IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG.

FULL COURT APPEAL CASE NUMBER: A5067/2021

HIGH COURT CASE NUMBER: 41499/18

Reportable: YES

Of interest to other Judges: YES

Revised: No

17/08/2022

IN THE MATTER BETWEEN:

In the matter between:

THE MINISTER OF POLICE **APPELLANT**

And

ZAKHELE MANYONI **RESPONDENT**

JUDGMENT

Oosthuizen-Senekal CSP, AJ (with Makume J and Wright J concurring)

Introduction

[1] One of the issues in this appeal is whether remarks made by the trial Judge to the plaintiff as to how monies from a possible damages award should be invested. Shortly after the Plaintiff had finalised his evidence and prior to both Counsel having had an opportunity to address Court on the issue before it, the trial Judge suggested

that he take the money to a large company for investment purposes. Upon being challenged as to the perception of bias, the trial Judge and counsel for the defendant became embroiled in an exchange, where the trial Judge was accused of acting like a financial advisor. In the final analysis the trial Judge found in favour of the Plaintiff on the merits and awarded a substantial amount by way of damages.

[2] On appeal to the Supreme Court of Appeal, the matter was referred back to a Full Bench after leave to appeal had been refused by the court *a quo.*

[3] For ease of reference, the parties are cited as in the court *a quo.*

[4] The plaintiff instituted a claim for damages against the Minister of Police (**"the first defendant"**) and the National Director of Public Prosecutions (**"the second defendant"**) arising out of wrongful arrest and detention and further claimed damages against the second defendant for malicious prosecution. Both claims were granted by the court *a quo.* Aggrieved by the outcome, and particular the court *a quo's* personal financial advice to the plaintiff, the first defendant launched the appeal.

[5] The essential issue before this Court is whether the court *a quo* was biased to the extent that it could not apply an independent mind when it found that the arrest and detention was unlawful, and whether the plaintiff had proved his claim for malicious prosecution.

Factual Matrix

[6] The material facts of this matter are largely common cause.

[7] In the early hours of the morning on 6 May 2017 Mrs E [....] J K [....] (**"the complainant"**) was attacked in her home by an unknown male person. The intruder's face was covered and therefore she was unable to identify him. During the incident, the complainant resisted and fought her attacker. In retaliation the assailant attempted to prevent her from screaming by inserting his fingers into her mouth in order to pull her tongue from her mouth. The complainant then bit the assailant's

fingers inserted into her mouth and she screamed for help. The assailant fled the scene through the broken window where he had earlier gained entry to the complainant's house.

[8] The complainant reported the incident at the Jabulani Police Station in Soweto, whereafter a case docket was opened. Following investigation of the crime scene a fingerprint was lifted and a blood sample, possibly that of the assailant, was collected at the crime scene.

[9] Warrant Officer Sithubeni (**"Sithubeni"**), stationed at Jabulani Police Station was appointed as investigating officer in the matter.

[10] On 17 May 2017 during an interview, the complainant advised Sithubeni that she was unable to identify her attacker. However, on Friday, 19 May 2017 the complainant contacted Sithubeni and informed him that she had received information from community members about a person having a bandage on his left hand. She also informed Sithubeni that the said person was residing in the same street as herself. The attack and subsequent attempt at identifying the plaintiff happened in Soweto, a densely populated area.

[11] Pursuant to the report, the plaintiff was arrested for housebreaking and attempted rape. The basis for the arrest was that the plaintiff was indeed a person having a bandage on his left hand and thus the attacker. During the arrest Sithubeni did not request the plaintiff to remove the bandage in order to ascertain whether his injuries were consistent with that of human bite marks.

[12] On Monday, 22 May 2017 the plaintiff appeared in the Protea Magistrate's Court and the matter was postponed for 13 June 2017 for a formal bail application. On 13 June 2017 the plaintiff's bail application was refused and the matter was postponed for further investigation. During his incarceration, the plaintiff was transported to the Nthabesing Thuthuzela Care Centre at Baragwanath Hospital where he was examined by a medical practitioner/nurse, whereafter a J88 was completed. During the said examination a buccal swab was also taken from the plaintiff.

[13] Finally, on 24 January 2018 during the plaintiff's appearance in the Protea Regional Court, the prosecutor requested a further remand in the matter, because the DNA report was unavailable and the matter could not proceed to trial. The presiding officer refused a further postponement and the matter was struck from the court roll.

[14] The plaintiff therefore remained in custody from the day of his arrest, 19 May 2017 until 24 January 2018.

[15] After some months and on 31 July 2018, the plaintiff was summonsed to appear in the Regional Court. While sitting outside the court someone came and advised him that the criminal charges were withdrawn against him.

[16] The basis for the withdrawal were firstly, that the DNA analysis was inconclusive as to the identity of the assailant and secondly, the fingerprint found on the crime scene was not that of the plaintiff but that of Mr Sipho Msimango.

[17] The plaintiff then instituted an action against the defendants on the 8th November 2018 the trial proceeded on 8 February 2021. It was agreed between the parties that there would be no separation of merits and quantum. The defendants called two witnesses during the trial, namely Warrant Officer Sithubeni and Mr Khoza, the Regional Control Prosecutor stationed at the Soweto, Protea Regional Court. The plaintiff was the only witness in his case.

[18] Judgment was delivered on 23 June 2021. The trial Judge found that the arrest of the plaintiff was unlawful and the following order was granted;

> 1. The first defendant is ordered to pay to the plaintiff the sum of R25 600.00 for loss of earnings plus interest at the rate of 10% per year from 8 November 2018 to date of payment in full;
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> 2. The first defendant is ordered to pay to the plaintiff the sum of R600 000.00 as damages for unlawful arrest and detention plus interest at the rate of 10% per year from 8 November 2018 to date of payment in full;

3. The first defendant is ordered to pay the plaintiff's costs of the action, including all reserved costs.

Bias of the presiding officer

[19] The core issue in this appeal concerns the question of the impartiality by the trial Judge sitting as court of first instance.

[20] Mr Mhambi, counsel appearing on behalf of the respondents raised the following ground in this regard in his heads of argument,

"Failure to guard against his feelings

> Not only that, in paragraph 71 of his judgment, the learned Acting Judge indicated that he 'have much sympathy for the plaintiff'. It would appear that he has never guided his sympathy in terms of the facts as his analysis of the evidence was selective, and on the evidence, he has even failed to state the reason why he rejected the evidence of the investigating officer which in some instances, was collaborated by the evidence of the prosecutor. It is our respectful submission further that the learned Acting Judge in this regard was not a reasonable, objective and informed as a person would on the correct facts and did not reasonably apprehend that the justice in question by not bringing an impartial mind to bear on the adjudication of the case."

[21] Mr Naidoo, counsel appearing on behalf of the plaintiff stated the following in relation to the argument of bias and impartiality;

> "The submissions in this paragraph are misguided. It is apparent from the judgment of the Court *a quo* that the reference to sympathy for the Plaintiff in paragraph 71 relates to the Court's determination of quantum. To give the statement context, the Court *a quo* stated at paragraph 71:

‘It seems to me that the appropriate level at which to set general damages would be R600 000.00 as at 24 January 2018. I have much sympathy for the Plaintiff; I had to guard against my sympathy unduly influencing my award.’

The Appellant’s imputation that the Court had sympathy for the Plaintiff in its analysis of the evidence is misguided and not supported by any factual submissions and should be rejected.

From a reading of the judgment, the evidence of the investigating officer was not rejected. The finding that he acted irrationally was based on his own evidence. The prosecutor corroborated the investigating officer's evidence only in so far as what the investigating officer told him i.e., which was also the evidence that he gave in court. From the evidence given by the investigating officer, there was no rational basis for the arrest.

The submissions that the Honourable Acting Judge was not reasonable, objective and informed... and did not bring an impartial mind to bear on the adjudication is without merit.

The Appellant has referred this Court to Case Lines pages 053-349 to 053-350. From a reading of the aforementioned pages, it is respectfully submitted that the Honourable Acting Judge explained himself regarding his advice to the Plaintiff in the event that he receives an award. In any event, it cannot be inferred from the quoted passage that the Honourable Acting Judge was unreasonable, not objective and uniformed and neither can it be inferred that he was not impartial. It is respectfully submitted that the judgment of the Court *a quo* is well researched and constructed and showed a thorough understanding of the evidence and the law.”

[22] Section 165(2) of the Constitution[1] requires courts to apply the law impartially and without fear, favour, or prejudice. The oath of office prescribed by schedule 2 of the Constitution requires each judge to swear that he or she will uphold and protect

[1] The Constitution of South Africa, Act 108 of 1994.

the Constitution and will administer justice to all persons alike without fear, favour, or prejudice, in accordance with the Constitution and the law.

[23] The Constitutional Court has stated in *President of the Republic of South Africa & Others v South African Rugby Football Union & Others*[2] that there exists a presumption that a judge is unbiased. This presumption exists due to the oath that judges take upon being appointed, as well their training and experience, which should enable a judge not to let personal feelings or interests interfere with his or her duties as a judge. The person who alleges that a judge has not acted impartially must accordingly prove the reasonable grounds upon which such allegations are based.

[24] Furthermore, in terms of section 34 of the Constitution, every person has the right to have any dispute, that can be resolved by application of law, decided in a fair public hearing before a court or another independent and impartial tribunal or forum. Where a presiding officer has adjudicated a case in which there is a reasonable apprehension that such presiding officer might be biased, then such conduct is inconsistent with section 34 of the Constitution.

[25] In *South African Human Rights Commission obo South African Jewish Board of Deputies v Masuku and Another,*[3] the Constitutional Court said,[4]

> "All this to say that the law does not suppose the possibility of bias. If it did, imagine the bedlam that would ensue. There is an assumption that Judges are individuals of careful conscience and intellectual discipline, capable of applying their minds to the multiplicity of cases which will seize them during their term of office, without importing their own views or attempting to achieve ends justified in feebleness by their own personal opinions

[26] In the *SARFU* matter *supra* at paragraph [35] it was held:

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[2] [1999] ZACC 11, 2000 (1) SA 1, 1999 BCLR 1059 (10 September 1999)
[3] [2022] ZACC 5; 2022 (4) SA 1 (CC), 2022 (7) BCLR 850 (CC) (16 February 2022)
[4] Paragraph [58].

> "A cornerstone of any fair and just legal system is the impartial adjudication of disputes which come before the courts and other tribunals. … Nothing is more likely to impair confidence in such proceedings, whether on the part of litigants or the general public, than actual bias or the appearance of bias in the official or officials who have the power to adjudicate on disputes."

[27] At paragraph [48] the following was said;

> "… At the same time, it must never be forgotten that an impartial judge is a fundamental prerequisite for a fair trial and a judicial officer should not hesitate to recuse herself or himself if there are reasonable grounds on the part of a litigant for apprehending that the judicial officer, for whatever reasons, was not or will not be impartial." [Emphasis]

[28] In *S v Le Grange*[5] the court confirms:

> "It must never be forgotten that an impartial judge is a fundamental prerequisite for a fair trial. The integrity of the justice system is anchored in the impartiality of the judiciary. As a matter of policy, it is important that the public should have confidence in the courts. Upon this social order and security depend. Fairness and impartiality must be both subjectively present and objectively demonstrated to the informed and reasonable observer."

[29] Since one of the most important requirements of judicial office is impartiality, being accused of bias strikes a blow against a judge's professional integrity. Reference to judicial impartiality in this context means that a judge must be open to persuasion, without rigidly adhering to personal, and often preconceived views about an issue. A judge is required to bring an open mind to the adjudication process.

[30] In South Africa, the concept of "*reasonable apprehension of bias*" is often used in the context of determining whether the present or past conduct of a presiding officer compromises his/her position in relation to the fair and impartial discharge of

[5] [2008] ZASCA 102 at [21].

his/her duties. Where a judicial officer creates a reasonable impression that s/he may be biased, a litigant may ask the judge to recuse him-/herself from hearing or deciding the matter.

[31] In *Roberts v Additional Magistrate for the District of Johannesburg*[6] Cameron AJA expressed the requirements as follows;

> "[1] There must be a suspicion that the judicial officer might, not would, be biased,
>
> [2] The suspicion must be that of a reasonable person in the position of the accused or the litigant.
>
> [3] The suspicion must be based on reasonable grounds.
>
> [4] The suspicion is one which the reasonable person referred to would, not might have."

[32] The test for "*reasonable apprehension of bias*" is an objective one and the applicant alleging bias or an apprehension of bias bears the *onus* of proving such. Furthermore, the test must be applied on a case-by-case basis.

[33] In *SARFU supra*, it was emphasised that the apprehension of the reasonable person must be considered in the light of the true facts presented at the hearing, and any incorrect facts must be ignored in applying the double reasonable test formulated by the Constitutional Court.[7]

[34] Cameron J explained the double reasonable test in the matter of *South African Commercial Catering and Allied Workers Union and Others v Irvin & Johnson Ltd (Seafoods Division, Fish Processing)*[8] as follows;

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[6] [1999] 4 All SA 285 (SCA).
[7] Paragraph [45].
[8] 2000 (3) SA 705 (CC). (*SACCAWU*)

> "Not only must the person apprehending bias be a reasonable person, but the apprehension itself must in the circumstances be reasonable. This two-fold aspect finds reflection also in *S v Roberts*, decided shortly after *SARFU*, where the Supreme Court of Appeal required both that the apprehension be that of the reasonable person in the position of the litigant and that it be based on reasonable grounds."

[35] In *Take & Save Trading CC and others v Standard Bank,*[9] Harms JA stated that a Judge:

> "… is not simply a 'silent umpire' … fairness of court proceedings requires of the trier to be actively involved in the management of the trial, to control the proceedings, to ensure that public and private resources are not wasted …"

[36] A presiding officer is accordingly entitled and required actively to participate in the court proceedings to ensure that the proceedings are controlled and regulated, with aim of ensuring a just and fair process. The participation by a presiding officer must, however, be exercised in an impartial and civil manner.

[37] In the matter of *Mulaudzi v Old Mutual Life Assurance Company (South Africa) Limited and Others*[10] the Supreme Court of Appeal confirmed that an apprehension of bias may arise from the conduct or utterances of a judicial officer prior to or during proceedings, and the following was said;

> "It is settled law that not only actual bias but also the appearance of bias disqualifies a judicial officer from presiding (or continuing to preside) over judicial proceedings. The disqualification is so complete that continuing to preside after recusal should have occurred renders the further proceedings a nullity. The general principles are well established. They are now enshrined in section 165(2) of the Constitution, which provides 'the courts are independent and subject only to the Constitution and the law, which they must apply impartially and without fear, favour or prejudice'. Thus, a judicial

[9] 2004 (4) SA 1 (SCA) at [3].
[10] 2017 (6) SA 90 (SCA).

officer who sits on a case in which he or she should not be sitting, because seen objectively, either he or she is either actually biased, or there exists a reasonable apprehension that he or she might be biased, acts in a manner that is inconsistent with the Constitution."

[38] The crux of the appeal in this case, is whether there was a reasonable apprehension on part of the first and second Appellants that the trial Judge was biased, and whether the manner in which the proceedings were conducted raised a reasonable apprehension of bias.

[39] In considering the above question the following remarks made by the court *a quo* during the trial has to be considered and analysed to determine whether the Appellant's perception of bias equates to a reasonable apprehension of bias.

[40] During the cross examination of Mr Khoza by Mr Naidoo on behalf of the plaintiff, the following transpired:[11]

"*Court*: Let him just finish his question please.

Mr Naidoo: As the court pleases.

Court: His answer, the witness, did the witness just answer his question before he said he does not answer your question, you say you would read Part A? Mr Khoza?

Mr Naidoo: That is correct M'ord, I would read, I would read Part A which contain evidence, statement of the witnesses, complainant, accused and so forth, for me to make my decisions.

Court: But your, sorry Mr Naidoo, but you understand why these questions are so important, there is a man who spend about 240 days in prison for a

[11] See Volume 3 case lines 053/233-234.

crime he did not commit. So, there is a, the spotlight is on, on the prosecuting authority and on the police here."

[41] The following line of questioning continued by the trial Judge;[12]

"*Questions by the Court*: Mr Khoza.

Mr Khoza: M'ord.

Court: The difficulty in this matter is this, a man who was ultimately innocent was kept in jail 240 days whilst the matter has been investigated. Now is it common to keep people in jail during investigation for prolonged periods? Why did you not finish your, complete your investigation first, before you, before the man was kept in custody for so long?

Mr Khoza: M'ord, I am not sure whether the bail, whether the bail was refused by the court or it was granted. I cannot tell why the accused was in custody for so long. It might happen that the court during bail application refused bail, that would be out of the prosecution's hand, but I am not sure of it. I cannot tell you."

[42] The reference to the plaintiff as an *innocent person* being incarcerated for a period of 240 days, could reasonably have triggered the parties to believe that the court *a quo* might not be impartial in adjudicating the matter. Referring to the plaintiff as an innocent person during the hearing of evidence, before he had testified clearly creates a perception that the plaintiff was unlawfully arrested, detained and prosecuted and hence that the issue had already been decided.

[43] The record further reflects unnecessary comments by the court *a quo* at the end of the plaintiff's evidence,[13]

[12] Volume 3 case lines 053/265-266.

[13] Volume 4 Case Lines 053/346-347.

"*Court*: Before I excuse Mr Manyoni, I want to say something to you. Mr Interpreter will you just tell him that please. I have not made up my mind in this case. I weigh-up the duties of the police to protect women and I consider that they should put innocent people in jail. So do not assume that I will find in your favour. But if I do, I want to speak as an older man. Out from matric, did a degree in Commerce and a degree in Law. I would never if I receive this much money as you claim mister, I would not invest it myself. You must speak if that happens to someone you can trust like your attorney, to make certain that you get to a large company who will take care of you. Because everyone will try and get hold of your money. This is your once chance to have a better life.

Mr Mhambi: The Court just proceed, what are you trying to say?

Court: I am saying that I am excusing him now.

Mr Mhambi: No, no, no, the allegation that you have made, what are you trying to say? I mean, it seems you have made your mind already.

Court: I have not made up my mind. I have heard all the evidence and I have not made up my mind.

Mr Mhambi: Of invest coming in, you have not made up your mind?

Court: I have not made up my mind, sir.

Mr Mhambi: Now with the issue of investment of money where is it coming from?

Court: Yes. Mister, I have given a large amount to leeway in this matter. When I sit in these matters the one thing that motivates me most of all is what I see before me. I have made no offence to this man and I am going to excuse him now. I have not made up my mind, I will decide this matter once I

have heard your argument and decided the matter. I have not decided it upfront; I have decided it during the matter.

Mr Naidoo: M'ord, my understanding is that you said, if you hold in his favour.

Court: If something happens. am acutely aware of the suffering in this country, that is all. I want to excuse this man now and say to him thank you for his testimony and thank you, Mr Interpreter."

[44] Shortly after the plaintiff was excused by the court the following exchanges were made between the trial Judge, Mr Mhambi and Mr Naidoo;[14]

"*Court*: You have said that I have made up my mind.

Mr Mhambi; No, it is not so much about you making up your mind. The Court should be taking both sides, because you did not make such comments to the witness of the defence.

Court: Yes.

Mr Mhambi: Now the Court start to occupy a position of a financial advisor that before or after the accused has been awarded money people are going to look after his money, he must get a financial advisor to advise him about how to invest the money. That is my understanding of what you- in the sense of what you are saying. Am if I am correct, I am really concerned. And if I am not correct, I am might not be concerned.

Court: What is your concern?

Mr Mhambi: Is that the Court is advising the plaintiffs on how to handle money.

[14] Volume 4 case lines 348-350.

Court: You see, I cannot him - if I wanted to advise him. Let me put it this way.

Mr Mhambi: And the Court made a ...[Intervenes]

Court: I think once I have retired, I wanted to do something like this where I can help poor people with no fee and I will not invest their money. But what I see here and I see in every matter and if you have acted long - if you lived long enough in this town, seen enough of the suffering, we see it in every matter how people with a Standard 2 education gets injured in a motorcar collision, gets paid R5 million by the Road Accident Fund and a year later all the money is gone. That is all - I cannot say anything more than what I did. So I stepped at a very narrow line. I have not decided whether he will get the money. But that is money that should carry them through their lives and our system in this country of what happens is we not assisting the poor and the uneducated. I am concerned about that. You have taken offence about that, I am very sorry that you take offence, but it was not as a lawyer that I spoke. I spoke as a man with grey hair who has lived long enough to see how our system failed the vulnerable people.

Mr Mhambi: But what should have been done by that giving me a problem, that person who is on the other side and not by this Court, but seen all the time be neutral on the facts and that is what I firmly believe. Whatever the Court - the Court is human at the end, it has views and you have listened to the evidence. The Court must remain neutral so that even a person on the street can be able to trust the Court and including the accused. Now the way you have the tone that the Court has taken is as if this amount of money is guaranteed it is going to come, it is going to be awarded the accused.

Court: I tried to make it very clear that I do not know because have such sympathy for the police, the situation in which the police officer finds himself with the complainant in an attempted rape case. I thought I made that clear. I

sit here and I look at the matter from your client's perspective and look at it from the man who have spent 8 months in jail. I see both sides, I think.

Mr Mhambi: I doubt if the Court we should take it any further, I think we should just accept that way and then make it move forward for this case.

Court: But what I thought was a kind thing to do."

[45] Mr Mhambi, rightly so, objected to the remarks by the court *a quo* with reference to *"financial advice"* provided to the plaintiff, prior to the hearing of argument and judgment being delivered. It is well to remember that it remains an attorney's prerogative to advise the client on financial issues emanating from a claim in circumstances such as before this court. It is not for the trial judge to do so.

[46] The comments made in this regard were a strong indication that the court *a quo* at that stage made up its mind that the plaintiff should be successful in his claim against the respondents. These remarks reflected negatively on the impartiality of the court *a quo.*

[47] The impression was created that the court *a quo* was predisposed to the particular result and furthermore, the impression was that the court *a quo* prejudged the matter.

Conclusion

[48] The remarks by the court *a quo* were unfortunate and are of concern to this Court.

[49] It is clear the Appellants have not proved actual bias on the part of the court *a quo.*

[50] However, having regard to the above comments by the trial Judge during the proceeding it is probable that a reasonable person would have had a reasonable apprehension of bias on the part of the court *a quo*. This is a case where there is

cogent evidence that demonstrates that something the trial Judge has done or said gives rise to a reasonable apprehension of bias.[15] In applying the *dicta* of Cameron J not only must a person apprehending bias be a "reasonable person", a category into which the respondents fall, but also "the apprehension itself must in the circumstances be reasonable".[16]

[51] In applying the above principles to the facts in this case, the Appellant has met the requirements of the two-fold test as referred to in *SACCAWU supra.*[17] In summary the Appellants are considered to be in the category of a reasonable person and the apprehension itself is reasonable in the circumstances.

[52] In coming to this said conclusion, it is therefore, unnecessary to discuss any of the further grounds of appeal in the matter.

[53] During the hearing of this appeal, Mr Mhambi for the Minister asked us to remit the matter for a fresh trial before another judge. He expressly assured us that he was authorised to make the request also on behalf of the NDPP. In my view, this is the safest course to adopt.

[54] Regarding costs, while the appellant has been successful in setting aside the decision of the court below, the respondent is in no way to blame for what occurred. In these unusual circumstances, the costs in the appeal, including the costs in the application for leave to appeal and in the application to the Supreme Court of Appeal lie where they fall.

Order

[55] In the circumstances, the following order is made:

1. The appeal is upheld.

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[15] See *Masuku supra* at paragraph [60].
[16] Id at paragraph [64].
[17] Id [33].

2. The judgment and orders dated 24 June 2021 are set aside.

3. The trial hearing in the action instituted by the plaintiff against the first and second defendants under case number 41499/18 in this court is to commence and be heard *de novo* by another judge. If the plaintiff sets the matter down for trial notice must be given to both defendants.

4. The costs of the appeal, including the costs of the application for leave to appeal and the application for leave to the SCA are to be carried by the parties.

CSP OOSTHUIZEN-SENEKAL
Acting Judge of the High Court
Gauteng Division, Johannesburg

I agree

M MAKUME
Judge of the High Court
Gauteng Division, Johannesburg

I agree

GC WRIGHT
Judge of the High Court
Gauteng Division, Johannesburg

This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to *Case Lines* and by release to SAFLII. The date and time for hand-down is deemed to be 16h00 on 17 August 2022.

DATE OF HEARING: **3 August 2022**
DATE JUDGMENT DELIVERED: **17 August 2022**

APPERANCES:

Attorney for the Appellant:	State Attorney
Counsel for the Appellant:	Mr M.H Mhambi
Attorney for the Respondent:	Logan Naidoo Attorneys
Counsel for the Respondent:	Mr L Naidoo