

**REPUBLIC OF SOUTH AFRICA**



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

**CASE NO.:74452/2017**

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

9 June 2023

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DATE

**In the matter between:**

**MINISTER OF POLICE**

**Applicant**

**and**

**THURE MZWANDILE ANDRIES**

**Respondent**

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**JUDGMENT  
APPLICATION FOR LEAVE TO APPEAL**

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**MAZIBUKO AJ**

Introduction

1. The applicant seeks leave to appeal to the Full Court against the whole judgment and the order of this court delivered on 21 October 2022, where the respondent's claim of damages arising from his unlawful arrest and detention succeeded.

2. The issue was whether the plaintiff's arrest and detention were unlawful. Also, whether the defendant was liable for further detention of the plaintiff, which is from and including 25 May 2015 to 26 July 2017. The applicant accepts liability for unlawful arrest and detention until the first court appearance of the respondent.

#### Condonation

3. The applicant's notice of application for leave to appeal was only filed on 10 February 2023. The explanation provided is that they only became aware of the judgment on 2 November 2022. The applicant instructed for an opinion on the judgment. No account is given for the period between 2 November 2022 and 20 December 2022. Again no explanation is made as to what was happening between 20 December 2022 and 31 January 2023, except that the office of the state attorney needed to get quotes before appointing a service provider to give an opinion on the judgment. The respondent opposes the condonation application in that the period of delay is not adequately accounted for.
4. In exercising the court's discretion in respect of good cause for condonation, the following was stated in the matter of United Plant Hire Pty Ltd v Hills 1976 (1) SA 717(A) at 720E-G:  
*"It is well settled that, in considering applications for condonation, the court has a discretion to be exercised judicially upon consideration of all facts, and that, in essence, it is a question of fairness to both sides. In this inquiry, relevant considerations may include the degree of non-compliance with the rules, the explanation, therefore, the prospects of success on appeal, the importance of the case, the respondent's interest in the finality of his judgement, the convenience to the court, and the avoidance of unnecessary delay in the administration of justice. The list is not exhaustive."*
5. In Van Wyk v Unitas Hospital (Open Democratic Advice Centre as Amicus Curiae) 2008 (2) SA 472 (CC) at 447A-B, it was stated that:  
*"This court has held that the standard for considering an application for condonation is the interest of justice. Whether it is in the interest of justice to*

*grant condonation depends upon the facts and circumstances of each case. Factors that are relevant to this inquiry include but are not limited to the nature of the relief sought, the extent and cause of the delay, the effect of the delay on the administration of justice and other litigants, the reasonableness of the explanation for the delay, the importance of the issue to be raised in the intended appeal and the prospects of success.”*

6. This court is not satisfied that the explanation given by the applicant for the delay is reasonable. The period of delay is not adequately accounted for and even where an attempt is made the reasons are flimsy. However, in exercising its discretion, considering the effect of not granting the same as well as the importance of the matter to both parties, this court hereby grants a condonation application in the interest of justice. The late filing of the prosecution of the appeal is hereby condoned.

#### Leave to appeal

7. This court does not propose to set out the exhaustive grounds of appeal again or repeat that which is set out in the judgment as that which was relevant was dealt with in the judgment.
8. Briefly the grounds of the bout on the judgment, are that the court erred in failing to have regard to the correct approach as enunciated in the case of De Klerk v Minister of Police [2019] ZACC, Mahlangu and Another v Minister of Police (CCT 88/20)[2021] ZACC 10; 2021(7) BCLR 698 (CC); 2021 (2) SACR 595 (CC) (14 MAY 2021) and Woji v Minister of Police (92/2012) [2014] ZASCA108 (20 August 2014). Had the court correctly followed the said approach, it would have found that there was no evidence presented based on which the defendant could be held liable for further detention of the plaintiff beyond the first court appearance date, it was argued.
9. In argument, the applicant, through its counsel, submitted that the respondent did not prove that they were responsible for his further detention. In that, the respondent provided no bail application records, charge sheet or docket to prove that the applicant was responsible for his detention.

10. Further, there existed grounds for the appeal to be heard in that the grounds, as mentioned earlier, established reasonable prospects of success on appeal, that another court will arrive at a conclusion different to that reached by this court.
11. The respondent opposed the application for leave to appeal on the ground that the application fails to satisfy any of the requirements for the granting of the appeal.
12. It was argued, on behalf of the respondent, that, among others, during the trial the applicant elected to not call the investigating officer, though he was in court, to testify on what basis the applicant should not be held liable for the further detention.
13. In *MEC for Health, Eastern Cape v Mkhitha and Another (1221/2015)(2016) 8 ZASCA 176 (25 November 2016)*, the SCA held that: *“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.”*
14. The grounds of appeal raised by the applicant are emphatically on the absence of evidence not provided by the respondent in proving its case. The applicant’s case regarding further detention was that it was the magistrate’s call to further detain the plaintiff. It was not the applicant’s case that during the bail application, its testimony was that the respondent could be released on bail or warning, however, the magistrate decided otherwise. Considering the grounds raised, there is no sound and rational basis to conclude there are reasonable prospects of success on appeal. The court considered and followed the correct approach in the cases mentioned in paragraph 8 above.

15. Leave to appeal may only be given where the judge concerned believes that “the appeal would have a reasonable prospect of success” in terms of Section 17(1)(a)(i) of the Superior Courts Act 10 of 2013. This court believes it was correct in finding that the applicant was vicariously liable for the wrongful arrest and the whole period of detention until his release from custody. It considered, decided and supplied reasons for the conclusions and decisions concerning issues raised by the applicant and the respondent, respectively. It is not persuaded that the grounds raised by the applicant in its application for leave to appeal are issues in which another court is likely to reach conclusions different to those reached by it. The court correctly accepted the evidence as adduced and found in favour of the respondent. The claim, on the basis appearing in the judgment, correctly succeeded. No justification exists for this court to grant leave to hear an appeal. Consequently, the application stands to fail.

16. Consequently, the application for leave to appeal must fail. The following order

is made:

Order

1. The application for leave to appeal is dismissed with costs.

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**N. MAZIBUKO**

**Acting Judge of the High Court of South Africa**

**Gauteng Local Division, Johannesburg**

*This judgment was handed down electronically by circulation to the parties' representatives by email being uploaded to Case Lines.*

Representation

Counsel for the applicant:

Mr SM Malatji

Attorney for the applicant:

Office of the State Attorney

Counsel for the respondent:

Mr M Tjiana

Attorney for the respondent:

Makapan Attorneys

Date of hearing:

7 June 2023

Judgment delivered on:

9 June 2023