



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

**APPEAL CASE NO: 41848/2018**

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

DATE

\_\_\_\_\_  
SIGNATURE

**IN THE MATTER BETWEEN:**

**MINISTER OF POLICE**

**FIRST APPELLANT /**

**DEFENDANT**

**NATIONAL DIRECTOR OF**

**SECOND APPELLANT /**

**PUBLIC PROSECUTION**

**DEFENDANT**

**AND**

**LUNGISANI KHELE**

**RESPONDENT /**

**JUDGMENT**

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**Strijdom AJ**

1. In this matter the applicants seek leave to appeal to the Full Court of the High Court, Gauteng Local Division, against the whole of the judgement granted by me on 1 June 2022, in favour of the respondent/plaintiff with costs against the 1<sup>st</sup> and 2<sup>nd</sup> applicants/defendants.
2. This application is opposed by the respondent/plaintiff.
3. In broad terms the following are the major grounds of appeal:

**IN RE ARREST**

- 3.1. The court should have found that the arresting officer Sgt Sibeko read the police docket in which the other two female suspects were arrested for possession of suspected stolen goods and that the respondent/plaintiff was implicated on the crime of theft.
- 3.2. The court should have found that the arresting officer based his suspicion on reasonable grounds and that the arrest was lawful and justified.
- 3.3. The court should have found that the arresting officer exercised his discretion rationally within the ambit of section 40(1)(b) of the CPA 51 of 1977.

## **IN RE DETENTION**

- 3.4. The court should have found that the arrest was lawful and since the arrest was lawful the subsequent detention was also lawful.

## **IN RE MALICIOUS PROSECUTION**

- 3.5. The court should have found based on the Police docket, the arrest statement and evidence of Sgt Sibeko there was reasonable cause to prosecute the respondent/plaintiff.

## **IN RE QUANTUM ARREST AND DETENTION**

- 3.6. The court should have found that the award of R150 000.00 for arrest is excessive and shockingly high.
- 3.7. The court should have found that the award of R150 000.00 for detention is shockingly high.

## **IN RE QUANTUM MALICIOUS PROSECUTION**

- 3.8. The court should have found that the amount of R100 000.00 for malicious prosecution is excessive and shockingly high.

4. Section 17(1) of the Superior Courts Act, 10 of 2013 provides that:

'LEAVE TO APPEAL:

- 17(1) Leave to appeal may only be given where the judge of 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 judgements on the matter under consideration;

(b) the decision sought on 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.’

5. What the test of reasonable prospects of success postulates is a dispassionate decision based on the facts and the law and that the Court of Appeal would reasonably arrive at a conclusion different to that of the trial court.

6. In order to succeed therefore the applicant must convince the court on proper grounds that he has prospects of success on appeal and that these prospects are not remote but have a realistic chance of succeeding.

7. More is required to be established than that there is a mere possibility of success, that the case is arguable on appeal or that the case cannot be categorised as hopeless.

8. In respect of all the grounds of appeal raised, my judgement dealt with the facts and law as presented by the parties and how the court arrived at each conclusion on the contentions raised by the parties.

9. On all these issues when the facts and the law were examined there is in my view no sound rational basis for the conclusion that there are prospects of success on appeal.

10. In the result the following order is made:

10.1. Leave to appeal is dismissed with costs.

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**STRIJDOM JJ  
ACTING JUDGE OF THE HIGH COURT  
OF SOUTH AFRICA  
GAUTENG, LOCAL DIVISION  
JOHANNESBURG**

**DATE OF APPLICATION: 9 JUNE 2022**

**DATE OF JUDGEMENT: 25 JULY 2022**

**ATTORNEYS OF APPLICANTS: STATE ATTORNEY, JOHANNESBURG**

**ATTORNEYS FOR RESPONDENT: KUBAYI ATTORNEYS, KEMPTON PARK**