

REPUBLIC OF NAMIBIA

REPORTABLE



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

**Ruling: Bail Pending Appeal**

**CASE NO. CC 05/2013**

In the matter between:

**WILLEM VISAGIE BARNARD**

**APPLICANT**

v

**THE STATE**

**RESPONDENT**

Neutral citation: *Barnard v S* (CC 05/2013) [2018] NAHCMD 399 (6 December 2018)

**Coram:** VELIKOSHI AJ

**Heard:** 28-30 November 2018

**Delivered:** 6 December 2018

**Flynote:** **Criminal Procedure** – Bail – Application pending appeal – Post-conviction bail applications - governed by s 321(1)(b) and s 60 of the Criminal Procedure Act 51 of 1977 as amended subject to s 61 of the same Act – court given wider powers - Onus on Applicant to show on a balance of probabilities – Granting of

bail in interest of administration of justice – Domestic violence – Combating of Domestic violence Act 4 of 2003 - Applicant convicted of Murder – an offence part of Part IV of Schedule 2 of the Criminal Procedure Act – Applicant failed to show on – balance of probabilities that – his admission on bail would not – frustrate the interest of the due administration of justice and public interest. – Application to be admitted on bail dismissed.

**Jurisdiction:** High Court – Court of first instance and appeal – jurisdiction to hear bail application pending appeal in terms of s 321 and s 60 of the Criminal Procedure Act 51 of 1977 – alternatively, inherent jurisdiction in terms s 2 of the High Court Act 16 of 1990 provided there is an appeal is pending or leave granted – Supreme Court is a court of Appeal – no jurisdiction to hear bail applications.

**Summary:** On 23 January 2018, the applicant was convicted of murder with direct intent read with the provisions of the Combating of Domestic Violence Act 4 of 2003. On 25 July 2018 the applicant was sentenced to eighteen (18) years imprisonment of which eight (8) years were suspended for (five) 5 years on condition that the applicant is not convicted of murder committed during the period of suspension. Dissatisfied with his conviction, the applicant applied to this court on 7 September 2018 for leave to appeal against his conviction, to the Supreme Court. This court accordingly dismissed his application. Subsequently, the applicant petitioned the Chief Justice and the petition was granted. Applicant now applies to this court to be admitted to bail pending his appeal to the Supreme Court. The state opposes the application.

*Held that* the High Court being the court of both first instance and appeal has jurisdiction in terms of s 321 and s 60 of the Criminal Procedure Act 51 of 1977 as amended to preside over bail applications on appeals pending in the Supreme Court.

*Held that* post conviction bail applications are governed by s 321 and s 60 subject to s 61 of the Criminal Procedure Act 51 of 1977 as amended.

*Held that* the mere granting of leave to appeal upon petition is not on its own sufficient to entitle a convicted accused to be released on bail pending appeal

*Held that* the legislature by introducing s 61 of the Criminal Procedure Act 51 of 1977, has not intended to suggest the elevation of the threshold in bail applications pre-conviction (pending trial) higher than in post-conviction bail applications. In the court's view, the legislature could not have intended suggest that a more liberal approach and less stringent test be applied on those who were tried and convicted of very serious offences.

*Held that* a lighter test ought to be applied in pre-conviction bail applications because an applicant in bail pending trial applications still enjoys his constitutional right to be presumed innocent until proven guilty in a competent court of law. That is to say that the accused is still presumed innocent and the court will, where possible, lean in favour of granting him or her liberty before he is tried.

*Held further* that even in light of his or her presumed innocence, an accused charged with a serious violent crime may be denied bail if it is in the interest of the public or the administration of justice that the accused be retained in custody pending his trial or her trial.

*Held that* the applicant is serving a 10 years' prison sentence which in the court's view is not a short period and if bail is not granted, the convict would have not served a substantial part of his 10 years sentence and if the appeal succeeds, prejudice to the applicant would be minimal.

*Held that* the court finds it strange that the private hospitals the applicant prefers do not see his medical condition as exceptional and urgent. The applicant's remedy does not lie in being admitted to bail but rather in seeking an appropriate order against his preferred private hospitals.

*Held that* to have an accused convicted of a serious and violent crime of murder with direct intent read with the provisions of the Combating of the Domestic Violence Act roaming freely albeit within the confines of his farm boundaries, would bring the administration of justice into disrepute.

*Held that* the applicant has family ties outside Namibia because his son resides in South Africa. *Held further* he has the necessary resources to raise finances that would allow him to live a comfortable life elsewhere particularly in South Africa. The risk of abscondment is real and is aggravated by the 10 years imprisonment imposed on him. .

*Held that* when an applicant has already been convicted and sentenced the presumption of innocence falls by the way side. The operation of the presumption of innocence until proven guilty does not operate in his favour. It is a fact that the law considers him as a criminal, until perhaps he succeeds to upset the conviction in any appeal he may make.

*Held that* the applicant has failed to show on a balance of probabilities that his admission on bail would not frustrate the interest of due administration of justice and public interest. The bail application accordingly fails.

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### ORDER

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The applicant's application for bail pending appeal is dismissed.

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### RULING

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VELIKOSHI AJ:

#### Introduction

[1] This is an application for bail pending appeal. The applicant Willem Visagie Barnard was tried and convicted on a charge of murder with *dolus directus* for murdering his wife, with whom he was in a domestic relationship as defined in s 1 of the

Combating of Domestic Violence Act<sup>1</sup> and sentenced to 18 years imprisonment, 8 of which was conditionally suspended. The sentence was handed down on him on 25 July 2018.

[2] Subsequent to his sentence, he lodged an application for leave to appeal his conviction to the Supreme Court in terms of s 316(1)(b)<sup>2</sup> which was heard on 7 September 2018. The application for leave to appeal was dismissed by Shivute J on 14 September 2018 on the basis that the applicant did not have prospects of success on appeal. Displeased with the dismissal of his application for leave to appeal to the Supreme Court, the applicant petitioned the Chief Justice for leave to appeal against his conviction which was granted on 23 October 2018. This court is told that his appeal against the conviction now pending before the Supreme Court is to be heard on a date not yet communicated to the applicant.

#### Evidence in support of the bail application

[3] The applicant testified orally in the bail application. This evidence may be summarised as follows: He testified that he is 65 years old born on 21 April 1953 in Upington South Africa. He was born in South Africa due to lack of medical doctors in Namibia before independence. Soon after he was born, he and his parents returned to Namibia where he grew up. Although as a young man he had worked for the then South African Police in Johannesburg for about 3 years, he had resided within the district of Mariental up until the occurrence of the incident that caused him to be convicted. He is a father of two children, a son and a daughter. He has two siblings. Except for his son that lives in South Africa, he has no other family ties beyond the jurisdiction of this court. It is furthermore, his evidence that he has no valid passport or any other travelling document.

[4] He said that if granted bail he will not abscond because he owns a farm and livestock valued at approximately N\$ 12 000 000. He does not have any property elsewhere outside Namibia. He said that he is afraid of prison but should the Supreme Court not uphold his appeal against the conviction, he would serve his sentence. It is

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<sup>1</sup> Act 4 of 2003.

<sup>2</sup> Act 51 of 1977 as amended (hereinafter "the CPA").

also his evidence that, he has several medical ailments, which he concedes are not recent. He complained that due to his imprisonment in the Windhoek Central Correctional Facility, his health is deteriorating fast because the medical interventions that would cure them could not be carried out for two reasons. The first reason is that his private Doctor or Surgeon has refused to carry out an operation on him in the Windhoek Central State Hospital because it is dirty. The second reason is that all private Hospitals refused to admit him for the reason that as a sentenced prisoner he would be under prison or as he puts it police guard. He explained that the presence of the police officers or prison guards he was told would blemish the good image of those Private Hospitals. In support of his application, medical proof with details of the applicant's ailments was admitted into evidence as Exhibit 'A'.

[5] Besides his needs of surgical medical attention and his deteriorating health, the applicant wants to be released on bail so that he can look after his livestock and properly manage the farm. He said that the situation on his farm is also deteriorating because his daughter and his three employees cannot manage it the same way he used to. He said that he has lost livestock due to theft and drought. If he is out on bail, he will mitigate the loss.

[6] Ms. Maria Leeb a 43 year old woman testified in support of the applicant's application. The applicant is her biological father. She, with the assistance of three employees are currently the ones responsible for the up keep of the applicant's farm. She admits that running a farm is not an easy task because she has not been able to manage the farm at the same level her father used to do for the reason that she too has her own farm to take care of. She confirmed that the father has serious medical ailments that need urgent surgical medical interventions. She said that the applicant's medical condition would not allow him to abscond.

#### Evidence in opposition of bail application

[7] The State opposed the applicant's application to be released on bail pending the hearing of his appeal in the Supreme Court on several grounds. Firstly, they opposed bail because the applicant is a convicted person sentenced to a custodial term of

imprisonment and thus the risk of absconding is higher. Secondly, it would not be in the interest of the due administration of justice to admit the applicant to bail regard being had to the fact that he stands convicted of an offence involving Domestic violence of which there is a general public outcry against such offences.

[8] Mr. Paulus Nangombe, a registered nurse employed at the Windhoek Correctional Facility, testified on behalf of the respondent. His evidence is to the effect that offenders with financial means are allowed to seek medical treatment from private doctors of their choice. According to him, the choice of where an inmate should be admitted lies with the inmate's private doctor. Once a private doctor has recommended that an inmate should be admitted at a specified private hospital, that wish would be fulfilled. To give effect to that they would take the inmate to the suggested private hospital for admission in compliance with the private doctor's request. As a general rule, and it makes sense in my view, an inmate so admitted, whether at a state or private hospital for whatever medical interventions would be guarded by prison or correctional officers for the duration of the admission. He said that the only private hospital that he is aware of that refuses to admit inmates is Rhino Park Private Hospital because they do not allow prison wardens to guard patients admitted in their wards. He said several inmates were admitted to Private Hospitals before and the latest admission was at Roman Catholic Private Hospital on 3-6 August 2018. The record of inmates admitted both at private and state hospitals was admitted into evidence as Exhibit 'B'. Exhibit 'B' shows that a not so recent admission of an inmate was recorded for Lady Pohamba Private Hospital.

#### The law on bail pending appeal: The question of jurisdiction

[9] An application to be admitted to bail after conviction is governed by s 321 and s 60 of the Criminal Procedure Act.<sup>3</sup> The provisions of s 321 prohibit the suspension of a sentence imposed by a superior court by reason of any appeal against a conviction unless the trial court thinks it fit to order the sentenced accused's release on bail or be

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<sup>3</sup> Act 51 of 1977 (hereinafter the 'CPA').

treated as an unconvicted criminal. In as far as the applicability of s 60 to bail applications is concerned the court in *S v Hendriks*<sup>4</sup> said the following:

'Section 60 appears to me to be wide enough for a Superior Court to consider and to grant bail at any stage during which an application for leave to appeal or for the reservation of a question of law is pending before it and up to the stage when it gives its decision. Once it has decided to grant leave to appeal and/or to grant an application for a reservation of a question of law, it can only consider an application for bail and grant bail or order that the accused be treated as an unconvicted prisoner, it acts in terms of s 321.

Should the Superior Court, however, decline to grant leave to appeal or to reserve a question of law, it has no power in terms of either s 60 or 321(1)(b) to grant bail or order that the accused be treated as an unconvicted prisoner, unless and until leave to appeal has been granted by the appellate Division in response to the Chief Justice for leave to appeal.' (Emphasis added)

[10] Section 60 provides that:

'60 Bail after first appearance of accused in lower court

(1) Any accused who is in custody in respect of any offence may at his or her first appearance in a lower court or at any stage after such appearance, apply to such court or, if the proceedings against the accused are pending in the High Court, to that court, to be released on bail in respect of such offence, and any such court may release the accused on bail in respect of such offence on condition that the accused deposits with the clerk of the court or the registrar of the court, as the case may be, or with the officer in charge of the correctional facility where the accused is in custody, or with any police official at the place where the accused is in custody, the sum of money determined by the court in question'.

[11] Section 60 of the CPA therefore empowers an accused to bring a bail application in a lower court or if proceedings are pending in the High Court, in that court. The section is however silent on where the applicant whose appeal is pending in the Supreme Court should take his application for bail pending the hearing of his appeal. Our Supreme Court is a court of appeal. Even with its inherent jurisdiction conferred to it by Article 78(4) of our Constitution, the Supreme Court cannot hear matters as a court of first instance. Therefore, this court derives its jurisdiction from s 321 read with s 60 of

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<sup>4</sup> 1992 NR 382 at page 384.



the CPA to hear applications for bail on matters pending before the Supreme Court by virtue of it being a trial court referred to in s 321 provided that the applicant's appeal is pending before the Supreme Court<sup>5</sup> and perhaps where leave to appeal was granted either by the trial court or upon petition by the Chief Justice. Alternatively, the High Court, being both a court of first instance and appeal court has inherent jurisdiction conferred to it by s 2 of the High Court Act.<sup>6</sup>

### Applicable legal Principles

[12] The discretion to grant bail and determine the amount rests in the court. In exercising its discretion judiciously, the court must seek to strike a balance between protecting the liberty of the individual and safeguarding the proper administration of justice. Since the fundamental consideration is the interests of justice, the court will lean in favour of the liberty of the applicant and grant bail where possible.

[13] In recent years, courts have adopted a more liberal approach and less stringent test that even where reasonable prospects of success are absent the court should grant bail for as long as the appeal is not doomed to failure.<sup>7</sup> This does not however mean that in every case where applicant has shown that he or she has reasonable prospects of success on appeal, the granting of bail pending appeal should inevitably follow. The onus is still on the applicant to show on balance of probabilities that, he will not abscond or that his release will not jeopardise the proper administration of justice and the interest of the public. The duty of the court is to consider all the relevant factors placed before it, or apparent from the record of the trial proceedings. If bail were to be inevitably granted merely because the applicant was granted leave to appeal to a superior court, what then would the need be for an applicant to lodge a formal bail application?

### The main factors to be considered

[14] In applications of this nature I find it expedient to consider the following factors some of which have been suggested by both counsels for the applicant and respondent:

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<sup>5</sup> See *S v Hendriks* supra at p. 389.

<sup>6</sup> Act 16 of 1990.

<sup>7</sup> See *Hartmut Beyer v S* (CA 136/2013) [2013] NAHCMD 384 (02 December 2013) and *Lang v S* (CA 53/2013) NAHCMD 248 (23 August 2013).

- a) The prospects of success on appeal;
- b) The seriousness of the offence involved and the sentence as well as the risk of abscondment;
- c) A possible delay before the appeal is heard;
- d) The interests of the administration of justice and public interest.

[15] The first factor is the prospects of success on appeal. I have earlier on stated that the applicant's leave to appeal was dismissed by Shivute J on the basis that the applicant's prospects of success on appeal do not exist. It is a fact that the applicant successfully petitioned the Supreme Court to have his matter heard on appeal. Mr. Botes for the applicant argued that the highest court in the land by granting the applicant's leave to appeal when he petitioned the Chief Justice has already found that the applicant has reasonable prospects of success on appeal. He submitted further that three judges of the Supreme Court have on petition granted leave to appeal against the conviction only; they could only have done so if they have considered that the applicant has reasonable prospects of success in his appeal. And I agree. Counsel for the applicant further argued giving meaning to the applicant's fundamental rights enshrined in various democratic constitutions in general and Article 7 of the Namibian Constitution which provides that no person shall be deprived of personal liberty except according to the procedures established by law.

[16] To mind, Article 7 of our Constitution does not find application in this bail application because the applicant lost his personal liberty in accordance with the law in that he was convicted and sentenced in the course of a trial. Counsel for the applicant also argued that to keep the applicant in custody pending the outcome of his appeal will result in an arbitrary detention by this court which will impermissibly infringe on the applicant's right to be presumed innocent which to a certain extent remains until the highest court in the land has pronounced itself on his appeal. Counsel for the applicant argued mainly on the prospects of success as the main reason why bail should be granted despite his submission that the state therefore is precluded from raising the question of reasonable prospects of success and requesting this court to adjudicate

thereon as this court clearly does not have the jurisdiction to alter, set aside or differ from a finding of the highest court of this country on this very aspect.<sup>8</sup>

[17] Mr. Kumalo appears to be in agreement that in the light of the fact that the Supreme Court has found that the applicant has reasonable prospects of success, it may not be necessary for the court to again decide on whether the applicant has prospects of success. He cautioned, however that the fact that the Supreme Court has granted leave to appeal does not mean that the appeal itself is successful. With this too I agree, but only to the extent that the mere granting of leave to appeal upon petition is not on its own sufficient to entitle a convicted accused to be released on bail pending appeal. I wish to observe that under normal circumstances an inquiry of bail pending appeal requires more focus on the appellant's prospects of success on appeal and whether she or he poses a flight risk, but these two are not the only considerations.

[18] With regard to the issue of the applicant being a flight risk, Counsel for the applicant reiterated that the applicant is not a flight risk. He submitted that the applicant is a Namibian with properties in Namibia. He further submitted that the State, the respondent that is, has not led any evidence to contradict the applicant's evidence that he will not abscond just as it failed to lead evidence to show that the applicant is a danger to the society. Counsel for the applicant submitted further that the State's interest would be best taken care of by the court imposing strict conditions of bail and he prayed to the court to exercise its discretionary powers in the applicant's favour by granting him bail pending appeal so that he can have the surgical medical interventions that he needs; look after and take care of his farm and resolve an issue pertaining to his Testament (Will).

[19] In reply counsel for the respondent submitted that the applicant is a flight risk for several reasons. Chief amongst them is the fact that the applicant is a convicted person sentenced to a custodial term of imprisonment and thus the risk of absconding is higher. He referred the court to the case of *Lang v S*<sup>9</sup> wherein it was held that the presumption of innocence until proven guilty by a competent of court does not arise in post-

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<sup>8</sup> And he referred to *Coetzee v S* (A 25/2017) [2017] ZAGPHC 65 (27 February 2017).

<sup>9</sup> (CA 53/2013) 2013] NAHCMD 248 (23 August 2013) paragraph 5.

conviction bail because the trial court would have made a finding of fact. He counter argued that there was no need for the State to lead evidence to contradict the applicant's evidence on abscondment. He asked if the State should for example have led evidence to prove that the applicant is a flight risk because he has relatives beyond the borders of Namibia, when it is already his evidence that his son is residing in South Africa? Or that he is afraid of prison when his evidence is already to that effect?

[20] The next factor relates to the delay before the appeal is heard. Counsel for the applicant argued that they have not yet received the date on which the appeal would be heard. He submits that from his experience with one matter he referred to as '*Likoro's*' matter, it is likely that the applicant's appeal would only be heard in a year or so. Counsel for the respondent to a certain extent agreed but argued that a year is a reasonably short period of time. I must observe that of late this is no longer a valid reason, given the fact that appeals are now being dealt with expeditiously unlike in the past. The applicant is serving a 10 years sentence which in my view is not a short period and if bail is not granted, the convict would have not served a substantial part of his 10 years sentence, so if the appeal succeeds, prejudice to the applicant would be minimal.

[21] Before I address the last factor, I must pause here to observe the question of the applicant's ill-health which the applicant himself admits is not recent. Counsel for the applicant also referred this court to documents submitted in mitigation before sentence for a clear and detailed report of the extent of the applicant's ailments. This too proves that the medical condition of the applicant is not something new. The state is not disputing that the applicant has a medical condition that requires his admission and surgery.

[22] The only reason why the applicant is not receiving the medical treatment that he requires is that the private hospitals of his choice are refusing to admit him under prison or police guards. In my view, this has much more to do with what appears to me to be discrimination of the applicant on the basis that he is a sentenced prisoner. In my view the fault does not lie with the Windhoek Correctional Facility but with his ideal private hospitals that are refusing to admit him. In any event, counsel for the applicant indicated

that the admission of inmates to private hospital is allowable in exceptional circumstances. This court was made to believe that the applicant has serious ailments that need urgent medical and surgical interventions. I find it strange that the private hospitals he prefers do to not see his medical condition as exceptional and urgent. The applicant's remedy does not lie in being admitted to bail but rather in seeking an appropriate order against his preferred private hospitals.

[23] I will now deal with the last factor which is the interests of the administration of justice and public interest. The concept of the 'the interest of the public or the administration of justice' was incorporated into our law by the legislature through s 3 of the Criminal Procedure Amendment Act<sup>10</sup> which amended s 61 of the Criminal Procedure Act<sup>11</sup> provides that:

'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 trial or her trial'.

[24] As I have indicated above<sup>12</sup> bail pending appeal is regulated by s 321 and s 60 of the CPA. The application of section 60 is subject to provisions of s 61 which as I have indicated earlier on, introduced the concept of public interest or the administration of justice into our law.

[25] In considering the concept of the interest of the public or the administration of justice the High Court in *Charlotte Helena Botha v The State*<sup>13</sup> stated that:

'In such instances the letting out on bail of a person who is accused of a callous and brutal murder, or a person who continues to commit crimes, creates the perception that the public at

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<sup>10</sup> Act 5 of 1991.

<sup>11</sup> Act 51 of 1977 herein the CPA.

<sup>12</sup> In paragraphs 9 -11.

<sup>13</sup> Unreported judgment of the High court of Namibia CA 70/1995 delivered on 20.10.1995 by O'Linn J and Hannah J p. 22.

large is at the mercy of such criminals and that neither the police nor the courts can effectively protect them. Considerations such as the public interest may, if there is proper evidence before the court, lead to the refusal of bail even where the possibility of abscondment or interference may be remote’.

[26] It is no doubt that the applicant is convicted of a serious crime, murder with direct intent for murdering his wife. Murder is part of Part IV of Schedule 2, and this in itself aggravates the applicant’s case. What is even more aggravating is the fact that the applicant was in a domestic relationship with the deceased. I do not think that the legislature by introducing s 61 has intended to elevate the threshold in bail applications pre-conviction (pending trial) higher than that in post-conviction bail applications. In my view, the legislature could not have intended to suggest that a more liberal approach and less stringent test be applied on those who were tried and convicted of very serious offences.

[27] If anything a lighter test ought to be applied in pre-conviction bail applications because in an application to be released on bail pending trial, the applicant still enjoys his constitutional right to be presumed innocent until proven guilty in a competent court of law.<sup>14</sup> That is to say that the accused is still presumed innocent and the court will, where possible, lean in favour of granting him or her liberty before he is tried. But even in light of his or her presumed innocence, an applicant charged with a serious violent crime may be denied bail if it is in the interest of the public or the administration of justice that the accused be retained in custody pending his trial or her trial.

[28] On the other hand, where an applicant has already been convicted and sentenced the presumption of innocence falls by the way side. The operation of the presumption of innocence until proven guilty does not operate in his favour. It is a fact that the law considers him as a criminal, until perhaps he succeeds to upset the conviction in any appeal he may make.

[29] There is an upsurge of cases of domestic violence resulting in death. These cases concern men much less as they concern women behaving violently. The applicant was convicted of murder with direct intent. It is both in the interest of the public

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<sup>14</sup> In terms of Article 12(1)(d) of our Constitution.

and that of the due administration of justice that those convicted and sentenced for committing serious violent crimes serve their sentences. To have an accused convicted of a serious and violent crime of murder with direct intent read with the provisions of the Combating of the Domestic Violence Act roaming freely albeit within the confines of his farm boundaries, would bring the administration of justice into disrepute. In any event the applicant has family ties outside Namibia because his son resides in South Africa. He has the necessary resources to raise finances that would allow him to live a comfortable life elsewhere particularly in South Africa. The applicant is serving a 10 year sentence. Given these factors, the risk of abscondment is real.

[30] Counsel for the applicant heavily relied on the applicant's reasonable prospects of success on appeal. Although it was not necessary for me to determine the applicant's prospects of success on appeal, I should mention that I have read the record of proceedings, that is the evidence presented by the State and the applicant in the main trial including all the exhibits; the judgment of the main trial; mitigation and aggravation of sentence; the record of proceedings in the application for leave to appeal and the heads of argument of both the applicant and the state as well as the reasons for the dismissal of the applicant's application for leave to appeal.

[31] While I accept that the applicant has reasonable prospects of success on appeal as found by the Supreme Court upon petition, I wish to comment that it is not a remote possibility that the applicant's conviction may be confirmed on appeal. And if that should occur, he would have only been less than two years into his sentence of 10 years imprisonment.

[32] The short of it is that the applicant has failed to show on a balance of probabilities that his admission on bail would not frustrate the interest of the due administration of justice and public interest. The interests of justice require that the applicant prosecute the appeal whilst in custody.

Order:

The applicant's application for bail pending appeal is dismissed.

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ITON Velikoshi

Acting Judge



## APPEARANCES:

Applicant: Mr. LC Botes  
Instructed by Garbers & Associates, Mariental

Respondent: Mr. P Kumalo  
Office of the Prosecutor-General, Windhoek