CASE NO. CA 92/2009

IN THE HIGH COURT OF NAMIBIA

In the matter between:

SYDNEY CLAUDE SCHNUGH

versus

THE STATE

CORAM: **VAN NIEKERK, J *et* PARKER, J**

Heard: 24 May 2010

Delivered: 31 January 2011

JUDGMENT

VAN NIEKERK, J: [1] The appellant was arrested on 19 December 2008 on allegations of theft by false pretences and theft by conversion of a motor vehicle valued at about N$70 000. A bail application brought in the magistrate's court was unsuccessful, the magistrate having dismissed the application on the grounds (1) that the appellant had not discharged the onus resting on him of showing on a balance of probabilities that he would not abscond and stand his trial; and (2) that it would not be in the interests of the public or the administration of justice to release the appellant because (i) he had evaded arrest; and (ii) the investigation was incomplete.

[2] The magistrate's decision was appealed. This Court *(per* MANYARARA AJ and SWANEPOEL AJ (as he then was) found that the magistrate had committed no misdirection and on 13 March 2009 dismissed the appeal.

[3] On 4 September 2009 appellant launched a second bail application before the same magistrate on what were alleged to be new facts. These were (i) the lengthy period of incarceration which had passed while the police investigation had not been finalized; (ii) as a result, there is a decreased risk of interference by the appellant in the police investigation; and (iii) the fact that there had not been a formal inquiry when the magistrate previously refused bail in terms of section 61 of the Criminal Procedure Act, 51 of 1977. The magistrate found that only the facts mentioned in (i) and (ii) *(supra)* were new facts and gave appellant leave to renew his application for bail on these alleged facts. After hearing evidence and argument the magistrate on 12 October 2009 refused bail, whereafter the appellant launched this appeal on no less than fourteen grounds.

[4] The magistrate prepared a written judgment in which she summarizes the evidence presented. The judgment also contains some reasoning, but ends rather abruptly. Although the transcribed record is not clear, it appears that this judgment was read out in court. The final decision, namely whether the application was granted or refused does not appear clearly from the record. However, it is common cause between the parties that bail was indeed refused.

[5] I must confess that I have great difficulty in following the magistrate's judgment and to make sense of parts of the reasoning to discern what the actual grounds were on which bail was refused. My difficulty stems from the manner in which the magistrate expresses herself. The problem could also have arisen because she perhaps did not edit or proof read the written judgment. Furthermore, she did not initially provide additional reasons in response to the notice of appeal. When the appeal came before us on a previous occasion, we ordered that the magistrate provides reasons on the grounds raised in the notice of appeal. These reasons suffer from the same defects as the judgment. In addition, some of the answers do not in substance address the grounds of appeal and are unhelpful.

[6] I think it is necessary to stress the importance of a magistrate's duty to provide reasons when a matter goes on appeal. The magistrate's reasons are, if properly done, of great assistance to the court of appeal, which cannot be expected to adjudicate the appeal without the benefit of the magistrate's findings on fact and law and the accompanying reasoning. That is why rule 67(3) of the magistrates' courts places a duty on the clerk of the court to place a copy of the case record and notice of appeal before the presiding magistrate who shall within 14 days thereafter furnish to the clerk of the court a statement in writing showing -

(i) the facts he or she found to be proved;

(ii) his or her reason for any finding of fact specified in the

appellant's notice as appealed against; and

(iii) his or her reasons for any ruling on any question of law or as to the admission or rejection of evidence so specified as appealed against.

[7] Rule 67(4) places a further duty on the clerk of the court who "shall upon receipt of the judicial officers statement forthwith inform the person who noted the appeal that the statement has been furnished". There is no indication in the record before us that these steps were ever taken. The importance of the magistrate's reasons are emphasised by the fact that he or she is required to furnish amended reasons should the accused amend his/her notice of appeal. This is provided for in rule 67(5), which states:

> "(5) Within 14 days after the person who noted the appeal has been so informed, the appellant may by notice to the clerk of the court, amend his notice of appeal and the judicial officer may, in his discretion, within 7 days thereafter furnish the clerk of the court a further or amended statement of his findings of facts and reasons for judgment."

[8] The matter has been dealt with in at least two reported judgments of this Court. In *S v Tases* 2003 NR 96 HC FRANK, J stated the following at 103G-H:

> "In terms of the Magistrates' Courts Rules, Rule 67(3) a magistrate is obliged to furnish such reasons. Only where he had given an *ex tempore* judgment in which the matters raised in the notice of appeal have been dealt with may he/she decline to furnish further reasons. Even in such a case the magistrate must respond to the notice of appeal by indicating that he/she has nothing to add to the original judgment (S *v Vogel* 1979 (3) SA 822 (N) and *Williams v Eerste Addisionele Landdros, Bloemfontein* 1967 (4) SA 61

[9] In S *v Kakololo* 2004 NR 7 HC MARITZ J (as he then was), dealing with the issue of a valid notice of appeal, stated the following (at 8F-G):

> "[The notice of appeal] ... serves to inform the trial magistrate in clear and specific terms, what the grounds are on which the appeal is being brought and whether they relate to issues of law or fact or both. It is with reference to the grounds of appeal specifically relied on that the magistrate is required to frame his or her reasons under the Magistrate's Courts Rule 67(3)." [my underlining]

[10] He continued (at 10A-B):

> "....[T]he scheme envisaged in Rule 67 is designed to facilitate the fair and expeditious adjudication of appeals. It contemplates, for example, that the court of appeal will have the benefit of the magistrate's reasons specifically addressing the grounds of appeal given at a time when the proceedings are still relatively fresh in his or her mind." [my underlining]

[11] In the South African case of S *v M* 1978 (1) SA 571 (NPD), the Court dealt with the problems encountered when *ex tempore* judgments do not deal at all or only obliquely with the points raised in the grounds of appeal and where the magistrate does not address these points squarely when giving reasons and stated (at 572D):

> "It makes it extremely difficult for a Court of appeal to do justice to both the appellant and to the State if it is obliged to come to a conclusion without the assistance to which it is entitled from a magistrate, and which a magistrate is obliged to give."

[12] The Court in *M's* case also quoted with approval and emphasised (at 573A)

the following statement in the report of the judgment in *Masini v Smith* in 35 *SALJ* 491, namely that the magistrate, when providing reasons "*....must moreover satisfy the Court that he has brought an intelligent and judicial consideration to bear on all the salient and essential features of the case.*"

[13] I respectfully agree entirely with the views expressed in the abovementioned authorities.

[14] What, I think, can be gleaned from the judgment and additional reasons, is that the magistrate came to the conclusion, *inter alia,* that the explanation for the delay in completing the investigation is reasonable; and that there are stronger reasons than during the first application to believe that the State has a strong *prima facie* case against the appellant. The final statement in her judgment reads as follows (the quotation is *verbatim):*

> "Of course the 2nd point that is of decreased of abscondment it is obvious that the Court previous ruled the accused be kept in custody and in this hearing in also the Court ruling in the interest of justice and that of public administration."

[15] Counsel before us were in agreement that the magistrate probably means to say in the last few words that she is denying bail, as in the first application, also in the second application on the basis that it is in the interests of the public and the administration of justice. I think this is a fair interpretation. The first part of

the sentence is more difficult - is the magistrate saying that there obviously is a decreased risk of abscondment because she previously ordered that the appellant be kept in custody? If so, that would beg the question of whether the appellant is likely to abscond if released.

[16] Ms *Schimming-Chase,* who appeared on behalf of the appellant both in the lower court and on appeal, submitted that the judgment should be interpreted to mean that bail was refused on the grounds of the interest of the public and of the administration of justice. However, she also prepared heads of arguments on the basis that the magistrate also refused bail because the appellant posed a flight risk.

[17] Ms *Jacobs* who appeared on behalf of respondent, pointed out that the State in the court *a quo* opposed the granting of bail on the new facts on the basis that there was still a risk of abscondment. This being so, she submitted that the magistrate had to make a finding on this aspect and that she did in fact decide that appellant still posed a risk for certain reasons. State counsel further submitted that the magistrate in fact found that these were no new facts persuading her to grant bail and that she also refused bail on the grounds that it would be in the interests of the public and the administration of justice.

[18] Before turning to the merits of the appeal, it is necessary to record that section 65(4) of the Criminal Procedure Act, 51 0f 1977 expressly provides that the court hearing the appeal shall not set aside the decision against which the appeal is brought, unless the court is satisfied that the decision was wrong, in

which event the court shall give the decision which in its opinion the lower court should have given.

[19] I now turn to a consideration of the first basis on which the second bail application was premised. To understand this basis it is necessary to go back to the first bail application. During that application, the former investigating officer, W/O Tjivikua testified that, in addition to the original charge against appellant, he later received another 27 dockets against appellant, three of which he received on 23 and 24 December 2008 shortly after the appellant's arrest. However, the appellant had not yet been formally charged on these 27 dockets. The additional complaints still had to be investigated but the indications were that they involved a total amount of approximately N$1,5 million. Tjivikua further indicated that he needed certain documentation from the appellant, namely business registers and second hand goods certificates. Tjivikua testified that the appellant had informed him that the registers were in the possession of his wife. According to Tjivikua the speed with which the investigations would be finalised would, *inter alia,* depend on whether appellant would provide the required documentation. He stated that a team of 3 to 4 investigators had been formed to investigate the complaints in the 27 dockets and that he estimated the investigation would be finalised within 3 months. The investigation team allegedly included W/O Nganyone from the Motor Vehicle Theft Unit of Nampol.

[20] On 4 September 2009, the date the second bail application was launched, the appellant had not yet been formally charged on any of the additional

complaints. By then about 8 months had passed, whereas Tjivikua's estimation was that the investigation would have been finalized within 3 months. The fact that the investigation had ostensibly not been finalized while a period of 8 months had passed, therefore formed the first basis of the second bail application.

[21] In the second bail application the State called W/O Nganyone, the new investigating officer, to testify about the progress of the investigations.

He said that he took over from Tjivikua in February 2009, when the investigation of the cases against the appellant was transferred to the Motor Vehicle Theft Unit. He received 43 dockets from Tjivikua. He testified that the only investigation that had been done by then related to the first docket opened against the appellant. On the other 43 dockets no investigation had been done by February 2009. Later he received 3 more dockets against the appellant. Thereafter some complaints were withdrawn, bringing the total number of dockets against the appellant to 36. The gist of the complaints against the appellant is that the complainants handed their motor vehicles over to the appellant to sell them by auction. He allegedly sold the vehicles but failed to pay the proceeds to the complainants. Two of the cases involved goods other than motor vehicles. As many of the vehicles involved had been sold to other second hand car dealers who in time sold them to other customers, he had to spend time tracing all the vehicles. This meant that he had to travel all over the country to trace the vehicles and to obtain statements from all the persons involved. In addition he had 140 other unrelated dockets on hand to investigate, which meant that he could not devote all his attention to the cases against the

appellant. This meant that the investigations were delayed and took about 8 months to complete as opposed to 3 months. While the bail proceedings in the court *a quo* were pending, Nganyone formally charged the appellant with 36 additional counts, bringing the total number of counts of theft by false pretences against appellant to 37. The total value of the alleged thefts is N$1.9 million. He was of the view that all the investigation was finalized, but when after he handed over the dockets to the Deputy Prosecutor General, he received instruction to have certain handwriting analysis done to prove the signature of the accused on certain documents. All indications by Dr Ludik of the National Forensic Science Laboratory were that the analyses would be
finalized by 12 October 2009.

[22] Nganyone was of the view that, taking into consideration the number of cases and the nature of the investigation, the time he took to complete the investigation was not long. The magistrate agreed with him, because she held that the investigation was completed within a reasonable time bearing in mind that he was singly handling it.

[23] Appellant's counsel submitted that the magistrate erred in several respects by ultimately dismissing the first new ground on which the second bail application is premised. The first error the magistrate allegedly made was to rule during the course of the bail proceedings "that the investigating officer was not compelled to testify or to answer questions on the contents of the dockets containing the charges against the appellant to *inter alia* establish whether the

investigations of the charges laid against him were in actual fact finalised and with regard to the strength of the State's case against the accused" (see paragraph 1 of the Notice of Appeal). This in turn, led to a second error, it was submitted, namely that the magistrate relied on and took into account the unsubstantiated *ipse dixit* evidence of the investigating officer, in particular with regard to the finalisation of the investigation, the risk of abscondment, the strength of the State's case and the public interest in the appellant being refused bail (see paragraph 7 of the Notice of Appeal).

[24] As I stated before, while the bail proceedings were pending accused was charged in a separate court on the additional 36 charges. Nganyone made the allegation that the investigation had been finalized, except that the control prosecutor the previous day had given instruction that certain handwriting analysis had to be done to prove the accused's signature. Counsel for appellant wanted to cross examine Nganyone on the issue of whether the investigation had indeed been finalised and concerning his testimony that the State had a strong *prima facie* case against the appellant. In cross examination the defence put it to Nganyone that the investigations had indeed still not been completed and sought to establish this fact. However, Nganyone could not remember certain dates and other relevant acts in relation to the investigation. Initially he agreed to bring the police dockets to court so that he could refresh his memory on these matters, but subsequently the prosecution declined to make the dockets available to the witness. This led to an application by the defence that the dockets be handed to Nganyone so that he would be in a position to refresh his memory. The defence made it clear that it was not seeking access to the dockets or copies thereof.

Defence counsel only wanted the investigating officer to extract some information from the dockets where necessary. In support of the application the defence relied on the South African case of
Nieuwoudt en Andere v Prokureur-Generaal van die Oos-Kaap 1996 (3) BCLR 340 (SE).

[25] The State opposed to the application and the matter was argued. The prosecutor distinguished the *Nieuwoudt* case on a number of grounds and submitted that the defence was not entitled to disclosure at the bail application stage.

[26] The magistrate delivered a ruling with reasons, which was not transcribed in full, as the recording was indistinct in several places. This Court ordered the magistrate on a previous occasion to reconstruct this part of the record, which she did. With due respect to the magistrate, the reconstruction is not a model of clarity. From what I am able to make out, it seems that the magistrate understood what the defence wanted, but she was of the view that, if the police officer has the dockets in court and is asked questions related to the contents, this will (i) lead to disclosure of the contents, which the State was not required to make; and (ii) prejudice the investigation, which was still incomplete.

[27] In my view the magistrate erred in both respects. Firstly, the mere fact that the dockets are made available and even if questions are asked thereon, would not necessarily lead to the disclosure of the contents in a way impinging on the

rights of the State. Secondly, she erred by finding that Nganyone regarded the investigation as incomplete, which he clearly did not.

Thirdly, the magistrate relied on an extract from a case quoted in the *Nieuwoudt* matter (at p344), which is to the effect that where an investigating officer is still gathering information the premature disclosure of his hand by granting access to information in the docket would not only alert the suspect to the progress on the investigation, but may well close off other sources of inquiry. Clearly Nganyone was already past this stage of the investigation, which was by then already about 11 months old. What should also not be forgotten is that it is common cause that the appellant had agreed with the complainants to sell the vehicles or other goods which were delivered to him for that purpose; that he sold these items and that he failed to pay the proceeds over to the complainants, but used the proceeds to cover the expenses of his business. Appellant was in fact trying to obtain bail so that he could work to earn an income to repay the complainants what he owes them. The only issue expressly put into dispute during the bail proceedings was the value of some of the items sold. By this I do not mean to say that there may not be other aspects in dispute, e.g. intention. A further issue that arises is what it was that was actually stolen, as the charge sheets forming part of the appeal record are confusing. Was it the goods or the money that was stolen? In all the circumstances I can hardly imagine that the investigator was holding his cards close to his chest, so to speak.

[28] By clear implication the magistrate ruled that the dockets need not be made available. She ruled that Nganyone must, however, answer questions posed to him during cross examination as he is the investigating officer and "the one who

knows about the case and should be able to answers *(sic)* them relating to the investigation of the case." In her additional reasons she states: "The court ruling was that the investigating officer required (sic) to answer to questions post (sic) to him, hence he is the investigating officer." I suppose by using the word "hence" she means to say "because". The irony is that the defence's application was sparked precisely because Nganyone could not answer the questions posed to him, as he had, not surprisingly, forgotten some details contained in the dockets. The magistrate's ruling, therefore, effectively placed the matter back at square one.

[29] I agree with the submission made on behalf of the appellant, and reflected in the first ground of appeal, that magistrate erred by, in effect, ruling that the investigating officer was not compelled to testify or to answer questions on the contents of the dockets containing the charges against the appellant to *inter alia* establish whether the investigation was in actual fact finalised. In my view the magistrate should at least have ordered the prosecution to have the dockets available. Thereafter the matter should have been dealt with on a question by question basis, depending on the question posed and whether it required a response entailing disclosure of privileged information or not.

[30] It is trite that not every misdirection has an impact on the proceedings which avails an appellant's case on appeal. However, in my view the ruling of the magistrate placed an unwarranted damper on the future conduct of the defence in its cross examination and prejudiced the appellant by closing off an avenue by

means of which he may have been able to establish the facts he needed to lay a basis for the first premise on which he launched the second bail application. Therefore the matter must be approached on the basis that the appellant would have been able to show that the investigation was still not complete. Defence counsel also indicated during her application to have the dockets available that she intended posing questions to Nganyone about the alleged strength of the State case. I think it must be assumed in favour of the appellant that the magistrate's ruling also caused some prejudice in relation to this aspect of the appellant's case.

[31] The eleventh ground of appeal is that the magistrate erred in law and/or fact by taking into account the provisions of section 61 of the Criminal Procdure Act, 51 of 1977, in refusing bail, without a proper enquiry being held on this issue, without the appellant being cross-examined on this issue, and without the State placing such ground on record at the outset of the bail application. It is indeed so that the State initially opposed the second bail application only on the basis that there was a risk that he would abscond. It is on this basis that the appellant went into the witness box and on this basis that he was cross examined. Only during the examination in chief of the investigating officer did he express the view that it is in the interest of justice that the appellant "is remanded in custody and that he stands his trial rather than being outside." The magistrate gave no indication that she was conducting an enquiry as contemplated by section 61 of the Criminal Procedure Act. As I stated above, a fair interpretation of the magistrates' judgment is that the appellant was indeed refused bail on the basis that it would be against the interests of the public and the administration of

justice. I agree with the submission made on behalf of the appellant that he was prejudiced by the belated raising of this matter without proper notice and clear indication of the case he was required to meet.

[32] What further concerns me in relation to this issue is that the magistrate did not give reasons why she was refusing bail in terms of section 61 of the Criminal Procedure Act. All she stated was that, as in the first application, she was also refusing bail on the same grounds in the second application. In her main judgment the magistrate gave no reasons for this decision. In her additional reasons she did not deal with this ground of appeal but referred the court and the parties to her judgment as fully covering this aspect. In my view the fact that she gave no reasons leaves the matter open to the Court of Appeal to consider the matter on its own grounds.

[33] In the alternative, even if I am wrong and I should accept State counsel's submission that the magistrate in fact concluded on the same grounds as during the first application that bail should be refused in the interest of the public and of the administration of justice, it means that the magistrate relied on the fact that (i) had evaded arrest; and (ii) the investigation was incomplete. As to (ii), clearly the investigation was complete except for the handwriting analysis, as was accepted by the magistrate in her final judgment. Appellant could hardly interfere with the remaining forensic investigation, except by refusing to give a specimen or by altering his handwriting. A refusal seems unlikely in view of all the negative implications of such conduct. Altering his handwriting can be done

in or out of custody. No questions were posed to the appellant during cross examination to even suggest that he is likely to interfere with the remaining forensic investigation. Furthermore, the investigating officer made no allegation that the appellant would be likely to interfere with the further investigation. Surprisingly, further, Nganyone was not interested at all in the appellant's registers and other documentation in spite of the fact that in words of Ms Barry (State counsel during the appeal on the first bail application), this evidence was of "paramount importance" (see para [9] of the judgment in that matter). The police did not at any stage seize these items as they would clearly have been entitled to do in terms of the Criminal Procedure Act. On the State's case in the second application the registers and documentation are not important. I do not think the appellant should be further blamed for not offering to hand over the documentation as he was during the appeal on the first bail application (see para [9] of the judgment in that matter.)

[34] As to (i) *(supra),* this Court recorded in the first bail appeal judgment that the arresting officer merely assumed that it was indeed the case and left the point open whether in fact the appellant had in fact evaded arrest by booking into the guest house. I think it is probable on the common cause facts that the appellant was not attempting to flee from Namibia when he booked into the guest house. He had no packed suitcase, no money, no valid passport, no cell phone, no ticket booked of any kind to another country. Even if it could be said that he then may have tried to evade arrest as he knew that the police were looking for him, it seems unlikely that he would have succeeded in doing so for long, as it indeed turned out. As it is, his wife accompanied the police to the place where he was staying. It is not contested that appellant already knew since

about 3 December 2008 that the police were making enquiries about the matter, yet he did not hide, until shortly before 19 December 2009 when he was arrested at the guest house. In my view the fact that the appellant possibly deliberately sought to evade arrest at that stage should not have played a significant role at the stage that the second bail application was heard. Although such a fact, if established, would remain relevant, it would have to be considered together with all the other evidence presented at the second stage. Bearing in mind that the magistrate did not provide any new reasons for refusing bail on the basis of section 61, it seems to me that the refusal during the second bail application on the basis of him evading arrest at a much earlier stage is on thin ground.

[35] I am further of the view that there is merit in the 14th ground of appeal, namely that the magistrate erred by failing to consider the imposition of any bail conditions. There is no indication whatsoever that the imposition of conditions was considered in any way. In my view the circumstances of this case are not such that the refusal of bail is so self-evident that conditions need not even be considered.

[36] Having come to this conclusion, together with the other material misdirections I have already found in regard to the first and 11th ground of appeal, I think that this Court is at large to consider the issue of bail afresh. There is no need to deal with the remaining grounds of appeal.

[37] The appellant testified that since he was last refused bail he has lost his house, his car and his business. His wife has regrettably also passed away in the

interim. The accused expressed his intention to stand trial. Although it is trite that the mere say so of an accused on a matter such as this is not worth much, I think there are some facts which are in his favour. He has no valid passport and there is no evidence that he has applied for one. Although this fact is certainly in itself not conclusive, there is the additional evidence that he has been offered employment at Cobra Cooling by an old friend of 25 years, who also testified to this effect. Mr Brown has a business in Windhoek since 2002 doing vehicle air conditioning repairs and the installation of alarms and other electronic devices. He is willing to employ the accused in an administrative capacity to help him to get back on his feet again. Although his goodwill was questioned by the prosecution in the court *a quo* and labelled as a scheme to get the appellant released on bail, I have a favourable impression, albeit from the written record, of Mr Brown and the way in which he has stepped up to assist and support the appellant. He seems to be sincere, also because, as I understand it, he is willing to put up the money for the appellant's bail. The accused still has several of his family members residing in Namibia, and at the time of the second bail application his mother-in-law was willing to provide him with accommodation. It was suggested by the prosecution *a quo* that the appellant, having lost his house, business and wife, had nothing further to lose by absconding from Namibia and not standing his trial. However, it seems to me that his family and friends are supporting him in a way that makes it improbable that he would abuse the laws of the country by fleeing. In my view it is also not so easy for a person with his name and race to unlawfully cross the borders into other African countries, even into South Africa, and to remain there undetected as a fugitive. The chances that he may disappear into some other country appear to be

remote. I think that if bail in a high amount is granted subject to strict conditions, this would serve the purpose of balancing the concerns of the State with the interests of the appellant.

[38] While stating this I bear in mind that Ms *Jacobs* impressed on us the seriousness of the crimes with which the appellant is charged so far. In this regard I assume that the involvement of the Office of the Prosecutor-General will lead to more sensible charges being drawn than those already framed in the magistrate's court. I agree that it is serious if the appellant is suspected of repeatedly stealing from or defrauding innocent members of the public by convincing or allowing them to entrust their hard earned goods to him to be sold in the *bona fide* expectation to be paid the proceeds of sale in due course, while he knew that he would not be doing so at all or at the agreed time, or if he unlawfully misappropriated the proceeds of the sales. I can understand that such complainants may suffer much hardship in that they have not received what they were entitled to, plus being without the asset sold and probably having to go to the expense of buying another in its place without the expected income from the sale of the asset entrusted to the appellant. It probably is difficult for a complainant to see a person accused of having done such deeds walking the streets and continuing with his life. However, I think they should also realize that this so-called freedom comes at a price and that bail should not be refused in order to punish an accused who has not yet been convicted. In this case the chance that the accused is a danger to the public in that he might repeat any such alleged acts appears to be very slim indeed. What also weighs heavily with me is that it is uncontested that the accused has already repaid several of the

complainants who made civil cases against him and that he is willing to continue doing so if he is released on bail and able to work.

[39] I further take note of the fact that the total amount alleged to be involved in the charges against he appellant is high in the vicinity of N$1,9 million. I added up the values of each charge, some of which have not been specified and some of which are in dispute, to be about N$1,665 000. This is still a high amount. It is not clear from the charges framed whether the value alleged is the estimated value of the goods before sale or whether it is the actual amount which appellant had to pay the complainant. Bearing in mind the high total value allegedly involved, I am nevertheless of the view that a high amount of bail plus stringent conditions are likely to be effective in the appellant standing his trial and satisfying the demands of public interest and the administration of justice.

[40] An indication was given during the hearing before us that the appellant is able to pay bail of N$50 000. I think this amount is fair in the circumstances of this case.

[41] The following order is accordingly made:

1. The appeal against the refusal of bail is upheld.
2. The appellant is granted bail in the amount of N$50 000, subject to the following conditions if the bail money is paid in full:

(a) that the appellant appears at the next time and date to which the trial matter in any court has been postponed and remains in attendance until excused by that court, failing which a warrant may be issued for his arrest, the bail be cancelled and the bail money be forfeited to the State;

(b) that the appellant does not leave the district of Windhoek;

(c) that the appellant reports once daily between 18h00 and 20h00 at the Windhoek Police Station;

(d) that the appellant does not renew or apply for a passport or obtain temporary or emergency travelling documents from the authorities in Namibia of any other country.

3. The investigating officer shall provide a copy of the identification document of the appellant with his description and a copy of this order to all border posts and all official points of exit from Namibia.

VAN NIEKERK, J

I agree.

PARKER, J

Appearance for the parties:

For the appellant: Adv E M Schimming-Chase
At first instructed by LorentzAngula Inc, later by Theunissen Louw and Partners

For the State: Adv H F Jacobs
Office of the Prosecutor-General