

**IN THE HIGH COURT OF SOUTH AFRICA  
EASTERN CAPE DIVISION, GRAHAMSTOWN**

**CASE NO: CA235/2017  
DATE HEARD: 12/10/2018  
DATE DELIVERED: 16/10/2018  
NOT REPORTABLE**

In the matter between:

**MINISTER OF POLICE**

**APPELLANT**

and

**SOLOMZI JOBSON PIKE**

**RESPONDENT**

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**JUDGMENT**

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**PLASKET J**

[1] Mr Solomzi Jobson Pike (Pike) was arrested without a warrant at his home on the night of 9/10 October 2013 by Warrant Officer Tertuis Ferreira (Ferreira), a member of the South African Police Service. Pike was thereafter detained but was released without having appeared in court on the morning of 11 October 2013. He subsequently instituted a claim for damages against the Minister of Police (the Minister) on the basis that his arrest and detention had been unlawful. He succeeded in the Magistrate's Court, Port Elizabeth and was awarded R60 000 in damages.

[2] The Minister now appeals against the order of the court below. He has abandoned his appeal against quantum, leaving only one issue for determination. That is whether Ferreira held a reasonable suspicion, when he arrested Pike, that

Pike had committed an offence referred to in Schedule 1 of the Criminal Procedure Act 51 of 1977 (the CPA).

### **The facts**

[3] The material facts are not in dispute. On 29 June 2013, the Drommedaris Supermarket in Despatch was robbed by a group of men. Shortly thereafter, a motor vehicle used in the robbery was found abandoned between Despatch and Port Elizabeth.

[4] Warrant Officer Mornè Baker (Baker) a fingerprint expert in the Local Criminal Record Centre of the SAPS in Uitenhage inspected the vehicle. He found the fingerprints of a number of people on the vehicle. When he ran them through a system called the Automated Fingerprint Identification System, or AFIS, the result was that one of the fingerprints he had found was that of Pike.

[5] Baker deposed to his finding in an affidavit which he gave to Ferreira, the investigating officer. Ferreira, in his evidence, confirmed that he received this information and that the system also linked Pike to another pending case of robbery. On the strength of this information, he decided to go to Pike's home and arrest him. He believed that the suspicion that Pike was guilty of robbery, on the basis of these facts, was a reasonable one. Whether he was correct in this belief is the sole issue to be decided.

### **Reasonable suspicion**

[6] Section 40(1)(b) of the CPA provides that a peace officer may, without warrant, arrest any person 'whom he reasonably suspects of having committed an offence referred to in Schedule 1, other than the offence of escaping from lawful custody'. The offence of robbery is listed in Schedule 1.

[7] As was explained by Van Heerden JA in *Duncan v Minister of Law and Order* 1986 (2) SA 805 (A) at 818H-I, the formation of a reasonable suspicion is a jurisdictional fact that triggers a discretionary power to arrest. See too *Minister of Safety and Security v Sekhoto & another* 2011 (1) SACR 315 (SCA) para 28.

[8] The suspicion that must be held must, in order to be a reasonable one, be objectively sustainable, in the sense that it must rest on reasonable grounds. *Duncan's* case at 818H; *Minister of Law and Order & others v Hurley & another* 1986 (3) SA 568 (A) at 578B-D. That said, the jurisdictional fact for an arrest without

warrant in terms of s 40(1)(b) remains a suspicion. In *Shabaan Bin Hussien & others v Chong Kam & another* [1969] 3 All ER 1626 (PC) at 1630C-D, the Privy Council, in a passage quoted with approval in the courts of this country, held:

‘Suspicion in its ordinary meaning is a state of conjecture or surmise where proof is lacking; “I suspect but I cannot prove”. Suspicion arises at or near the starting point of an investigation of which the obtaining of prima facie proof is the end.’

[9] In *Mabona & others v Minister of Law and Order & others* 1988 (2) SA 654 (SE) at 658E-H, Jones J spelt out how a reasonable suspicion is formed. He held:

‘Would a reasonable man in the second defendant's position and possessed of the same information have considered that there were good and sufficient grounds for suspecting that the plaintiffs were guilty of conspiracy to commit robbery or possession of stolen property knowing it to have been stolen? It seems to me that in evaluating his information a reasonable man would bear in mind that the section authorises drastic police action. It authorises an arrest on the strength of a suspicion and without the need to swear out a warrant, ie something which otherwise would be an invasion of private rights and personal liberty. The reasonable man will therefore analyse and assess the quality of the information at his disposal critically, and he will not accept it lightly or without checking it where it can be checked. It is only after an examination of this kind that he will allow himself to entertain a suspicion which will justify an arrest. This is not to say that the information at his disposal must be of sufficiently high quality and cogency to engender in him a conviction that the suspect is in fact guilty. The section requires suspicion but not certainty. However, the suspicion must be based upon solid grounds. Otherwise, it will be flighty or arbitrary, and not a reasonable suspicion.’

## Conclusion

[10] Ferreira had a sworn statement that the fingerprint of Pike was found on the vehicle used in a robbery that had been committed shortly before the abandoned vehicle had been found. In addition, he had information that Pike was a suspect in another case of robbery.

[11] When these two facts are taken together, it seems to me, a suspicion arises that Pike may have been involved in the robbery of the Drommedaris Supermarket. That, to my mind, is a reasonable suspicion to hold in the circumstances.

[12] That being so, the magistrate ought to have found that it had been established that Ferreira was a peace officer, and thus authorised to arrest, that he had entertained a suspicion, that the suspicion related to Pike having committed a

Schedule 1 offence and that the suspicion was a reasonable one. The necessary jurisdictional facts were, in other words established by the Minister.

[13] In the result, the appeal must succeed. I make the following order.

(a) The appeal is upheld with costs.

(b) The order of the court below is set aside and replaced with the following order.

‘The action is dismissed with costs, including the costs of counsel.’

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C Plasket

Judge of the High Court

I agree.

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R Brooks

Judge of the High Court

## APPEARANCES

For the appellant:

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Instructed by

The State Attorney, Port Elizabeth

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For the respondent:

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