**REPUBLIC OF NAMIBIA** **REPORTABLE?**

**HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK**

**JUDGMENT**

Case no: CA 136/2013

In the matter between:

**HARTMUT BEYER** **APPELLANT**

and

**THE STATE** **RESPONDENT**

**Neutral citation:** *Beyer v The State* (CA 136/2013) [2013] NAHCMD 384 (02 December 2013)

**Coram:** GEIER J
**Heard**: **02 December 2013**
**Delivered**: **02 December 2013**
**Release date: 31 January 2014**

**Flynote**: Criminal procedure - Bail - Appeal against magistrate's refusal to grant bail - Court should not set aside refusal of bail of lower court unless satisfied that case was wrongly decided –

Bail - Pending appeal - Application for - Factors to be taken into account - Prospects of success of appeal – court taking note of recent judgments in this court applying a more liberal approach and less stringent test - that even where reasonable prospects of success are absent the court should grant bail for as long as the appeal is not

doomed to failure and is therefore arguable and that the courts should grant bail to avoid prejudice to an appellant.

Bail - Pending appeal - Application for - Factors to be taken into account - Prospects of success of appeal – Where there is no risk of the applicant for bail absconding - a less rigorous test than the traditional reasonable prospects of success test can be applied and it is then enough that the appeal is reasonably arguable and not manifestly doomed to failure.

Appellant in casu having reasonable prospects of success on appeal and thus had satisfied the more stringent test – it had in any event also emerged that appellant could also show a case that was reasonably arguable and was not manifestly doomed to failure. – as the magistrate in the court a quo had failed to consider certain salient factors in his judgment altogether and thus exercised his discretion, not to admit the appellant to bail – wrongly – and as there was no other basis on which the court should refuse bail in the interest of justice – Bail pending the appeal granted.

**Summary**: The facts appear from the judgment.

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## ORDER

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1. The appellant's appeal against the refusal of Magistrate Kwizi, to admit the appellant to bail, pending his appeal, as delivered on 27 September 2013, is upheld.

2. Bail is granted to appellant with immediate effect on the following further conditions:

    2.1 The appellant is to hand in all his travel documents to the investigating officer as soon as possible.

2.2 The appellant is to report to the office of the Namibian Police in Omaruru, alternatively to the investigating officer, once a week between the hours 08h00 to 18h00.

2.3 If the appellant wishes to leave Omaruru, for any reason, he should inform the investigating officer in this regard prior to leaving.

2.4 The appellant is directed to present himself at court personally at the time that his appeal is heard and/or at the time the judgment in the appeal is delivered.

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**JUDGMENT**

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GEIER J:

[1] This is an appeal against the refusal of the Magistrate of Omaruru to admit the appellant to bail pending an appeal against his conviction on the count of attempted murder.

[2] Counsel for the appellant and counsel for the State agree that the outcome of this appeal will turn on the question of whether or not the appellant can show that he has reasonable prospects of success in the appeal that has been noted.

[3] This limitation of the issues pertaining to this appeal was correctly made in my view as there is a no indication, on the papers before me, that the granting of bail would, for any other reason, jeopardize the proper administration of justice.

[4] It is uncontroverted in this regard that the appellant, a 65 year old pensioner, with no previous convictions, with fixed property and permanent residence, also

having his family in Namibia, is unlikely not to await the outcome of this appeal, particularly, if one for instance also takes into account ,that, while trial awaiting, he had to appear some 16 times - (I restrain myself from commenting on why this still happens in Namibia) - before being sentenced, during which period he also left Namibia twice for Germany, from which he returned, in order to stand his trial. It should be mentioned in this regard that he was also never arrested after having been charged and before being sentenced.

[5] The facts in this matter can be briefly summarized as follows: During the evening of 3 April 2010, the complainant, Brian Lehman, and his friends drove in Erongo Street, Omaruru, where a potjie, which they transported fell in their vehicle, a Toyota bakkie. He, as the driver stopped, in order to 'put the pot in good order', as he put it, in the vehicle before he drove off again. There is some divergence on the evidence whether the complainant and his friends were unruly and posed a threat and whether they had been drinking alcohol or not. The Appellant was obviously disturbed by the commotion outside his house in the street and went out to investigate. Apparently and according to him, he had heard some shots on an earlier occasion and again just before he went out to investigate. The appellant allegedly felt threatened and testified that he thought he was being fired at from the people in the complainant's bakkie. He found cover in his garden behind the palm tree and fired one warning shot into the ground. The bakkie according to him then fled at high speed. The complainant and his friends stopped at the Shell service station where they noticed an indent apparently made by a bullet at the back of the vehicle. The photo plan handed in as an exhibit shows this damage on the lower tail gate of the Toyota bakkie. A complaint was immediately made to the police by the appellant's wife, that same evening, while the complainant, laid his complaint, only on the following day. The photo plan, as mentioned before, was compiled, and some four days later a projectile was also found. The appellant's firearm, a pistol, and a cartridge were taken in for forensic testing as well as the projectile that was found. The forensic examination could however not link the projectile to the appellant's firearm.

[6] The Magistrate’s reasons for refusing bail, pending the outcome of the appeal, are somewhat cryptic. I quote the relevant parts:

‘On the two grounds by the defence for applicant that he did not intend to kill anyone and that the firearm in question could not be linked to the spent projectile found at the scene, the court has this to say and that those issues were already dealt with by this court in its judgment that was handed down on 27/09/2013. Just to motivate the above statement on both the issue of linked of firearm to projectile and intention by applicant to kill anyone the court especially, after having heard the evidence of Justin who had personally seen applicant firing at them, came to that conclusion or believed that witness. The projectile in question was also dealt with and the Court indicated that indeed there is no direct evidence to effect, however that the evidence before court in that respect is of circumstantial in nature, like for instance, that the said projectile was found just in that surrounding of the crime scene. Mr Nambahu (forensic expert) testified as well that he did not examine the same as it had no grooves on it, he however testified that it was possible that having seen photo 6 and 7 that a projectile hitting on such items causing such damage cannot be fit for examination. The court also does not agree much with the contention by applicant that he did not intend to injure or kill anyone as he only fired a warning shot. In short, the above having considered, court still comes to the same judgment it gave earlier on 27/09/2013 in this matter and in court’s view there are no prospects of Applicants succeeding in his appeal. The application for bail pending appeal is therefore hereby dismissed.’

[7] From these reasons it is unclear what the Magistrate intended to say regarding the circumstantial evidence relating to the projectile found at the scene. Some clarification of this is found in the main judgment where the Magistrate states:

‘Mr Nambahu ( the forensic expert) told court that he analysed the revolver and the spent cartridge that he found the revolver to be in good working condition. That he test fire two bullets from the said revolver with cartridges, he compared to the spent cartridge (Exhibit B) and that he could confirm that the spent cartridge he received for examination was fired from the revolver in question. However he could not examine or analyse the spent projectile as such was deformed and that it had no grooves on it. There is indeed no direct evidence that the spent projectile was the one that hit the back side of the vehicle since it was not examined, however the evidence is of circumstantial in nature. The spent projectile was found in the surrounding area or vicinity of the crime scene. Mr Nambahu (forensic expert)

testified in cross examination that it was possible that the spent projectile caused damage on vehicle, and that he said considering a projectile causing damage on photos 6 and 7 cannot be analysed. Bianca's evidence was very much inconsistent, and Brian told court that he did not see accused shooting at them as he was driving. Justin's evidence is overwhelming and I cannot see why it should be rejected. I thus found the truth in testimonies of Justin, Mr Nambahu, Sergeant Kavela Naboti and Alfeus,(the investigating officer). In light of the above, I find accused person guilty as charged of attempted murder…'.

[8] If, and this is what I think, the Learned Magistrate tried to convey, that he found that the circumstantial evidence of this case is to the effect that, the only reasonable inference, to be drawn from the projectile found on the scene, is that it must be the one that had caused the damage to the back of the complainant's vehicle and that it had emanated from the shot fired by the appellant, it cannot be said that this inference was palpably wrong. After all, the appellant admitted to firing one shot. There was no evidence that the Toyota bakkie, belonging to the complainant's father, was damaged before the incident and where the damage was consonant with a projectile making contact with the tail gate of the bakkie, which damage was also noticed shortly after the incident, upon inspection at the Shell Service station. This seems to be the only reasonable inference to be drawn from the available evidence.

[9] For purposes after determining the appellant's prospects of success on appeal I will accordingly depart from the premise that the projectile, which the appellant admittedly fired, caused the damage on the vehicle, which the complainant drove at the material time, as depicted on photo plan Exhibit A more particularly on photos 5, 6 and 7.

[10] What remains to be determined against this background is whether the evidence and the Magistrate's reasons for conviction can realistically withstand the launched appeal against conviction and whether this enquiry thus shows- or does not show- reasonable prospects of success on appeal which, so I have been informed, has been set down for hearing in March 2014.

[11] In this regard I take into account that the decision made by my brother Cheda in *Lang v The State*[1] has given recognition to what he has formulated as being :

'a more liberal approach which seems to have ushered in a paradigm shift towards lenience … which is anchored on the universal need to give meaning to fundamental rights enshrined in various democratic constitutions in general and in Namibia in particular as stated in Article 7 of the Namibian Constitution.' [2]

The learned Judge went on to state that:

'this approach was also ably laid down in *S v Branco*[3]. The most common deprivation of one's liberty is imprisonment. It therefore stands to reason that imprisonment should not be easily resorted to, as it is a human right and as such is sacrosanct. The English proverb "he who loses liberty loses all" finds a comfortable home in this approach. In *S v McCoulagh* 2000 (1) SACR 542 (W) at 549-51, the court went further and stated that even where reasonable prospects of success are absent the court should grant bail where the prison term would have expired when the appeal is heard. This, therefore, means that as long as the appeal is not doomed to failure at it where, it is therefore arguable that the courts should in those circumstances grant bail to avoid prejudice to an appellant. See *S v Hudson* 1996 (1) SACR 431 (W) at 434b and *S v De Villiers* 1999 (1) SACR 297 (O) at 310. I am fortified by the reasoning and approach adopted by the learned Judges in the above cases and I fully associate myself with it.' [4]

[12] I can see no reason why this approach should not be adopted in this case. Also counsel seem to be in agreement that a more liberal approach can be adopted in our jurisdiction. I also refer in this regard to what Marais J stated in *S v Anderson* 1991 (1) SACR 525 (C) at 527 E to G[5].

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[1](CA 53/2013 delivered on 22 August 2013) reported on the *Saflii* web-site at http://www.saflii.org/na/cases/NAHCMD/2013/248.html

[2]*Lang v S* at [6] – [7]

[3] 2002 (1) SACR 531 (W)

[4]*Lang v S* at [7]

[5]'I appreciate that in dealing with this application I have applied a test which is less demanding than that postulated in Beer's case supra. There it was said that where release on bail pending an appeal against sentence only is in issue, an applicant for bail must show that he has reasonable prospects of success. With respect, I decline to put the test as high as that in all cases concerning sentence. Where, as here, there is no risk of the applicant for bail absconding and a refusal of bail may (I put it no higher) result in a successful appeal against sentence being rendered futile by a refusal of bail, I

[13] The convenient point of departure is to thus consider the main aspect, on which this appeal will turn, which is the charge, which the appellant was facing and which resulted in his conviction on that charge.

[14] It should possibly be mentioned at this juncture that the appellant was also acquitted on all the remaining lesser charges.

[15] The main charge was formulated as follows:

‘Attempted murder - count 1 – (in respect of accused Beyer Hartmut). - The accused is guilty of the crime of attempted murder - in that upon or about the 19h15 and on the 3rd day of April 2010 and at or near Erongo Street in the district of Omaruru the accused did unlawfully assault Byran Lehmanna by shooting at the motor vehicle registration N8449WB of which Byran Lemanna was the driver with intent to murder him.’

[16] It immediately becomes apparent from a reading of the record that appellant did not assault Brian Lehman and that the appellant did also not shoot at the vehicle with the intent to injure any specific individual on it, let alone the driver, Mr Lehman.

[17] It must be remembered that in order to secure a conviction on attempted murder the State firstly had to prove that the appellant had the intention to commit murder i.e. to murder Brain Lehman and because appellant failed to achieve that purpose he became liable to be convicted for the attempt to murder Brian Lehman.[6]

think that one should eliminate the risk of that happening by granting bail. In such circumstances, and I emphasise the words 'in such circumstances', I think that it is enough that the appeal against sentence is reasonably arguable and not manifestly doomed to failure. That is of course a less rigorous test than the traditional reasonable prospect of success test which was formulated by the Courts in the context of applications for leave to appeal in situations where there was no appeal as of right. It may well be that the traditional test or something approximating to it may be appropriate in dealing with bail applications pending appeal against sentence where there is some reason to be concerned about whether or not the applicant for bail will abscond. However, that is not the situation with which I have to deal and it is therefore unnecessary for me to decide it.’

[6] See for instance : *R v Schoombee* 1945 AD 541 at 545 – 6 or *S v Du Plessis* 1981 (3) SA 282 (A) at 398 H – 400 D

[18] ‘Intention’ in this connection has been held to bear the same meaning as the ‘intention to commit the contemplated crime’.[7]

[19] It goes without saying that the State had to prove this element of the charge.

[20] The high- watermark of the State’s case is the evidence of Justin De Klerk.

[21] It emerges from the judgments delivered in the court *a quo* that the conviction was founded essentially on the evidence of Mr De Klerk.

[22] In support of the conviction the Magistrate stated firstly:

‘ … I thus found the truth in testimonies of Justin, Mr Nambahu, Sergeant Kavela Naboti and Alfeus,(the investigating officer).

[23] In regard to Justin the court found:

‘Justin who sat the back of the vehicle that day saw how accused aimed and shot at the vehicle. The witness was very firm in his testimony and he stood his grounds or version. A warning shot cannot be shot directly at human beings and if that is the case then it cannot be said to be a warning shot. That is with intent to kill or injure another person’.

[24] In the judgment refusing bail the Magistrate’s motivation for refusing bail reads as follows:

‘Just to motivate the above statement on both the issue of linked of firearm and projectile and intention by applicant to kill anyone the court especially, after having heard the evidence of Justin who had personally seen applicant firing at them, came to that conclusion or believed that witness’.

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[7] See : *R v Huebsch* 1953 (2) SA 561 (A) at 567 - 568

[25] It so emerges that the Learned Magistrate based his finding that the appellant intended to kill the complainant on the evidence of Justin De Klerk. The salient parts of Justin De Klerk's evidence, on the other hand, read as follows:

> 'I saw the accused when he shot at us' …' I saw the accused pointed a firearm at us and he fired once at the back side of the bakkie' … 'The shooting took place in the evening at about 19h45. The accused stood at a small gate of his yard inside. It was dark and I could see accused with a revolver plus minus 20cm. I do not know the colour of the revolver. The distance was plus minus 15m. I saw the accused well when he shot that day. I recognised accused on his eyes and beard'.

[26] During cross-examination he was asked:

'Did you see the accused shooting?'
'Yes I saw him holding a revolver in his hands and he shot'.
…
'What do you mean you identified him by his eyes?'
'I saw him based on how his eyes are made'.
…
'You saw the eyes of accused but you could not see a big 20cm revolver's colour?
'I could not look at accused all the time.'
…
'Are you sure that accused had a gun in his hands?'
'Yes because he lifted it to shoot and I heard the sound of the gun whereas the bullet touched our vehicle'.
…
'Did you see the movement of the bullet'
'No'.

[27] The following comments can immediately be made in regard to the veracity of Mr De Klerk's evidence:

**1.** The revolver was silver in colour. Why would Mr De Klerk be unable to see its colour in circumstances where he claims he could even notice the particular make-up of the appellant's eyes - at night - from a distance and were appellant stood inside his yard under cover of a palm tree.

**2.** For the same reasons it is highly unlikely that De Klerk could see the particular make-up of appellant's eyes in the circumstances sketched above. It emerges that Mr De Klerk fabricates evidence in this regard.

**3.** De Klerk does not testify that appellant aimed to fire 'at the complainant' referred to in the charge. He claims to have seen appellant 'when he fired a shot at us'.

**4.** He then elaborates on that evidence by stating that 'the appellant pointed a firearm at us'. He does not say that appellant pointed a firearm 'at the complainant' referred to in the charge. It is also not surprising, given the circumstances, that De Klerk could not with any greater precision say at what specific person the appellant pointed the firearm.

**5.** On appellant's own admission he fired a shot - aimed some 10 to 15 meters behind the car. The witness could thus have formed the impression that the firearm was pointed generally at the group and the vehicle in which he was sitting.

[28] The question which arises in such circumstances is whether on this evidence the State managed to prove *mens rea,* namely the intent of appellant to kill the complainant.

[29] In this regard a consideration of appellant's evidence becomes necessary.

[30] The relevant parts from his evidence are follows:

'I then fired one warning shot towards the road on the ground. There was no other place where I could have shot the warning shot. I shot about 10 to 15 meters behind the car. I intended to shoot 10 to 15 meters behind the car with no intention to harm anyone. At that point in time I would have the right to shoot someone at the car in order to defend myself'.

[31] He goes on to state under cross-examination:

'Q: After the incidence of 21h00, you took your revolver, and fired one warning shot. You shot at a distance of plus minus 15 meters behind the bakkie where the projectile landed'.

A: 'Yes, and I saw where the projectile landed. I estimate the distance *supra*'

Q: 'Did you pick up the projectile?' 'No.'

Q: 'State witnesses testified that their bakkie was hit by a projectile that it can be as a result of your shooting'.

A 'Yes, they also had the whole 04/04/ 2010 to shoot at the bakkie and what they did not consider was the angle'.

Q:'But that or state witness saw the damage or gunshot at the bakkie on 03/04/ 2010 at Shell service station.'

A: 'Then they should have gone to the police station that same time that but they went the next day'. I do not believe that they noticed the damage on the bakkie on 3 April 2010.' Question 'do you know that it is, it can be unlawful to shoot in the municipal area …'.

[32] It thus becomes clear - regardless of whether or not appellant was entitled to fire the shot in self-defence - that his testimony was that he fired a warning shot some 10 to 15m away behind the complainant's Toyota bakkie and that he even saw the projectile land.

[33] It becomes unclear why this evidence was not considered?

[34] Any person that has ever shot with a revolver into the ground will know that it is possible to see the shot hitting the ground. This piece of evidence thus stood un-contradicted.

[35] It is also unlikely that the appellant would not have achieved hitting the ground some 10 to 15m behind complainant's vehicle if one considers that he has owned

firearms for about 45 years and where he has trained people in the use of firearms and does shooting for a sport and for hunting purposes for some 45 years personally.

[36] In the corollary - and if appellant would have wanted to achieve the alleged intent - namely to kill Brian Lehman - one would have expected a different result and one would have expected him to achieve this object particularly if one takes into account that Mr De Klerk testified that he saw appellant standing some 15m from the vehicle in which Mr Lehman was sitting.

[37] Most important of all is however the forensic evidence of Mr Willem Nambahu. He testified:

> ‘Q: What will a bullet look like if it hit point on photo 6?’
>
> A: ‘It depends on the type of projectile. A projectile forming a hole on photo 6 cannot be used for comparison. To my view on photo 7, the bullet might have bounced, (it came with an angle which was not a straight angle). For a late bullet, you expect it to have one lake point which can be compared to a full jacket projectile. This projectile I am shown could collaborate with projectile.’

[38] From this evidence it emerges that ‘the projectile might have bounced’ and that ‘it came with angle which was not a straight angle’.

[39] It is immaterial whether there is something like a straight angle. What is material however to the outcome of this case is that the forensic evidence, tendered by Mr Nambahu, corroborates the appellant’s version, in a material respect, namely that he fired that shot into the ground, as a warning shot and without intending to murder anyone and that the projectile in question must have hit the complainant’s vehicle at an angle due to the bullet ricochetting off the ground or from another solid object on the ground.

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[40] It emerges in such circumstances that the appellant does have reasonable prospects of overturning his conviction on appeal regardless of whether or not the more liberal approach is applied in this regard or not.[8]

[41] Even if I am wrong in this it must at the very least have emerged that appellant can show a case that is reasonably arguable and is not manifestly doomed to failure.[9]

[42] Ultimately it emerged that the Learned Magistrate in this instance failed to consider the above mentioned salient factors in his judgment altogether and thus exercised his discretion, not to admit the appellant to bail - in circumstances where the appellant was able to show good prospects of success on appeal - alternatively a reasonably arguable case on appeal, not manifestly doomed to failure - wrongly.[10]

[43] As in the circumstances of this case there also exists no other basis on which the court should refuse bail in the interest of justice[11] - and mindful of the generally

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[8] See for instance also : *Valombola v The State* (CA 93/2013) [2013] NAHCMD 279 (9 September 2013) reported on the *Saflii* web-site at http://www.saflii.org/na/cases/NAHCMD/2013/279.html in which Shivute J continues to follow the traditional approach at [20]

[9] *S v McCoulagh* at 549-51 as cited with approval in *Lang v S*

[10] See also : *Unengu v State* (CA 38/2013) [2013] NAHCMD 202 (18 JULY 2013) reported on the *Saflii* web-site at http://www.saflii.org/na/cases/NAHCMD/2013/202.html and where Ndou AJ formulated the approach as follows : [3] It is trite law that this court, sitting as a court of appeal, is bound by the provisions of Section 65 (4) of the Criminal Procedure Act, *supra*, not to interfere and set aside the decision of the Magistrate in the court *aquo* "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 or his opinion the lower court should have given." In S v Timoteus 1995 NR 109 (HC) this court cited with approval the dictum in S v Barber 1979 (4) SA 218 (D & CLD) where Hefer J, said the following: "It is well known that the powers of this court are largely limited where the matter comes before it on appeal and not as a substantive application for bail. This court has to be persuaded that the Magistrate exercised the discretion which he/she has, wrongly. Accordingly, although this court may have a different view, it should not substitute its own view for that of the Magistrate because that would be an unfair interference with the Magistrate's exercise of his discretion. I think it should be stressed that, no matter what this court's view are, the real question is whether it can be said that the Magistrate, who had the discretion to grant bail, exercised that discretion wrongly." – see also S v Branco 2002 (1) SACR 531 WLD; S v Du Plessis 1992 NR 74 (HC) and S v Swanepoel 2004 (10) NCLR 104. This is the approach I will follow in dealing with this appeal.'

[11] See for instance *Unengu v State,* op cit at [4]

underlying consideration to questions of bail[12], as adopted by Muller J in *S v Pienaar* [13] - I come to the conclusion that this appeal should succeed.

[44] During argument I also enquired from counsel what bail conditions they would consider appropriate should the appellant be admitted to bail.

[45] Ms Estherhuizen on behalf of the State proposed that reporting conditions be imposed and that appellant should also be required to inform the investigating officer should he intend to leave Omaruru for any reason. She also submitted that appellant should surrender his travel documents.

[46] Mr Small on behalf of the appellant agreed that the travel documents of the appellant should be surrendered but submitted that there was no reason to require the appellant to report. In any event, and if reporting conditions be imposed, that any restrictions on the appellants movements or permission to travel to Germany, for instance, should not be unreasonably refused. He also suggested that the court should order the appellant to be present at his appeal hearing.

[47] In the result the following orders are made:

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[12] [11] Generally, in respect of the approach by a court in a democratic society where specific rights of an individual are entrenched in a constitution (such as the Namibian Constitution) to grant or refuse bail, the following, as stated by Cachalia AJ (as he the was) in *S v Branco 2002* (1) SACR 531 (WLD) at 532h – 533c, with reliance on the Namibian decision by Mohamed J in *S v Acheson*, *supra,* should be kept in mind: *The fact that the Appellant bears the onus does not mean that the State can adopt a passive role by not adducing any or sufficient rebutting evidence in the hope that the Appellant might not discharge the onus. (See S v Jonas 1998 (2) SACR 677 (SE); S v Mauk (supra).) It must however be borne in mind that any court seised with the problem of whether or not to release a detainee on bail must approach the matter from the perspective that freedom is a precious right protected by the Constitution. Such freedom should only be lawfully curtailed if the interests of justice so require…. The fundamental objective of the institution of bail in a democratic society based on freedom is to maximize personal liberty. The proper approach to a decision in a bail application is that:'The court will always grant bail where possible, and will lean in favour of and not against the liberty of the subject provided that it is clear that the interests of justice will not be prejudiced thereby.'Per Harcourt J in S v Smith and Another 1969 (4) SA 175 (N) at 177E-F. In S v Acheson 1991 (2) SA 805 (Nm), Mahomed AJ (as he then was) emphasized that-'An accused person cannot be kept in detention pending his trial as a form of anticipatory punishment. The presumption of the law is that he is innocent until his guilt has been established in court. The court will therefore ordinarily grant bail to an accused unless this is likely to prejudice the ends of justice.'*

[13] (CA 30/2010) [2010] NAHC 135 (5 October 2010) reported on the *Saflii* web-site at http://www.saflii.org/na/cases/NAHC/2010/135.html

1. The appellant's appeal against the refusal of Magistrate Kwizi, to admit the appellant to bail, pending his appeal, as made on 27 September 2013, is upheld.

2. Bail is granted to appellant with immediate effect on the following further conditions:

    2.1 The appellant is to hand in all his travel documents to the investigating officer as soon as possible.

    2.2 The appellant is to report to the office of the Namibian Police in Omaruru, alternatively to the investigating officer, once a week between the hours 08h00 to 18h00.

    2.3 If the appellant wishes to leave Omaruru for any reason he should inform the investigating officer in this regard prior to leaving.

    2.4 The appellant is directed to present himself at court personally at the time that his appeal is heard and/or at the time the judgment in the appeal is delivered.

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H GEIER

Judge

APPEARANCES

| | |
|---|---|
| APPELLANT: | AJB Small<br>Instructed by: Mueller Legal Practitioners,<br>Windhoek. |
| RESPONDENT: | K Esterhuizen<br>Office of the Prosecutor-General, Windhoek |