

## **Police v Anton Coetzee**

**2024 INT 309**

### **The Intermediate Court of Mauritius (Criminal Division)**

**In the matter of:  
CN 169/2024**

**Police**

**V**

**Anton COETZEE**

#### **Ruling**

1. The Applicant stands charged with the offence embezzlement in breach of **section 333(1) of the Criminal Code** coupled with **section 44(1)(b) of the Interpretation and General Clauses Act**. He is represented by counsel Me. Bandhu. The Prosecution was represented by Me Bookhun, Senior State Counsel.
2. A Prohibition Order was imposed on the Applicant on 17<sup>th</sup> September 2024. The Applicant has made an application for a variation of the Prohibition Order to allow him to travel to South Africa from 17<sup>th</sup> November 2024 to the 28<sup>th</sup> November 2024 for the following reasons: (a) to collect documents which shall be used as evidence for his defence in the main case against him; and (b) for medical treatment of his wife.
3. The police is objecting to the present application on the ground that the Applicant may abscond if he is allowed to travel.
4. PS 6753 Ginerdeb deposed on behalf of the police. He stated that since the main case concerns a charge of embezzlement of Rs 4.2m, the Applicant may abscond if he is allowed to travel. Furthermore, he is a South African

national with a South African passport. To his knowledge, there is no extradition treaty between Mauritius and South Africa. He confirmed that the Applicant has abided by all his bail conditions. He further explained that the circumstances leading to the arrest of the Applicant was that the total sum of Rs 4.2m was allegedly credited into his account by the complainant in order to lodge a case before the South African Court but this was never done. He confirmed that the Applicant is an attorney-at-law in South Africa. In cross-examination, he admitted that the Applicant has always been present for enquiry purposes save and except for the variation application. He maintained not being aware if there is an extradition treaty. He further disagreed that there would be no risk of absconding if such a treaty did in fact exist. He stated that the Applicant has given an address in South Africa but he could not confirm whether it was that of his fixed place of abode. In re-examination, with regards to the variation order application, PS 6753 Ginerdeb explained that the Applicant came for enquiry for the first time but on the second occasion, he stated that he will deal with the court directly.

5. The Applicant deposed under oath. He is a South African national who lives in Mauritius with his wife. He is an attorney-at-law in South Africa. He produced a copy of his air ticket (*Document A*) and his marriage certificate (*Document C*). He also produced a copy of the SADC Protocol on Extradition (*Document B*) as well as the copy of an email regarding a correspondence between one Dr Roos in South Africa and the wife of the Applicant regarding her medical appointment (*Document D*). The Applicant explained that there are 2 reasons why he wishes to travel. The first one is that the present matter has been ongoing for over 3 years but since it is coming for trial, he wishes to collect documentary evidence from his law practice in South Africa which is now a closed office. He has been doing work for the complainant for several years and the relevant documentary evidence is over 3000 pages. His office is now closed. He

was the only attorney working there with one receptionist such that now it is impossible for someone else to collect such document and go through it for him. He went on to explain that the present matter concerns him as a South African Attorney and the complainant being South African relating to a Mauritian company owned by only South African shareholders. So he has to go through the documentary evidence with the help of a South African attorney. Should he not be able to obtain such document, he will be prejudiced in his defence. He went on to say that both his father and his best friend passed away and yet he did not ask to travel as he was constantly informed that the main case was going to be lodged. If he really had the intention to abscond, he could have done so when his father passed away. The second reason that he wishes to travel is because his wife has to undergo a surgery. His wife had a heart attack on 20<sup>th</sup> January 2024 and she had 3 stents. She is on a daily medication in order to prevent blood clots around the stents. It has been advised that she does not have any surgery before February 2025 but she is now suffering from gallstones in her gallbladder. She is currently being treated with antibiotics and she is in constant pain and he has had to rush her to C-Care clinic. His wife and himself have been advised that she should have the gallbladder removed as soon as possible. Even though the doctors in Mauritius are very competent, they are both reluctant to have the surgery in Mauritius as this could be fatal to her in view of her heart condition. They have liaised with one Dr Roos in South Africa who is willing to do the surgery. Furthermore, his wife would be surrounded by her family.

6. In cross-examination, he confirmed being an attorney at law and that this is his first application to travel. He disagreed that as a legal person, it would have made more sense to have travelled before to collect any documentary evidence in order to disculpate himself. At enquiry stage, he was told by the police that if he had any evidence, he could bring same to court for the main case. When it was put to the Applicant that the relevant

documentary evidence could be sent via DHL, he explained that there is no one in South Africa to collect same from his closed office. He denied wanting to travel in order to abscond. He maintained that there is an absolute necessity for him to travel for the reasons explained above. Furthermore, the Applicant explained that there is a humanitarian reason for him to travel in case his wife passes away following the surgery and he would wish to be by her side.

7. In submissions, learned defence counsel stated that the Applicant has clearly explained the reasons for his travel and in view of the SADC Protocol, there is no risk of absconding. On the other hand, learned senior state counsel submitted that the Applicant had failed to satisfy the Court that there was an absolute necessity for him to travel.

8. I have duly analysed all evidence adduced. **Section 16 of the Bail Act** provides that:

*(1) A person against whom an order has been made under section 14 may apply to the court before which his case is pending for a variation of the order.*

*(2) Where an application is made under subsection (1), the Court may vary the order if it is satisfied that it is necessary to do so -*

*(a) to avoid loss or prejudice to the applicant;*

*(b) to avoid damage or loss to the applicant's property;*

*(c) because of the health of the applicant or his next of kin; or*

*(d) in such other cases as the Court thinks fit.*

*Where a court makes a variation order under subsection (2), the court may—*

- (a) on being satisfied that there are sufficient reasons for so doing, allow the applicant multiple departures from, and returns to, the country within a period specified by the court;*
- (b) impose on the applicant such other terms and conditions as it deems fit.*

9. It is undisputed that the Applicant is a South African national and is the holder of a South African passport. His South African passport cannot be restricted by the Mauritian authorities. The Applicant has invoked 2 grounds in order to be able to travel. Now, an application under **section 16 of the Bail Act** to vary a prohibition order may not be automatically denied on the mere fact that an Applicant is a foreigner and is the holder of a foreign passport which cannot be restricted. The Court will have to do a balancing exercise as to whether the risk that this entails outweighs the prejudice being caused by Applicant's physical absence in the country he wishes to travel. To make such balancing exercise, the Court will have to assess the necessity of Applicant travelling in the light of the reasons he has invoked.
10. With regards to the first reason, it is undisputed that the Applicant is an Attorney at Law in South Africa having had a legal practice there. He has maintained throughout that, apart from him, there is no one else who would be able to trace out the relevant documentary evidence. The Court certainly bears in mind that there is a very serious charge against the Applicant and a severe sentence is likely to be imposed should he be found guilty. However, at this stage, the Court bears in mind the principles of **section 10(2)(a) of our Constitution** that the Applicant, even though he is charged with a criminal offence, is presumed to be innocent until proven otherwise. Furthermore, as an accused party, he has a constitutional guarantee under **section 10(2)(c) of our Constitution** that he shall be given adequate time and facilities for the preparation of his

defence. As he has explained above, the present charge against him concerns him as a South African Attorney and the complainant being South African relating to a Mauritian company owned by only South African shareholders. Hence, he has to go through the documentary evidence with the help of a South African attorney. So this can only show the necessity of the Applicant's physical presence in South Africa in order to obtain documentary evidence for the conduct of his defence in the present matter which is coming for trial in January 2025.

11. With regards to the second reason why he wishes to travel, it has remained undisputed in cross-examination that his wife has had 3 stents and is in need of further surgery for the removal of her gallbladder. It is clear as per the email from Dr Roos (*Document D*), the latter has requested the wife of the Applicant to come for an appointment to make an analysis of her medical situation. The Court certainly bears in mind that the removal of a gallbladder is indeed a very serious surgery to be carried out whilst taking into account her heart condition. This is confirmed by the document attached to his application for variation of Prohibition Order whereby her treating doctor in Mauritius, Dr Indur, has stated that there is a risk of stent thrombosis should she undergo a cholecystectomy. The prosecution raised the fact that should the Applicant and his wife wish to talk to Dr Roos, they can certainly do so from here. The Court cannot agree to this line of reasoning inasmuch as the decision to discuss the health of a person is a very personal one to make. Furthermore, when it comes to the health of a human being, it can be understood that a doctor would need to physically see and examine a patient. The Accused has also explained the risks involved should his wife be called upon to undergo a gallbladder surgery which could be fatal and as clearly mentioned by him, on a humanitarian ground, he would wish to be there with her to support her and even be there should she pass away. Learned counsel for the prosecution maintained in submissions that even if there is a request to

travel on medical ground, this does not concern the Applicant personally. Again, the Court cannot agree to this line of reasoning inasmuch as our law has made provision under **section 16(2)(b) of the Bail Act** for a variation of a Prohibition Order because of the health of the applicant or his next of kin (*underlining is mine*). The Court is of the view that the reasons provided by the Applicant for wanting to accompany his wife to South Africa for medical treatment show an absolute necessity to do so.

12. True it is that the South African passport of the Applicant cannot be restricted. This undoubtedly carries with it an inherent risk of no control being exercisable on the movement of the Applicant if he is allowed to travel. However, the present investigation has been ongoing for 3 years and if the Applicant had the intention of absconding, he would have done so already with his South African passport. As per the enquiring officer, the Applicant has always abided by his bail conditions. Furthermore, it is important to bear in mind that the Court cannot overlook the fact that there is the SADC Protocol on extradition between Mauritius and South Africa such that there is a legal avenue should the Applicant choose to abscond.
13. The Court is of the view that the prejudice being caused and the even graver prejudice likely to be caused to the Applicant's continued stay in Mauritius outweigh the risk of him not returning for his trial for being the holder of a South African passport, a risk which has been largely minimised by the factors highlighted above.
14. For reasons set out above, by virtue of **section 16(2)(a) and (c) of the Bail Act**, the Court is satisfied that it is necessary that the Prohibition Order against the Applicant be varied in order to prevent any prejudice to the Applicant's defence and because of the health of his wife.

15. The Prohibition Order against the Applicant is accordingly varied on the following conditions:

- (a) Applicant is to travel to South African from 17<sup>th</sup> November 2024 to 28<sup>th</sup> November 2024 and he is to provide a copy of his air ticket to the police prior to his departure;
- (b) Applicant is to furnish a security of Rs 500,000 by means of a bank cheque;
- (c) Applicant is to provide a telephone number on which he at all times be contacted by the police when he is in South Africa;
- (d) Applicant is to provide an address where he will be residing whilst being in South Africa; and
- (e) Applicant does not travel outside South Africa between 17<sup>th</sup> November 2024 and 28<sup>th</sup> November 2024.

**Z.B.Essop (Ms)**  
**Magistrate**  
**Intermediate Court (*Criminal Division*)**  
**This 15<sup>th</sup> November 2024**