HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

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

6 September 2022

DATE SIGNATURE

In the matter between Case no. : 72988/17

KOOPMAN, I. **Applicant**

and

THE MINISTER OF POLICE **Respondent**

JUDGMENT

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1. This is an application in which the applicant, as plaintiff in the main action, prays for leave to appeal against the whole of the order and judgement of this

court granted on 1 December 2021. In those proceedings the applicant's claim for damages was dismissed with costs.

2. The applicant filed a notice of application for leave to appeal and thereafter, subsequent to the first hearing of the application, the applicant filed an amended application for leave to appeal. In an application such as the present the applicant must convince the court that the requirements of section 17 (1) of the Superior Courts Act, Act 10 of 2013, are satisfied. For purposes of the present application the applicant has to show that he has a reasonable prospect of success on appeal or that there is some other compelling reason why the appeal should be heard.

3. In the first notice of application for leave to appeal the applicant relied on two grounds of appeal. Firstly, it was submitted that this court erred in holding that the actions of the police officer who conducted the arrest of the applicant could not be criticised. In support of this ground it was submitted that the arrest took place a few days after the applicant's arrest; that the arrest took place when there was no clear and/or imminent danger or threat of danger to the complainant; that there was no urgency; that the applicant had a fixed address and that it was generally desirable that summons be used instead of an arrest being effected; and that the respondent failed to show why it was necessary in the circumstances to arrest the applicant instead of issuing a summons to appear at court.

4. In respect of the second ground it was submitted that this court erred regarding the constitutional rights of the applicant in that the police officer failed to satisfy himself as to the facts of the matter in order to form a reasonable suspicion before effecting the arrest.

5. In respect of the first ground the applicant aims to criticise the discretion exercised by the arresting police officer. This aspect was canvassed in the earlier judgement of this court and in my view this ground of appeal lacks merit and no other court would reasonably come to a different conclusion. The earlier judgment also shows that some of the above-mentioned factual statements presently being made on behalf of the applicant are wrong.

6. The second ground of appeal, namely the alleged disregard of the rights of the applicant, which relates to the discretion exercised by the police officer, was also fully discussed in the previous judgement of this court. This court found that the police officer exercised his discretion and that he did so properly. In my view no other court would come to a different conclusion than the one arrived at by this court.

7. In the amended application for leave to appeal the applicant added another two grounds of appeal. In the first ground the applicant referred to the fact that this court accepted the defence that the police officer was entitled to arrest the plaintiff in terms of section 40 (1) (q) read with section 40 (2) of the Criminal Procedure Act. The applicant then referred to section 3 of the Domestic Violence Act which provides that a police officer may arrest a person without a

warrant “at the scene of an incident of domestic violence”. The applicant then noted that the aforesaid proviso is not contained in section 40 (1) (q) of the Criminal Procedure Act. It was then stated that in view of the fact that at the time of the arrest there was no direct or imminent threat of violence to the complainant and in view of the fact that the arrest did not take place at the scene of the crime, this court erred in not holding that the arrest was unlawful.

8. The second ground of appeal contains the submission that the difference in the wording between the two statutes is a compelling reason why leave to appeal should be granted.

9. On behalf of the applicant it was, *inter alia*, submitted that section 3 of the Domestic Violence Act only allows for an arrest at the scene of the incident of domestic violence while section 40 (1) (q) contains no such restriction. It was submitted that the respondent relied in its pleadings and both sections and that if the arrest had taken place in terms of section 3, such arrest would have been unlawful.

10. Firstly, the issue of the aforesaid dissimilar provisions in the two Acts was not pleaded by the applicant and in my view it is too late for the applicant to attempt to derive any benefit therefrom at this late stage.

11. Even if I were to be wrong, I find that there is no merit in these grounds and in the submissions on behalf of the applicant. The defendant did rely on section 40 (1) (q) of the Criminal Procedure Act which does not restrict an arrest

without a warrant to the place of the incident and thus does not contain the limitation of section 3 of the Domestic Violence Act. Section 3 does not limit the power which is conferred on the arresting officer by section 40 (1) (q). Section 40 (1) (q) contains only one internal qualification and that is "an act of domestic violence as contemplated in section (1) of the Domestic Violence Act". Section 14 (1) (q) is clearly a self-standing provision just as section 3 of the Domestic Violence Act. Each may be utilised without the other for if the legislature had intended to limit section 40 (1) (q) it would have expressly done so. The satisfaction of the requirement of section 40 (1) (q) of the Criminal Procedure Act, such as was the case *in casu*, was sufficient to confer lawfulness on the arrest of the applicant. Section 3 of the Domestic Violence Act does not introduce an additional requirement which is not found in section 40 (1) (q) of the Criminal Procedure Act.

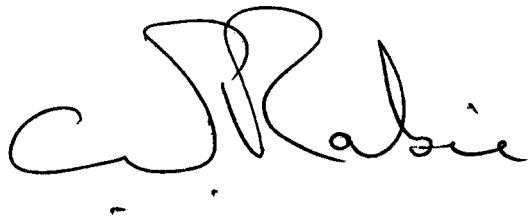
12. Consequently I find that even if the applicant were to be allowed to introduce arguments in respect of the aforesaid statutory provisions, there is no prospect of success in such arguments on appeal.

13. In the result I find that the applicant failed to show a reasonable prospect of success on appeal or that there is some other compelling reason why the appeal should be heard.

14. As far as costs are concerned I find that there is no reason why costs should not follow the event.

15. In the result, the following order is made:

1. The application for leave to appeal is dismissed with costs.



C.P. RABIE

JUDGE OF THE HIGH COURT

6 September 2021

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