

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

31/5/16.

CASE NO: 33643/2011

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

31 May 2016

In the matter between:

JATHEEN BHIMA

APPLICANT

and

THE STATE

RESPONDENT

J U D G M E N T

KUBUSHI, J

[1] The applicant (the plaintiff in the trial court), seeks leave to appeal to the full bench of this court, alternatively, to the Supreme Court of Appeal, against the entire judgment I granted on 1 March 2013, under case number 33643/2011.

[2] The applicant filed his application for leave to appeal out of time and at the commencement of the hearing of this matter his counsel applied for condonation. The application for condonation was not opposed. I granted the application.

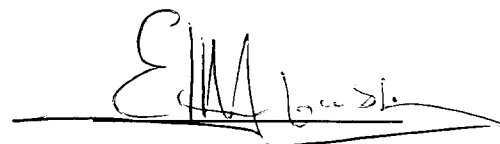
[3] At the trial, the applicant was claiming damages against the respondent (the defendant in the trial court) for being unlawfully assaulted, ridiculed and verbally abused by members of the South African Police Service (SAPS). I was in my judgment not satisfied that the applicant had on the preponderance of probabilities shown that he was assaulted by the members of SAPS. I, in that regard, found that the applicant failed to demonstrate a higher probability value than the respondent and ordered absolution from the instance.

[4] The applicant is relying on various grounds of appeal in his application for leave to appeal. The main ground, as is argued by his counsel before me, is that I erred in my finding that the applicant did not, on a balance of probabilities, satisfy me that he was assaulted by members of SAPS.

[5] Based on this ground, counsel for the applicant's submission is that there are prospects of success in the appeal in that another court may, after evaluation of the facts of the case, come to a different conclusion.

[6] Despite the reasons for my findings which have been extensively set out in my judgment, I am of the view that since I decided the issues purely on credibility findings based on the probabilities as I saw them, there are reasonable prospects that another court may find differently on such probabilities and, possibly, find in favour of the respondent rather than the applicant. Leave to appeal should on that basis be granted.

[7] Application for condonation is granted and leave is accordingly, granted to the applicant to appeal to the Full Court of this Division only on the ground of appeal argued before me.

A handwritten signature in black ink, appearing to read 'E.M. Kubushi', is written over a horizontal line.

E.M. KUBUSHI

JUDGE OF THE HIGH COURT

APPEARANCES:

HEARD ON THE	: 26 MAY 2016
DATE OF JUDGMENT	: 31 MAY 2016
APPLICANT'S COUNSEL	: ADV. N.F DE JAGER
APPLICANT'S ATTORNEYS	: BARNARD&PATEL INC
RESPONDENTS' COUNSEL	: ADV. M MANALA
RESPONDENTS' ATTORNEY	: STATE ATTORNEY