



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
	11 November 2022

	DATE

	SIGNATURE

Case no: 29972/2019

In the matter between:

THE MINISTER OF POLICE

1st Applicant

NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

2nd Applicant

and

THAMSANQA RONNY MIYA

Respondent

JUDGMENT

Mazibuko AJ

1. The applicant seeks leave to appeal to the Supreme Court of Appeal, against the judgment and the order of this court delivered on 4 August 2022, where the first applicant's special plea was dismissed.
2. In the special plea the issue was whether the service of summons issued against the first applicant, the Minister of Police, upon the State Attorney only, was proper and effective service of summons on the first applicant. Whether

the omission to serve on the first applicant rendered the plaintiff's summons void. Alternatively, an order that the respondent's claim against the first applicant has prescribed.

3. The application for leave to appeal is mainly against the court *a quo's* purposive approach in interpreting Section 2 of the State Liability Act (the SLA), Section 5(1)(a) of the Institution of Legal Proceedings Against Certain Organs Of State Act, 40 of 2002 (the Legal Proceedings Act) and Section 15(1) of the Prescription Act, 68 of 1969 (the Prescription Act). The applicant argues that the provisions in these legislation are peremptory, therefore the intention of the legislature was that they be complied with.
4. In essence the submission on behalf of the first applicant is that though the first applicant became aware of the summons and defended same by filing all necessary and relevant court processes and was ready for trial. The fact that the summons was not served on them rendered the summons void. Reference was made to specific paragraphs of the judgment that are appealed against, which are; 13, 19, 31, 32 to 34 and 36 to 38.
5. The first applicant submitted that the case of Minister of Police and others v Samuel Molokwane (730/2021)(2022) ZASCA 111, which was considered in the judgment, is distinguishable, in that in Molokwane the debtor was served whereas in *casu* the debtor, the Minister of Police was not served. Further that the case of *Rauwane v MEC for Health Gauteng Provincial Government* (19009/14) (2018) ZAGPJHC 518 is of persuasive value but not binding on this court. In *Rauwane Mahalelo J* held that *the purpose of section 2(2) of the SLA is to ensure that the State Attorney obtains notice or is informed of all the legal proceedings instituted against an organ of state.*
6. It was argued that there exist compelling circumstances as envisaged by Section 17(1)(a)(ii) of the Superior Courts Act. In that (a) the matter requires the attention of the SCA for clarity in relation to the interpretation of the

provisions of the SLA, Legal Proceedings Act and the Prescription Act in relation to the service of court processes and the interruption of prescription.

(b) The matter has an important question of law and is of public importance, not only to the first applicant, but, to all organs of state who will be impacted on future disputes regarding the provisions of the Acts of parliament in question.

7. Another issue raised on behalf of the first applicant against the judgment is that the court erroneously failed to deal with the issue in relation to the alternative prayer of the special plea, which reads:

“Alternatively that the plaintiff’s claim *against the first defendant has prescribed on or about 20 December 2020.*”

8. The first applicant’s submission in this regard is that this was pleaded and by not making a determination will close doors for them as it renders the issue to be *res judicata*, in that they would not be able to raise same in the future.
9. The court *a quo* already held a view that when the appellants filed their notice of intention to defend in July 2019, through the State Attorney, it could be accepted that the first applicant was aware of the court process, *viz*, the summons. In my view the issue of prescription of the respondent’s claim cannot arise.
10. The respondent filed no cross-appeal. It argued in favour of the judgment and mainly that the Prescription Act does not prescribe the modality of how the service on the debtor of any process should be to interrupt prescription. It emphasized that the purposive approach in interpretation of the legislation is correct as it also recognizes the provisions of the Constitution, especially the right to access courts.
11. Leave to appeal may only be given where the judge concerned is of the opinion that ‘*the appeal would have a reasonable prospect of success*’¹.

¹ Section 17(1)(a)(i) of the Superior Courts Act 10 of 2013

12. I do not believe the court a quo was wrong in interpreting the provisions of the said acts the way it did, especially in adopting the purposive approach as it was referred to. However, I am persuaded that the issues raised by the applicant in its application for leave to appeal are issues in respect of which another court is likely to reach conclusions different to those reached by me. Those issues include my interpretation of the relevant provisions of the State Liability Act, Institution of Legal Proceedings Against Certain Organs Of State Act, 40 of 2002 and the Prescription Act. There are reasonable prospects of another court reaching a legal conclusion dissent from mine. Leave to appeal has a reasonable prospect of success and should be granted.

13. Though this matter is not of such a complex nature, however, due to the question of law and it being of considerable importance not only to the first applicant but also to other Organs of State, in my view, it should be referred to the Supreme Court of Appeal.

14. In the circumstances, the following order is made:

Order

1. The applicant's application for leave to appeal succeeds
2. The applicant is granted leave to appeal to the Supreme Court of Appeal.
3. The costs of this application for leave to appeal shall be costs in the appeal.

N. Mazibuko
Acting Judge of the High Court of South Africa
Gauteng, Pretoria

This Judgment is digitally submitted by uploading it onto Caselines and emailing it to the parties.

Representation

Counsel for the Applicant: Mr TC Kwindu
Instructed by: The State Attorney, Pretoria

Counsel for Respondents: Mr RM Maphutha
Instructed by: Makhafola & Verster Incorporated, Pretoria

Date of hearing: 4 November 2022
Judgment delivered on: 11 November 2022