

## REPUBLIC OF SOUTH AFRICA

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

CASE NO: 02554/2014

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

**SIGNATURE:**  
**07.11.2022**

**DATE:**

In the matter between:

**MINISTER OF POLICE**

Applicant

and

**SIBEKO SIPHO SIMON**

Respondent

**JUDGMENT**

**(Leave to Appeal Application)**

***Delivered:*** By transmission to the parties via email and uploading onto Case Lines the Judgment is deemed to be delivered. The date for hand-down is deemed to be 02 November 2022.

**SENYATSI J:**

- [1] On 19 November 2021 I handed down judgment in favour of the respondent, Mr Siphon Simon Sibeko for wrongful arrest and ordered the applicant, Minister of Police to pay Mr Sibeko R550 000 in damages.
- [2] The Minister filed leave to appeal the *quantum* of the award made.
- [3] The judgment has been and criticised by the applicant and leave to appeal has been noted based on the following grounds: -
- 3.1. The court erred when it held that the detention of Mr Sibeko at the hospital was for three weeks without considering the circumstances that resulted in the three weeks stay in hospital;
  - 3.2. The court erred by his exercising its discretion rationally and objectively when it ordered the Minister to pay Mr Sibeko R550 000;
  - 3.3. The court failed to consider the recent judgment from the *Constitutional Court in Mahlangu & Another v. Minister of Police* 2021 (2) SACR 595 (CC) which decision was handed down on 14 May 2021;
  - 3.4. The court erred in not assessing the award using any comparable decisions as a guide which is a well-established principle, courts to award a fair award since the Minister operates on public funds which should be accounted for at all reasonable times;

- 3.5. The court erred when it did not consider relevant factors regard being had to the detention of Mr Sibeko. The applicant contends that the respondent was coached right in front of court and that the judgment is silent of the respondent being coached;
- 3.6 The court erred when it considered that Mr Sibeko was psychologically affected when there was no evidence from any expert in this regard;
- 3.7 The court erred when it did not objectively consider the evidence of Mr Sibeko to a single witness not collaborated by any other witness or documentary evidence to support his case;

[4] The issue to be determined is whether the applicant for leave to appeal has made out a case for the court to consider the application favourably.

[5] Leave to appeal is evaluated in terms of section 17(1) of the Superior Courts' Act No10 of 2013 which provides as follows:

*“(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that: -*

*(a)(i) the appeal would have a reasonable prospect of success; or*

*(ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;*

*(b) the decision sought to appeal does not fall within the ambit of section 16(2)(a); and (c) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties.”*

[6] Our courts have had the opportunity to interpret the meaning of section 17 of the Act in so far as it relates to the test to be applied when considering leave to appeal. In *MEC Health, Eastern Cape v Mkhita & Another*<sup>1</sup> the court held as follows:-

*“[17] An applicant for leave to appeal must convince the court on proper grounds that there is a reasonable prospect or realistic chance of success on appeal. A mere possibility of success, an arguable case or one that is not hopeless, is not enough. There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal.”*

[7] In this case, there has not been any challenge to the treatment meted out by the police to Mr Sibeko when he was chained to his hospital bed for a period of three weeks. It is irrelevant whether his hospitalisation had anything to do with the members of the South African Police Services. The respondent's evidence on how his privacy was violated when he had to shower with his legs chained was serious enough to warrant it being addressed however it remained unchallenged by the applicant

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<sup>1</sup> (1221/15) [2016] ZASCA 176(25 November 2016) at para 17

- [8] In regards to the discretion exercised to grant the award as the court did, I hold a view that the discretion was judicially exercised.
- [9] Consequently, I am of the view that the grounds raised in the application do not meet the requirements as prescribed in section 17 (1) and would not succeed in appeal. Therefore, the application for leave to appeal must fail.

**ORDER**

- [10] The following order is made:

(a) Application for leave to appeal is refused with costs.

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**SENYATSI ML**

***Judge of the High Court of South Africa  
Gauteng Local Division, Johannesburg***

**REPRESENTATION**

Judgment reserved: 22 August 2022

Date of Judgment: 7 November 2022

Appellant's Counsel: Adv. N Nharmuravate

Instructed by: The State Attorney

Respondent's Counsel: Adv. T Tshabalala

Instructed by: Houghton Harper Inc.