

CASE NO.: A384/2010

NOT REPORTABLE

IN THE HIGH COURT OF NAMIBIA

In the matter between:

ADRIAAN JACOBUS PIENAAR

APPLICANT

versus

THE CHIEF MAGISTRATE WINDHOEK

1ST RESPONDENT

THE STATE

2ND RESPONDENT

CORAM:

HOFF, J

Heard on:

20 December 2010

Delivered on:

20 December 2010 (*Ex tempore*)

JUDGMENT

HOFF, J; [1] This is an application brought on an urgent basis which the applicant seeks the following relief.

[2] That this Court orders the Magistrate's Court to within twenty four hours hear a bail reduction application. Alternatively that the Court orders that Magistrate M Mujali in the in Windhoek Magistrate's Court hear the bail reduction application within a reasonable time.

[3] When this matter was heard Mr Small who appears on behalf of the 2nd Respondent raised a point *in limine*, which in a nutshell relates to the issue of jurisdiction.

[4] Section 63(1) of the Criminal Procedure Act 51 of 1977 regulates the

procedure where an applicant applies for a reduction of bail or an amendment of his bail conditions, which reads as follows;

"Any Court before which a charge is pending in respect of which bail has been granted may upon the application of the prosecutor or the accused increase or reduce the amount of bail determined under Section 59 or 60 or amend or supplement any condition, imposed under Section 62 whether imposed by that Court or any other Court and may where the application is made by the prosecutor and the accused is not present when the application is made issue a warrant for the arrest of the accused and when the accused is present in Court determine the application".

[5] The case of the applicant is that, he moved his application for reduction of the bail moneys fixed, in the Magistrates Court at the stage prior to his case, being transferred to the Regional Court.

[6] And the argument therefore goes that it is for that reason, that the Magistrate's Court, is the Court, which must hear his application for the reduction of his bail moneys.

[7] Section 63 as I just read out now, is very clear on the issue jurisdiction. At the present moment the matter is pending before the Regional Court, the case having been transferred by the Magistrate to the Regional Court. It is for this Court at this stage to look at and to determine whether the Magistrate's Court has any jurisdictions to hear the bail reduction application as requested by the applicant.

[8] Section 63 is in my view very clear and unambiguous. It is the Court before which a charge is pending which has jurisdiction. The case having been transferred to the Regional Court in my view the Regional Court is the Court in which this case is pending and it is for that reason the Regional Court, which has jurisdiction to hear the reduction of the bail moneys in this regard.

[9] The Magistrate's Court having transferred the case to the Regional Court is *functus officio*. It has no jurisdiction to hear a bail reduction Application as requested by the applicant. It is for this reason that this

Court cannot grant the application by the applicant.

[10] The applicant is advised to have his bail reduction application heard in the Regional Court.

[11] In the result the application is refused.

HOFF, J

ON BEHALF OF THE APPLICANT:

IN PERSON

Instructed by:

ON BEHALF OF THE 2nd RESPONDENT

ADV. SMALL

Instructed by:

OFFICE OF THE PROSECUTOR-GENERAL