

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA, NORTHERN LOCAL DIVISION, OSHAKATI

BAIL APPEAL

Case Title: <i>Joseph Ndeshipanda Emvula v The State</i>	Case no.: HC-NLD-CRI-APP-CAL-2018/00042
	Division of Court: Northern Local Division
Heard before: Honourable Mr Justice January J	Heard on: 23 January 2020 Delivered on: 24 February 2020
Neutral citation: <i>Emvula v S</i> (HC-NLD-CRI-APP-CAL-2018/00042) [2020] NAHCNLD 31 (24 February 2020)	
The order: <ol style="list-style-type: none">1. The appeal partially succeeds;2. The ruling of the magistrate to refuse bail is set aside;3. The matter is remitted to the magistrate to consider the bail application afresh;4. The magistrate is directed to peruse the initial first bail application to determine what the facts were then and whether or not this second bail application is based on new facts;5. The appellant is remanded in custody to be kept at Okalongo police station trial awaiting;6. The Office of the Registrar is directed to serve this order on the station commander of Okalongo police station and the station commander of Oshakati police station.	

Reasons for the order:

JANUARY J:

[1] The appellant was arrested on charges of 1. Robbery with aggravating circumstances, 2. Possession of a firearm without a licence and 3. Possession of a dangerous weapon.

[2] The appellant brought a second bail application in the Regional court, Oshakati on what they construed as new facts. The alleged new fact is the long time the appellant spent in custody since his arrest.

[3] The record of the first bail application was not available when this second bail application was adjudicated. It is by now trite that when an application for bail is brought on new facts, the courts approach is to consider whether there are new facts against the background of old facts.¹

[4] It means that the new application should not be a mere extension of the initial one. It must be established if indeed there are new facts warranting the granting of the bail application.

[5] The magistrate considered the fact that the record of the initial application was not available. He however entertained the second bail application without ensuring to determine if the second bail application was indeed based on new facts. In my view this was a misdirection.

[6] The record of the initial first application is likewise not before this court to determine if indeed the second application was based on new facts.

¹ See: *Noble v State* (CA 02/2014) [2014] NAHCMD 117 (20 March 2014)

Judge(s) signature	Comments:
January J:	None
Counsel:	
Appellant	Respondent
Mr L Shipila Directorate of Legal Aid, Oshakati	Mr L Matota Office of the Prosecutor-General, Oshakati