

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA

“ANNEXURE 11”

<b>Case Title:</b>		<b>Case No:</b>	
The State		CC 06/2021	
<b>Applicant/State</b>		CC 07/2021	
vs		<b>Division of Court:</b>	
Ricardo Jorge Gustavo		High Court, Main Division	
<b>Respondent/Accused</b>			
<b>Heard before:</b>		<b>Date of hearing:</b>	
Honourable Mr Justice Oosthuizen		11 March 2022	
		<b>Delivered on:</b>	
		24 May 2022	
<b>Neutral citation:</b> <i>S v Gustavo</i> (CC 06/2021) [2022] NAHCMD 259 (24 May 2022)			
<b>Result on application for leave to appeal:</b> Refused.			
<b>COURT ORDER</b>			
<b>IT IS ORDERED THAT:</b>			
1. The State's application for leave to appeal to the Supreme Court is refused.			
2. The matter is finalised and removed from the roll.			

**REASONS FOR ORDERS:**

[1] On 21 December 2021 the Court delivered its judgment and reasons for granting bail to the Accused, Mr Ricardo Jorge Gustavo.

[2] The reasons and the bail conditions are to be read and understood as a unitary judgement.

[3] The Court's discretion to grant bail was not annulled (as it previously was) by the 1991 amendment of Section 61 of the Criminal Procedure Act.

[4] The Court's discretion was restored to the extent that the Court may refuse bail concerning certain scheduled offences if the Court deem it in the interest of justice or in the interest of the administration of justice.

[5] The discretion to impose bail conditions in order to provide for the freedom of the Accused as well as for the interest of justice or the interest of the administration of justice, remains with the Court.

[6] The Court heard the evidence of the Accused and was able to form a first hand impression concerning the serious intention of the Accused to stand trial. The Court also heard the evidence of the Investigating Officer and took notice of the State's concerns and its arguably strong case with full awareness of the fact that the Investigating Officer was not there to prove the State's case on the merits (which he, frankly speaking, cannot do as a secondary witness).

[7] The State in the bail application provided the Court with documents it intends to use in the trial in order to show that it has a strong case against the Accused. The Court however is not required to make a finding on the veracity and/or permissibility of the documents provided from the bench or on the documents provided through the Investigating Officer who is a secondary witness.

[8] Hearsay evidence by the State in bail applications are allowed on the basis of the inherent urgency of bail applications. In this matter the Court adjudicated on a second bail

application on new facts. Where, as in the present application, the State could have presented direct evidence concerning the alleged tax fraud; direct evidence of a conspiracy; direct evidence concerning the proposed 24/7 GPS monitoring device, and has elected not to do so, it should not complain afterwards when the Court in the exercise of its discretion allow the Accused on bail in the interest of justice or the interest of the administration of justice.

[9] The bail conditions were designed to address the interests and concerns of both the Accused and the State while preserving the interest of justice or the interest of the administration of justice.

[10] I incorporate herein the reasons for judgment read together with the Court Orders as on 21 December 2021.

[11] I conclude that there is no reasonable prospect that the Supreme Court will come to another conclusion or that the Supreme Court will come to a conclusion that I exercised my discretion wrongly in the circumstances.

[12] Therefore, it is ordered that:

[12.1] The State's application for leave to appeal to the Supreme Court is refused.

[12.2] The matter is finalised and removed from the roll.

<b>Judge's signature:</b>	<b>Note to the parties:</b>
Oosthuizen Judge	
<b>Counsel:</b>	
<b>Applicant/State</b>	<b>Respondent/Accused</b>
Mssrs Marondedze and Lutibezi Of the Office of the Prosecutor General	Mr Brockerhoff Of Brockerhoff & Associates