



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal

Ulde v Minister of Home Affairs & others

The Supreme Court of Appeal today declared that the detention of Mr Manjar Ali Shaik Yusuf Ulde at the Lindela Detention Centre on 6 February 2008 had been invalid and set it aside. The SCA held that the immigration officer (an official in the Department of Home Affairs) had failed to exercise any discretion or not properly exercised his discretion in deciding to detain him. It accordingly set aside a judgment of the Johannesburg High Court dismissing the application to declare Ulde's detention unlawful.

The facts before the court were that Ulde was arrested as an illegal foreigner 15 January 2008 and charged with this and other offences in the Kempton Park Magistrates Court. On 4 February 2008 the magistrate released him on bail despite the vigorous opposition of the Department.

Two days later, while he was visiting a friend at the Lindela Detention Centre, he was once again detained by an immigration officer, Mr Matone Peter Madia, who was aware that Ulde had been released on bail. In his affidavit before the court Madia said that after he was satisfied that Ulde was an illegal foreigner he detained him because he had an 'obligation' to do so. He also asserted that because of the seriousness of the allegations against Ulde, and the unlikelihood that he could succeed in regularising his stay in the country, he would simply have disappeared and evaded his trial. It appears that after spending a brief period in detention in February Ulde was deported to India.

The SCA held that Madia had not been under any obligation to detain Ulde because the law gave him a discretion on whether or not to detain him. Also, Madia was not entitled to simply ignore the magistrate's decision to grant bail to Ulde, which were based on the very considerations that Madia used to detain Ulde. To the extent that Madia did exercise a discretion therefore, the SCA held that he had not done so

properly. The Minister of Home Affairs was ordered to pay the costs of the application in the high court and of the appeal.