

**NORTH GAUTENG HIGH COURT, PRETORIA
REPUBLIC OF SOUTH AFRICA**

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ~~YES~~/NO.

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO.

(3) REVISED.

28/11/2012

DATE

SIGNATURE

Case No: 69021/2012

Date heard: 28/11/2012

Date of judgment: 28/11/2012

In the matter between:

LAWRENCE McMaster

Applicant

And

DIRECTOR OF PUBLIC PROSECUTION

1st Respondent

(Gauteng Province)

MINISTER OF JUSTICE AND CONSTITUTIONAL

DEVELOPMENT

2nd Respondent

MAGISTRATE CHAUKE

3rd Respondent

MINISTER OF POLICE

4th Respondent

JUDGMENT

PHATUDI J:

[1] In this application the applicant seeks on an extreme urgent basis an order authorising the magistrate at the Pretoria Magistrate's Court to

hear the bail application of the applicant before 16:00 on the 28 November 2012.

If the aforesaid should not be possible as soon as possible on Thursday 29 November 2012¹

[2] I enquired from counsel for the applicant as to why this matter should be heard on this extreme urgency. He refers me to Rule 6(12) (a) of the Uniform Rules of this honourable court.

[3] I further enquire from him if this is an appeal or if the magistrate postponed the bail hearing not as envisaged in terms of section 50(6) (d) of the Criminal Procedure Act 51 of 1977. Counsel confirms that the applicant has been lawfully arrested and brought before court within 48 hours.

[4] The matter was heard and the magistrate postponed the hearing of the bail application as envisages in terms of section 50(6) (d).

[5] I further enquired from counsel for the applicant if he has knowledge of the judgment that has been handed down on the 16

¹ Notice of Motion page 2

November 2012 by the Supreme Court of Appeal, in the matter between National Commissioner of Police and the Minister of Safety and Security v Jacques Coetzee. Counsel informs me that the judgment has been brought to his attention and has knowledge thereof.

[6] Considering the application before me, the applicant failed to adhere to the practice directive with regard to the procedure of filing the urgent application. Considering all the facts, in my view, there is no evidence led before this court that warrants this matter to being heard on an extreme urgency.

[7] On that leg alone this application stands to be struck off the roll. I however considered the merits. The magistrate correctly and rightly heard the applicant's bail application. The magistrate postponed this matter in terms of section 50(6) (d). For convenience, the section reads that 'the lower court before which a person is brought in terms of this subsection may postpone any bail proceeding or bail application to any date or court for a period not exceeding 7 days at a time on the terms which the court may deem proper and which are not inconsistent with any provisions of this Act'

[8] I want to emphasise the principle set out in the Coetzee judgment. The Supreme Court of Appeal held that '[16] courts must guard against and resist the temptation to impose duties on police officials under the guise of an alleged protection of rights guaranteed under the Bill of Rights, which existing law, in this case the CPA, does not impose. It is well to repeat what Stegmann J said in *S v Baleka & others* 1986 (1) SA 361 (T) at 374H – 375A:

No room remains for the exercise of the court's inherent common law powers in that respect, save, perhaps, to the extent that such powers can be exercised within the framework set by the statutory provisions.'

[9] Considering the provisions of section 50(6) (d) I am of the view that the magistrate acted correctly in postponing the said hearing of the bail application as prescribed in the section.

[10] I am reluctant to order the magistrate to hear the said application on the 28 and/or 29 and/or any other day other than the date upon which the magistrate has postpone the matter to.

[11] I am reluctant to so postpone this matter on the basis of the principle enshrined and set out in the Coetzee matter that this court

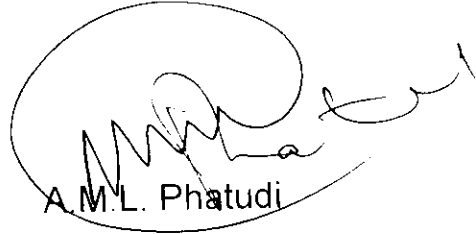
must guard against the temptation to impose duties on the officers of court especially the police and the officers of lower courts.

[12] It is indeed trite that reviews and/or appeals from the magistrate's courts must be heard by two judges. This is neither an appeal nor a review of the magistrate's decision. One judge may, however, hear an appeal against the refusal of the bail by the magistrate. This is the only instance where a single judge can sit and hear the matter from the magistrate, that being, an appeal for the refusal of the bail. This application is not an appeal against the refusal of the bail. This is an application to order the magistrate to hear the application for bail. As principled in Coetzee, this court should resist or guard against imposing such duties. I am bound by that decision. As a result, this application on this second leg stands to be dismissed.

I, in a result, make the following order:

1. The application is dismissed.
2. No order as to costs.

3. The applicant will remain in custody until his bail application is heard on the 05 December 2012.



A.M.L. Phatudi

Judge of the High Court

On behalf of the applicant:

Steve Bester Attorneys

1396 Topaas Street

Waverly

Pretoria

Adv. Van As

On Behalf of the Respondent:

Director of Public Prosecutions

Gauteng Province

Church Square

Pretoria

Adv. Vorster