



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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Maritz v The State (81/2023) [2024] ZASCA 72 (8 May 2024)

Today the Supreme Court of Appeal (SCA) dismissed an appeal with costs. The appeal emanated from the Free State Division of the High Court, Bloemfontein (the high court) where the presiding judge in that matter (Naidoo J) refused to recuse herself from the pending criminal trial.

The appellant, Mr Jan Gysbert Maritz, a practising attorney, was charged with 18 counts of sexual assault and statutory rape. On 17 May 2021, the trial commenced in the high court. The appellant was represented by two senior counsel and pleaded not guilty to all charges. On 21 May 2021, whilst the first state witness was testifying, the appellant advised the high court that he wished to change his plea of not guilty to a guilty plea, and made numerous admissions in terms of s 220 of the Criminal Procedure Act 51 of 1977 (the Act) which were accepted by the respondent. Based on these admissions, the appellant was convicted on counts 1 to 16 after the respondent stopped prosecution in respect of counts 17 and 18.

He was convicted on his guilty plea and released on bail with certain conditions, pending sentencing proceedings which were to be held from 14 to 17 September 2021. The respondent applied for variation of the appellant's bail conditions, and the matter was set down for hearing on 4 June 2021. Due to a bereavement in her family, Naidoo J was not available to hear the application, and Daniso J adjudicated the variation of the bail conditions application.

A week before the commencement of the scheduled sentencing proceedings, the appellant's legal representatives indicated to Naidoo J that they would be terminating their services due to ethical reasons and that the appellant would apply for the withdrawal of the s 220 admissions. Naidoo J informed them that she was *functus officio* as she had already convicted the appellant.

On 14 September 2021, counsel for the appellant at the time, formally withdrew their services along with the then instructing attorneys. Subsequently, new legal representatives placed themselves on record and indicated that they were not ready to proceed with sentencing on that day. The parties were then afforded an opportunity to argue whether the appellant's bail should be revoked. Ultimately, Naidoo J revoked the bail and remanded the appellant in custody. She refused the appellant's application for leave to appeal the revocation of bail. Leave to appeal was granted by this Court to the full court of the Free State Division of the High Court, Bloemfontein (the full court). On 5 November 2021, the full court reinstated the appellant's bail and he was released from prison.

On 29 November 2021, the appellant brought an application for the recusal of Naidoo J on the basis that she was biased and that he had a reasonable apprehension that he will not be accorded a fair trial. He based his application against Naidoo J on the following: (a) the judge irrationally and unilaterally revoked his bail; (b) the judge is a Gender Based Violence Activist (GBV Activist); (c) the judge requested a victim impact report before the revocation of the appellant's bail; and (d) prior to the hearing of the variation of the appellant's bail conditions, the judge spoke to her colleague, Daniso J about the case. The high court dismissed the application for recusal. Dissatisfied with the high court order, the appellant petitioned the SCA and leave to appeal was granted.

In addressing the appellant's contentions as listed above, the SCA reasoned as follows:

(a) With regards to the revocation of bail, the SCA held that the allegation by the appellant that Naidoo J mentioned that she would revoke his bail while they were in chambers was not supported by any of the affidavits filed by those who were present in chambers on that day, including by his erstwhile counsel. In the result, the SCA, on this point, concluded that this allegation must therefore be rejected as being without any merit and not capable of grounding a reasonable apprehension of bias;

(b) On the point of being a GBV Activist, the SCA reasoned that a judge's holding of particular views on social matters was not an indication that that judge will necessarily be biased in respect of certain matters, nor does it naturally follow that, where a judge was known to hold certain views, she will not be capable of applying her mind to a particular matter. The SCA similarly rejected this ground for recusal as being without merit;

(c) On the ground of the request for a victim report, the SCA held that the high court was correct in rejecting it because, as a matter of fact, it would make no sense for the judge to ask her registrar to call the appellant for any documentation. Secondly, at no point did counsel state that the registrar specifically asked for a victim impact report, and, lastly, the judge was informed that the appellant's new legal team would not be ready to proceed with the sentencing proceedings on the date scheduled, therefore, the issue of a report being sought to be read before that day, would be illogical;

(d) On the last ground of recusal which related to contact between Naidoo J and Daniso J, the SCA reasoned that the circumstances surrounding the contact between the two judges was in no way a display of personal interest in the appellant's trial, as was suggested by the appellant. It was common cause that the order for the variation of the bail condition before Daniso J was by agreement between the appellant and the prosecution and was not influenced by Naidoo J.

In conclusion, the SCA held that it was incumbent on the appellant to show, on the correct facts, that there was reasonable apprehension that the judge will not bring an impartial mind to bear in the matter and that the appellant failed to do so. In the result, the SCA dismissed the appeal with costs.

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