IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

CASE NO: A95/22

In the matter between

PERRY OSAGIEDE	FIRST APPELLANT
ENORENSE IZEVBIGIE	SECOND APPELLANT
FRANKLIN EDOSA OSAGIEDE	THIRD APPELLANT
OSARIEMEN ERIC CLEMENT	FOURTH APPELLANT
COLLINS OWHOFASA OTUGHWOR	FIFTH APPELLANT
MUSA MUDASHIRU	SIXTH APPELLANT
TORITSEJU GABRIEL OTUBU	SEVENTH APPELLANT
PRINCE IBEABUCHI MARK	EIGHTH APPELLANT

AND

THE STATE	RESPONDENT

Date of Hearing: 02 August 2022
Date of Judgment: 01 September 2022

JUDGMENT

THULARE J

[1] The Republic of South Africa (SA) is open for business. SA is alive with possibilities. These facts drew the attention of the world, one of the consequences of which is the attraction of foreign nationals to SA. SA also has a value system. The values include the supremacy of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996) (the Constitution), the rule of law [section 1(c) of the Constitution], a judicial authority vested in the courts [section 165(1) of the Constitution] and judicial independence with the courts subject to the Constitution and the law which they must apply impartially and without fear, favour or prejudice [section 165(2) of the Constitution], human dignity, the achievement of equality and the advancement of human rights and freedoms. The appellants' bail proceedings drew our courts to exercise judicial functions within that context. This is an appeal against the decision of the magistrate refusing to grant bail to the appellants. The appeal by the seventh appellant was dealt with by a different court.

[2] The issue was whether the decision of the magistrate was wrong.

[3] The Extradition Act, 1962 (Act No. 67 of 1962) (the EA), as regards a foreign state, the United States of America (the US) in this matter, provides for three phases in the process of surrendering a person to that requesting state. It is the administrative phase which is initiated by the applicable request and then the issue of the warrant and the arrest of the person. The second phase is the judicial phase and the last phase is the executive where the Minister of Justice decide on the surrender [*Director of Public prosecutions, Western Cape v Tucker* 2022 (1) SACR 339 (CC). The first phase was completed and this matter related to the proceedings in the second phase.

[4] The appellants, as detained persons under the warrant of arrest, were brought before the magistrate of Cape Town. The US made a request for the extradition of first to sixth appellant. They were appearing for purposes of an enquiry with a view to their surrender to the USA. The eighth appellant had been arrested whilst the US awaited the indictment from the Grand Jury in Texas but the request had been made to SA for his surrender. The superseding indictment against first to sixth appellant had been issued by a Grand Jury sitting in Newark, New Jersey in the US. Before the enquiry commenced, the appellants applied to the magistrate to admit them to bail as envisaged in section 9(2) of the EA. The National Prosecuting Authority of SA (the

State or the NPA), opposed the application. A public prosecutor, delegated by the Director of Public Prosecutions, Western Cape Province, SA. appeared on behalf of the State in the enquiry and the ancillary bail application as envisaged in section 17 of the EA.

[5] The State alleged that a warrant of arrest has been issued in the USA in the district of New Jersey against the first appellant with alias "Lord Sutan Abubakar de 1st", "Rob Nicollela" and "Alan Salomon" and that he is wanted in the USA to stand trial and to answer to:
1. Once count of wire fraud conspiracy, in violation of Title 18, United States Code, Section 1349.
2. Two counts of wire fraud, in violation of Title 18, United States Code, sections 1343 and 2.
3. One count of money laundering conspiracy, in violation of Title 18, United States Code, section 1956(h) and
4. Three counts of aggravated identity theft, in violation of Title 18, United States Code, sections 1028A and 2.

[6] The magistrate of Cape Town had issued the warrants on the basis of an opinion that the appellants had committed offences which in terms of the laws of SA and of the USA were punishable with a sentence of imprisonment or other form of deprivation of liberty for a period of six months or more. The magistrate set out the extraditable offences against the first appellant, in terms of SA laws, as:
1. Conspiracy, be contravening the provisions of section 18 of the Riotous Assemblies Act, 1956 (Act No. 17 of 1956)
2. Fraud and
3. Money laundering, by contravening the provisions of section 4 of the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998).

[7] The State alleged that a warrant of arrest has been issued in the USA in the district of New Jersey against the second appellant with alias "Richy Izevbigie" and "Lord Samuel S Nujoma" and that he is wanted in the USA to stand trial and to answer to:
1. Once count of wire fraud conspiracy, in violation of Title 18, United States Code, Section 1349.

2. Two counts of wire fraud, in violation of Title 18, United States Code, sections 1343 and 2.
3. One count of money laundering conspiracy, in violation of Title 18, United States Code, section 1956(h).
The magistrate set out the extraditable offences against the second appellant, in terms of SA laws, as:
1. Conspiracy, be contravening the provisions of section 18 of the Riotous Assemblies Act, 1956 (Act No. 17 of 1956)
2. Fraud and
3. Money laundering, by contravening the provisions of section 4 of the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998).

[8] The State alleged that a warrant of arrest has been issued in the USA in the district of New Jersey against the third appellant with alias “Lord Nelson Rolihlahla Mandela”, “Edosa Frankyn Osgiede” “Dave Hewitt” and “Bruce Dupont” and that he is wanted in the USA to stand trial and to answer to:
1. Once count of wire fraud conspiracy, in violation of Title 18, United States Code, Section 1349.
2. Two counts of wire fraud, in violation of Title 18, United States Code, sections 1343 and 2.
3. One count of money laundering conspiracy, in violation of Title 18, United States Code, section 1956(h) and
4. Three counts of aggravated identity theft, in violation of Title 18, United States Code, sections 1028A and 2.
The magistrate set out the extraditable offences against the third appellant, in terms of SA laws, as:
1. Conspiracy, be contravening the provisions of section 18 of the Riotous Assemblies Act, 1956 (Act No. 17 of 1956)
2. Fraud and
3. Money laundering, by contravening the provisions of section 4 of the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998).

[9] The State alleged that a warrant of arrest has been issued in the USA in the district of New Jersey against the fourth appellant with alias “Lord Adekunle Ajasi” and “Aiden Wilson” and that he is wanted in the USA to stand trial and to answer to:
1. Once count of wire fraud conspiracy, in violation of Title 18, United States Code, Section 1349.
2. Two counts of wire fraud, in violation of Title 18, United States Code, sections 1343 and 2.
3. One count of money laundering conspiracy, in violation of Title 18, United States Code, section 1956(h).
The magistrate set out the extraditable offences against the fourth appellant, in terms of SA laws, as:
1. Conspiracy, be contravening the provisions of section 18 of the Riotous Assemblies Act, 1956 (Act No. 17 of 1956)
2. Fraud and
3. Money laundering, by contravening the provisions of section 4 of the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998).

[10] The State alleged that a warrant of arrest has been issued in the USA in the district of New Jersey against the fifth appellant with alias “Lord Jesse Makoko” and Phillip Coughlan” and that he is wanted in the USA to stand trial and to answer to:
1. Once count of wire fraud conspiracy, in violation of Title 18, United States Code, Section 1349.
2. One count of money laundering conspiracy, in violation of Title 18, United States Code, section 1956(h) and
3. One count of aggravated identity theft, in violation of Title 18, United States Code, sections 1028A and 2.
The magistrate set out the extraditable offences against the fifth appellant, in terms of SA laws, as:
1. Conspiracy, be contravening the provisions of section 18 of the Riotous Assemblies Act, 1956 (Act No. 17 of 1956)
2. Fraud and
3. Money laundering, by contravening the provisions of section 4 of the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998).

[11] The State alleged that a warrant of arrest has been issued in the USA in the district of New Jersey against the sixth appellant with alias “Lord Oba Akenzua” and that he is wanted in the USA to stand trial and to answer to:
1. Once count of wire fraud conspiracy, in violation of Title 18, United States Code, Section 1349.
2. One count of money laundering conspiracy, in violation of Title 18, United States Code, section 1956(h) and
The magistrate set out the extraditable offences against the sixth appellant, in terms of SA laws, as:
1. Conspiracy, be contravening the provisions of section 18 of the Riotous Assemblies Act, 1956 (Act No. 17 of 1956)
2. Fraud and
3. Money laundering, by contravening the provisions of section 4 of the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998).

[12] The State alleged that a warrant of arrest has been issued in the USA in the district of New Jersey against the eighth appellant with alias “Prince Ibeah” and “PI Mark” and that he is wanted in the USA to stand trial and to answer to:
1. One count of money laundering conspiracy, in violation of Title 18, United States Code, section 1956(h) and
The magistrate set out the extraditable offences against the eighth appellant, in terms of SA laws, as:
1. Conspiracy, be contravening the provisions of section 18 of the Riotous Assemblies Act, 1956 (Act No. 17 of 1956)
2. Money laundering, by contravening the provisions of section 4 of the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998).

[13] The US alleged that the appellants are members of the Neo Black Movement of Africa, also known as the Black Axe and that they have held leadership positions within the Black Axe in Cape Town. It is further alleged that Toritseju Gabriel Otubu (Otubu) assisted at least one of the Black Axe leaders in laundering illegally obtained money from the US. It is alleged that Black Axe described itself as a movement that operates in zones around the world. It was alleged that Black Axe generally maintained a pyramidal command structure and the worldwide headquarters was in Benin City,

Nigeria. The zones were regional chapters officially authorised by the national leadership in Benin City. Different zones were responsible for providing money to the organisation, as were individual members. Black Axe publicly disclaimed that it was a criminal organisation, however, it was alleged that its members were known to engage in widespread financial fraud and the type of street-level violence typically associated with a mob or gang.

[14] It was alleged that Black Axe gangs were involved, amongst others in grand theft, money laundering, and email fraud/ cybercrime. It was alleged that the appellants conspired to engage in wild-scale internet fraud and to launder the proceeds of that fraud to SA for their personal benefit. They would contact potential victims by email or reach out to them on social accounts, including online dating websites. Using false identities and representations, they would convince their victims that they were in romantic relationships with the online personas that they fabricated, which often purported to be engineers or managers working on a project in SA. They would sway their victims to send money directly or permit others to send money through their financial accounts to SA.

[15] Apart from the conspiracy, the appellants would exchange victim information through the internet and would share details of the schemes to further bolster the plausibility of their fraud narratives. They sometimes used other individuals, commonly referred to as ‘money mules’, to deposit illegally obtained funds to conceal the illegal nature of the source of the funds. They also circulated the money transfer confirmations and bank account information among those involved in the particular fraudulent transaction.

The Schedule of the Bail application

[16] The appellants were persons arrested with a warrant and were brought before a lower court, the magistrate’s court of Cape Town. They were not arrested in respect of an offence, but for purposes of adjudication upon the cause of their arrest [section 50(1) of the Criminal Procedure Act, 1977 (Act No 51 of 1977) (the CPA)]. The cause of the appellants’ arrest was to determine whether they should be surrendered to the US authorities. The CPA defined an offence as an act or omission punishable by law

[section 1 of the CPA]. They were not arrested pursuant the exercise of the authority the State of SA to institute and conduct a prosecution in respect of an offence in relation to which a lower or superior court in the Republic exercised jurisdiction [section 2 of the CPA]. They were not persons whom the NPA intended prosecuting as an accused person in respect of an offence and were not in custody in respect of that offence. The person facing extradition is not an accused person and the enquiry does not result in a conviction or sentence [*Geuking v President of the Republic of South Africa and Others* 2003 (30 SA 34 (CC) at para 47].

[17] Legal proceedings in extradition are *sui generis* [*Geuking* at para 26]. Section 9(2) of the EA provided:

"9. (2) Subject to the provisions of this Act the magistrate holding the enquiry shall proceed in the manner in which a preparatory examination is to be held in the case of a person charged with having committed an offence in the Republic and shall, for the purposes of holding such an enquiry, have the same powers, including the power of committing any person for further examination and of admitting to bail any person detained, as he has at a preparatory examination so held.

The CPA in its definition of criminal proceedings, includes a preparatory examination under Chapter 20 [section 1 of the CPA]. A bail application as envisaged in section 9(2) of the EA is, in nature, criminal proceedings.

[18] In their bail application, the person facing extradition is entitled to procedural fairness [*Geuking* para 47]. Section 60 of the CPA is procedure, in criminal proceedings in the Republic, which was intended to meet the Constitutional requirement that no-one should be deprived of physical freedom unless a fair and lawful procedure was followed. In *Nel v Roux* 1996 (3) SA 562 (CC) it was said:

"Requiring deprivation of freedom to be in accordance with procedural fairness is a substantive commitment in the Constitution."

A bail applicant facing extradition has the right to freedom and security, which includes the right not to be deprived of their freedom arbitrarily or without just cause [section 12(1)(a) of the Constitution].

[19] The appellants were arrested and brought before the magistrate, for the magistrate to hold an enquiry with a view to surrender the appellants to the US. They

were not charged by the NPA with having committed an offence in the Republic. The magistrate had the power to admit them to bail, and it is against that background that the appellants brought a bail application. I am unable to trace any intention of the Legislature, in both the EA and the CPA, to the effect that the offences specified by the other State, would assume the same schedule of offences which if committed in the Republic, would be punishable therein as an offence. I am unable to support the view that the accused appeared before the magistrate for an 'unscheduled offence".

[20] The magistrate holding a bail application in extradition proceedings has the same powers, in respect of the bail application of such detained person, as that magistrate has at a preparatory examination. The bail application proceeds in the manner in which it would be held in the case of a person charged with having committed an offence in the Republic, at a preparatory examination, subject to the provisions of the EA. Previously, before the issue of the warrant for committal for trial or sentence of an accused in respect of whom a preparatory examination was instituted, the decision to release such accused on bail before the preparatory examination was concluded, was in the discretion of the magistrate, except where the offence was treason or murder [section 87(1) of Criminal Procedure Act, 1955 (Act No. 56 of 1955)].

[21] Nothing suggests that the CPA has in its reach anything more than domestic application only. On the other hand, the EA regulate the domestic procedures which govern extradition proceedings and which protect the rights of persons present in SA whose surrender is sought by a foreign State [*Harksen v President of the Republic of South Africa and Others* 2000 (2) SA 825 (CC) at para13]. The CPA, in respect of bail proceedings in terms of section 9(2) of the EA, must be read subject to the EA. The CPA must be read consistently with the EA subject to the Constitution. Section 60 of the CPA must be read consistently with the EA. The EA must be read consistently with the Constitution [*Harksen* at para 17]. It was unnecessary for the EA to expressly incorporate the terms of section 50 and 60 of the CPA.

[22] The submission that the EA was passed prior to the current CPA, and so there was no nexus between the EA and the CPA must be rejected. The power of the magistrate to admit a person detained under a warrant issued in terms of the EA also relates to the entitlement of such person to apply to be released on bail as envisaged

in section 50 and 60 of the CPA. The EA comprehends ‘bail’ in the CPA. The word ‘bail’ in section 9(2) of the EA refers to the concept as provided for in Chapter 9 (sections 58-71) of the CPA. I do not understand the new provisions relating to a preparatory examination to change the essential nature or character of a bail application as envisaged in section 9(2) of the EA [*Berman Brothers v Sodastream Ltd and Another* 1986 (3) SA 209 (AD) at 238E-240J]. Of particular importance, is that Chapter 20 of the CPA which makes reference to the preparatory examination, refers to the “accused”.

[23] For purposes of section 60 of the CPA read with section 9(2) of the EA, by necessary implication, the word ‘accused’ includes a person arrested as envisaged in the EA. Section 60(1)(a) of the CPA provides:

“60 Bail application of accused in court

(1)(a) An accused who is in custody in respect of an offence shall, subject to the provisions of section 50(6), be entitled to be released on bail at any stage preceding his or her conviction in respect of such offence, if the court is satisfied that the interests of justice so permit.”

The test in admitting to bail any person detained under a warrant of arrest or a warrant of detention for the purpose of holding an enquiry with a view to surrender such to the foreign State, as envisaged in section 9(2) of the EA, is that the interests of justice so permit.

The case against the appellants

[24] Black Axe was recognised as a mafia group with a presence in Palermo, Italy. The authorities in Italy faced a new foe, which was a Nigerian criminal gang called the Black Axe. The gang was involved in and between 15 and 18 of its members were arrested on charges including mafia conspiracy, drug trafficking, exploitation and violent crimes. The first appellant’s email account contained a copy of a speech from the Head of the Black Axe during a seminar for the organisation held in Cape Town on 9 November 2018 where the Head called for members to provide money to the organisation to assist the Italian Zone members with their legal bills to fight the charges against them. The Federal Bureau of Investigation arrested individuals across Texas for a series of cybercrime-related activities, including BEC and romance scams. Some of those arrested were Black Axe members. Records were lawfully obtained from the

first appellant in his iCloud account which contained a transcript of a speech in France in 2016 by a regional head of Black Axe during which the regional head admitted that Black Axe should not be found or associated with immoral and illegal activities, and that most of them were active violators of laws, perpetrators of various crimes that was defacing Africa world-wide.

[25] The first appellant's iCloud account also contained records of remarks by Lord Omar Bongo, the then Chairman of the National Council of Elders who said people wanted to change but their will died when they realised that the change revolved around their illegal means of livelihood. He was concerned that the group had lost the secrecy code and that a greater percentage of axemen got involved in racketeering but were becoming lousy. He was worried that they showed off unnecessarily their bad money, implored them to hide themselves in their lifestyles and to separate the movement from their illicit engagements. He was concerned about the organisation being on the spotlight negatively.

[26] There was a photo wherein the first appellant, the second appellant and the fifth appellant together with others held pillows with the emblem of the organisation. Another photo of the three, obtained from the first appellant's Facebook account, depicted them sitting together in front of a sign that depicted the Black Axe emblem and underneath it written "Cape Town Zone". An email account of the 3rd appellant had emails to order mugs with the emblem in 2017. A website was established that collected and summarised press articles regarding the Black Axe. The person who maintained the website received threats. An Executive Council meeting of the organisation in March 2015 showed that several zones worldwide joined together to try to attack and discredit the person. The measures included launching a cyberattack against those running the website and tracking the movements of those involved with the website. A committee was established to accomplish these tasks. The first appellant received a copy of these meeting minutes and the resolution due to his status in the Black Axe organisation. The first, second and third appellants were members of the organisation long before the Cape Town zone was officially recognised by the worldwide leadership in 2013.

[27] In 2013 the first appellant emailed a list of 56 members of the Cape Black Axe with their strong names. An email in 2016 from the first appellant showed that he became a member in 2002 along with several others, and in that email he described the second appellant as the chairman. The email showed that the first appellant became the leader of the Cape Town zone in 2013. It also contained the list of individuals who held leadership positions within the zone along with their phone numbers, email address and strong name. The email showed that the first appellant was the founder of the Cape Town Zone and was its Zonal Head from around 2013 to 2018 and thereafter became an Elder of the Zone. He had been initiated into the organisation in 2000 in the Benin Zone, Nigeria. The second appellant was the Zone's Chairman of the Council of Elders from around 2018 and thereafter an Elder of the Zone. He had been blended into the Black Axe in 1997. The third appellant was the Chief Ihaza from around 2013 to 2018 and thereafter an Elder on its Council of Elders. He had been blended in 2005. The fourth appellant was an Assistant Eye and was blended in 2008. The fifth appellant was the Chief Eye of the Zone from about 2013 to 2018. He had been blended in 2005. The sixth appellant was an Assistant Butcher in the Zone from around 2013. He had been blended in 2008. The Cape Town Zone registered itself as an NGO. The means of communication with members, other zones and the governing body in Nigeria was through whatsapp.

[28] The investigations identified the first appellant as a participant in the conspiracy after establishing that he had received, through his SA business bank account in the name of Peroski Auto & Spares Pty Ltd, money illegally obtained from individuals and businesses whose email systems had been compromised. Records obtained from two email accounts which first appellant controlled, revealed that he used romance scams and advance fee schemes to target victims in the US and elsewhere. Romance scams were a form of fraud where the perpetrator created fictitious profiles, often posted online dating and social websites to lure victims into believing that they were in a romantic relationship with the perpetrator. Once the perpetrator gained the victim's trust, he then directed the victim to transfer or receive money under false pretences. Advance-fee schemes was another form of fraud by which the perpetrator falsely promised to provide the victim with loans, inheritances and other forms of financing if the victim merely fronted a smaller sums of money in advance of the larger transfer. Enticed by the offer, the victim provided the sum of money, but the perpetrator never

transferred the larger, promised amount. The first appellant used various email accounts and aliases including the false names ‘Rob Nicolella’ and ‘Alan Salomon’ in internet scams.

[29] The appellants shared the details of the scam, the victims’ names, address, phone number and email address with other conspirators. As part of the fraud and money laundering, the appellants and the other conspirators transferred instructions and copies of money transfer confirmations to each other. Evidence of these communications were found throughout the appellant’s email accounts. The appellants used various email accounts and aliases, including false names. The counts individualise the appellants, their roles, the applicable email accounts, bank accounts and the aliases used, and also identified the victims and the amounts sent. Because of the number of the charges, the number of accused, the involvement of other conspirators and the information shared, the aliases, the various email accounts used in respect of the victims, protection of the victims against undue mental stress and secondary victimisation, the number of bank accounts, the records from google accounts and records from the iCloud accounts, the counts are not herein individualised to avoid a tediously lengthy judgment.

[30] The appellants also used business email compromises to obtain money. Between July 2020 and August 2020 a business in the US unwittingly sent more than approximately US$2 million into financial accounts pursuant fraudulent wire instructions. The perpetrators compromised the business’s email account, which was then used to send phishing emails to other business accounts to collect their credentials. An auto-forwarding rule was put in place, which caused emails sent to the compromised email account o automatically forward emails to another account. This is how money was wired into fraudulent accounts. A University in the US was also a victim of the business email compromise scheme.

[31] It is alleged that the appellants are all Nigerian nationals with worldwide support of the Black Axe whose headquarters are in Nigeria. The organisation also has zones throughout the world, which would facilitate their flight to locations beyond Nigeria. The appellants have foreign bank accounts, cryptocurrency exchange based accounts and mobile storage wallets which are used to facilitate movement of financial assets

outside SA. The appellants not only use false aliases, but have created and transferred false documents, including fake invoices to create an appearance of legitimacy. The network of victims and mules were available to secure funds for the appellants. The appellants had moved to fraud and money laundering in cryptocurrency which was for the most part anonymous and could be accessed from anywhere in the world. It would be impossible to stop the appellants from accessing cryptocurrency wallets.

[32] The appellants' means of income had been derived from criminal activity. There is an extensive history of communication and sharing of purposefully manufactured documents used in furtherance of the fraudulent schemes. The appellants have the ability to manufacture documents and the means of identification. The devices were confiscated, but the ability to access online accounts remained. Thus the capacity to conceal or destroy evidence remained. The threat to likely contact the witnesses to threaten or coerce them to destroy evidence of communication with the group remained.

[33] Black Axe was classified as an illegal cult in Nigeria, with a long history of using violence to further its criminal enterprise, which included killing, sexual attacks and corporal punishment as methods of enforcement within its ranks and in its recruitment. It is said to be the most notorious secret society to have emerged from Nigeria. Opposition to it is dangerous and cult members' conduct have given concrete reason to fear them. The US had identified additional victims in Germany, Barbados, Grenada, Jamaica, Turks and Cairos, United Kingdom and Canada, all associated with the Black Axe in Cape Town. The US did not maintain an extradition treaty with Nigeria.

[34] 162 electronic devices were seized following the arrests and searches of the appellants. Forensic imaging of the devices is ongoing but a preliminary review of the devices has revealed that two email addresses known to be associated with criminal activity as laid down in the indictment were observed on the iPhone 8 seized at the residence of first appellant. The phone is listed in the name of first appellant. Following his arrest and the search of his residence, his Facebook page was deleted, despite all electronic devices having been removed from his person upon his arrest. This reaffirmed concerns about the destruction of evidence by the appellant or others on his behalf.

[35] An iPhone 12 Pro was seized at the residence of the third appellant and two email addresses associated with criminal activity were observed on the phone. Third appellant was listed as the owner. An iPhone 6plus was seized at the residence of the fourth appellant. 13 email addresses known to be associated with criminal activity were observed on the phone. Fourth appellant was listed as the owner. An iPhone XR was seized at an address associated with the fifth appellant. Two email addresses associated with criminal activity were observed on the phone.

[36] Given the cyber enabled nature of the crimes and the magnitude of the charges that the appellants are facing, there were strong reasons to believe that should the appellants be released, they will alter or destroy the evidence, instruments or proceeds of the crime and/or direct other members to do the same. There was also a belief that the appellants would attempt to flee from South Africa or continue to engage in criminal activities. It was submitted that their release would jeopardise the public confidence in the criminal justice system.

[37] An immigration officer in the department of Home Affairs in SA, with verification from an Officer from Law Enforcement, Immigration Unit as well as an officer from Temporary Residence Functional Service and Visa management considered the appellants documents. First appellant had Nigeria as country of origin. He had three Nigerian passports, two South African passports, one non SA citizen identity document issued in 2002 and one SA citizen identity document issued in 2005. His first Nigerian passport had a visitor's permit issued to accompany a SA spouse, which was extended twice. He was issued with a permanent residence permit in 2002. His second Nigerian passport had two traveling endorsements. His third Nigerian passport had various travelling endorsements to Nigeria. His first SA passport issued in 2005 and valid until 2015 had an Australian visa and a Nigerian Entry visa. The second SA passport issued in 2015 and valid until 2025 was endorsed with 2 Uk visas and 1 Chinese visa. His asylum application was cancelled in 2002 and he was married to a SA citizen.

[39] First appellant entered SA illegally in April 1998. He approached Home Affairs and asked for asylum. A criminal case docket was registered and investigated against him under Worcester CAS 1572/01/2000. He was issued with a temporary permit to a

prohibited person to legalise his stay in order to give him an opportunity to present his case. He was informed that he was not entitled to any SA documents pending the outcome of his asylum application. In 1999 he approached Home Affairs in Worcester and applied for a South African passport. In support of his application, he presented the official with a SA ID document, containing an ID number which claimed to be a different person. The person impersonated had been robbed of his identity document, which criminal case was reported to Gugulethu SAPS.

[40] First appellant was arrested and charged with fraud and contravention of the immigration laws in that he submitted a false application, using a SA ID to apply for a SA passport. An official who attended to first appellant's application for an SA passport became suspicious when first appellant could not speak isiXhosa, the indigenous language spoken by Africans born in Butterworth in the former Transkei, now part of the Eastern Cape. The particulars he used were those of a Xhosa from Butterworth. The case against the first appellant was removed from the roll because witnesses were not subpoenaed for trial, and the case was never re-enrolled. The State is now investigating if this could be attributed to corruption or defeating the administration of justice. First appellant had a Facebook account which contained many personal photos and those of his co-perpetrators. Subsequent to his arrest it was deleted, pointing that he either had access to an electronic device whilst in prison or had another person with access to his login details and passwords to delete his profile. This is an indicator that he is likely to tamper with evidence.

[41] The country of origin for second appellant was Nigeria. He had 1 SA passport issued in 2020 and valid until 2023 and 1 non SA citizen identity document issued in 2004. He was also a holder of a permanent residence permit. The first and second appellants' status in SA were affected by their arrests. Upon execution of their arrests they became prohibited persons as envisaged in section 29(1)(b) of the Immigration Act, 2002 (Act No. 13 of 2002) (the IA), and the Minister of Home Affairs was to be advised to deprive them of their citizenship in terms of section 8(2)(b) of the Citizenship Act, 1995 (Act No. 88 of 1995) and withdraw their permanent residence status.

[42] Third appellant's country of origin is Nigeria. He had more than 1 Nigerian passport. His first passport indicated that he entered the country through a visitor's

visa issued in 2006 in Lagos. His temporary residence permit was further extended more than once. His second passport indicated that in 2013 he was issued with a Business Permit. His third passport indicated that he was issued with a retired person visa in 2018 valid until March 2022. He was convicted of dealing in drugs and was a prohibited person in terms of section 29(1)(b) and (e) of the IA. He also stood to be charged with at least three contraventions of the IA.

[43] Fourth appellant country of origin was Nigeria. He had more than 1 passport. He was issued with a visitor's visa in 2008. He had a temporary residence permit issued to him which was extended a number of times. It showed it was granted for study purposes at the University of the Western Cape. The second passport of fourth appellant was issued in 2014. There was another passport issued to fourth appellant in 2019. His three passports were compared with a passport issued to Frank Igbinedion and the facial impression were the same. The passport of Frank Igbinedion was issued fraudulently. The fourth appellant last entered the country on a study permit which was valid until 31 December 2014. He was an undesirable person on 21 March 2017 in terms of section 30(1)(h) of the IA. The Departmental systems indicated that he departed on 21 March 2017 on a Nigerian passport and there was no record of his subsequent entry on any of his passports. He was declared an undesirable person for a period of 5 years and did not qualify for admission into the country, for a visa or for a permanent residence permit. His sojourn was in contravention of the IA. He also stood to be charged on at least three contraventions of the IA.

[44] Fifth appellant had more than one passport. He entered the country on a visitor's visa in 2013. He remained undocumented after his visa expired. His second passport indicated that he departed from the country on 12 August 2017 without any visa endorsement. He re-entered the country on 15 August 2017 at Oshoek port of entry without a visa. He received a visitor's visa valid until 14 September 2017. His asylum seeker application was rejected on 1 September 2017. He had no residential status in SA. His entry without a visa when he was required to have one, meant he entered the country in through error and remained in the country in contravention of the IA. He should have been declared an undesirable person when he left the country on 12 August 2017. He stood to be charged for contravening at least 3 contraventions of the IA. Among the documentation seized at the residence of fifth appellant, was an

international air waybill. The waybill was in respect of an HP laptop delivered to Phillip Coughlan. Phillip Coughlan was an alias used by fifth appellant to commit criminal offences.

[45] The sixth appellant's country of origin was Nigeria. He had more than one passport. He entered the country on a visitor's visa in 2010. He was issued with a business visa in 2014. His second passport had the same business visa but their barcodes differed. His third passport had visitor's visa which made reference to a charity organisation and voluntary activities. He was to conduct voluntary work at Igivefirst Charity initiative. He had legal residential status in the country. He however has made himself guilty of contravention of various provisions of the IA.

[46] The eighth appellant's country of origin was Nigeria. He had more than 1 passport. He entered the country on a visitor's visa in 2018 to do work at a charity organisation, Amen Christian Church. The second passport was issued in 2021. He had a fraudulent visa. His asylum application was rejected and he was an undesirable person in terms of the IA. No record could be found that he applied for his residential status in SA. The third appellant to the eighth appellant were all prohibited persons under section 29(1)(b), section 29(1)(e) and undesirable persons under section 30(1)(h) of the IA. The eighth appellant's arrest and detention was requested by the US, and he was a well-known member of the Black Axe who used aliases against numerous victims in the US. The case involved him and his co-conspirators engaging in widespread fraud via the internet by taking on various aliases, which included "Prince Ibeh". The US feared that his release pending extradition would enable him or his co-conspirators to flee from SA and to be able to hide or move fraud money in protection of his co-conspirators and potentially destroy valuable physical and digital evidence accessed through the banking system and the internet. In one instance of romance scam the victim, eighth appellant laundered the proceeds through the business account of another Black Axe member in Dallas, Texas in the US.

[47] The appellants did not abide by the terms and conditions of their status including terms and conditions attached to the relevant permits upon its issuance, extension or renewal. The status expired upon the violation of their obligations as envisaged in section 43 of the IA. They were susceptible to deportation as envisaged in section

32(2) of the IA. They were illegal foreigners and they could not buy or rent fixed property, as that was a criminal offence as envisaged in section 42(1)(b)(ix) of the IA. The appellants showed the means to move in and out of SA, some instances where they were without travel documents or proper processing. The retention of their documents will not stop their movement. Their citizenship still had to be determined, in the circumstances.

[48] A further few examples suffice to indicate the evidence against the appellants. There was an FNB account in the name of UYI Edo Committee of Friends, whose signatories are the first appellant, one Osamede Olguokhlan and Efosa Eriamiamto. The cellphone numbers of Osamede and Efosa appeared in the messages that were sent from a cellphone which was seized at Pollsmoor prison in the cell where some of the appellants were detained. There was an amount of R820 000-00 deposited into Mitons Matsemela Trust account, made up of various deposits. These deposits were made by different individuals and an entity into sixth appellant's FNB account and from there via EFT into Mitons Matsemela Trust account. This was typical characteristics and behaviour of a criminal syndicate conducting money laundering.

[49] Peroski Auto and Spares was a company controlled by first appellant whilst Abravoo Trading CC was a company controlled by second appellant. The two companies had Nedbank accounts where each of the two appellants respectively was the only signatory. A mini cash flow analysis of the two companies revealed that for the period 2015 to 2018 Peroski received a total of R8 149 773-14. Abravoo received a total of R5 410 041-95 in suspicious transactions. One particular depositor made a deposit of RR711 402-59 into Peroski and R224 796-27 into Peroski. The funds to these accounts were mostly swift transfers or deposits made by individuals overseas, the majority of whom are confirmed victims. It is safe to conclude that these funds were proceeds of crime. These funds were immediately depleted by ATM withdrawals, lifestyle expenses, electronic payments and numerous teller/counter withdrawals. No business related expenses were evident from the accounts, such as payment of utility bills, rentals or other business expenses and tax. It was safe to conclude that the businesses were straw companies to receive funds and dissipate them.

[50] Peroski Motors and Peroski Auto & Spares Pty Ltd, in terms of the detailed online report (XDS), shared the same address, which was the residential address of first appellant. He was arrested at the address and it was a residential home and did not appear to be a repair shop for vehicles. The business appeared to only be businesses in name but not in function or substance. The investigators were unable to trace the business address of G Route Mobile Communications due to lack of details provided by second appellant. Following the XDS report, the business did not exist. Investigators sought Roats Drive in Parklands, Tableview and could not find such a street, in order to locate the business address of Abravoo. They did locate Raats Drive in Parklands, Tableview. The address was a residential property and not a commercial property. The business appear to only be business in name but not in function or substance.

[51] Sixth appellant paid R820 000-00 in cash to purchase a flat. It was established that the appellants were in possession of or had access to electronic devices whilst in Pollsmoor prison, which they used to commit further offences and to destroy evidence and may contact and intimidate witnesses or communicate with the outside world. Sixth appellant or someone on his behalf was able to digitally communicate with persons outside the prison and to give instructions in respect of the transfer of his flat. This led to a search which was conducted in the cells where the appellants were held. 6 cellphones were found in the cell 616 B3 unit, where first, fourth, sixth and eighth appellants were held. 5 cellphones were found in cell 622 B3 unit where second, third and fifth appellant were held. One of the 5 phones found in cell 622 B3 unit was a mobicel found on the bed of an inmate, who denied ownership. During the search that phone rang and the inmate was directed to answer the cell. The female voice asked to speak to Richy. The officials asked who Richy was but got no response. Later an inmate confirmed that the cellphone belonged to Richy who was identified as second appellant.

[52] The analysis of the electronic devices provided evidence that the appellants had been in possession of or had access to cellphones whilst in Pollsmoor prison. Information found by DPCI Digital Forensic Laboratory (DFL) on a Samsung had messages. One message sent named sixth appellant. The other sent message gave an ABSA account number, whose holder was first appellant. The other sent message

was fourth appellant trying to get hold of his life partner. A message received provided fourth appellant's father's cell number. The other message was sent to a number with a dialling code of Italy in Europe, and read "call me with this number abeg."
The other message received gave the cellnumbers of Efosa and Osamede. The other message sent provided a lawyer's number and the message received in return said the recipient would call the lawyer. Another message received provided Eric with his wife's number. Another message sent gave a cell number and further read: "you fit get Richy through this number but na Igie own".
Another sent message gave fourth appellant's full names. A message received provided the name Perry and a cell number with a dialling code of Nigeria. There was also a message from first appellant's wife announcing her visit on the Saturday. A message received asked to speak to Perry, by a person who identified themselves as Tony. There was also a message which addressed the receiver as King which exchanged greetings. Another message was received asking who is this, and the answer was sent was a cellnumber and the name Richy.

[53] There were also numerous calls to and from local and international calls in Nigeria, several ewallet transfers to a total of R15 400-00 between 21 October 2021 and 09 November 2021. Reference to bank accounts were sent via sms. It was concluded, from the two devices, that first appellant, second appellant, fourth appellant and sixth appellant had used the electronic devices to conduct communications and potentially still conducting criminal activity. Egbe Tony Iyamu is a co-perpetrator sought by the US. His extradition papers were received and his arrest formed part of the operation when the appellants were arrested but he was not located and the warrant for his arrest is still in circulation,

[54] Although third appellant registered at Forex Varsity and paid R19 500 in full, he did not attend the course. The reason for non-attendance provided to that institution was that he was overseas. The address that he provided as the address of his rental property business, the location was a residential property and not a commercial property. The business was not a functioning and operating business. Fourth appellant attended the University of the Western Cape between 2010 and 2014 but he did not graduate.

Appellants' cases

[55] The first appellant was born in Nigeria in 1969 and came to SA in 1998. He was granted a temporary asylum seeker permit, which regulated his stay until 2000. He met engaged and married his wife in 1998. He was granted a temporary residence permit in that year allowing him to reside with his wife. His view is that the basis for his request for asylum status stands. He challenges the view that he was an undesirable or prohibited person. This is moreso because of the presumption of innocence which applied in both the US and SA. He had been in Cape Town for over 20 years and owns immovable property where he stayed with his wife and four children who are all still of school going age. The property is mortgaged with Absa bank and its estimated value is R2 million. He completed the equivalence of a matric and obtained an LLB degree in 2020. He also owned two vehicles valued at around R200 000-00 and R50 000-00 which were all fully paid.

[56] He worked as a Quality Controller in Nigeria and has established a business in SA, Peruski Motors, where he bought accident damaged vehicles which he fixed and resold. His income fluctuated and he generated in excess of R30 000-00 per month. He commenced his articles of clerkship with Ebi Okeng Incorporated, a law firm. He desired to be admitted to practice and specialise in immigration law, having noted with concern struggles encountered by foreign nationals in SA. His wife is no longer employed as a result of the allegations against him. He was the primary caregiver and his family was dependent on him. He was stressed and had anxiety because of unsettled fears for his family especially his wife who was diagnosed with a reoccurring brain tumor. Her illness concerns him. He also cited his displeasure with the conditions in prison.

[57] His travel documents were seized by the police at the time of his arrest. He had never obtained fraudulent travel documents. He is a SA citizen and considered Cape Town his home. His business, family ties and employment were in Cape Town. He was not a flight risk. Since his incarceration he was unable to earn a livelihood. His articles will be terminated and he could not generate an income, His continued detention will ruin all his goals in relation to his profession. He needs a reasonable

opportunity to prepare his defence and to ensure that his legal fees are paid. Extradition proceedings are slow and take years to conclude.

[58] The State's prospects of succeeding are questionable in the light of amongst others the absence of dual criminality. He denied entering the country illegally. He disputed that the conditions of his stay were explained to him in the language that he understood pending his asylum application. He disputed the connection between the Neo Black Movement of Africa to the Black Axe. He disputed any allegation of a criminal nature and membership of any association. He disputed knowing any money mule. He disputed the use of aliases. He disputed the likelihood of committing further offences. He did not have various means of evasion. His status cannot be put to question. He was not a prohibited person and he was not illegal in the country.

[59] He did not threaten anyone, nor harbour any resentment against any person and have no previous convictions or pending cases or warrants of arrest issued against him and had no disposition to commit offences. He will not evade, but will oppose his extradition. He will abide with conditions that he may not make contact with any person. He had no access to any evidential material. His release will not undermine or jeopardise the objectives or proper functioning of the criminal justice system, including the bail system. He gave his full co-operation to Interpol and the Hawks during and after his arrest. There is no possibility of him concealing or destroying evidence obtained by law enforcement institutions. He had R10 000-00 available to pay bail.

[60] His wife in a confirmatory affidavit explained that his arrest led to her leaving her employment. She had a brain tumor removed in 1997 and had undergone surgery again in 2014 when it was again diagnosed where she also did a brain drain to drain excess liquid. A regrowth was discovered two years ago and lately is growing rapidly. She was warned against stress. She relied on him and feel vulnerable. Arina Smit (Smit) was a self-employed social worker in private practice who compiled a report to help the court understand the first appellant. His sources were the first appellant and his family. The first appellant's parents are deceased. His only two brothers are also in SA, whilst one of his two sisters was in the US and the other in Nigeria. The children presented with trauma related to their father's arrest and will need to go for counselling.

His elder son presented anger, irritability and feelings of disconnection. His wife presented some delayed functioning in areas of speech and memory.

[61] Second appellant was 45 years old, born in Nigeria and arrived in SA in 2000. It was a result of the political tensions and he was issued with a temporary asylum seeker permit. He was now a permanent resident permit holder of SA since 2004 after his marriage to a SA woman in 2002. He was issued with a non-citizen identity document in 2004. He will challenge the Minister if there was withdrawal of his citizenship or declaration as undesirable. He purchased the immovable property where he resides in this court's jurisdiction subject to a mortgage bond registered in his name since 2018. He resides at the address with his wife and three children.

[62] He obtained the matric equivalent and also completed a Diploma in Social Work in Nigeria. His late father was involved in in politics as a member of the People Democratic Party, which was a risk in the hostile political environment and he took refuge in SA. He arrived in 2001 and worked part-time as barman and later as waiter and saved enough o start his own business. He bought, restored and sold accident damaged vehicles. In 2007 he joined the meter taxi business. In 2013 the launch of Uber adversely affected his business and he took employment as stock manager. He earned enough to take out the bond but terminated his employment to pursue studies. He still operated his transport business.

[63] He was married to another woman in terms of customary laws of Nigeria in 2016. He has two minor children from that marriage. He has another minor daughter from a previous relationship. He provides for the needs of his children. His wife is a student, unemployed and relied on him for financial assistance. He was the primary caregiver and his family would suffer if he were to remain in custody. He cited the conditions in prison and the emotional stress to him and his family as a result of his arrest, which traumatised his children. He owned four vehicles, three of which were used in his meter taxi business which are an Audi A4 valued at about R100 000-00, Toyota Quest valued at about R70 000-00, Renault Sandero valued at about R60 000-00.

[64] His SA passports and ID were confiscated by the law enforcement agencies involved with his arrest. He had no objection with them retained by the investigating

officer until the matter was finalised. His ability to evade has become an impossibility because of the seizure of his documents. He considered SA his home. He was unable to generate an income since his incarceration. He needs time to prepare his defence, consult with his legal representatives and pay his legal fees. The delays in his legal representatives gaining access to him makes consultation impossible and was prejudicial to his defence. He also referred to the slow nature of extradition proceedings and the prejudice he will suffer as a result.

[65] His marriage to his previous wife was not one of convenience but put of love. He disputed what sought to create an adverse inference in relation to the manner that his current status in SA was obtained. He disputed the likelihood of him absconding or committing further offences or the interests of justice will be undermined should he be granted bail. He disputed involvement in any organised crime organisation or any name other than the names referred to in his travel documentation. He had not previous convictions. All material purported to have been used to commit the offences referred to in the indictment were confiscated by law enforcement agencies.

[66] He disputed that the issuance of the warrant by the US did not find application within section 29(1)(b) of the IA and disputed the effect of the provisions of the IA as the procedures available to protect his rights in section 8 of the IA as amended were not adhered to. He disputed association of his identity with any criminal organisation involved in any criminal conduct of any nature. He disputed that he was given any notification as a means to provide him with the opportunity to challenge any decision taken from the intended request to the Minister for the withdrawal of his citizenship. He also repeated what the first applicant said in para 49 above. His wife, married in accordance with custom of Nigeria, deposed to a confirmatory affidavit, wherein she also indicated how the arrest and incarceration affected her and the children.

[67] Smit also provided a report. The second appellant was one of six children. His father passed on and his mother and 2 brothers were in Nigeria, one sister was in Canada and another sister was in the US. He had lost a brother when they were younger. His mother suffered from diabetes and was not well. She did not know about his arrest and he did not want her to know as he was concerned about her health. The second appellant’s wife had reported her financial struggles since his arrest, as well

as her ill-health from hyperthyroidism. The wife was not a driver and the business did not operate with the second appellant in custody.

[68] Third appellant was 37 years and his country of origin was Nigeria. He arrived in SA in 2006 on a visitor's visa. He applied for and was granted a temporary residence permit in 2007 on the basis of a relationship with a partner. The permit was extended. He pursued studies and after qualification registered a business which enabled him to obtain a business permit. He was granted a retired persons visa which was valid until March 2022. He never received any notification of any breach of the conditions of the permits issued to him. If any, a decision that he was a prohibited person or an undesirable person would have been made without affording him an opportunity to explore the rights in section 8 of the IA. He intends challenging such a decision.

[69] He purchased his first home where he resides with his family for approximately one year now. He obtained the equivalence of matric in Nigeria. He came to SA and completed a Diploma in Internet Web design through Unisa. He registered for a degree in Psychology at the University of the Western Cape which he did not complete. He completed a Management Development Programme with Varsity College. He also completed a course in graphic design and a course in Management Development. He enrolled for further studies at Forex varsity. He worked for a company and later tried business but it did not do well. He recently registered his own property rental company.

[70] He owned two properties in Phoenix, Milnerton, which he rented out to tenants. The properties are each estimated to be valued at R600 000-00. The establishment of the business was based on the acquisition of a bequest from his late father in the amount of R2 million. The income from the business was approximately R27 000-00 per month. He also tried a taxi business which did not do well. He owned two vehicles, a Mercedes CLA valued at about R500 000-00 and a Mercedes GLA valued at about R600 000-00. He previously owned a Toyota which was rented to taxify but which he sold in 2019.

[71] He was in a long-term relationship with a woman and they were in the process of planning a traditional marriage. They have 3 minor children. His father passed in 2015 and his mother passed on in 2017. He acquired a substantial inheritance from his

father. He had two brothers and two sisters. His brothers resided in Cape Town. He is on chronic medication for stomach ulcer. He did not have the necessary dietary requirements in prison. He made reference to the prison conditions. He had a valid passport which contained a valid retired person's visa. It was seized by law enforcement agencies. He undertook not to apply for any emergency travel documentation and to abide by any condition to allay fears of being a flight risk.

[72] He was the only breadwinner. If he could not generate a livelihood, his wife will not be able to meet the monthly financial obligations and the children will struggle to survive. Nobody was equipped to take the responsibility of overseeing all aspects of the functioning of his business. He will lose his investment. He will need a reasonable opportunity to prepare his defence and ensure payment of his legal fees. Consultation opportunities at Pollsmoor prison were delayed and limited, which was highly prejudicial to his defence. The extradition process was slow. He basically repeated the disputes as set out in para 47 to 49 and 55 to 57 above. He acknowledged the previous conviction in relation to drugs for which he served a non-custodial sentence in 2009. He intended to oppose the extradition application.

[73] The woman in his life deposed to a confirmatory affidavit and confirmed their 8 year old relationship. The property in which they reside was owned by the third appellant and was paid for in full. She will be destitute if he was incarcerated. She was under emotional strain and anxiety as their youngest child was only two months old, the middle one was 2 years and the elder one 7 years old. The elder child was present at the time of the father's arrest. The child reported to the class teacher, and the mother has been advised to seek a psychologist to manage the trauma on the child.

[74] Smit prepared a report. The third appellant was one of five children. An elder brother and younger brother resided in SA. The one sister was in the US and the other sister in Nigeria. He had occasional contact with his family and regarded SA as his home where he wanted his children to grow up. In exploring how he purchased his house, the third appellant told Smit that he invested in cryptocurrency (Bitcoin). His life partner reported to Smit that he inherited some money from his father which she knew he had invested in some cryptocurrency. The life partner was unemployed and was unable to manage the rental business. She now asked friends to help out with

groceries to survive. She was concerned about medical expenses for the children and the medical aid which third appellant had, was now unpaid. The third appellant was stressed and anxious.

[75] The fourth appellant was 35 years of age and his country of origin was Nigeria. He decided to immigrate to SA inspired by the international recognition of its standard and quality of education. He arrived in SA in 2008 on a visitor's visa. He had his visa extended and got a temporary residence permit to pursue his studies at the University of the Western Cape, valid until 2014. He continued to sojourn as his return to Nigeria would have compromised his safety and human rights because of the aggression of Boko Haram insurgence and violence. His stay was to assert his rights by seeking refuge in SA to which he had acclimatised. Several attempts to apply for asylum were frustrated by the hostility that most foreign nationals were subjected to when applying. He nevertheless confirmed that he sought asylum in SA.

[76] His declaration as undesirable was not communicated to him, which denied him an opportunity to exercise his rights to challenge the decision which adversely affected him, as envisaged in section 8 of the IA. The intention to initiate such proceedings and having him charged with contravention of the provisions of the IA was artificially created as a basis to oppose his release on bail. He had instructed his attorneys to challenge those proceedings, as amongst others, they were an attempt to circumvent his constitutional right to remain silent in regard to criminal charges for which his extradition was sought. His valid Nigerian passport was seized. He considered SA his only home and had no intention of ever leaving SA. He was arrested at the townhouse which he rented where he lived with his partner.

[77] He received the equivalence of a matric in Nigeria and was enrolled at the University there when he learned about opportunities in SA. He abandoned his studies in Nigeria and permanently relocated to SA in 2008. He continued with his Sociology studies in 2009 and graduated in 2014. In 2015 he completed a Management Development Programme at Varsity College. In 2016 he worked for MTV Base for around 6 months. Since then he is a rapper in the music industry, doing approximately 3 venues per month at R10 000-00 and having an average of about R30 000-00 per

month. He had performed amongst others at Saints and Sneakers Cartel. His partner was unemployed and he was the sole provider for her and their minor child.

[78] He has been with his partner for 3 years and they have a 5 month old child. He was unable to earn a livelihood to support his young family. He has movable property which were the contents of the property he rented as well as a Mercedes Benz A class A200 valued at approximately R400 000-00. He also set out his prison experience including the communication, rival gang fights and threats from prison gangs. He was stressed emotionally, mentally and physically. Rent was not paid and his partner was given an indulgence. His family was suffering. He was depressed and lacked a sense of hope. He needed a reasonable opportunity to prepare his defence and to ensure payment of his legal fees. The prison was not conducive for a proper consultation. Extradition proceedings were slow and took long. He also cited the same facts upon which his co-accused relied as set out in para 47 to 49 and 55 to 57 above. His partner made a confirmatory affidavit. She also indicated that she will be destitute with the minor child if he is not able to pay their rent. He was responsible for their financial needs, including rental and the child's medical needs. Smit also provided a report.

[79] Fifth appellant was 37 years and has his origin in Nigeria. He immigrated to SA in 2013. He was unhappy in Nigeria and moved to SA on a visitor's visa to experience a better life in SA. Whilst in SA he became aware of the political turmoil in Nigeria and sought asylum in SA. He had two expired passports and one valid passport at the time of his arrest. The two expired passports were seized. His valid passport was with his legal representative who received it from an agent at Visa Facilitation Services Global (VFS) which had it as he had applied for a work permit and relative visa some days before his arrest. He was informed that the permit had been granted. His asylum seeker permit had expired. He intended to take the matter on judicial review, which would automatically mean the extension of his permit. He intends opposing an application to have him declared an undesirable person and charges relating to contravening the terms of his status.

[80] He had leased property, for over a year now, for which he paid R15 000-00 per month. The lease agreement reflected his partner's sister who assisted them to conclude the lease agreement. He resided at that property with his partner, two minor

children and a nanny. He matriculated in 2001 in Nigeria and obtained a National Diploma and National Higher Diploma in business administration and management. He worked for the government of Nigeria for a year. Between 2006 and 2010 he worked with his elder brother making and selling videos. Thereafter he worked for a company as a marketer for two years and accumulated enough money to travel to SA.

[81] In SA he worked as a promoter at a club between 2014 and 2017 when the club closed down. He became a model at Loys Model Agency in 2017 and generated about R20 000-00 per month. He also ran a pick-up and drop off laundry business for guesthouses and generate an additional R25 000-00. He employed two other people at the business. He was not married but was in a stable relationship for the past six years and have two minor children who are in school. He intends marrying his partner, who was seven months pregnant. He suffers chest pains which occur when he faced anxiety or was in cold conditions. He had difficulty breathing in situations where he was in stressful positions. This condition has become more frequent since his arrest. He explained the prison conditions and his fear of being sexually abused. An inmate had tried to touch his private parts. He warded off the attack, but was beaten up by several men in the cells. This shocked him and caused him anxiety.

[82] He owned movable property which were in the rented property, as well as a BMW 3 series 2007 model valued at about R80 000-00. He also relied on the same facts as set out in para 49, 55 to 57 above. His partner made a confirmatory affidavit. She was in the last trimester of her pregnancy and had back pain and sharp pains in her abdomen. The pregnancy was difficult and had been exacerbated by the stress related to his arrest and detention. She was self-employed a s caterer for weddings and events and earned around R20 000-0 and R30 000-00 per event. Since her advanced pregnancy she had been unable to run the businesses effectively and had run into financial difficulties, in the absence of his help. Smit also provided a report. His parents and siblings lived in Nigeria. He had three siblings. Two brothers had their own businesses and the younger sister was still in school. He has never visited Nigeria since he arrived in SA in 2013, although he had monthly contact with his family.

[83] Sixth appellant was 33 years and his country of origin was Nigeria. He immigrated to SA in 2010 on a visitor’s visa which was valid until 2011. The purpose of his visit

was to explore opportunities and engage in philanthropic activities in which he was engaged. He registered a business and was issued with a business visa from 2015 to 2019. He secured networks and applied for a visitor's visa which was issued from 2019 to 2022 and which allowed him to offer voluntary service to a charity organisation to uplift the communities in previously disadvantaged communities. He considered Cape Town his home. He intended to challenge the intention to initiate proceedings against him to declare him undesirable.

[84] He purchased property worth approximately R1.5m where he resided with his wife and two minor children since February 2021. He completed the equivalence of matric in Nigeria in 2004. When he could not enrol for tertiary education after his father passed on, he got involved in the informal economic sector in Nigeria and gathered sufficient finds to travel to SA. He immigrated to South Africa to find a stable environment to live out his ambition to give back to the communities. He owned an online clothing store which is duly registered as a company in SA. He generates approximately R50 000-00 per month, the bulk of which goes back to suppliers and the remainder is to cover household amenities. His incarceration will hamper his business and maintenance and care for his family.

[85] He married customarily in 2016. His wife was pregnant with their third child. All his children were born in Cape Town. Although he had recovered from covid-19 the effects and certain symptoms were still evident in his body. He was fearful of contracting it again. He cited the conditions in prison including his witnessing a fight in his cell within rival gangs. When the fight happened he could not sleep because of fear and confusion. He feared the detrimental effect on his mental, emotional and physical health if the fights were to occur sporadically. He was constantly threatened if he did not do according to the wishes of generally aggressive and hostile inmates.

[86] He did not have any immovable property outside SA. He also owned a GS 350 Lexus valued at approximately R80 000-00 and movable property which was in his immovable property. He also acquired another immovable property, an apartment valued at about R850 000-00. He had a valid Nigerian passport and a valid permit valid until November 2022 which were seized. He needed time to consult and prepare for his trial and to also secure funds to pay for legal representation. The extradition

process was long. He also relied on the facts as set out in para 47 to 49 and 55 to 57 above. Smit also prepared a report. The applicant's mother and siblings were in Nigeria. He is one of 9 children. His father is deceased. He had not been to Nigeria since his arrival in SA. His 4 year old daughter was of concern. She had started to wet her bed again and struggles with nightmares since her arrest. She was consistently asking about the bracelets which were put on her father, as she witnessed when he was handcuffed.

[87] The eighth appellant was 39 years and his country of origin was Nigeria. From 2011 this area was constantly attacked by Boko Haram, a terrorist group. The growth and popularity of the group led to more violent and a local church in 2014 was blasted with a bomb. He took a decision to immigrate to SA where he knew his safety and human rights would be protected under the Constitution. Upon his arrival in SA he approached the Cape Town Refugee Centre of the Department of Home Affairs on numerous occasions in order to seek a temporary asylum seeker permit. He was confronted by countless frustrations due to the extremely long queues and unhelpful attitudes from the officials. If the system was smooth and efficient, he had compelling reasons to be granted refugee status. In the absence of documentation, he had relied on the principle of non-refoulment as provided for in section 2 of the Refugees Act, 1998 (Act No. 130 of 1998).

[88] He was not notified that he was a prohibited or undesirable person and such determination and declaration would be opposed. His being charged for contravention of the terms of his status would be challenges if instituted. These allegations were made after the fact to artificially create a basis for his bail to be denied. He leased premises where he resided and paid R10 000-00 rental. The electronic equipment seized from his residence did not belong to him but to a flat mate who had not been back to the flat for a few days. He owned movable property to the value of approximately R200 000-00.

[89] He completed the equivalence of matric in Nigeria in 2002. In 2013 he travelled to Malaysia where he completed a one year Diploma in International Tourism. He ran an online clothing store called PIMark Creation which was a registered company since 2020. His average income was around R13 000-00 and R14 000-00 monthly.

Previously he did promotional work for a club from 2014 to 2016 and that employment ended when the club was closed. He did charitable work for an NGO, IGIVEFIRST in Cape Town. He educated the youth about substance abuse and the importance of education as a means to improve living circumstances. As a result of that work, he had for a visa in terms of section 11(1)(B)(ii) of the IA to extend his assistance to a much larger population. He was not married and not involved in a relationship and had no children.

[90] In the last three years he suffered from chronic stomach ulcer which required medication. Most times he was constipated and struggled to defecate. He had specific dietary requirements which could not be met by the prison. He was not taking his medication. His health condition was deteriorating. He had asked to be transferred to the hospital section or have access to medication but was not assisted. He also cited conditions in prison, including an attempt to sexually violate him. Whilst showering, an inmate had approached him from behind, the inmate pushed their genitals against him and groped his penis from behind. He screamed and the inmate retreated but told him that he could easily get stabbed. The inmate returned with a sharpened toothbrush and showed it to him. One of his co-accused came to his assistance. Since then they attempt to shower as a group to protect themselves. He did not smoke but inhaled tobacco mixed with various toxins and this caused his chest to burn and made breathing difficult.

[91] He also relied on the facts as set out in para 47 to 49 and 55 to 57 above. Smit prepared a report. The appellant presented unwell and anxious when she saw him and complained of abdominal discomfort. He was one of 9 siblings. His 5 sisters, a brother and the mother were in Nigeria. One brother resided in Johannesburg and was there for 10 years and the other in Italy and was there for 6 years. His father passed away in 2019. He had never been back to Nigeria since he came to SA. He had monthly contact with his family in Nigeria. He regarded SA as his home.

The legal principle

[92] Section 65(4) of the CPA reads:

“65 Appeal to superior court with regard to bail

(4) The court or judge hearing the appeal shall not set aside the decision against which the appeal is brought, unless such court or judge is satisfied that the decision was wrong, in which event the court or judge shall give the decision which in its opinion the lower court should have given."

Analysis

[93] The State disclosed the purpose of the arrest and detention of the appellants and set out the further and sufficient particulars of the reasons upon which the appellants' further detention were founded. The appellants elected not to use the opportunity provided by the bail application to present facts that disturbed the probabilities that are established by the State case against them. In the absence of any facts to disturb the probabilities established by the facts presented by the State. The bare denials were not sufficient to frustrate the State case. The bare denials were not sufficient material to produce a discernible defence which was good in law.

[94] In the absence of a discernible defence which was good in law, against the background of such serious allegations where the nature of the allegations and the circumstances under which they were committed induced shock not only in Cape Town or just within the borders of the Republic of South Africa but internationally, especially in countries like the US whose people suffered and they are pursuing the allegedly extremely wicked, cruel, highly unpleasant acts of the appellants, as well as Italy which is pursuing the atrocities allegedly committed by Black Axe, the release of the appellants on bail will likely induce shock and outrage. The release of the appellants will undermine or jeopardise the public confidence in the criminal justice system of the Republic of South Africa. Our courts will lose legitimacy.

[95] In this particular case, the public includes the international community, including countries whose citizens, residents or permit holders were victims, and here the list includes Germany, Barbados, Grenada, Turks and Cairos, United Kingdom and Canada. This case is one of those where SA's ability to cope well with the difficulties of organised crime, especially cross-border cybercrime, and its spirit and resilience is tested. The vigor and strength of spirit and our temperament and staying quality, as a Judiciary, must stand the test of time.

[96] The message from the Judiciary of the Southern tip of Africa must resound and be clear: SA is not a nobody's country. It is not a national park that can be owned but is not the object of rights and responsibilities of any specific subject. It is not a country that is not a subject in law where everybody can do anything, as it belonged to no one, and can be wildly appropriated, acquired and captured at will. One thing is certain, SA has not been abandoned by its citizens. The celebration of SA's achievement of a democratic and constitutional state may have taken longer than necessary. In this extended celebration, most of SA did not read, amongst others, the 1969 classic paper of Neil Postman delivered at a Teacher's Convention, titled *"Bullshit and the Art of Crap-Detection.* It is for that reason that in many respects, SA became victims of what Postman called "bullshit" which manifested in pomposity, fanaticism, inanity, superstition and could be exposed by earthiness.

[97] I understood Postman to explain pomposity as the triumph of style over substance; fanaticism to stand on two legs of bigotry which had no tolerance for data that did not conform to one's point of view and Eichmannism which was an acceptance of regulations and definitions without the realities of a particular situation; inanity as giving a voice and audience to people, whose opinions have little else but verbal waste to contribute to the issue at hand; superstition as ignorance presented in a cloak of authority and earthiness as a value system. Against the background of what Postman explained, SA no longer tolerates bullshit, and has its crap-detectors on. The Constitution of SA is not a Father Christmas in nobody's country, who holds a shopping basket containing rights giving away the power to anybody to do anything against the values, integrity and ethics that good mothering taught, with no responsibilities.

[98] SA is back to serious business of improving the quality of life of all its citizens and to free the potential of each person. SA and its citizens and residents welcome business, including by and from foreign nationals. Part of the preamble of our Constitution reads:

"We therefore, through our freely elected representatives, adopt this Constitution as the supreme law of the Republic so as to –

… Improve the quality of life of all citizens and free the potential of each person; and build a united and democratic South Africa able to take its rightful place as a sovereign state in the family of nations."

[99] The freeing of the potential of each person is not limited to SA citizens. As part of what SA adopted in its Constitution, it includes foreign nationals. What SA expects from all foreign nationals are the simple principles of peaceful co-existence which includes respect for the sovereignty and territorial integrity of the Republic. That includes respect for SA laws, including immigration laws, and when a foreign national sojourn, SA values as well. SA values expects adherence to principles of personal qualities that include morality, credibility, logic and the use of one's abilities to advance equality and mutual benefit to deliver peaceful co-existence.

[100] The evidence suggests that all the appellants may be found to exhibit dishonesty and the absence of strong moral principles and that they contribute to the disunity, division and destruction in the belief that people of African descent in particular have common interests and should be unified. The evidence suggests that their immigration into SA was not an enhancement of a necessary cultural exchange to contribute in the development of the economy of SA and had the tendency to frustrate the general aim of immigration which encouraged and strengthened bonds of solidarity between all ethnic groups of the human race to advance humanity and the qualities of being humane. Their conduct demonstrated a tendency to collaborate with criminality in our immigration systems and cyberspace, perhaps to subjugate the systems and to undermine, if not exterminate, the authority of the Republic in immigration and in business. SA's friendly and generous reception of its visitors and its lack of restriction, frankness and accessibility seems to have been abused.

[101] There is a very foul smell of criminality, including corruption and defeating the ends of justice, around the first appellant's acquisition of immigration documents, which the State is investigating in SA. There is evidence of him impersonating another to access a SA passport. He owned an immovable property worth around R2 million, yet there is no record of his business actually doing what it purports to do. There was nothing extra-ordinary about the personal circumstances of first appellant. He also owned two luxury executive cars.

[102] The second appellant also bought property worth R2 million. Like the first appellant he also alleged running a business of buying, restoring and selling accident damaged vehicles. There was no record of an active business at business premises. He also owned a luxury executive car and another vehicle. It is worth mentioning that the type of business allegedly run by the first and second appellants, are those in which one could easily employ managers, and if one recruited well, could easily be left in the care of committed employees, if any, or trusted family like a wife, who could still run it as their lives depended on it. He could simply not have been a driver of more than one taxi at a time, just as an example. The appellants used to travel and there is no evidence that their businesses previously suffered, if they existed.

[103] The third appellant also owned immovable property where he resided and two further properties which he rented out. He also owned two luxury vehicles. It is difficult to understand how if the two properties generated an income from rentals, it could be said that the wife could not derive an income and would be destitute. The State alleged that the alleged business was a sham to cover up for the explanation of the wealth earned from criminal activity. In explaining his wealth, the third appellant indicated an inheritance from his father and his investment in cryptocurrency.

[104] The audacity of the fourth appellant is very daring. He arrived in SA on a visitor's visa and after its expiry he simply sojourned in the Republic. The long queues and the alleged hostility of officials of Home Affairs can never be enough to meet his disregard of the laws of SA. He demonstrated an arrogant disregard of the normal restraints of immigration processes. The adventure and fearlessness in that intrepid boldness was not intimidated or overwhelmed by the prospect of difficulties if he were to be found by SA law enforcement officials. It was an overbearing manner which demonstrated an attitude of superiority and presumptuous of the authority of the State to manage immigration. It is an attitude which, like a white thread, ran through all the appellants, as regard the authority, sovereignty and integrity of the Republic of South Africa.

[105] The fifth appellant alleged that he was a model, and the model agency said he worked there but was not a model. This means that the R20 000-00 which he alleged was an income from his modelling is doubtful to be counted as part of his lawful means to earn a living. This also casts doubt on the sources of his other laundry income. This

is moreso that if it was simply a pick-up and delivery of laundry from guesthouses, it could still be managed by his wife in his absence. Legitimate income under the circumstances, would help explain affordability of his monthly rentals, at R15 000-00 per month, and a luxury vehicle at his age. There are issues also around his asylum permit application. The lease agreement is not in his name but that of his sister-in-law.

[106] The sixth appellant had a property worth approximately R1.5m. He owned an executive car and was in the process of purchasing a flat for about R850 000-00 cash. He was 33 years. He alleged involvement in charity work and an online clothing store which is registered. It must be borne in mind that the State case suggested that the appellants registered what on the face of it seemed as legitimate business enterprises or economic activities, as a sham or cover for their illegal activities to justify their wealth accumulation. In the circumstances, one would have expected that a man in the position of the sixth appellant, in his quest to gainsay the State case and indicate that the interests of justice permit his release, would simply set out facts which would indicate that the State case is improbable and that if his facts are proved, he may be found not liable to surrender to the US and that there was no sufficient evidence to warrant a prosecution for the offence in the foreign state.

[107] He is the applicant for bail after all and where the State opposed his bail application, there was a duty cast upon him to satisfy the court that the interests of justice permitted his release. This duty is that which a bail applicant is legally obligated to do, and is different from the *onus* as a legal obligation. It is the duty inherent in the formal request to the court in respect of his cause. It seems to me, that this is what the courts had in mind in cases like *R v Matsala* 1948 (2) SA 585 (E) at 592. In *Liebman v Attorney-General* 1950 (1) SA 607 (W) at 611 the position was advanced more clearer when it was said that it was for the applicant to show grounds for the exercise of the discretion in his favour and this did not mean that he had to prove very special facts. It was this duty that was referred to in *Matsala* and also in *De Jager v Attorney-General, Natal* 1967 (4) SA 143 (D) at 149G as *"onus".* This duty is what all the appellants could have done, if they had valid defences in law, to ward of further detention. This they did not do.

[108] In extradition proceedings, this evidentiary burden, once the State set out it facts, shifts to the bail applicant, to set out the nature of their evidence in rebuttal [*South Cape Corporation (Pty) Ltd v Engineering Management Services (Pty) Ltd* 1977 (3) SA 534 (A) at 548]. For instance, if the facts placed by an applicant before the court indicated that, if proved at extradition proceedings, there would be doubts about their liability for surrender or the sufficiency of the evidence to warrant a prosecution, it will be a clear indicator that the deprivation of liberty cannot be delayed until the person is discharged at the end of the enquiry, which would be a pointer to release on bail in the interests of justice. I am unable to agree with counsel for the appellants that the merits of the extradition enquiry played no role in these proceedings. Clearly we understood *Tucker* differently, especially from para 86 but especially para 100 and 101.

[109] The duty on the appellants was different from the *onus* or the overall burden on the State, in the sense of finally satisfying the court that the interests of justice did not permit the release of the appellants on bail [*Pillay v Krishna* 1946 AD 946 at p 952-953; *Brand v Minister of Justice and Another* 1959 (4) SA 712 (A) at 715]. In *Pillay* it was said:

“But I must make three further observations. The first is that, in my opinion, the only correct use of the word “*onus”* is that which I believe to be its true and original sense (cf. D. 31. 22) namely, the duty which is cast on the particular litigant, in order to be successful of finally satisfying the Court that he is entitled to succeed on his claim, or defence, as the case may be, and not in the sense merely of his duty to adduce evidence, to combat a *prima facie* case made by his opponent. The second is that, where there are several and distinct issues, for instance a claim and a special defence, then there are several and distinct burdens of proof, which have nothing to do with each other, save of course that the second will not arise until the first has been discharged. The third point is that the *onus*, in the sense in which I use the word, can never shift from the party upon whom it originally rested. …

but the *onus* which rests upon his opponent is not one which has been transferred to him: it is an entirely different *onus,* namely the *onus* of establishing any special defence which he may have.”

[110] The level of exaggeration by the appellants is simply overboard. Whilst it is alleged that he never returned to Nigeria since he came into SA in 2010, an affidavit

allegedly deposed by him to confirm his customary marriage in 2016 is mysteriously presented. The eighth appellant alleged that he fled to SA to seek asylum. He had been in SA since 2014 but did not attend to Home Affairs to have his stay regulated. He also blamed long queues and hostile officials for not getting the proper documents. He leased property for R10 000-00. He ran an online clothing store and did charitable work. The State alleged that the appellant had a fraudulent visa and that his asylum application was rejected and there was no record that he applied for residential status. His sojourn was illegal. He was alleged to have used alias “Prince Ibeah” and “PI Mark” and to have been involved in one count of money laundering conspiracy in terms of the US code with a substantially similar offence in SA.

[111] All the appellants had established their stay in the Republic since their respective arrivals in the country. However, a closer look at their activities as set out in the State case, measured against no records of any honestly earned income, caused their respective alleged economic activity to pale into insignificance. The facts set out by the State, if proved, will lead to a finding that they made a livelihood out of a criminal enterprise and, as members of Black Axe. The personal circumstances of all the appellants did not yield anything extraordinary or significant [*S v Scott-Crossley* 2007 (2) SACR 470 (SCA) at para 12]. Mere bare denials of the considerations in section 60(4) of the CPA was insufficient [*S v Botha en n’ Ander* 2002 (1) SACR 222 (SCA) at para 18]

[112] The general principle in criminal appeals is that a court of appeal will not set aside a determination unless the magistrate was wrong [*R v Dhlumayo* 1948 (2) SA 677 (A) at 705-706]. In *S v Mohamed* 1977 (2) SA 531 (A) at 542A-B it was said:

“To sum up: the appeal by an aggrieved accused under sec. 97 of the Code to a Superior Court against a decision of a magistrate in respect of his application to be released on bail, is an appeal in the wide sense, that is, it is a complete re-hearing and re-adjudication by the Superior Court of the merits of the application, with or without additional information, in which it can, in the exercise of its own discretion, make such order as to it seems just;”

[113] In *S v Dlamini; S v Dladla and Others; S v Joubert; S v Schietekat* 1999 (4) SA 623 (CC) at para 11 it was said:

"[11] Furthermore, a bail hearing is a unique judicial function. It is obvious that the peculiar requirements of bail as an interlocutory and inherently urgent step were kept in mind when the statute was drafted. Although it is intended to be a formal court procedure, it is considerably less formal than a trial. Thus the evidentiary material proffered need not comply with the strict rules of oral or written evidence. Also, although bail, like the trial, is essentially adversarial, the inquisitorial powers of the presiding officer are greater. An important point to note here about bail proceedings is so self evident that it is often overlooked. It is that there is a fundamental difference between the objective of bail proceedings and that of the trial. In a bail application the enquiry is not really concerned with the question of guilt. That is the task of the trial court. The court hearing the bail application is concerned with the question of possible guilt only to the extent that it may bear on where the interests of justice lie in regard to bail. The focus at the bail stage is to decide whether the interests of justice permit the release of the accused pending trial; and that entails in the main protecting the investigation and prosecution of the case against hindrance."

[114] The case against the appellants was that they are members of an organised crime organisation which can be said to be international. There was evidence that first appellant, who was identified as the leader of the Cape Town zone of the organisation, received minutes and resolutions of a Committee established by Black Axe to attack and discredit a person, including through cyberattacks, who had established a website that collected and summarised press articles regarding the organisation. There was also evidence which showed that first to sixth appellant were members of Black Axe and held leadership positions in its Cape Town Zone. First appellant's email account also has a copy of a speech where members of Black Axe were called to provide money to the organisation to assist the Italian Zone members with their legal bills to fight the charges against them. There were photos of first, second and fifth appellant together with emblems of Black Axe. Third appellant ordered mugs with the emblem of Black Axe. There was an email setting out the 56 members of the Cape Town Zone and it also set out the leadership roles of the first to sixth appellant.

[115] The evidence points to the ease with which, on a balance of probabilities leaders of Black Axe, being the appellants, were able to enter and leave the country, or even sojourn within the country without being properly documented and their sojourn unknown to the State. The appellants have the means to leave the country, and have the capacity to do so illegally or fraudulently. This also speaks to the ease with which

the appellants could breach the bail conditions and negates the conditions' binding effect and enforceability. The appellants have been shown to be able to eke out a living from an international criminal enterprise and this is an indication of the extent to which the appellants can afford to forfeit the amount of bail which may be set. The evidence showed that the US did not have an extradition agreement with their country of origin, Nigeria. In crossing the borders, which one of them had done without proper processing, it is not known whether they will even return to their country of birth in an attempt to evade their trial. I have already indicated that the nature of the offence was that it induced shock. It involved dishonesty, greed and selfishness and an insatiable appetite to accumulate wealth in haste without a days' work. The case against the first to sixth appellant is strong.

[116] The case against the appellants require protecting its prosecution. In respect of the eighth appellant, it is both the investigation and the prosecution that require protection. In para 49 and 50 of *Dlamini,* the court said:

"[49] One can therefore confidently conclude that although the wording of sub-s (1)(a) no longer replicates the governing constitutional norm, and although the term "the interests of justice" is used with variable content, the nature of the exercise under chapter 9 of the CPA, and the manner in which a court enquiry into bail is to be conducted, remain substantially unaltered. It remains a unique interlocutory proceeding where the rules of formal proof can be relaxed and where the court is obliged to take the initiative if the parties are silent; and the court still has to be pro-active in establishing the relevant factors. More pertinently, the basic enquiry remains to ascertain where the interests of justice lie. In deciding whether the interests of justice permit the release on bail of an awaiting trial prisoner, the court is advised to look to the five broad considerations mentioned in paragraphs (a) to (e) of sub-s (4), as detailed in the succeeding subsections. And it then has to do the final weighing up of factors for and against bail as required by sub-s (9) and (10).

[50] Sub-ss (4), (9) and (10) of s 60 should therefore be read as requiring of a court hearing a bail application to do what courts have always had to do, namely to bring a reasoned and balanced judgment to bear in an evaluation, where the liberty interests of the arrestee are given the full value accorded by the Constitution. In this regard it is well to remember that s 35(1)(f) itself places a limitation on the rights of liberty, dignity and freedom of movement of the individual. In making the evaluation, the arrestee therefore does not have, a totally untrammelled right to be set free. More pertinently than in the past, a court is now obliged by

s 60(2)(c), (3) and (10) to play a pro-active role and is helped by sub-ss (4) to (9) to apply its mind to a whole panoply of factors potentially in favour of or against the grant of bail.

[117] The evidence showed that members of Black Axe and their co-conspirators easily exchange information, including on their victims. Eighth appellant as a person, and Black Axe members as a group, are familiar with the identity of the witnesses and with the evidence which the witnesses may bring against him and them. It seems that some processes in relation to the eighth appellant were not yet concluded. Incarceration at Pollsmoor prison did not stop members of Black Axe, on the balance of probabilities, from having access to electronic devices and to communicate with the outside world, which is an indication that conditions prohibiting communication between them and witnesses will remain a paper tiger, looking good on paper but having no meaning in real life except self –gratification at its pronouncement. The appellant as a person, against the background of his sojourn in SA, which is undocumented, and on the balance of probabilities Black Axe members with whom he was arrested and incarcerated, showed no respect for the law.

Findings

[118] For these reasons I am satisfied that the State established the likelihood that the appellants, if released on bail, will attempt to evade their trial [section 60(4)(b) of the CPA]. It established the likelihood that the appellants, if released on bail, will attempt to influence or intimidate witnesses or conceal or destroy evidence [section 60(4)(c) of the CPA]. The State also established the likelihood that the appellants, if released on bail, will undermine or jeopardise the objectives or the proper functioning of the criminal justice system, including the bail system. I am unable to conclude that the decision of the magistrate was wrong. After careful consideration of all these factors, I make the following order:
The appeal, in respect of all the appellants, is dismissed.

DM THULARE
JUDGE OF THE HIGH COURT