as a Medical Officer at the L[...] H[...] S[...] since 2008. The minor children who are dependent on them attend school at C[...] Klerksdorp and are in grades 10, 6 and 3 respectively. The appellant, her husband and minor children reside at [...] H[...] W[...] L[...] P[...] Wilkoppies, which property she owns jointly with her husband.

[11] According to appellant she generally takes care of the minor children by assisting them with preparation for school, daily transportation to and from school, and normally assists them with their schoolwork to ensure optimum outcomes. The appellant asserts that whilst her husband is the primary breadwinner, she generates a monthly income of R5000.00 (five thousand rand) per month by selling second-hand clothing and shoes. This income is used to cover the immediate costs of daily lunches and school excursions for the minor children. The appellant asserts that her continued incarceration can only prejudice herself and her family and especially her children which creates no benefit to the State. Her continued incarceration, she asserts has caused confusion and anxiety to her children who are used to her presence.

[12] The appellant has no previous convictions nor any pending cases on which she has been released on bail, which was confirmed pursuant to a warning extended in terms of section 60(11B)(a) of the CPA. The appellant was further apprised by the Magistrate of her right to remain silent and not to be compelled to adduce evidence, which was also explained by her legal representatives. The fact that adducing any evidence on the merits, save for information regarding any previous convictions or pending cases on which the appellant may have been released on bail, being used against her at a subsequent trial was also explained. Section 60(11B)(c) of the CPA provides in this regard, that:

“The record of the bail proceedings, excluding the information in paragraph (a), shall form part of the record of the trial of the accused following upon such bail proceedings: Provided that if the accused elects to testify during the course of

the bail proceedings the court must inform him or her of the fact that anything he or she says, may be used against him or her at his or her trial and such evidence becomes admissible in any subsequent proceedings.”

[13] The appellant elected to depose to evidence on affidavit on the merits. The following is deposed to in this regard:

“16. MERITS

16.1 My legal representatives have explained the provisions of section 60(11) of the Act to me. I respectfully make the following submissions in this regard:

16.2 I have been informed that I am accused of having committed the offence of Human Trafficking, which I find at the least to be ludicrous!

16.3 I am advised that I do not have to deal with the merits of the case for purposes of the bail application.

16.4 I should hasten to place on record that I am related to the 2 Complainants in this matter and I take notice that the State did not place their names on record and for their protection I would not refer to them by name save to say that the (*sic*) Complainants.

16.5 If my recollection serves me well; during the year 2019, prior to the first Complainant's arrival, who I would refer to as DK also... there were ongoing talks between me and my Aunt from home who detailed to me their circumstances that they were very poor and struggling and as such she was worried about the education as their parents had no income (*sic*) thus requested me to assist DK with funds to apply for a passport and visa. I contributed an amount of R3000.00 and my aunt agreed that

she will assist her to obtain her travelling documents and purchase a ticket for her.

16.6 During September 2019, DK arrived in South Africa and was received by my deceased parents who stayed with her at Vereeniging, GP. She then came to stay with me after 3 weeks.

16.7 At all material times through DK's stay with me in South Africa, her travel documents were always in her possession and she also had her own room as we own a spacious 4 bedroom house. DK was treated the same as all family members in the house and ate the same food that was prepared for all in the household. DK was never treated any differently to all children in the house. So much so that DK was seen as a family member that we enrolled for English classes to prepare her to start for school for 2023 as there is no French school close by. She would have attended a C[...] Klerksdorp for English classes. DK was never forced to perform any domestic duties and she contributed her share as all household members in cleaning and keeping the house neat. I deny that I forced her to domestic duties and she voluntarily assisted as she was expected of all children in the house to do certain chores in ensuring that the household was habitable. Every young and adult person in the household contributed by performing chores as in every family.

16.8 The complainant which I refer to as "MEN" also, arrived during October 2021 after the same arrangement were made as I sent my aunt money, to enable her to look for employment.

16.9 One Friday in January 2022, I came home and was informed the police have removed the complainants from our home and upon inquiry at the Police Station we informed that a case of domestic violence was opened and only heard that I was being arrested for the charges as preferred by the State.

16.10 The third Complainant, if it is the same person resided with us since her arrival and also her travelling documents were never removed from her by myself and she also had the freedom to move in and out as she pleased from the house. She could leave and come back and she has family in Vereeniging.”

[14] The appellant parrots the provisions of section 60(4)(a) to (e) of the CPA by maintaining that there is no likelihood of her posing a danger to any person; being a flight risk; not having knowledge of any evidentiary material against her; communicating with State witnesses; or her release on bail disturbing the public order or undermining the proper functioning of the criminal justice system.

The evidence for the State as respondent

[15] The investigating officer, Warrant Officer Petrus Barnardus Vermeulen, in his affidavit opposing the release of the appellant on sets out the State’s case against the appellant in explicit detail. This show of its hand by the State, which is commendable in the circumstances of the matter at hand, is generally unprecedented in bail applications.

[16] The facts which underpin the case for the State as extracted on a reading of the affidavit, from *inter alia*, the affidavits deposed to by the complainants are essentially as follows. “DK” a citizen from the Democratic Republic of the Congo (“the DRC”) who was 16 (sixteen) years old at the time was recruited in her hometown to move to the Republic of South Africa during July 2019. Since DK’s parents had passed away several years earlier, she was offered a better life in South Africa. DK was led to believe that she

would attend school in South Africa to complete Grades 11 and 12 with the prospect of furthering her studies at a University in South Africa. *DK* was excited about the prospects of a decent education which would enable her to improve the quality of life of her family. She therefore acquiesced in the proposal to relocate to South Africa.

[17] *DK*'s aunt and the appellant's younger sister were friends. The arrangements for *DK* to travel to South Africa were negotiated between the appellant and *DK*'s aunt. To this end, *DK* was provided with an identity document with her photograph, whilst the personal details reflected therein were false. According to *DK* she was transported from the *DRC* with other persons, accompanied by a man she refers to as "*the transporter*". *DK* and the other persons were left by *the transporter* in Zimbabwe, a distance from the South African border. The travel documents of *DK* and the other persons were taken by *the transporter* who instructed them to walk through the bushveld to Musina in South Africa where they would be met by another man once they had crossed the border.

[18] They indeed met this man in Musina, who transported them to Johannesburg. Upon arrival in Johannesburg, *DK* was transported to a house in Vanderbijlpark in Gauteng, where family members of the appellant resided. *DK* sojourned with the family members of the appellant for approximately two (2) weeks before the appellant arrived and took her to Klerksdorp.

[19] According to *DK* none of the promises made to her materialised. From 2019 to January 2022, she was not registered at a school but instead forced to perform unremunerated domestic work in the household of the appellant. During that time the appellant was verbally and physically abusive towards *DK* and threatened to send her back to the *DRC* when she refused to perform domestic work. According to *DK* she was physically beaten and burnt with hot water by the appellant.

[20] *DK* was only allowed telephonic contact with her family members every three (3) months, during which calls she was forced by the appellant to fib to her family and inform them that everything was in order and that she was happy. Eventually the appellant informed *DK's* aunt that she was rebellious. *DK* in turn informed her aunt that none of the promises made by the appellant were fulfilled and that she was mistreated by the appellant. *DK's* aunt, however, informed her that she would not be welcome to return home to the *DRC*.

[21] "*MEN*" a citizen from the *DRC* was recruited by an unknown man in her hometown between September and October 2021 to move to South Africa. The unknown man convinced her to visit the appellant in South Africa to secure employment. This unknown man facilitated the travel arrangements to South Africa. When *MEN* arrived in Lumbubashi, she was met by another unknown man referred to by her as "*the tour guide*". In similar circumstances to *DK*, *the tour guide* transported *MEN* and other persons from the *DRC* to South Africa.

[22] According to *MEN the tour guide*, during the journey from *the DRC*, remained in constant contact with the appellant. The *tour guide* similarly left *MEN* and the other persons in Zimbabwe a distance from South African border. In *MEN's* case she was in possession of valid travel documents and furnished with fraudulent travel documents. The *tour guide* took possession of her fraudulent documents when she was left in Zimbabwe. Again, they were told to walk to Musina.

[23] In Musina *MEN* and the other persons were collected by an unknown man and transported to Johannesburg. From Johannesburg *MEN* was also taken to a house in Vanderbijlpark, Gauteng which belonged to family members of the appellant. A few days after her arrival in Vanderbijlpark, the appellant arrived and took her to Klerksdorp where *DK* was still “enslaved”. As with *DK*, *MEN* was also forced to perform unremunerated domestic work. The appellant took possession of the travel documents of *MEN*.

[24] At times when *MEN* enquired about the proper employment she was promised prior to leaving *the DRC*, the appellant would physically and verbally abuse her. *DK* and *MEN* were fed rotten food and not provided with decent lodging.

[25] On 16 January 2022 the appellant assaulted *DK* with a sjambok in the presence of *MEN*. *DK* managed to leave and sought help. Two persons referred to as “*KT*” and “*AEM*” assisted *DK*. They took

photographs of her injuries and took her to the Thuthuzela Care Centre.

[26] Members of the Klerksdorp Police Station took *DK* back to the residence of the appellant and warned the appellant not to assault her. A few days later, however, the matter was reported to the Directorate Priority Crimes Investigation (“*DPCI*”), commonly known as the HAWKS. On 20 January 2022, Lieutenant Colonel Pretorius (“*Pretorius*”) and other members of the *DPCI* attended at the residence of the appellant. The appellant was not home at the time and *DPCI* were consequently able to interview *DK* and *MEN*. *MEN* informed *Pretorius* that the appellant had taken possession of her passport; and *DK* and *MEN* informed *Pretorius* that they were not in possession of cellular phones. *DK* and *MEN* were taken to the Thuthuzela Care Centre and thereafter to a place of safety.

[27] The *DPCI*, concerned about the wellbeing of *DK* and *MEN* requested assistance from the Department of Social Development (“the *DSD*”). Following full interviews with *DK* and *MEN* by the *DSD* they were issued with letters of recognition in accordance with the provisions of the Prevention and Combating of Trafficking in Persons Act 7 of 2013.

[28] Messages were left for the appellant to contact members of the *DPCI* to meet with them. Subsequently, the *DPCI* interviewed the appellant who handed over the passport of *MEN*. The appellant informed the members of the *DPCI* that she was prepared to pay for bus tickets for *DK* and *MEN* to return to *the DRC*. On 2 June

2023 the DPCI executed a warrant of arrest which was issued for the appellant in terms of section 43 of the CPA. At the time of execution of the warrant, two (2) more ladies from the *DRC* were found at the residence of the appellant. One of the ladies is a relative of the appellant whilst the other "*KHB*" informed the DPCI that she was recruited in her hometown during 2022 under the guise that the appellant required a nanny for her children. *KHB* excited by the prospect of earning more money in South Africa took up the opportunity.

[29] A photograph was taken of *KHB* who was informed that travel documents would be arranged for her. *KHB* was fetched by an unknown man who travelled with her from the *DRC*. The unknown dispossessed her of her travel documents somewhere between the border of Zimbabwe and South Africa and destroyed it, alleging that her documents had expired. *KHB* was also told to walk through the bushveld to South Africa.

[30] On the South African side of the border *KHB* met another unknown person who transported her to Johannesburg where she and transported to the Vaal. The appellant arrived a few days later and transported *KHB* to her (the appellant's) brother's house. Approximately four (4) months later the appellant fetched *KHB* and transported her to her home in Klerksdorp. *KHB* was instructed to clean the house and bath and cloth the appellant's children. She was remunerated for her services in November and December 2022. From January to June 2023, no payment was forthcoming for the services she rendered.

[31] According to *KHB* the appellant shouted at her, called her a witch and assaulted her. She was made to sleep on a sponge mattress in the lounge and made to eat rotten food. She was not aware that she would be forced to work without remuneration. The only communication she had with her mother in *the DRC* was by telephone and in the presence of the appellant.

[32] According to further information received by the DPCI, two (2) other ladies were brought to the residence of the appellant, but they managed to escape.

Applicable authority

[33] As stated above the detailed facts which underscore the State's case against the appellant are unprecedented in a bail application. In *S v Schietekat* 1998 (2) SACR 707 (C) at 713h-714j Slomowitz AJ placed the nature of evidence the State is required to adduce in offences falling within the ambit of section 60(11)(a) and (b) in context where he stated that:

'Bail proceedings are sui generis...The State is thus not obliged in its turn to produce evidence in the true sense. It is not bound by the same formality. The court may take account whatever information is placed before it in order to form what is essentially an opinion or value judgment of what an uncertain future holds. It must prognosticate. To do this it must necessarily have regard to whatever is put up by the State in order to decide whether the accused has discharged the onus...'

(emphasis added)

[34] In *S v Viljoen* 2002 (2) SACR 550 (SCA) at 561G-I, paragraph 25, the Supreme Court of Appeal further placed the approach to evidence adduced by an accused on whom the onus rests in a Schedule 5 bail application, and the concomitant duty of the State in the face of the absence of a *prima facie* case made out by an accused as follows:

“[25] (Loosely translated by this Court): ... I wish, however, to note two reservations in bail applications. The first is with reference to an accused faced with evidence already on record, not being able to make out a prima facie-case, in which case there is no duty on the State to adduce evidence in rebuttal. The second, and most important reservation, is that caution must be had not to turn every bail application into drawn-out trial before criminal trial...”

(emphasis added)

[35] In the leading authority of *Mathebula v S* (431/2009) [2009] ZASCA 91; 2010 (1) SACR 55 (SCA); [2010] 1 All SA 121 (SCA) (11 September 2009) regarding schedule 6 bail applications, Heher JA (Ponnan JA and Bosielo AJA concurring) stated as follows:

“[11] In the present instance the appellant’s tilt at the state case was blunted in several respects: first, he founded the attempt upon affidavit evidence not open to test by cross-examination and, therefore, less persuasive: cf *S v Pienaar* 1992 (1) SACR 178 (W) at 180h; ...

[12] But a state case supposed in advance to be frail may nevertheless sustain proof beyond a reasonable doubt when put to the test. In order successfully to challenge the merits of such a case in bail proceedings an applicant needs to go further: he must prove on a balance of

probability that he will be acquitted of the charge: *S v Botha* 2002 (1) SACR 222 (SCA) at 230h, 232c; *S v Viljoen* 2002 (2) SACR 550 (SCA) at 556c. That is no mean task, the more especially as an innocent person cannot be expected to have insight into matters in which he was involved only on the periphery or perhaps not at all. But the state is not obliged to show its hand in advance, at least not before the time when the contents of the docket must be made available to the defence; as to which see *Shabalala & Others v Attorney-General of Transvaal and Another* [1995] ZACC 12; 1996 (1) SA 725 (CC). **Nor is an attack on the prosecution case at all necessary to discharge the onus; the applicant who chooses to follow that route must make his own way and not expect to have it cleared before him. Thus it has been held that until an applicant has set up a prima facie case of the prosecution failing there is no call on the state to rebut his evidence to that effect: *S v Viljoen* at 561f-g.**

...

[15] The remainder of the personal factors urged on us, are neither unusual or such as singly or together warrant release of the appellant in the interest of justice. Parroting the terms of subsec (4) of s 60, as he did, does not *establish* any of those grounds, without the addition of facts that add weight to his *ipse dixit*."

(emphasis added)

[36] In *S v Hudson* [1980] 1 All SA 130 (D) at 131 the following was said regarding a broad allegation by an accused who applies for bail, that such accused will not abscond and leave the country:

“... the expectation of a substantial sentence of imprisonment would undoubtedly provide an incentive to the appellant to abscond and leave the country...

where an accused applies for bail and confirms on oath that he has no intention of absconding due weight has of course to be given to this statement on oath. However, since an accused who does have such an intention is hardly likely to admit it, implicit reliance cannot be placed on the mere say-so of the accused. The court should examine the circumstances.”

(emphasis added)

Discussion

[37] It is against this background that the appeal against the refusal of bail by the court *a quo* must be considered, relevant to the third ground of appeal which embraces the main tilt at the decision of the Magistrate in refusing bail. The third ground of appeal as a reminder is that “(T)he magistrate ought to have found that the personal circumstances of the appellant, the fact that she is not a flight risk, that she has a shared fixed property in South Africa registered in her name, that she is married and her husband is gainfully employed in South Africa, that she is the mother of minor children who are residing in South Africa, the fact that she has been validly residing in South Africa for a considerable period of time and the fact that the State does not have a strong case against her cumulatively constitute exceptional circumstances in order to find that it is in the interest of justice for her to be granted bail.”

[38] The appellant bore the onus to prove exceptional circumstances justifying her release on bail on a balance of probabilities, in the court *a quo*. The case for the appellant in the court *a quo* was premised

predominantly on her personal circumstances, the interests of her minor children and her reliance on the presumption of innocence.

[39] The appellant sought to controvert the strength of the State's case through a single assertion that she had been informed that she was accused of committing the offence of human trafficking which she finds at the least to be ludicrous. Other than this single assertion, the facts deposed to by the appellant regarding the presence of *DK*, *MEN* and *KHB* at her residence greatly dovetails on the evidence of the State, except where she is implicated in acts of human trafficking in contravention of TIP, which are inherent in the versions of *DK*, *MEN* and *KHB*.

[40] The appellant maintains that she is not a flight risk. The appellant on her own version was instrumental in the travel arrangements for *DK* and *MEN*. The State's case is that, save for *KHB* who also had valid travel documents, *DK*, *MEN* and *KHB* travelled to South Africa with fraudulent documents. They illegally crossed the border from Zimbabwe to South Africa where the illegal fraudulent documents were returned to them in South Africa. This version of the State has not been gainsaid by the appellant through controverting evidence, save for her *ipse dixit* that the State's allegations are ludicrous. The evidence of the State demonstrates that the appellant clearly has ties with persons who are able to secure fraudulent travel documents.

[41] To further cast doubt on the broad assertion by the appellant that she is not a flight risk, the State adduced evidence to the court *a quo* to demonstrate the cross-border movement of the appellant from South Africa to the *DRC*. During the arrest of the appellant, two (2) travel documents were seized. The first is a travel document issued by the Department of Home Affairs of South Africa in the name of the appellant as a refugee. There are no entries in the travel document and it has never been used. The document expired on 10 May 2021.

[42] The second travel document is a passport issued by the *DRC* on 6 July 2021 in the name of the appellant, who is a refugee from the *DRC*. In the said passport the name of the appellant is reflected as “AV.Ikuna No 35 Q/Imbadi C/Masina, Kinshasa.” The appellant has travelled on numerous occasions using this passport.

[43] The marriage between the appellant and her husband Y[...] M[...] was entered into on 16 June 2015 in Mwanda. The Department of Home Affairs of South Africa, however, has no record of the appellant leaving South Africa or returning through any of its ports during that time.

[44] On 18 June 2021 the appellant is said to have departed from South Africa on Ethiopian Airways flight ET858 with passport number [...]. The appellant has not produced the said passport upon arrest and the DPCI are therefore not in possession thereof. On 14 August 2021 the appellant entered South Africa at OR Tambo

International Airport (“*ORT*”) on Ethiopian Airways flight ET809 from Addis Ababa. The appellant used the second travel document alluded to above to enter South Africa.

[45] On 6 April 2022 the appellant exited South Africa at *ORT* on South African Airways flight SA58 to Kinshasha in the *DRC*. On this occasion the appellant used the second passport alluded to above to exit South Africa and entered the *DRC* on the same day. On 25 April 2022 the applicant entered South Africa on Airlink flight 4Z37 from Dar es Salaam.

[46] On 15 February 2023 the appellant exited South Africa at *ORT* on Asky Airlines flight KP71 to Kinshasha in the *DRC*. The appellant used the second travel document alluded to above to exit South Africa and entered the *DRC* on the same day. The appellant returned to South Africa on 30 March 2023 on South African Airways flight SA59.

[47] The travel documents of the appellant demonstrate that she clearly maintains ties with the *DRC* through regular travels between the *DRC* and South Africa. Whilst the appellant holds a permanent residence permit, she maintains her ties with the *DRC*. There is no mutual legal agreement between South Africa and the *DRC* and the *DRC* is also not part of the SADC protocol. The *DRC* is therefore under no obligation to comply with any extradition requests from South Africa.

[48] The appellant is alive to the fact that she faces the prospect of life imprisonment in the event of a conviction of counts 1, 4 and 6, as provided for by section 51(1) and Schedule 2 of the Criminal Law Amendment Act 105 of 1997 (as amended). The finding by the court *a quo* that the appellant is a flight risk is borne out by the overwhelming evidence adduced by the State on the movement of the appellant in and out of South Africa.

[49] The appellant places much emphasis on the effect of her continued incarceration on her minor children. In her bail affidavit the appellant sought to place emphasis on a family member assisting with her children until the schools open, and that once the schools open it would add a burden to the said family member. The State persuasively demonstrated that the appellant during school terms travelled to the *DRC* without her children for extended or protracted periods of time. Clearly, the appellant and her husband have been able to mitigate the absence of the appellant for protracted periods of time, when required.

[50] The State has also gone further than the appellant in expounding on her personal circumstances and ownership of property in South Africa. According to the Financial Intelligence Centre (*“the FIC”*) the State has established that the appellant is in fact as she alleges the co-owner of the immovable property situated at [...] H[...] W[...], L[...] P[...], Wilkoppies, Klerksdorp held under title deed T[...] at the Pretoria Deeds Office. The property was purchased on 10 September 2018 for an amount of R2 830 000.00. The *FIC* also

established that the appellant does not hold any movable assets in South Africa. An enquiry at the Company and Intellectual Property Commission ('CIPC), revealed that the appellant is the Director with appointment date 25 February 2020 of R[...] under registration number [...]. The company status is indicated as "annual return, deregistration process". The residential address of the appellant as Director of R[...], furnished to the CIPC, is reflected as [...] G[...] Street, CE2, Vanderbijlpark, Gauteng. However, at the time of the registration of R[...], the appellant resided at the Wilkoppies address in Klerksdorp.

[51] The appellant is for obvious reasons familiar with the identity of the complainants who are in a place of safety, and their family members in the *DRC*. It is therefore a neutral fact that interference with the complainants is a probability.

[52] The case presented by the State in its opposition to bail demonstrates an exceptionally strong case, rather than a weak case which is ludicrous as claimed by the appellant. The complainants are in protective custody, have been given the necessary protective status by the *DSD* as victims of trafficking and have clearly deposed to affidavits on the complicity of the appellant in their trafficking from the *DRC* to South Africa.

[53] On a reading of the Magistrate's reasoning, a value judgment was made on the evidence of the appellant when juxtaposed against the

evidence of the State, the applicable authorities, and the conclusion reached that the appellant failed to dispense with the onus placed on her to prove the existence of exceptional circumstances which justify her release on bail. I cannot fault the Magistrate for the ultimate order reached.

Conclusion

[54] On the test espoused in section 65(4) of the CPA, I cannot find that that the decision inherent in the order of the Magistrate refusing bail, was wrong.

Order

[55] In the result the following order is made:

The appeal against the refusal of bail is dismissed.

A H PETERSEN

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION, MAHIKENG

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