

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, PRETORIA

Case Number: **A430/2018**

(1)	REPORTABLE:	
(2)	OF INTEREST TO OTHER JUDGES:	
(3)	REVISED:	
14/08/2023		
DATE		SIGNATURE

In the matter between:

M E RANKWETEKE

First Applicant

and

THE MINISTER OF SAFETY AND SECURITY

First Respondent

NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

Second Respondent

JUDGMENT

Botsi Thulare AJ

Introduction

[1] The appellant launched an action against the first and second respondents claiming damages suffered as a result of the alleged unlawful arrest and

subsequent detention. The action was heard by the court *a quo* and the court held that the arrest and that the subsequent detention, until the appellant was brought before a court, was unlawful. The court *a quo* awarded damages in the amount of R60 000.00 against the first respondent. The claim against the second respondent, the National Director of Public Prosecutions, for the continued detention until the charges against the appellant were withdrawn, was dismissed. The court *a quo* held that that period of detention was lawful. This appeal was directed at the dismissal of the appellant's claim against the second respondent.


- [2] The evidence led before the Court *a quo* was to the effect that on or about the 17th April 2013, the Appellant was arrested and detained. On 19 April 2013, the appellant appeared in court. The matter was postponed for further investigation and to verify the appellant's address. The appellant was afforded an opportunity to obtain legal representation and a possible application for bail. The appellant remained in custody.
- [3] The contention and the issue that this court of appeal needed to determine was whether the continued detention after the first appearance was unlawful and unjustified, and whether there was a justifiable reason for the prosecutor to enrol the matter and to remand it?
- [4] It appears from the facts relating to this appeal, that the prosecutor believed that on the documents before him a *prima facie* case was shown, which warranted further investigation. Furthermore, the address of the appellant required verification before bail could be considered.
- [5] On 26 April 2013, the appellant appeared in court, duly represented by a legal representative. By agreement a date for a formal bail application was set, namely 29 April 2013. On the latter date, bail was set at R1 000.00, and the appellant was released. Subsequently the charges against the appellant were withdrawn on 5 June 2013.

- [6] In *De Klerk v Minister of Police*¹ the court held that in order to determine whether the continued detention was lawful, regard must be had to the manner in which the remand was influenced.
- [7] In this regard the prosecutor had a statement in the docket that implicated the appellant driving the relevant vehicle that was observed leaving the scene of where the robbery was perpetrated to where the vehicle was parked afterwards. In the vehicle a reflector jacket was found. A reflector jacket was used during the robbery. Allegedly video footage was available that related to the commission of the robbery. That footage was not viewed prior to the arrest and prior to the appellant appearing in court.
- [8] A further important issue was that when the appellant first appeared in court, his address had not been verified, which impacted on the issue of bail.
- [9] During his first appearance in court, the appellant was informed why he would remain in custody, namely, so that his address could be confirmed; he would be provided with legal assistance and that further investigation was required.
- [10] During his second appearance the appellant was legally represented. The representative agreed to a further remand for a formal application for bail to be brought and agreed to a particular date in respect thereof.
- [11] The court *a quo*'s finding that the appellant had not shown that the prosecutor was at fault in remanding the matter as recorded above cannot be faulted.
- [12] It follows that the appeal against the second respondent cannot succeed.

I give the following order:

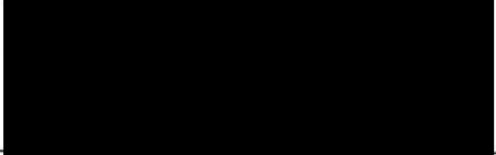
The appeal is dismissed with costs.

¹ 2020 (1) SACR 1 (CC) at para 62.



MD BOTSI-THULARE
ACTING JUDGE OF THE HIGH COURT
PRETORIA

I agree and it is so ordered



C J VAN DER WESTHUIZEN
JUDGE OF THE HIGH COURT

Date of hearing: 13 April 2023
Date of Judgment: 14 August 2023

On behalf of the Appellant: D J Combrink
Instructed by: Du Toit Attorneys

On behalf of the Second Respondent: R Mudau
Instructed by: State Attorney