

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case No: CC 1/2018

JACO KENNEDY

v

THE STATE

**Neutral citation:** *Kennedy v S* (CC1/2018) [2020] NAHCMD 305 (17 July 2020)

**Coram:** TOMMASI, J

**Heard:** 05/04/2019;13/05/2019;14/06/2019;06/09/2019;07/10/2019;  
21/10/2019; 11 & 12/11/2019; 29/11/2019; 10/01/2020; 13/01/2020;  
13/02/2020; 16 &17/03/2020; 30/04/2020; 06/05/2020; 22/05/2020;  
29/05/2020; 05/06/2020; 08/06/2020; 29/06/2020; 17/07/2020.

**Delivered:** 17 July 2020

**Flynote:** Bail –matter pending before this court for trial – nature of proceedings – bail application in terms of the Criminal Procedure Act, 51 of 1977 – refusal of bail by magistrate and dismissal of the appeal does not preclude the court from entertaining a further bail application – court ought to consider all the circumstances at time of application and consider facts both old and new – found that there remains a *prima facie* case- the likelihood of committing similar crimes and interference with witnesses – seriousness of the offences and the public interest and administration of justice outweighs the right of applicant to liberty and the right to be presumed innocent.

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## ORDER

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1. The applicant's application for the court to release him on bail pending trial, is dismissed.

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## REASONS FOR RULING

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TOMMASI J:

[1] The applicant herein brought an application for the court to release him on bail pending trial. He attached a founding affidavit in support of the formal bail application and a confirmatory affidavit of his wife. This application was opposed by the State.

[2] The applicant relied on his founding affidavit which was accepted as his evidence in main. He availed himself for cross-examination. The State from the outset indicated that they would call witnesses and rely on oral evidence. There was some discussion on the nature of the application before court. It was not an appeal as the applicant had already appealed the decision of the magistrate and the appeal was dismissed. This meant that the decision of the magistrate, having been confirmed on appeal, stands.

[3] The court ruled that it would consider this application as an application for bail in terms of the Criminal Procedure Act, 51 of 1977 as this is the only procedure that makes provision for the granting or refusal of bail. In *S v Acheson 1991 NR 1 (HC)* the state submitted that the applicant has previously been unsuccessful in the magistrate's court and on appeal. Mahomed AJ, at page 19 A-B, stated as follow:

'I am unable to agree with the suggestion that I am precluded from considering bail for the accused, merely because the accused was previously unsuccessful in this Court.

Each application for bail must be considered in the light of the circumstances which appear at the time when the application is made. A Judge hearing a new application is entitled, and

indeed obliged, to have regard to all the circumstances which impact on the issue when the new application is heard.’

[4] I shall thus consider the bail application in light of all the circumstances which impact on the issue which has been placed before this court in evidence, inclusive of the proceedings in magistrate’s court. The court would be remiss if it only ‘myopically concentrate on the new facts alleged.’<sup>1</sup> I shall therefore consider all the facts in its totality.

[5] The applicant raised the point *in limine* that the record of the bail proceedings in the magistrate’s court is inadmissible to the proceedings before court and that this court should consider the bail afresh on the ground that the magistrate ought to have recused herself. This court dismissed the *point in limine*<sup>2</sup> and the record of the bail proceedings was thus ruled admissible in the proceedings before this court.

[6] The applicant was initially arrested on a charge with having contravened the Combating of Rape Act, 2000 (Act 8 of 2000) during January 2015. He was granted bail in that matter and no application has been brought to this court to have the bail cancelled. His bail granted in that matter stands.

[7] He was arrested on 30 January 2016 on a similar charge of having contravened the Combating of Rape Act. His application for bail in respect of the second charge was refused in Magistrate’s Court and his appeal dismissed.

[8] Mr Isaaks, counsel for the applicant, submitted, correctly in my view, that my primary focus ought to be in respect of the evidence which was adduced in respect of the case at hand. I thus do not consider the evidence adduced by both the applicant and the respondent in respect of the first incident save for taking note of the fact that the applicant is facing another similar charge and it is common cause that both are serious offences.

#### The bail application in the Magistrate’s court.

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<sup>1</sup> S v Vermaas 1996 (1) SACR 528 (T) at 531 F: and Kauejao v The State (CC 06/2014) [2014] NAHCMD 316 (29 October 2014)

<sup>2</sup> See Jaco Kennedy v The State CC 1/2018 NAHCMC 425 (21 October 2019)

[9] The applicant testified in support of his bail application during February 2016 in the magistrate's court. He denied having committing the offence. He denied knowing the complainant and he denied having been in Otjomuise on 31 December 2015 when the incident was alleged to have occurred. He explained that he came from a nightclub in the early hours of the morning and he dropped off a friend. He went to an ATM to withdraw money but was unsure whether in fact he managed to withdraw money. He thereafter went home and his wife took the car keys from him. He went to his neighbours and he drank beer. He went with his neighbour to Katutura and he thereafter went home and slept. When he woke up, he went to Swakopmund with his family. His defence was essentially that he had an alibi. His wife and his neighbour, did not testify.

[10] The complainant also testified during the bail proceedings and she insisted that the applicant around 6h00 – 7h00 in the morning offered her a lift to work. She was waiting for a friend at the time and he offered to take both of them to work. He took her to a riverbed under the auspices that he wanted to urinate. He returned to the vehicle and wanted to kiss her. She resisted and he then raped her. She sent a message (sms) to her friend to tell her what was happening to her. After the incident the applicant took her to work and she sent a message to her friend to take down the registration number of the vehicle. The applicant gave her his cell phone number with the remark that she could contact him if she wanted more sex. They wrote down the registration number of the car. The applicant was traced using the registration number of the car and the cell phone number. She also testified that she received a number of calls from unknown people who wanted to persuade her to withdraw the case against the applicant.

[11] The magistrate relied on the evidence of the state witness in arriving at the conclusion that the applicant was charged with a serious offence and if convicted faced a substantial period of imprisonment. She found that there are no grounds to fear that the applicant would abscond but was satisfied that there was a likelihood that he applicant would interfere with the witnesses. A further factor which the magistrate considered was that the applicant has been charged with two charges of rape and that there was sufficient evidence to put him on trial, despite his claim to innocence. The court attached considerable weight to the fact that, in the absence of facts showing otherwise, that this offence was committed whilst the applicant was on

bail. The magistrate concluded that the applicant is likely to commit further offences, interfere with investigation and hinder the safety of the complainant.

#### This bail application

#### Applicant's case in main

[12] What prompted the applicant to bring this bail application is contained in paragraph 25 of his founding affidavit. It reads as follows:

On 6 September 2017 I attended at a High Court civil matter. (HC-MD-CIV-MOT-REV-2017/00167) At the holding cells I managed to use the phone of a taxi driver who was detained for traffic fines. On his phone I checked my e-mails and social media inbox messages. I saw the second complainant also sent me an inbox messages on Saturday, 2 September 2017 and Sunday 3 September 2017. During the conversation both myself and the complainant admitted to the consensual sexual intercourse between us on 31 December 2015. See Annexure "JK4"

[13] The annexure JK4 appear to be screenshots of the Facebook communication between the complainant and the applicant. On the face of the documents it appears that the complainant's facebook names are her own name and "Issa Belangrike Kasiekend". The following appears from these documents: On 2 September 2017 the complainant sent a message to the applicant referring inter alia to a telephonic discussion between them the previous Thursday. The complainant tried to call him unsuccessfully at a landline. She gives the applicant details of her new employment at Trustco. On 3 September 2017 the complainant sent him another message asking him whether he was ignoring her. On 6 September 2017 he responded informing her that he does not have a phone in jail and a police friend helped him to check his inbox. He refers to the consensual sex they had and made reference to having contracted a sexually transmitted disease after sexual intercourse with the complainant. The complainant admits to having had consensual sex. She requested flowers, biltong and payment of N\$20 000 and in return she promises to withdraw the case and to request that he be granted bail. The applicant agrees to pay the money and that the complainant undertook to send her banking details alternatively requested the applicant to e-wallet the money to her.

[14] The applicant stated in his affidavit that he made arrangements to have a Windhoek based florist deliver the flowers and biltong to the complainant personally and she thanked him for it. In support hereof he attached an invoice of the florist and a photograph depicting the complainant with flowers.

[15] He furthermore averred that the complainant, during the same period requested him to pay the amount of N\$20 000 into her bank account number 6222884305. During the same period the complainant informed him that the investigating officer was on leave and she could not see her in order to withdraw the case. For this reason the applicant did not transfer the funds. He saw from documents disclosed to him on 19 January 2018 that the complainant made a statement denying having been the author of those conversations, admitting having received the flowers and biltong but denying that she requested the items from the applicant.

[16] During cross-examination the applicant was asked whether he had any other communication with the complainant. He responded in the following manner: ‘.’ then I think there was a communication also prior to, prior to that... I am not sure but let me just quickly check’ and later ‘I think I saw in the docket and I have also took it up (sic) with my legal practitioner that for example one of those communications was a WhatsApp message that she sent me on 31 December that I also gave to Warrant Kangombe, the investigating officer.’ It transpired that the WhatsApp message was received on 31 December 2015 the same day the incident occurred. He testified that he only became aware of this message during September 2016, a day after he returned from the hospital and when Warrant Kangombe came to visit him at the correctional facility. It was not disputed that this document formed part of the contents of the docket. This document was not attached to the applicant but was handed into evidence without any objection by the respondent.

[17] The communication bears a telephone number which the applicant avers belongs to the complainant. The contents of this message contains information that, if proven to be true, could deliver a fatal blow to the case of the respondent.

#### The State's case & the applicant's reply thereto

[18] The Investigating officer, Benitta Nangolo filed an affidavit and testified in support of the State's opposition to the application for bail.

[19] She testified that she investigated the telephone numbers which the complainant gave her and found on 22 January 2016 i.e before the appellant was arrested, the complainant received a call from a telephone number which also called the applicant. The evidence show that this number belonged to a certain Patrick. During the first bail application the complainant testified that Patrick visited her at her place of work and asked her if there was not a financial solution to resolve the issue she had with the applicant. The computer printout of the applicant and Patrick shows that they were in regular contact. The applicant replied that he does not know who the owner is of this number as no affidavit of the cell phone owner was put before the court. The applicant denies that he informed Patrick to talk to the complainant.

[20] She also investigated the telephone call which the complainant received from a company called OOPS (the applicant's company) on 26 January 2016 (also before the applicant's arrest). The telephone number however was not registered on MTC's network and efforts to call the number revealed that it no longer existed. The applicant in response to this allegation admits being the owner of OOPS but denies knowledge of this call or whether the complainant applied for employment. He pointed out that no proof to this effect was put before the court.

[21] On the same date, 26 January 2016, according to Ms Nangolo the complainant received four calls from a cell phone number which was unknown to her. She did not answer the calls. She received a message from the same caller which reads: "answer it is very urgent it is regarding your case". The person identified himself as Sgt Kalefa. This differs somewhat from the testimony of the complainant during the first bail proceedings but in essence boils down to the same fact i.e that the applicant contacted the complainant and identified himself as Sgt Kalefa in an sms. Ms Nangolo's investigations revealed that the applicant is the owner of this number. The applicant in his reply admits that the number belongs to him but denies that he made such calls or sent a message claiming to be Sgt Kalefa. The computer printout however shows that on 26 January 2016, the number of the applicant called the complainant's number once and thereafter text messages were exchanged between the applicant and the complainant.

[22] The complainant also received a text message from a certain Mr Mbok warning her to be careful of the applicant as he was sending people to talk to her to

withdraw the case. Ms Nangolo interviewed Mr Mbok and he informed her that the applicant during February or March 2016 requested him to talk to the complainant to withdraw the case against him and he was willing to pay whatever amount in return for her withdrawal of the case. The applicant avers that there was some “beef” between them and Mr Mbok made these statements out of vengeance.

[23] Ms Nangolo testified that during October 2017 she received what appeared to be screenshots of the facebook communication between the applicant and the complainant and a WhatsApp message. She confronted the complainant with it who denied ever having had communication with the applicant. She informed Ms Nangolo that she received a lot of disturbing calls and messages from the time she reported the rape case against the applicant and for that reason she had last used that number on WhatsApp in March 2017. She denied having been part of the conversation on the document which emanated from the applicant. Ms Nangolo testified that the number which appears on the WhatsApp was never used prior to 11 August 2018 when it was registered on the network of MTC in the name of the complainant. She was confronted with the fact that the complainant gave this number in a statement which was taken in 2016. Mr Plaatjie, a manager of the Risk Management Division of MTC explained that this number was used on the MTC network for the first time 27 February 2016 but he admits that there was a system change during 2016. The date and effect thereof was not made clear.

[24] The complainant confirms that she is known by her name but that she changed it to “Issa Belangrike Kasiekend”. According to Ms Nangolo, the complainant informed her that she never used the 2 names at the same time. Ms Nangolo did her own investigation to ascertain whether there was social media communication between the complainant and the accused. She took the phone of the complainant to the National forensic Science Institute (NFSI) for analysis of her Facebook account. She was informed by Dr Ludik that there is no evidence on the account of the complainant that she ever communicated with the applicant on Facebook. The applicant avers that the complainant de-activated her facebook account after these allegations came to light but claims that his facebook account is still active. He avers that the complainant, in a statement dated 29 September 2017, confirms that the account “Issa Belangrike Kasiekend” belongs to her. The



complainant in this statement also confirms that on 29 September 2019 she was still using the aforesaid Facebook account.

[25] According to Ms Nangolo the complainant admitted having received the biltong and flowers but she did not know that it was from the applicant. She was called by someone by the name of Strauss. Ms Nangolo determined that the invoice was made out to the applicant. The applicant's reply hereto was that the alleged nameless card with the words thank you very much has not been placed before the court and that the complainant was not honest with the court. The said card however was produced and placed before the court showing that the name of the applicant is not on the card.

[26] Ms Nangolo investigated the bank account given in one of the documents handed to her during October 2017 and found that the account number, 62254039087 differs from the account number in his founding affidavit namely 6222884305. She stated that the bank account number which was attached to the documents she received during October 2017 was closed on 8 July 2017 i.e before the alleged discussions during September 2017. The account was also not opened in Keetmanshoop but in Katutura. She reasoned that it would not make sense for the complainant to give the applicant an account number which is closed. She also found it strange that this e-mail communication was excluded from his current application.

[27] The applicant stated in his reply that the complainant gave him the old account number during 2016 for him to deposit money to her but he never got an opportunity to pay it because after his arrest his wife handled his personal and business accounts. His ex-colleague Ms Moller e-mailed the old bank account of the complainant. He confirmed that the complainant gave her new bank account number which is 62262886305. This number also differed from the one in his founding affidavit and he maintained that this was due to a typing error. He could not say when the complainant sent him the account number but avers that it was sometime during 2017.

[28] According to Ms Nangolo, the complainant disputed having had consensual sex or that she infected him with an STD. The complainant indicated to her that she is prepared to provide her health passport as proof hereof. Ms Nangolo denies that

she was not available when on leave and stated that the complainant was free to contact her anytime. The applicant replied to this averment that he went to his private doctor who prescribed antibiotics and other medication to clear it.

[29] The applicant in his reply added a further allegation that the complainant contacted him during May 2019 through his nephew asking him for taxi money and to refer her to some of his accountant friends to help her to establish if there is a tax refund due to her. He paid her N\$1000 but directed his nephew to inform the complainant that she should rather not contact him directly because the police and prosecution may later allege that he is trying to interfere with her as a state witness. It is not stated exactly when in May 2019 and neither did the applicant indicate how the money was paid to the complainant.

[30] The state objected to the bail on the grounds that:

- (a) There are no new facts before the Honourable Court to proceed with the bail application;
- (b) The applicant, if released on bail is likely to interfere with the witnesses;
- (c) The applicant has the propensity to commit similar offences; and
- (d) It is not in the public interest or the administration of justice to release the applicant on bail.

#### Applicant's submissions

[31] Applicant submits that the Facebook communication dates after the formal bail application was heard as well as the appeal and it is thus new evidence. The complainant did not dispute using the name "Issa Belangrike Kasiekend" and there is no testimony as to when she changed it from her name to "Issa Belangrike Kasiekend". A further difficulty is the picture posted publicly by the complainant with her posing with the flowers. No affidavit was filed or testimony led in rebuttal. No foundation was led as to the credentials of Dr Ludik nor was evidence led to inform the court of the modalities he used to come to the conclusion that there was no evidence of communication between the applicant and the complainant.

[32] The applicant further submits that the Respondent must demonstrate, through credible evidence, the strength of the state's case, a factor which also plays a role in the propensity to commit the same crime.

[33] The applicant concedes that he created the impression in his initial bail application that he was not with the complainant. He submits that what he stated in his affidavit and oral testimony is the truth. He makes the submission that his medical cost would be too expensive for the prison authorities. It was argued that it was not disputed that he would be able to be gainfully employed and that he has a fixed residence. He submits that he is not a flight risk and the police investigation is completed and the trial is to commence on 1 July 2020 so there can be no interference with the witnesses.

#### The State's Submissions

[34] The state gave the court a summary of the charges the applicant faces in respect of both incidences. Ms Nyoni gave a summary of the allegations against the applicant and his co-accused in the first matter and placed details of the grounds of appeal, a citation of appeal and other judgments herein in her heads of arguments. I pause to mention that I, for the purposes of this application would focus on the facts pertaining to this matter and limit the consideration of the first case to facts stated hereinabove. I furthermore am in agreement with Mr Isaacks that references to other decisions relating to the applicant is not relevant in this application.

[35] Ms Nyoni, counsel for the respondent, submitted that the applicant is clearly playing mind games with the courts. In the lower court he expected the state to prove he committed a sexual act with the complainant. Now he wants the court to believe that he had consensual sex with the complainant. It appears from the version the applicant is now parading before this court that the only issue is whether or not it was consensual.

[36] Ms Nyoni argued that the fact that the applicant had consensual sex was known to the applicant at the time of the initial bail application and it cannot be a new fact. The court should question why the applicant did not raise it during the initial bail application when such information might have swung the decision of the magistrate in his favour.

[37] With regard to the alleged social media communication she argued that the documents produced were not authenticated. The origins of these documents are unknown and the complainant in any event denied being the author of these communications with the applicant. Ms Nyoni highlighted that the purported facebook communication states that he was assisted by a police officer whereas the founding affidavit states that he was assisted by a taxi driver. A further discrepancy is the alleged request by the complainant to be paid N\$20 000 but provides an account number which is closed. She argued that the bank account numbers provided in his affidavits varied substantially and that such differences cannot be ascribed to a typographical error.

[38] Ms Nyoni further submitted that the applicant's story of the flowers should not be believed. He sent his cousin but no evidence is adduced by his cousin and neither did the applicant adduce evidence of the nephew who was contacted by the complainant to obtain N\$1000 for taxi money.

[39] The purported WhatsApp message from the phone number of the complainant was sent on 31 December 2015 but the applicant became aware of it only during September 2016. She argued that the applicant never mentioned this message until 12 November 2019, three years after it was sent. Ms Nyoni submitted that it is inconceivable that the applicant would have forgotten about this message when same is more telling than the Facebook communication which he attached to his founding affidavit. She argued that the only reason for failing to incorporate as part of the documents in support of his application, is because it is a recent creation of the applicant. She urges the court to take note of the fact that the applicant was only arrested on 30 January 2016, a whole month after he received the purported WhatsApp message. He offered no explanation why it only came to his attention in September 2016. This document too she argued was not authenticated. The respondent's reply hereto is that the documents were received into evidence without any objections and that there was no evidence adduced by the complainant to refute the communication.

[40] The applicant conceded that although his medical condition is a new fact that it does not mitigate the reasons why the bail was refused by the magistrate in the

lower court. It is furthermore conceded that the stay of prosecution was exhausted and does not qualify as a new fact for the purposes of this bail application.

[41] Both parties agreed that the matter is set down for trial from 1 July 2020. Mr Isaaks however indicated that there would be a request for postponement in order for the applicant to obtain an expert report to challenge the evidence by Dr Ludik. No history was placed before the court regarding the reasons for postponements of the matter.

### The law

[42] It is trite that the applicant bears the onus on a preponderance of probability to prove that bail should be granted. I have already indicated that this court must have regard to all the circumstances as they appear which would of necessity include both old and new.<sup>3</sup> In *S v Noble and another* 2019 (1) NR 206 (HC) the court held that a bail application was not a trial but an inquiry at which the court was required to have due regard to the evidence adduced before it as a whole, and make a finding whether the state had established a *prima facie* case against the appellants. The court is furthermore cautioned that bail should not be used as a form of anticipatory punishment but must carefully weigh the applicant's right to liberty and his right to be presumed innocent against the seriousness of the offence committed and the interest of the public and the administration of justice

### Application of the law to the facts

[43] It is common cause that the applicant was arrested on a similar charge a year before his arrests herein. Although this court disregarded all the evidence in respect of the first matter the court must still have regard to the fact that it is a serious offence and that it is similar in nature to the offence under consideration.

[44] There is merit in the submission of the State that the version presented by the applicant is not new in that the applicant must have known that he had consensual sex with the complainant right from the beginning. This was never put to the complainant when she testified in the first bail application. The applicant in fact denied having been with her that morning and offered an alibi. This was, in light of his current admission, a blatant lie. This fact will have an impact on the credibility of

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<sup>3</sup> See *Kauejao v The State*, supra

the applicant during trial depending whether or not reasons are advanced for lying. It is not for this court to express what must be made of this fact but it is a factor that could weigh against the applicant during trial. In these proceedings the applicant made a poor impression when he did not want to admit to having lied after affirming to tell the truth but insisted that "it was a mere avoidance of certain facts."

[45] The applicant tendered a WhatsApp message sent from a phone number of the complainant on 31 December 2015. The content of this message is such that, if proven to be true, would confirm the "new" version of the applicant. There is no question that the magistrate would have come to a different decision if this evidence was adduced at the initial bail hearing. The question is why this information was not placed before the court since it was available on 31 December 2015. The applicant testified that he only became aware of this during September 2016. No plausible explanation is given why he could not have seen this message on the 30 December 2015 or why the complainant was not confronted with it during the bail hearing since he had it on his phone during the 30 days prior to his arrest. In addition hereto there is no reason advanced why he did not include this in his founding affidavit but only raised it when cross-examined. His explanation that it was an oversight is not plausible. This message is far more damaging to the State's case than the other communication attached to the founding affidavit. The version of the complainant in the Magistrate Court stands and the use of the number which appear on the message would best be examined during trial.

[46] The Facebook communication was brought under the attention of the state soon after it was discovered. There were some discrepancies as pointed out by the state between the explanation as to how the applicant gained access to his Facebook account and the differences in the banking details of the complainant. The applicant appears to have had various conversations with the complainant telephonically but when asked whether he had other discussions with the complainant prior to the Facebook he only recalled the WhatsApp message. He did not mention the conversation with the complainant during 2016 when she allegedly gave him the account number and neither did he mention that the complainant asked him for money during this discussion. The applicant indicated in his founding affidavit that the complainant thanked him for the flowers but he does not state how she managed to thank him.

[47] The state on the other hand failed to indicate to this court exactly when the complainant changed her facebook account name and whether or not she closed the account or merely changed the account name. It is further not clear on what basis Dr Ludik concluded that there was no evidence on the Facebook account of the correspondence between the applicant and the complainant. It is not clear which account name was investigated since it appears that the complainant used two account names.

[48] The documents containing the messages have been admitted but the veracity thereof is disputed. I am not in a position to determine, in light the technical nature of such evidence, whether it constitutes *prima facie* proof of the existence of such communication and the evidential value hereof would be best tested during trial.

[49] What has changed dramatically since the first bail application, is the fact that the sexual act is no longer in dispute and all that remains is for the state to refute the allegations of the applicant in respect of the electronic media conversations. It does not have the desired effect to weaken the respondent's case but it in fact has quite the opposite effect. The existence of a *prima facie* case against the applicant thus remains and consequently, the concern that the applicant has a propensity to commit similar crimes also remains.

[50] When it comes to the interference I am satisfied that the state proved that the applicant called the complainant on 26 January 2016 and sent messages (sms) to her. This was during the last week in January 2016 when, according to his testimony in the magistrate's court, he was called by the Women and Child Protection Unit to come to their offices. The applicant denied that there was proof that he contacted the complainant but it was adequately proven by the State that the applicant contacted her under the pretext that he was a police officer. Although this happened prior to his arrest I am of the view that it remains relevant. Interference with witnesses may occur at any stage of the proceeding and it is fallacy that it would not happen after completion of the investigation. The offence a serious offence which will upon conviction attract a lengthy term of imprisonment. In light of this fact it is conceivable that there may be interference in order to circumvent a conviction and the resultant imprisonment.

[51] The applicant's attitude when confronted with his interference was that of denial and insisting on proof when it was clear that the state had disclosed a print out of calls which reflects that he did in fact call the complainant. Given his previous interference there is a reasonable likelihood that he would interfere with the complainant.

[52] I have given due consideration to the submissions made in respect of imposing stringent bail conditions, the applicant's medical condition and the fact that the applicant could practically walk into new employment if released on bail. I am however of the view that the weight of factors such as the serious nature of the offence, the likelihood of the applicant committing similar crimes and the proven interference with the complainant tilts the scale between the liberty of the applicant and the proper administration of justice in favour of the a decision not release the applicant on bail pending his trial.

[53] The applicant's application for the court to release him on bail pending trial, is dismissed.

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MA TOMAMSI  
Judge



## APPEARANCES

STATE : Ms Nyoni  
Office of the Prosecutor-General  
Windhoek

ACCUSED : Mr Isaaks  
Instructed by Directorate of Legal Aid  
Windhoek