

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION, PRETORIA**

Case No: 4843/2021

Reportable: No
Of interest to other Judges: No
Revised: No

SIGNATURE

Date:

In the matter between:

ZAKHELE RADEBE

Plaintiff

and

THE MINISTER OF POLICE

1ST Defendant

THE PROVINCIAL COMMISSIONER:
SOUTH AFRICAN POLICE SERVICE

2ND Defendant

JUDGEMENT – APPLICATION FOR LEAVE TO APPEAL

MOOKI J

- 1 The Court dismissed the plaintiff's claim that he was arrested unlawfully. The plaintiff seeks leave to appeal. The grounds for the application are in relation to findings by the Court on the law and findings on the facts.
- 2 The plaintiff contends that the Court erred on the law in the following respects:
 - 2.1 That the Court shifted the onus of justifying the unlawful arrest on the plaintiff.
 - 2.2 The Court applied a subjective test, as opposed to an objective test, in determining the lawfulness of the arrest.
 - 2.3 The Court failed to satisfy itself that the arresting officer had reasonable cause to effect the arrest, in that the arresting officer must be possessed of objective evidence that warrants the arrest.
- 3 That the Court erred on the facts in the following respects:
 - 3.1 That Sergeant Nxumalo, accompanied by Mankge and warrant officer Mdlalose, went to hospital where Sergeant Nxumalo was told Gumede had been admitted.

- 3.2 There was a reasonable suspicion that the plaintiff had committed the crime of attempted murder based on:
 - 3.2.1 Mankge, an eyewitness, having identified the plaintiff at the police station as the person who stabbed Gumede on 27 October 2018,
 - 3.2.2 Police officers having gone to hospital to verify information given to them by the eyewitness, and
 - 3.2.3 Sergeant Nxumalo having confirmed to herself, at the hospital, that Gumede was injured on the stomach and that Gumede's wound had been dressed.
- 3.3 The plaintiff was asked for his side of the story before his arrest and that Sergeant Nxumalo gave undisputed evidence that warrant officer Mdlalose was the officer who had exchanges with the plaintiff.
- 3.4 The arrest was lawful in that the police had established proper grounds for their suspicion leading to the arrest.
- 4 The plaintiff sought to re-argue the merits of the case when moving the application for leave to appeal. This is illustrated by submissions that:
 - 4.1 The plaintiff was not arrested at the time as mentioned during the evidence, with reference various documents in the record.

- 4.2 The visit by Sergeant Nxumalo and others to the hospital was irrelevant because the visit occurred after the plaintiff had been arrested.
- 4.3 The Court relied on hearsay evidence, including that Warrant Officer Mdlalose did not give evidence.
- 4.4 Warrant Officer Mdlalose, as the officer who arrested the plaintiff, was the only person who could have given evidence from which the Court was to determine whether the police had a reasonable basis to arrest the plaintiff.
- 5 A litigant is not permitted to reopen a case in an application for leave to appeal. The case advanced during submissions is at odds, in a number of respects, with the specified grounds upon which leave to appeal is sought. For example, it is not a ground of appeal that:
- 5.1 The plaintiff was arrested before Sergeant Nxumalo and others went to the hospital where Gumede had been admitted.
- 5.2 Warrant officer Mdlalose was the only officer who could have given evidence for purposes of determining whether the arrest was lawful.
- 5.3 The defendants relied on hearsay evidence.
- 6 The bases for the Court's conclusions are detailed in the judgement. The Court did not oblige the plaintiff to justify his arrest. The Court considered evidence advanced on behalf of the defendants as to why and how the

plaintiff got to be arrested. The Court found the justification to accord with the law.

7 I am not persuaded that the Court erred in relation to contentions on the facts as set-out out in the application. The bases for the findings and conclusions by the Court are as detailed in the judgement.

8 Leave to appeal may only be granted where the judge is of the view that the appeal would have a reasonable prospect of success, or where there is some other compelling reason.¹ The plaintiff has not met the requirements.

9 I make the following order:

9.1 The application is dismissed.

9.2 The plaintiff is ordered to pay costs.

Omphemetse Mooki

Judge of the High Court

Heard on: 31 January 2024

Delivered on: 11 March 2024

For the Plaintiff: K Mvubu, together with A Bleki

Instructed by: Yonela Bodlani Attorneys

For the Defendants: T Tshitereke

Instructed by: The State Attorney, Pretoria

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

