

REPUBLIC OF SOUTH AFRICA



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

Case Number: **2101/2018**

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
<b>09 November 2023</b>	_____
DATE	SIGNATURE

In the matter between:

**MBELWA DANIEL**

First Applicant

**NICHOLAS SIYABONGA MELITHAFA**

Second Applicant

And

**THE MINISTER OF POLICE**

First Respondent

**THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS** Second Respondent

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**JUDGMENT**

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Mia, J

- [1] The appellants brought an application for leave to appeal against the judgment and order handed down on 14 June 2023 where the plaintiffs' claims for wrongful arrest and detention were dismissed with costs.
- [2] The appellants appealed on the basis that the court erred in its summary of the facts and findings and analysis of the evidence. Furthermore, that it failed in applying the test of unlawfulness post the detention. The application indicates the various grounds in detail.
- [3] It was submitted on behalf of the appellants that the standard for as indicated by the Supreme Court of Appeal has now settled the debate and makes it plain that there is no higher threshold as postulated in previous High Court decisions. On this basis it was argued the Supreme Court of Appeal in *Ramakatsa & Others v African National Congress & Another*<sup>1</sup> had resolved the debate on the issue of the threshold, resulting the standard not having changed.
- [4] On the basis that the court considered the arrest on 21 April as well as the arrest on 25 April, it was submitted that there was a misdirection and another court would come to a different conclusion on the arrest as well as the claim for damages.
- [5] Counsel appearing for the respondents submitted that it appeared there was an error with regard to who the arresting officer was. The respondent did not lead the evidence of two witnesses as it relied on Captain Nkosi as the arresting officer. Notwithstanding the error relating to the arresting officer, the arrest was justified and the subsequent detention was correct in view of the appellants abandoning the bail application.
- [6] I have considered the judgment as well as the submissions made on behalf of both legal representatives. The submission that the standard for leave to appeal has not changed is contrary to the decisions which accepted that the standard has been raised. On this aspect the submission is not persuasive.
- [7] On the basis that there was an error in the arresting officer, the evidence of the arresting officer was led and correctly so. To this extent it is appropriate that

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<sup>1</sup> [2021] ZSCA 31

leave to appeal is granted to a Full Court of this Division on the arrest on 25 April 2016 and subsequent detention.

[8] For the reasons above, I make the following order:

*Order*

The appellants are granted leave to appeal to the Full Court of this Division with costs to be costs in the appeal.

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**SC MIA  
JUDGE OF THE HIGH COURT  
JOHANNESBURG**

For the Applicant:

Mr L Naidoo  
instructed by Logan Naidoo Attorneys

For the Respondent:

Adv. L Abrahams  
instructed by State Attorney

Heard: 02 November 2023

Delivered: 09 November 2023