



THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal
Date: 11 September 2015
Status: Immediate

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.

George Magwabeni v Christopher Liomba (198/2013) [2015] ZASCA 117 (11 September 2015)

The Supreme Court of Appeal (SCA) today delivered a judgment upholding the appeal by the appellant, Mr George Magwabeni against the judgment of the Limpopo Local Division, Thohoyandou.

The issue before the SCA was whether the appellant acted maliciously when he laid a charge of malicious injury to property against the respondent with the police.

The respondent's claim arose in the following circumstances:

The respondent was employed by the appellant to provide certain electrical services at the appellant's hotel. The appellant allowed the respondent to stay at his premises in terms of the lease during the duration of the contract. A dispute arose between the appellant and the respondent as a result of which the appellant terminated the respondent's services and the lease. He told the respondent to vacate the premises by 15 December 2008. The respondent refused to do so because, according to him, he had not been paid for his work. On 17 December 2008 following a report that was made to him, the appellant laid a charge of malicious injury to property against the respondent with the police. He also asked the police to assist him to evict the respondent from the premises. The police arrested the respondent and charged him with malicious injury to property. The respondent was kept in prison for a week after which the charges against him were withdrawn. Thereafter the respondent sued the appellant for damages for malicious prosecution.

The high court in upholding the respondent's claim for malicious prosecution held that the institution of criminal proceedings against the respondent was not based on any reasonable suspicion, and had more to do with the appellant's attempt to evict him rather than the damage to his property.

On appeal the SCA set aside the high court's judgment. The SCA held that the appellant had reasonable and probable cause for the prosecution of the respondent as in his mind he honestly believed that he had a case for trespassing against the respondent when the latter refused to vacate his premises upon the termination of the lease. And in relation to the case of malicious injury to property the SCA held that the appellant believed that the respondent was responsible for the damage. The SCA accordingly found that the appellant was not malicious when he instituted criminal charges against the respondent.