REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, JOHANNESBURG)

CASE NUMBER: 19387/2018

DATE OF HEARING: 31 October 2022

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO

In the matters between:

MKHIZE SIBONGISENI SAPIEN **Appellant**

and

THE MINISTER OF POLICE **1st Defendant**

NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS **2ND Defendant**

This judgment has been delivered by being uploaded to the caselines profile on 2 November 2022 at 10h00 and communicated to the parties by email.

JUDGMENT IN APPLICATION FOR LEAVE TO APPEAL

Sutherland DJP

[1] This is an application for leave to appeal brought by the defendant, the Minister of Police, against a judgment of Victor J, who has retired, and as a result the application was argued before me.

[2] Condonation for the late filing of the application was sought. Although opposed, in my view condonation is appropriate. The key issue in the delay was the lapse of time for the judge to give reasons for the order. It is inappropriate to be precious about such applications. The delay is minor. There is no material prejudice. Thus, Condonation ought to be granted.

[3] The order made by Victor J upheld the case of an unlawful arrest and awarded the plaintiff damages. The plaintiff had been arrested on a charge of raping a minor, held for some time and thereafter the charges were withdrawn. According to the judgment, ostensibly, the arrest was a part of a rather inept exercise in which no prior investigation seemed to have been undertaken.

[4] The main thrust of the criticism of the judgment seems to be that allusions made therein to the police having erred in not referring the complaint of rape to a specialised sex crimes unit. Apparently, it was thought that this unit would have not have blundered. The argument advanced seems to centre this criticism as part of the ratio. In my view this not the obvious interpretation to cast upon that part of the judgment. Were it omitted, the outcome would not be materially affected.

[5] The balance of the criticisms related to findings of fact about which there may be different opinions, but remain the trial court's function to make choices. However, the core common cause fact was the arrest and humiliation of a person who was later fully exonerated once an investigation had been fully carried out.

[6] In my view another court is unlikely to conclude that the order should be overturned.

[7] The application should fail.

The Order

(1) Condonation of the late filing of the application is granted.

(2) Leave to appeal is refused.

(3) The applicant for leave to appeal (the Defendant) shall pay the costs of the respondent's (Plaintiff) opposition.

Sutherland DJP

Heard: 31 October 2022
Judgment: 2 November 2022

The Appellant/s were represented by: Adv NM Mtsweni
Instructed by: Mr Malape – State Attorney

The Defendant were represented by: Adv S Vobi
Instructed by: Mtumtum Incorporated