REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

17/11/2016.

CASE NO: A617/15

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

17 11 2016
DATE

SIGNATURE

In the matter between:

JACOBUS J VAN WYK	1st Appellant
LINDY POTGIETER	2nd Appellant

and

THE MINISTER OF POLICE	1st Defendant
THE DPP, GAUTENG	2nd Defendant

JUDGMENT

AC BASSON, J

Introduction

[1] This is an appeal against the judgment of the court *a quo* dismissing the two appellants' claims for damages resulting from an arrest without a warrant and their subsequent detention. The first defendant's (the Minister of Police) defence is founded upon the provisions of section 40(1)(a) of the Criminal Procedure Act ("the CPA").[1] The two appellants were arrested on a suspicion of having been in possession of an illegal substance.

[2] Section 40(1)(a) and section 40(1)(h) of the CPA are relevant to the arrest in this matter. Section 40(1)(a) of the CPA reads as follows:

> " 40 Arrest by peace officer without warrant
> (1) A peace officer may without warrant arrest any person -
> *(a)* who commits or attempts to commit any offence in his presence;"

Section 40(1)(h) provides that:

> "(1) A peace officer may without warrant arrest any person—
> . . .
> *(h)* who is reasonably suspected of committing or of having committed an offence under any law governing the making, supply, possession or conveyance of intoxicating liquor or of dependence-producing drugs or the possession or disposal of arms or ammunition."

Background facts

[3] It was common cause that the two appellants Mr Jacobus van Wyk ("Van Wyk") and Ms Lindy Potgieter ("Lindy") were arrested on Thursday 8 August 2013 without a warrant of arrest and thereafter detained for approximately

[1] Act 51 of 1977.

3½ days at the SAPS Hercules. They were detained over a long weekend with the public holiday known as Women's day on Friday the 9th of August 2013. The two appellants were arrested together with two other individuals a one Bianca Potgieter ("Bianca") and a one Morris.

[4] On Monday 12 August 2013 the second defendant issued a certificate of *nolle prosequi* in respect of both appellants whereafter they were released.

[5] The appellants claimed damages for the following:

(i) The first claim is against the first respondent for their alleged wrongful arrest and detention;

(ii) The second claim is also against the first respondent for malicious prosecution; and

(iii) The third claim is against the second respondent (the Director of Public Prosecutions) for the alleged unlawful refusal of bail.

Brief summary of the common cause facts

[6] It was common cause that on the evening of 8 August 2013 the four occupants in the vehicle (the two appellants, Bianca and Morris) were arrested by Sergeant Van Rooyen ("Van Rooyen") and Warrant Officer Potgieter ("Potgieter"). The plaintiffs testified that they were on their way to Midas to buy vehicle spares. Lindy was the driver of the vehicle. Bianca was seated next to her in the front. The two men (Van Wyk and Morris) were seated at the back.

[7] There is some dispute about whether the vehicle was stopped by the police officers or whether the car was stationary when the police officers. According to the appellants they had stopped next to the road at the insistence of Bianca who wanted to speak to her nephew who was standing next to the road. According to the appellants it was only then that the police officers had arrived whereafter the four of them were arrested.

[8] It was common cause that when the police officers approached the vehicle, Bianca immediately handed over a parcel to Van Rooyen and said words to

the following effect: "Sorry, sorry, ek sal nie weer nie". Bianca also admitted to Van Rooyen that the parcel contained drugs. Van Rooyen then searched the vehicle and discovered what is referred to in the evidence as a "strootjie" – which is a cut off straw (plastic tube) that is often used to inhale illegal substances such as Cocaine or CAT.

[9] Van Rooyen testified that in his experience he suspected that the white residue in the straw was drugs such as cocaine or CAT. In this regard he testified that "[a]s ek 'n strooitjie kry met 'n wit poeier wat in die binnkant vassit is dit dwelms. Dit is hoe ondervinding my geleer het in die afgelope 16 jaar oor wat ek getuig het". The straw was found on the backseat in the middle where the two men sat. According to Van Rooyen no one took ownership of the straw whereafter the decision was then taken to arrest all four individuals.

[10] Potgieter confirmed that the straw was found in the back of the car. He likewise testified that in his experience the white powder was CAT and that the straw was used to inhale CAT or something similar.

[11] Van Wyk was adamant that he knew nothing about the straw and that he also did not see where the police officers found the straw. He could, however, not dispute the fact that the straw was found in the car.

[12] According to the appellants Bianca told the police at the scene as well as at the police station that they must not arrest the others (the appellants and Morris) as they were not involved.

[13] Potgieter denied that he had heard Bianca say that the others were not involved when she voluntarily handed over the package containing drugs. He, however, admitted that he later heard that she had made such a statement to one of the officers and testified that it could have been that he heard it from Van Rooyen. Van Rooyen, however, denied that he had heard this statement.

[14] It was common cause that straw containing the white powder was never subjected to any forensic tests. Potgieter confirmed that it was never done and testified that the "speuders het daar bietjie geslip".

Claim 1: Unlawful arrest in terms of section 49(1)(a) and 49(1)(h) of the CPA

Jurisdictional requirements

[15] The onus to proof that the arrest was lawful rests on the first respondent (the arresting officers). The onus arises from the fact that an arrest constitutes a depravation of freedom and is regarded as *prima* facie unlawful. Justification for the arrest is therefore required from the arresting officer.[2] See in this regard *Minister of Law and Order and others v Hurley and another*:[3]

> "I consider it to be good policy that the law should be as there stated. An arrest constitutes an interference with the liberty of the individual concerned, and it therefore seems to be fair and just to require that the person who arrested or caused the arrest of another person should bear the *onus* of proving that his action was justified in law."

[16] In defending a claim for unlawful arrest (in other words in justifying the arrest), the following three jurisdictional requirements as set out in section 40(1)(a) have to be pleaded: (i) Firstly, the arrestor is a peace officer; (ii) Secondly, an offence must have been committed or there must have been an attempt to commit an office and; (iii) Thirdly, the offence or attempted offence must be committed in the presence of the arresting officer. Once these jurisdictional facts are present the discretion whether or not to arrest will arise. (I will return to this discretion hereinbelow.)

[17] What is required of an arresting officer has been considered in some detail by the court in *Scheepers v Minister of Safety and Security*:[4]

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[2] *Minister of Safety and Security v Sekhoto and Another* 2011 (1) SACR 324 at paragraph [16].
[3] 1986 (3) SA 568 (A) at 589E – F.
[4] 2015 (1) SACR 284 (ECG).

"[18] The test is an objective one and the question to be answered is in our view whether the arresting officer had direct personal knowledge of sufficient facts at the time of the arrest, on the strength of which it can be concluded that the arrestee had prima facie committed an offence in his presence. Stated differently, did the arresting officer have knowledge at the time of arrest of the arrestee, of such facts which would, in the absence of any further facts or evidence, constitute proof of the commission of the offence in question. The aim is not to determine whether the arrested person is guilty of the offence on which he was arrested. It accordingly matters not that the arrestee was not prosecuted or was acquitted at a subsequent trial on the basis of evidence other than what the arresting officer had in his possession at the time when he executed the arrest. An acquittal simply means that the prosecution failed to prove the guilt of the arrested person beyond a reasonable doubt on the evidence available to it at that time and placed before the trial court. As stated by Price J in *R v Moloy* 1953 (3) SA 659 (T) at 662E:

> 'It is not necessary, of course, that a person who is apparently committing one of the minor offences referred to in s 26*(a)* of Act 31 of 1917 must thereafter be convicted of that offence in order for the arrest to have been lawful. For instance, a constable may validly arrest a person whom he sees committing a common assault even if it should turn out later on that such person was acting in self-defence and is innocent of any offence. The constable in such a case would see before his eyes all the elements which go to constitute the crime of assault.'

[19] To hold otherwise is, as a matter of public policy, undesirable. It would mean that knowledge is *ex post facto* attributed to the arresting officer, of facts he did not have actual knowledge of at the time of effecting the arrest. It requires the search for a balance between two equally important aims of public policy, namely the liberty of the individual on the one hand, and the maintenance of law and order on the other. Arrests under s 40(1)*(a)* usually take place in circumstances

> where prompt and decisive action is called for, and which is of necessity founded on the circumstances of the moment, such as public order offences. The arresting officer cannot be expected to determine the guilt of the arrestee in such circumstances in advance, and to hold otherwise would unnecessarily discourage peace officers from arresting offenders who are in the act of committing an offence. The arrest of a person *in flagrante delicto* without a warrant is a necessary power to effectively maintain order and combat crime and should not be unduly curtailed."

[18] Of particular importance is the principle emphasised by the court in *Scheepers* that it is not required of the arresting officer to determine whether the arrestee is guilty or not. What is relevant is whether, objectively viewed, the arresting officer had knowledge at the time of the arrest of such facts which would, in the absence of any further facts or evidence, constitute proof of the commission of the offence in question. It is also not required that the arresting officer must form the view on the likelihood or otherwise of a conviction of the person that was arrested in terms of section 40(1)(a) of the CPA. It is likewise not required that the arrestee is later charged or convicted. See in this regard *Minister of Safety and Security and Another v Mhlana*[5] where the court held that-

> "... in order for a peace officer to be placed in a position to rely upon s 40(1)*(a)* it is not necessary that the crime in fact be committed or that the arrestee be later charged and convicted of the suspected offence."

[19] On behalf of the appellants it was submitted that they were subjected to so-called collective punishment because there was not a single shred of evidence that a possible common purpose or conspiracy existed between them. It was further submitted that the doctrine of common purpose was applicable to the situation.

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[5] 2011 (1) SACR 63 (WCC) in paragraph [15] at 68C.

[20] I am not persuaded by this argument. As pointed out, it was not required that the arresting officers had to determine the guilt of the appellants at the time of the arrest and it was certainly not their duty to determine whether, in light of the doctrine of common purpose, the appellants were indeed guilty. Nothing more was required of the arresting officers than that they should have had knowledge at the time of the arrest of such facts which would have, in the absence of any further facts or evidence, constitute proof of the commission of the offence in question.

[21] Leaving aside for a moment the fact that Bianca handed over a packet containing dugs to Van Rooyen that she also took ownership thereof. It was the evidence of Potgieter and Van Rooyen that they found the straw containing white powder which, in their experience was drugs, in the car. The straw was not found where Bianca sat but was found at the back of the car where Van Wyk and Morris sat. There was no evidence before the court that Bianca also took ownership of the straw. In this regard both Potgieter and Van Rooyen testified that because no one took ownership of the straw containing the powder all four were arrested. Van Rooyen explained that it was in these circumstances necessary to arrest all four of them and that it was not for him (as the arresting officer) to decide who was guilty but that it was for a court to decide who was guilty (in the sense who the owner of the drugs was). This evidence was also confirmed by Potgieter.

[22] I am in light of these facts satisfied that sufficient facts existed at the time on which the arresting officer – who had direct knowledge of the facts - could have arrived at a conclusion that an offence was committed in their presence.

[23] In so far as section 40(1)(h) of the CPA is applicable, it can likewise not be concluded on the evidence that the arresting officers could not have formed a reasonable suspicion that the appellants committed an office of possession of dependence producing drugs. I should also point out that it is irrelevant whether the straw did in fact contain a depending producing drug or not. The fact that it resembled cocaine or CAT was sufficient for the arresting officers

to have formed a suspicion that the straw contained an illegal substance. Furthermore, a suspicion by its very nature implies that there may exist some uncertainty in respect of whether the offence had been committed. The court in *Duncan v Minister of Law and Order*[6] explained what is meant by the word "suspicion" in the context of section 40 of the CPA:

> "Section 40 (1)*(b)* provides that the arresting officer must have a "reasonable suspicion" that the suspect had committed an offence referred to in Schedule 1 of the Act. As far as "reasonable suspicion" is concerned, reference may be had to the Criminal Procedure Act 51 of 1977 ss 41(1)*(b)*, 42 (1)*(c)*, 46(1), 48 and 49 (2). *Ingram v Minister van Justisie* 1962 (3) SA at 229G - 230A correctly states the test to be applied - relying on *Hicks v Faulkner* 8 QBD at 171, which was also approved of in *May v Union Government* 1954 (3) SA at 128H - 129A. The words "reasonable suspicion" in s 40 may tend to indicate some subjective test to be applied; however, that is not so; the test as to whether VAN HEERDEN JA "reasonable suspicion" could have existed and did exist, is to be determined by an objective standard, namely that of the reasonable man with the knowledge and experience of a peace officer based upon the facts and circumstances then known to the arresting peace officer. S v Nell 1967 (4) SA at 491B - E, 492A - B, E - F, and particularly at 496D - F; LSD Limited and Others v Vachell and Others 1918 WLD at 143; Guardian Newspapers (Pty) Ltd v Minister of Justice and Others 1946 TPD at 732.

Discretion to arrest

[24] The decision to arrest was also attacked by the appellants. In this regard it was claimed that the arresting officer should have considered less invasive measures than arrest in order to bring the appellants before court.

[25] It is accepted that once the jurisdictional facts for an arrest have been established the discretion whether or not to arrest arises. This discretion

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[6] 1986 (2) SA 805 (A) at 812H – 813B.

arises precisely because of the accepted principle that an arresting officer is not obliged to arrest.[7] The discretion to arrest must be exercised in good faith, rationally and not arbitrarily.[8]

[26] The decision to arrest should be based on the intention to bring the arrested person to justice. Where an inappropriate motive for the arrest was present or where the arrest was not *bona fide,* the arrest would be unlawful. See in this regard *Duncan v Minister of Law and Order:*[9]

> "If the jurisdictional requirements are satisfied, the peace officer may invoke the power conferred by the subsection, ie, he may arrest the suspect. In other words, he then has a discretion as to whether or not to exercise that power (cf Holgate-Mohammed v Duke [1984] 1 All ER 1054 (HL) at 1057). No doubt the discretion must be properly exercised. But the grounds on which the exercise of such a discretion can be questioned are narrowly circumscribed. Whether every improper application of a discretion conferred by the subsection will render an arrest unlawful, need not be considered because it does not arise in this case. All that need be said for the purposes of the point under consideration is that an exercise of the discretion in question will be clearly unlawful if the arrestor knowingly invokes the power to arrest for a purpose not contemplated by the Legislator. But in such a case, as is generally the rule where the exercise of a discretion is questioned, the *onus* to establish the improper object of the arrestor will rest on the arrestee (cf *Divisional Commissioner of SA Police, Witwatersrand Area, and Others v SA Associated Newspapers Ltd and Another* 1966 (2) SA 503 (A) at 512; *Groenewald v Minister van Justisie* 1973 (3) SA 877 (A) at 884)."[10]

[27] What is therefore important is the fact that the arresting officer must exercise a discretion before effecting an arrest. See in this regard *Raduvha v Minister*

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[7] *Sekhoto* at paragraph [28].
[8] Ibid.
[9] 1986 (2) SA 805 (A).
[10] At 818H – 819B.

of Safety and Security and Another where the Constitutional Court held as follows:[11]

> "[42] Section 40(1) of the CPA states that a police officer "may" and not "must" or "shall" arrest without a warrant any person who commits or is reasonably suspected of having committed any of the offences specified therein. In its ordinary and grammatical use, the word "may" suggests that police officers have a discretion whether to arrest or not. It is permissive and not peremptory or mandatory. This requires police officers to weigh and consider the prevailing circumstances and decide whether an arrest is necessary. No doubt this is a fact-specific enquiry. As the police officers are confronted with different facts each time they effect an arrest, a measure of flexibility is necessary in their approach to individual cases. Therefore, it is neither prudent nor practical to try to lay down a general rule and circumscribe the circumstances under which police officers may or may not exercise their discretion. Such an attempt might have the unintended consequence of interfering with their discretion and, in the process, stymie them in the exercise of their powers in pursuit of their constitutional duty to combat crime.
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> [43] As section 40(1) grants police officers a discretion whether to arrest, the two courts should have gone further in their evaluation of the evidence to determine whether the facts justified an arrest. This is so because an arrest is a drastic invasion of a person's liberty and an impairment of their rights to dignity, both of which are enshrined in the Bill of Rights.
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> [44] In other words the courts should enquire whether in effecting an arrest, the police officers exercised their discretion at all. And if they did, whether they exercised it properly as propounded in *Duncan* or as per *Sekhoto* where the court, cognisant of the importance which the Constitution attaches to the right to liberty and one's own dignity in our constitutional democracy, held that

[11] [2016] ZACC 24.

the discretion conferred in section 40(1) must be exercised "in light of the Bill of Rights".

[28] Although it is not required that the arrest should be the action of last resort, it is nonetheless required that the discretion must be exercised properly. In considering this question the comments made the court in *Sekhoto* should be borne in mind:

> "The standard was not perfection, or even the optimum, judged from the vantage of hindsight, and, as long as the choice made fell within the range of rationality the standard was not breached"[12]

[29] An arrest will not be unlawful if it was the intention of the arresting officer to arrest pending further investigations into the alleged offence prior to releasing the arrestee. See in this regard *Duncan v Minister of Law and Order*.

> "Section 50 (1) of the present Act leaves even more scope for further investigation prior to an appearance in court. For an arrestee may now be detained for at least 48 hours before being brought before a court. I therefore share the view of VAN DIJKHORST J that an arrest without warrant is not unlawful merely because the arrestor intends to make further investigation before deciding whether to release the arrestee or to proceed with a prosecution as contemplated by s 50 (1). If the object of the arrestor is to do just that, it cannot be said that he acted with an extraneous or ulterior purpose such as SCHREINER JA had in mind in *Tsose's* case. But that was also the law under the old Act.
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> Put negatively, an arrest is unlawful if the arrestor has no intention of bringing the arrestee before a court. And in the case of a private or so-called citizen's arrest in terms of s 42 of the new Act the test is whether or not it was the arrestor's primary object to hand the arrestee over to the police for further steps in terms of s 50. That, I conceive, is what

[12] *Sekhoto*. Quoted from the headnote.

was intended to be conveyed by *dicta* such as that the object of the private arrestor must be "om hom (ie the arrestee) voor die gereg te bring": *Wiesner v Molomo (supra* at 158E) and *Macu v Du Toit en 'n Ander* 1983 (4) SA 629 (A) at 645G."[13]

See also *Raduvha v Minister of Safety and Security and Another:*[14]

"[43] As section 40(1) grants police officers a discretion whether to arrest, the two courts should have gone further in their evaluation of the evidence to determine whether the facts justified an arrest. This is so because an arrest is a drastic invasion of a person's liberty and an impairment of their rights to dignity, both of which are enshrined in the Bill of Rights.

[44] In other words the courts should enquire whether in effecting an arrest, the police officers exercised their discretion at all. And if they did, whether they exercised it properly as propounded in *Duncan* or as per *Sekhoto* where the court, cognisant of the importance which the Constitution attaches to the right to liberty and one's own dignity in our constitutional democracy, held that the discretion conferred in section 40(1) must be exercised "in light of the Bill of Rights".

[30] Once a suspect is arrested, the arresting officer must bring the arrestee before a court as soon as possible but no later than 48 hours. Once the arrestee has been brought before a court, the authority to (further) detain will fall within the discretion of the court. (I will return to this aspect herein below.)

[31] I have already referred to the fact that the appellants disputed whether the arrest was warranted in the circumstances particularly in circumstances where Bianca had (according to the appellants) informed the arresting officers that the appellants were not involved.

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[13] *Supra* at 120B – D.
[14] [2016] ZACC 24.

[32] Turning to the facts: It was not disputed that a straw with white powder residue was found in the car. I have already referred to the fact that the appellants disputed that the white powder was drugs. I have also already pointed out that it is not required of the arresting officers to be of the view that a crime had in fact been committed and/or that the arrestee was in fact guilty. It was therefore irrelevant at the time of the arrest whether the white powder was in fact cocaine or CAT. All that was required was that a reasonable suspicion existed at the time of the arrest that an offence had been committed. In this case it was not disputed that the straw was found where the two men were seated. Because no one took ownership of the straw the four of them were arrested. In this regard it was the evidence of Potgieter that they were not in a position to test the urine of the appellants in order to determine who the actual user of the suspected drugs was as they did not have the necessary equipment to do such a test at the scene. He also testified that an investigating officer had to be appointed to further investigate the matter.

[33] I have already indicated that I am in light of the evidence satisfied that sufficient facts were present upon which the arresting officers could properly have concluded that *prima facie* an offence had been committed in their presence in the form of a straw containing white powder which could - in the absence of other evidence - constitute proof of an offence.

[34] Was the discretion to arrest properly exercise? Put differently, did the facts justify an arrest? Having regard to the evidence, I am satisfied that the arrest was lawful in the circumstances and that the discretion to arrest was properly exercised. There was furthermore no credible evidence before the court that the arrest was affected for any other purpose than for the lawful purpose of charging and prosecuting the two appellants. I am in light of the aforegoing therefore satisfied that in arresting the appellants, the arresting officers acted within the ambit of section 40(1)(a) and 40(1)(h) of the CPA. The appeal on this ground must therefore fail.

<u>Were the appellants maliciously prosecuted?</u>

[35] The allegation is made in the Particulars of Claim that the arresting officers were malicious and that they falsely prosecuted the appellants.

[36] The appellants bear the onus to proof that the first respondent officials had maliciously prosecuted them. I have already dealt with the circumstances surrounding the arrest. I am not persuaded that there was credible evidence before the court *a quo* to justify a conclusion that the arrest was malicious. I have already pointed out that the purpose of the arrest was – if regard is had to the evidence of Potgieter and Van Rooyen – to bring the appellants to justice. It should also be borne in mind that, after the arrest, the arrestor had a limited role in this process. See in this regard *Sekhoto*[15] where the court held as follows:

> "[44] While the purpose of arrest is to bring the suspect to trial, the arrestor has a limited role in that process. He or she is not called upon to determine whether the suspect ought to be detained pending a trial. That is the role of the court (or in some cases a senior officer). The purpose of the arrest is no more than to bring the suspect before the court (or the senior officer) so as to enable that role to be performed. It seems to me to follow that the enquiry to be made by the peace officer is not how best to bring the suspect to trial: the enquiry is only whether the case is one in which that decision ought properly to be made by a court (or the senior officer). Whether his decision on that question is rational naturally depends upon the particular facts, but it is clear that in cases of serious crime — and those listed in Schedule 1 are serious, not only because the legislature thought so — a peace officer could seldom criticised for arresting a suspect for that purpose. On the other hand, there will be cases, particularly where the suspected offence is relatively trivial, where the circumstances are such that it would clearly be irrational to arrest. This case does not call for consideration of what those various circumstances might be. It is sufficient to say that the mere nature of the offences of which the respondents were suspected

[15] *Ibid.*

> in this case — which ordinarily attract sentences of imprisonment, and are capable of attracting sentences of imprisonment for 15 years — clearly justified their arrest for the purpose of enabling a court to exercise its discretion as to whether they should be detained or released, and, if so, on what conditions, pending their trial."

[37] An allegation was also made that, after the appellants were arrested, no investigation into the alleged offence done. Apart from the say-so of the appellants no credible evidence was placed before the court warranting such a conclusion. Moreover, if regard is had to the so-called "investigation diary" it appears from the entries therein that the investigation did in fact proceed. There is therefore no merit in this ground of appeal.

Did the prosecutor wrongly exercise her discretion in denying the plaintiffs bail?

[38] The appellants pleaded that the conduct of the prosecutor (the third respondent) was unlawful in failing to grant them bail. In this regard the appellants bear the onus to prove this claim.

[39] It was common cause that an after-hour prosecutor was approached by the appellants' legal representative and that bail was refused.

[40] Bearing in mind the fact that the onus rests on the appellants, the evidence before the court *a quo* has to be evaluated. Again, apart from the say-so of the appellants no credible evidence was placed before the court warranting such a conclusion. What does, however, appear from the record is the fact that attempts have been made by the appellants' legal representative to obtain bail for the two appellants. Those attempts have been unsuccessful.

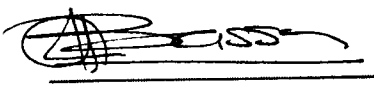
[41] Furthermore, from the evidence of Lindy it appears that she had been the subject of a complaint of theft and that at the time of her arrest and detention the matter was still outstanding. It was put to Lindy in cross-examination that it was as a result of her past history that the prosecutor had decided not to grant her bail. Lindy in fact conceded that it was because of the so-called "Carltonville" matter that she was not granted bail. In re-examination she

also referred to another matter in Kimberly that was still pending. From the profile report of Van Wyk (that was included in the bundle) it likewise appears that Van Wyk also was the subject of numerous complaints ranging from shoplifting, theft and common assault. From these limited facts placed before the court *a quo* it appears that the prosecutor must have refused bail in light of the outstanding or pending cases or past history of the two appellants.

[42] In light of these facts I am therefore satisfied that there are no merits in the claim that the prosecutor wrongfully refused the application for bail.

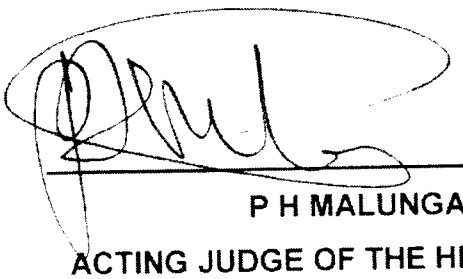
[43] In the event the following order is made:

The appeal is dismissed with costs.



A C BASSON
JUDGE OF THE HIGH COURT
PRETORIA

I agree



P H MALUNGANA
ACTING JUDGE OF THE HIGH COURT, PRETORIA

Appearances:

For the appellant: Adv J R Bauer
Instructed by: Potgieter, Penzhorn & Taute Attorneys

For the respondent: Adv DE Meyer
Instructed by: The State Attorney