REPUBLIC OF NAMIBIA

NOT REPORTABLE

HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: CA 01/2017

In the matter between:

IVAN VICTORY TJIZU **APPELLANT**

and

THE STATE **RESPONDENT**

Neutral citation: *Tjizu v S* (CA 01/2017) [2017] NAHCMD 131 (08 May 2017)

Coram: LIEBENBERG J
Heard: **24 April 2017**
Delivered: **08 May 2017**

Flynote: Criminal procedure – Appeal – Bail – Appellant charged with three offences under the Anti-Corruption Act 8 of 2003 and racketeering in terms of the Prevention of Organised Crime Act 29 of 2004 – Principles applicable to bail discussed – Section 61 of CPA not applicable – Offences charged not listed in Part IV of Schedule 2 – Possible competent verdicts not

included – Section 270 of CPA not finding application – Real likelihood of interference with investigation or witnesses.

Summary: The appellant is a public prosecutor charged with offences under the Anti-Corruption Act and the Prevention of Organised Crime Act. The trial court refused bail in that the investigations were at a premature stage and that there was proof of influence exerted by the appellant on an outstanding suspect and or possible State witness at a stage when the investigation was still ongoing. Appellant appealed against the refusal of bail on these grounds.

Held, that it was an irregularity for the court during bail proceedings to have relied on s 270 of the CPA regarding competent verdicts, making same applicable to offences listed in Part IV of Schedule 2 in order to invoke the provisions of s 61, as appellant was not in custody in respect of any of the offences listed thereunder. However, such irregularity is not material enough to set aside the decision of the trial court as bail was not *per se* refused for reasons provided for in s 61.

Held further, on the issue of public interest, there must be something more tangible for the court to refuse bail than the offender merely holding a public office, funded with tax payers' money.

Held further, though the strength of the State's case, considered together with the seriousness of the crimes involved, is likely to increase the risk of absconding, bail was not objected to on this ground. Hence, the ground of the State's objection to bail on the strength of its case finds no application and therefore not a valid objection.

Held further, failure on the part of the court to enquire as to the period which the investigations would still last did not constitute a misdirection as the time allowed to finalise investigations solely falls within the discretion of the court.

Held further, bail was not refused because appellant's position as prosecutor, however, he stood central and in a position of authority when offences were committed.

Held further, the proper approach in deciding the risk of interference with State witnesses or the investigations itself is to ask whether it is likely that the appellant will, not may, interfere. In the present case, there is evidence that the appellant did hamper the investigation whilst ongoing and there was a real likelihood of continued interference if granted bail. Appeal accordingly dismissed.

ORDER

The appeal is dismissed.

JUDGMENT

LIEBENBERG J:

[1] This is an appeal against the refusal of bail in the district court of Windhoek. Dissatisfied with the outcome of the bail application, the appellant lodged an appeal on 03 January 2017 setting out several grounds in the notice forming the basis of the appeal. At the outset of the appeal hearing the appellant expressed his displeasure with the time it took the Registrar to have the appeal set down for hearing. He further complained about the lack of cooperation from the police in order to have access to funds for legal representation. This notwithstanding, he decided not to have the matter postponed any further for that reason and elected to argue the appeal in person.

[2] Appellant was arrested on 01 December 2016 on charges of corruption under the Anti-Corruption Act 8 of 2003 and racketeering in terms of the Prevention of Organised Crime Act 29 of 2004. On 13 December 2016 the appellant formally applied for bail and, besides his own testimony in support thereof, also relied on the evidence of his life partner. The State opposed the application and presented the evidence of the investigating officer. The court *a quo* delivered its ruling on 15 December 2016 according to which bail was denied and the appellant remanded in custody.

[3] In the notice of appeal the appellant listed numerous grounds according to which the presiding magistrate misdirected himself when considering the bail application. I do not deem it necessary to restate these grounds in any particularity and will discuss same in the course of the judgement.

[4] The grounds on which the State opposed bail are the following: (a) The investigation had only started and was at a premature stage; (b) a risk of interference by the applicant with witnesses if released on bail; (c) interference with the possible arrest of further suspects; (d) that it will not be in the interest of the public or the administration of justice to release the applicant on bail; and lastly, (e) that the State has a strong case against the applicant (which increases the risk of absconding).

The offences charged

[5] From the summary of charges associated with the accused as per the appeal record, the appellant at the time of the bail hearing faced three counts under the Anti-Corruption Act 8 of 2003[1] and one count under the Prevention of Organised Crime Act 29 of 2004.[2] The seriousness of these charges requires no elaboration as the penalty provisions provide for substantial fines. History has proved that the imposition of direct imprisonment, pending on the circumstances of the case, is more likely to be imposed.

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[1] Count 1: c/s 43(1) – Corruptly using office or position for gratification.
Count 2: c/s 35(3)*(b)* – Corruptly using a false document by an agent.
Count 3: c/s 46 – Attempts or conspiracies to commit offences.

[2] Count 4: c/s 2(5) – Racketeering.

[6] For a better understanding of the charges preferred against the appellant it seems necessary to give a brief exposition of the investigating officer's evidence regarding the stage at which the investigation was at the time of the application, and *modus operandi* followed when the offences were committed. Evidence on the merits was presented in order to explain what transpired and though the appellant challenged certain aspects thereof in cross-examination, he invoked his right not to give evidence on the merits, leaving most of the investigating officer's evidence unaffected.

The investigation

[7] Ms Victoria Shikukumwa is a senior investigating officer at the Anti-Corruption Commission for the past 13 years and although the present matter was assigned to her on the 11th of November 2016, she only started with the investigation on 23 November 2016 due to her having been on study leave and official duties abroad. The investigation initially started off as an internal investigation, seemingly initiated by a supervisor at the Magistrate's Court Luderitz Street in Windhoek, regarding 32 police dockets in which a certain Mr Mutjinazo from Opuwo claimed witness fees in several cases. She had listed these dockets and forwarded it to the police. She also at the time approached the appellant, being the prosecutor of the court from which these matters arise, asking him for a contact number so as to establish the extent of the witness' evidence, as there was a wide range of offences involved. The appellant's response to the request was simply that it was his witness and that he would personally contact the person. Appellant during his testimony did not refute these allegations which not only seems to suggest that he has contact with this person, but also that he did not want the supervisor to obtain information from Mr Mutjinazo in connection with witness fees paid out to him. At the time of the bail application this Mr Mutjinazu could not yet be traced.

[8] The investigating officer started off by looking for a specific docket in which a certain Mr Aino Kombanda claimed witness fees in the amount of N$6 600 which had been signed for by the prosecutor of D-Court, being the

appellant. She was then given the list of 32 police dockets prepared by the supervisor. Whereas the appellant was on study leave at the time, access was obtained to his office through the control prosecutor, Mr Thourob, where five of the dockets under investigation were found, plus another from the liaison officer. It had in the meantime been discovered that Aino Kombanda was not a witness to the cases on which witness fees were claimed and paid out on various occasions to the amount of N$20 000. The investigating officer subsequently tracked down Aino Kombanda, as well as a certain Sam Haiduwah, from whom sworn statements were obtained.

[9] In their respective statements the aforesaid persons directly implicated the appellant for orchestrating a scam, together with a certain Pandu, posing as a police officer on duty at court, in which false claims for witness fees were processed and, when subsequently paid out, they financially benefited from. The investigation also revealed direct contact between the appellant and Aino in the form of text messages sent by cell phone, while the number of Pandu was found under the contacts on the appellant's phone.[3] It was further discovered that on 30 November 2016 the appellant transferred the amount of N$200 via his cell phone to this person referred to as Pandu. At the time of the bail application the investigating officer was unable to trace Pandu and neither could it be established whether that was indeed his real name. According to Aino, he had introduced Sam Haiduwah to the accused as well as a certain Fillemon Paulus, one Kutondokwa and many others, all at the appellant's insistence when he was unavailable. It had also been established that the accused's signature appeared on subpoenas issued to these persons allegedly being witnesses; also on the form authorising payment of witness fees to them.

[10] The statement obtained from Sam Haiduwah essentially confirms the allegations made by Aino in which the appellant is implicated, the latter known to him by his name Victor. Sam and Aino also introduced Fillemon Paulus to the investigating officer from whom a statement was obtained. He said he was either asked by Sam or Asino to come to court where court fees were claimed

[3] Listed as 'Pa'.

in the same fashion as described above. The investigating officer testified that she was not certain of the amounts claimed by each, but at that stage fraudulent claims totalling close to N$280 000 was discovered. She also had to track down those persons mentioned by Sam and Aino to establish whether they were similarly involved in the fraudulent claiming of witness fees.

[11] Ms Shikukumwa testified about a specific docket that went missing, handled by the appellant on 29 September and which involved a certain Junius Haishongo where witness fees were claimed by Erwin Mutjinazo, the same person whom the supervisor had earlier alerted the authorities about concerning 32 claims paid out to him. The court record on that day reflects that the appellant confirmed the presence of this person at court being a witness. Up to the appellant's arrest only 12 dockets were retrieved, of which five were found in his office. The appellant was subsequently arrested where after the investigation continued and the names of more persons obtained from charge sheets and documents found in the appellant's office. Contact had been made with some who seem to have been forced by Pandu to attend court. The same *modus operandi* was followed and witness fees were claimed in their names from which Pandu and the appellant allegedly benefitted. According to the investigating officer there are still a number of persons whom she need to identify from court papers and police dockets, and further obtain their statements.

The bail application

[12] Appellant took up employment with the Ministry of Justice in 2013 as an Assistant Legal Officer and was appointed as prosecutor stationed in Walvis Bay until 2015 when he was transferred to Windhoek. He is single but is in a relationship with Ms Kuuoko for the past 11 years. One boy, now aged 9 years, was born from this relationship and lives with his parents in Katutura. Although Ms Kuuoko is employed, the appellant is the main breadwinner of his own and extended family. The main reason the appellant seeks bail is to take care of his mentally disabled son who suffers from severe autism, and to this end he submitted documentary proof in support thereof. Whereas the

child started exhibiting violent behaviour, he was sent to his grandmother in the north where he will remain until the issue of the appellant's incarceration is resolved.

[13] Other reasons raised by the appellant to be released on bail is that he wanted to further his part-time studies with Unam, furthermore, that his incarceration has adversely impacted on his health as he suffers from what he described as 'a severe degree of allergy' for which he takes medication.

[14] Regarding the State's objections to the appellant being released on bail, appellant testified that he will stand his trial as he does not have any reason to abscond; nor does he have the financial means to leave the country or has family living outside the borders of Namibia to go to. As for any fear of him interfering with the investigation or witnesses, appellant brushed the possibility aside claiming that if he had any intention of doing that, he could have done so during the internal investigation which started three months earlier. He did not since then interfere with the investigation or any of the witnesses and has no intention of doing that. In any event, he said, he does not know these witnesses personally. Regarding the possible arrest of other suspects, appellant said there were none, as those persons already identified will not be charged but used as witnesses for the State, making him the only suspect. Therefore, according to him the possible arrest of further suspects amounts to mere speculation.

[15] Appellant compared his position with that of other cases in which prosecutors charged were granted bail and concluded that he was being discriminated against. Also that there was no public outcry against him being given bail, raising the question as to how it could be in public interest or the interest of justice to refuse him bail. He further disputes the State's contention that it has a strong case against him.

Ruling of the court *a quo*

[16] After summarising the evidence presented the court acknowledged an accused person's rights to liberty and to be presumed innocent until proven guilty. Regarding the offences charged under the Anti-Corruption Act, the court expressed the view that s 61 of the Criminal Procedure Act by virtue of s 270, pertaining to competent verdicts, finds application. Section 61 provides as follows:

> '**61 Bail in respect of certain offences**
>
> If an accused who is in custody in respect of any offence referred to in Part IV of Schedule 2 applies under section 60 to be released on bail in respect of such offence, the court may, notwithstanding that it is satisfied that it is unlikely that the accused, if released on bail, will abscond or interfere with any witness for the prosecution or with the police investigation, refuse the application for bail if in the opinion of the court, after such inquiry as it deems necessary, it is in the interest of the public or the administration of justice that the accused be retained in custody pending his or her trail.'

(Emphasis provided)

[17] Though the court did not specifically pronounce itself on whether it invoked s 61 in reaching its decision when refusing the appellant bail, it cannot be excluded that it did, otherwise there would have been no need to refer to this section. This was the argument advanced by the State with whom the court seemed to have been in agreement. However, s 61 makes plain that the provisions of this section only find application where the accused is in custody in respect of any offence referred to in Part IV of Schedule 2. Had the Legislature intended to include any competent verdict, it would have included same in the Schedule, which is clearly not the case. Further, giving a broad meaning to the offences specified to also include all the unidentified competent verdicts under s 61, would undoubtedly prejudice the accused and go against the principles of fair justice. Therefore, in order for the prosecution to rely on the provisions of s 61 of Act 51 of 1977 in bail proceedings, the accused must be in custody on any of those offences listed in Part IV of

Schedule 2.[4] For the court *a quo* to have relied on s 61 would therefore have constituted a misdirection.

[18] It is settled law that not every irregularity will have the same result. What the court should determine is the extent or impact thereof, and whether it ultimately tainted the decision reached by the court *a quo*.[5] From a reading of the court's ruling, it is clear that when refusing the appellant bail, the court reached its conclusion on the strength of other factors weighing against the granting of bail and not solely for reasons provided for in s 61. I am therefore satisfied that the irregularity committed is not of fundamental nature, justifying the setting aside of the court *a quo's* ruling.

[19] On the issue of public interest the court *inter alia* said there need not have been petitions handed over or public demonstrations against the granting of bail. Also that the appellant was holding a public office in the interest of the public, funded by tax payers' money, therefore the public would have an interest in the case. Though this may be one way of looking at public interest extending beyond the parameters of the provisions of s 61, it would appear to me that something more tangible is required for a court to refuse bail simply because the offender holds a public office. I therefore do not consider that a factor to be taken into account when deciding whether or not the appellant should be admitted to bail.

[20] The court next considered the strength of the State's case and looked at the position of the appellant who had control over subpoenas, vouchers and authorisation of witness fees; also that he allegedly worked with an accomplice who had not yet been traced. Appellant disputed the strength of the State's case against him and, although he exercised his constitutional right not to give evidence on the merits or answer questions pertaining thereto, maintained his innocence while challenging the credibility of witnesses for the State, whose statements were relied upon during the bail application.

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[4] *Miguel v The State* (CA 11/2016) [2016] NAHCMD 175 (20 June 2016).
[5] *S v Shikunga* 1997 NR 156 (SC).

[21] It is trite that in bail proceedings the State at that stage need not prove its case against the accused and all it needs to do is to show on a balance of probabilities that, based on the evidence in its possession, it is capable of proving the accused's guilt.[6] In the present instance, by way of evidence given by the investigating officer, the State established a direct link between the appellant and the *modus operandi* employed to submit false claims in respect of witness fees. Evidence further established a direct connection between the appellant and several accomplices who are yet to be traced. On the evidence presented by the investigating officer during the bail hearing, the court in balancing the relevant factors, was entitled to conclude that there is a likelihood that the charges preferred against the appellant would be proved.

[22] The strength of the State case and the seriousness of the charges the appellant is facing are factors the court will look at in deciding whether he is a flight risk. The relevance of the seriousness of the offences charged lies in the sentence the court is likely to impose on conviction; the more probable a substantial sentence of imprisonment, the greater the incentive for absconding. As stated, the charges appellant is facing in this instance are considered very serious by the courts and are likely to attract severe punishment.

[23] Though the strength of the State case was raised as an objection to bail, it had not been argued that the appellant will abscond and not stand his trial; neither was there evidence to that effect or did the court *a quo* come to this conclusion. Appellant was born in Namibia with strong family ties and the likelihood that he will break ties with his family in order to abscond, in my view, is remote. I accordingly do not consider this sufficient reason for the State to have opposed bail.

[24] Turning to the State's objection(s) that the appellant will interfere either with the investigation or the witnesses, the court found that those witnesses (already identified during the investigation and from the investigating officer's testimony), are known to the appellant; also those who have been identified

[6] *S v Yugin* 2005 NR 196 (HC) at 200.

but who must still be tracked down. The court below was of the view that the investigating officer's request to be granted more time for investigating purposes before the appellant is released on bail, was not a carte blanch request but is limited, falling within the discretion of the court. Specific regard was had to the electronic transfer of funds by the appellant to Pandu (being a suspect material to the case), at a time when the investigation had already commenced. The purpose of the transfer had not been explained by the appellant as he chose to exercise his right to remain silent. The court in the end concluded that the State established sufficient proof of a real possibility for further influencing and interference with witnesses by the appellant and denied him bail.

Considering the objections and ground of appeal

[25] Central to the possible interference by the appellant with witnesses or the investigation is the first ground of objection by the State namely, that the investigation was at a premature stage and more time was required for further investigation. From evidence given by the investigating officer, it is evident that at the time of the appellant's arrest, he was under investigation for only one week. Though appellant shares a different view and claims that an official enquiry had already been lodged about three months prior to his arrest, he was actually referring to an internal investigation conducted and not the complaint lodged with the Anti-Corruption Commission on 31 October 2016. The complaint concerned payment of witness fees in the amount of N$6 000 paid to a certain Aino Kombanda (as witness in a traffic offence) and did not relate to, or (at that stage), implicate the appellant. It would therefore be incorrect to say that the investigation against the appellant was ongoing for three months prior to his arrest and the bail application. The evidence of Ms Shikukumwa that she was first on study leave and then as from 12 November 2016 out of the country for work, only to return on 23 November when she started with the investigation, was not disputed and had to be accepted as correct. This means that up to the time of the application itself, the investigation was about three weeks ongoing and of the 32 dockets initially identified for investigation, the investigating officer managed to collect only 12.

The fact that the dockets originate from various police stations, it was said, further impedes the collection of dockets and will require more time.

[26] What is clear from the testimony of the investigating officer is that the investigation was merely at a preliminary stage at the time of the application. Whereas the investigation required the studying of dockets and case records where exorbitant fees were paid out and the beneficiaries had to be traced and interviewed, there can be no doubt that this will require more time than the three weeks the investigating officer was afforded prior to the application. Bearing in mind evidence adduced that the amount involved keeps on rising as new evidence and witnesses emerge, the extent and nature of offences under investigation may significantly change. This is a factor that undoubtedly would impact on the question as to whether the appellant is a suitable candidate to be released on bail.

[27] Looking at the nature of the offences charged and the extent of the investigation to amass evidence in order to prove same, it would appear that this is not the ordinary run of the mill case where it could be expected that the investigation be finalised in a relatively short period of time. Where the investigation is at an infant stage and the full extent of the alleged crimes committed far from being established, and the latter impacting on the issue of bail, the court, in my view, should be hesitant to grant bail without having the full spectrum of the crime involved established. This is not an instance where the appellant was arrested in order to complete the investigation, but rather to prevent the perpetration of ongoing offences in circumstances where the appellant, as prosecutor, stood central.

[28] For the aforesaid reasons I am not in agreement with the appellant's contention that the court *a quo* misdirected itself by failing to enquire from the investigating officer some estimation as to how long the investigation would still take. This was certainly not known to the investigating officer at the time of the application as the investigation, as mentioned, was still in the beginning stage. The period of time allowed for finalising the investigation falls within the

discretion of the court and to contend that it exceeded a reasonable period, is simply without substance. This ground is accordingly without merit.

[29] Appellant further complained about discrimination against him for being a public prosecutor. However, no evidence was adduced to the effect that bail should not be granted to the appellant simply because he was a prosecutor at the time the alleged offences were committed. A remark made by the investigating officer about him not being fit to hold the office of prosecutor was clearly personal and did not resonate in the court's ruling. What the court remarked on is that the appellant, as prosecutor, stood central to the allegations in that he was perfectly placed to orchestrate the said offences. These are valid considerations based on facts placed before the court and which was indeed a factor the court was entitled to take into account, moreover when it had to decide the issue of possible interference by the appellant during the investigation stage. I am therefore not persuaded by appellant's submission that any misdirection was committed in this regard.

[30] From a reading of the court *a quo's* ruling it is evident, that bail was ultimately refused because the court found that there was proof of influence exerted by the appellant on an outstanding suspect (Pandu) by sending him money while the investigation was ongoing, and appellant's failure to explain his connection with this person. As already stated, according to evidence obtained so far, this person is directly linked to the appellant in relation to the alleged offences.

[31] In deciding the risk of interference with State witnesses or the investigation itself, the proper approach is to ask whether it is likely that the appellant will, not may, interfere.[7] In the absence of actual interference in the past, well-grounded fears of interference will suffice to refuse bail. In the present matter it had been proved that the appellant circumvented contact between the supervisor and a potential witness, or suspect, by refusing to avail the telephone number of the person, and him personally undertaking to contact this person, claiming that it was his (the State's) witness. However,

[7] *S v Bennett* 1976(3) SA 652 (C) at 655.

nothing came from this and the search is still out for this person. This happened at a time the appellant claims he was aware of the internal investigation. There is further evidence about dockets that were under the appellant's control and which had gone missing thereafter. Appellant did not explain the whereabouts of these dockets except for saying that it is possible that they could be found at the stations where the cases have been registered. Though such possibility cannot be ruled out completely, bearing in mind the infant stage of the investigation, evidence about these dockets being missing cannot be ignored simply because of the possibility that it might be traced. These were assigned to the appellant and in the absence of a satisfactory explanation as to its whereabouts, it would in my view constitute sufficient grounds for reaching the conclusion that the appellant has something to do with its disappearance.

[32] When regard is had to the above, it seems to me that the court *a quo's* finding of a real possibility of further influence and interference by the appellant with witnesses, is supported by facts and justified in the circumstances of the case. Though claiming that he has given his full cooperation in the investigation, this appears only to have been as far as allowing the police to search his house shortly after his arrest, and not pertaining to any of the persons known to the appellant whom the police were looking for. It is not suggested that he was under any duty to do so, but is merely aimed at showing that he did not 'fully cooperate' as suggested.

[33] As mentioned, the court did consider the position of the appellant and came to the conclusion that he was well positioned and would likely exert influence over potential witnesses and suspects. The conclusion seems to me consistent with evidence obtained from persons who were drawn into the scam and when they later wanted to quit, were threatened by the appellant who said they could not do so as their names were on record and that warrants for their arrest would be issued if they were to stay away. Alternatively, they had to furnish the names of others who could stand in for them. These allegations were not challenged and, in the absence of evidence

to the contrary, seems to indicate the position of authority the appellant allegedly had over these witnesses at the time the offences were committed.

[34] Evidence of this nature must have some bearing on the question whether there is a real likelihood of interference by the appellant and when considered holistically, I am inclined to come to the same conclusion as the court *a quo*, namely, that at the stage of the application there was a real possibility of continued influence on witnesses and/or interference with the investigation. The conclusion so reached must for obvious reasons be considered in the light of evidence gathered during the investigation and, pending on the extent and duration of the investigation still to be had, may bring about change to allow the appellant to be admitted to bail at a later stage. As for the time of the present application, to have granted the appellant bail, in my view, would not have safeguarded the proper administration of justice.

[35] Appellant further argued that the court below misdirected itself by ignoring the fact that appellant's delegation to act as prosecutor had been revoked by the Prosecutor-General, by which he is effectively barred from entering his previous office, thus limiting the likelihood of possible interference. Also that the court failed to consider the imposition of conditions.

[36] From what has already been said as regards possible interference by the appellant, it must be clear that this possibility is not limited to his workplace alone, but turns more on his access to persons crucial to the case and his authority over them that is likely to jeopardise the investigation. As for the imposition of bail conditions, as testified by the investigating officer, once the appellant was out on bail, there is no way that he could be monitored and could contact any person at will. It would therefore have been pointless in the circumstances of this case to impose bail conditions if it could not be monitored.

[37] Having come to this conclusion, it seems superfluous to deal with the remaining issues raised in the notice of appeal in any detail. Suffice it to say

that appellant's personal circumstances, though exceptional in that he has a young boy who suffers from autism and requires constant supervision, there is nothing compelling about his situation in circumstances where this child had been sent to his grandmother even before the appellant's arrest, and where he had been staying up until the time of the bail application. Even when he was staying with his parents, there had been a nanny looking after him. The appellant's personal involvement with his son is not required on a 24/7 basis as he wanted the court to believe; this much is evident from his testimony that they were living apart for some years when he was stationed in Walvis Bay. Though suspended from duty, the appellant still receives his monthly salary and there is no reason why his dependants should suffer any financial hardship as a result of his incarceration. The court *a quo* did summarise the appellant's personal circumstances and to boldly state that no consideration was given thereto by the court, is not borne out by the record. Ailments suffered by the appellant could be treated as before during his incarceration.

[38] Other issues raised such as the admissibility of hearsay evidence and an accused person's right to remain silent in bail proceedings are settled rules of law, and require no further discussion.

[39] In the result, the appeal is dismissed.

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JC LIEBENBERG

JUDGE

APPEARANCES

APPELLANT	In person.
RESPONDENT	D M Lisulo Of the Office of the Prosecutor-General, Windhoek.