



IN THE NORTH GAUTENG HIGH COURT, PRETORIA

[REPUBLIC OF SOUTH AFRICA]

29/01/2014  
CASE NUMBER: 2327/2005(B).

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
<u>29 JANUARY 2014</u>	
DATE	SIGNATURE

In the matter between:

W A ACKERMAN

1<sup>ST</sup> APPLICANT

A S ACKERMAN

2<sup>ND</sup> APPLICANT

J E ACKERMAN

3<sup>RD</sup> APPLICANT

M GEISLER

4<sup>TH</sup> APPLICANT

And

MINISTER OF SAFETY AND SECURITY

1<sup>ST</sup> RESPONDENT

NATIONAL COMMISSIONER OF THE POLICE SERVICES

2<sup>ND</sup> RESPONDENT

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JUDGMENT

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MAVUNDLA J;

- [1] This is an application for leave to appeal against the judgment of this court delivered on 4 October 2013, dismissing the claims of the applicants for their alleged unlawful arrest and damages suffered as the result.
- [2] It is trite that the question of granting or refusal of leave to appeal is a matter of the discretion of the court. The applicants must persuade the court that there are reasonable prospect of another court coming to a different conclusion to that arrived at by the trial court.
- [3] The grounds upon which leave to appeal is sought, are fully detailed in the applicants' notice for leave to appeal. I deem it not necessary, for purposes of this judgment, to chronicle these herein. It suffices to state that the applicants' chagrin against the dismissal of their claims was, *inter alia*, the trial court's finding that the respondents' witnesses were credible and accepting their evidence and finding otherwise as to the applicants. They also contended that the court misdirected itself in several respects by, *inter alia*, making conclusions or assumptions premised on untendered evidence and also by concluding that the restriction of the movement of 2nd applicant by means of handcuffing of his hands did not amount to arrest.
- [4] It was common cause that the issue in this matter was whether there was a reasonable suspicion on the part of the police to arrest the applicants. It was conceded on behalf of the applicants that the reasonable suspicion on the part of the police was triggered by the information supplied by the informant. It was also common cause that the said informant was the daughter of the first and second applicants.

- [5] With regard to what transpired at the applicants' place, was canvassed through the evidence of the applicants and the respondents. The trial court, being steeped in the atmosphere of the court in which the evidence was canvassed, made credibility findings and preferred the evidence of the respondents to that of the applicants. It is trite that a court of appeal is reluctant to interfere with credibility findings of a trial court. In my view, there are no reasonable prospects that the credibility findings of the trial court would be interfered with on appeal.
- [6] The applicants further contended that the court misdirected itself in making inferences and conclusions on evidence which was not lead. In this regard it was contended by the applicants that the trial court's conclusion that the purposes of the large quantity of used condoms was to enable the third applicant to count the number of men customers who were service by the fourth applicant, was not supported by any evidence and therefore amounted to a misdirection.
- [7] It was common cause that a large quantity of used condoms was found in the bedroom of the third and fourth applicants. Various explicit photos of the fourth applicant as well as material showing prices for certain sexual acts were also found at the premises and bedroom of the third and fourth applicants. The explanation of the applicants regarding the reason for the presence of the large quantity of used condoms was rejected by the court. The court inferred from the aforesaid facts that the purpose of keeping the large quantity of used condoms was to enable the third applicant to count the number of men who were sexually serviced by the fourth applicant. In my view, a court is at large to make inferences from the totality of undisputed facts and the rejection of the version of any of the parties. In the circumstances of this case, I am not persuaded that there was any misdirection in the inference and conclusion arrived at by this court. I am also of the view that there are no reasonable prospects of success of the appeal on the alleged ground of misdirection.

[8] It was further contended by the applicants that the court misdirected itself in not evaluating the evidence it would have arrived at a different conclusion with regard to the veracity and credibility of all the witnesses and would have rejected the version of the respondents and accepted that of the applicants. The witness whose evidence it is complained of that the court did not evaluate, was that of the ADT security officer who came after the event. The contention that his evidence would have assisted in corroborating the evidence of Mrs Fouche loses sight of the fact that the court evaluated the evidence of the last mentioned witness and made credibility findings thereon as such consideration of the ADT office would not have assisted the applicants in the final determination of the matter. In my view, there was no misdirection on the part of the court nor are there any reasonable prospects of success on appeal on this point.

[9] I am therefore of the view that, in the total conspectus of this case, and for the reasons stated herein above, there are no reasonable prospects of success on appeal. In the premises in the exercises of my judicial discretion, I am of the view that leave to appeal should be refused and the application be dismissed with costs.

[10] In the result the following order is made:

- (i) The application for leave to appeal is dismissed with costs.
- (ii) The applicants are jointly and severally, the one paying the other to be absolved, ordered to pay the costs of the application.



MAVUNDLA N.M.

JUDGE OF THE HIGH COURT

DATE OF HEARING : 19 DECEMBER 2013

DATE OF JUDGMENT : 29 JANUARY 2014

APPLICANT' COUNSEL : ADV J. HOLLAND-MUTER

Instructed by POTGIETER PENZHORN TAUTE INC

RESPONDENTS' COUNSEL: ADV. K.M. MOKOTEDI

Instructed by STATE ATTORNEYS (PRETORIA)