

IN THE SUPREME COURT OF SOUTH AFRICA(APPELLATE DIVISION)

In the matter between:

MASUSU NAVEI MAKHOTHU

Appellant

and

THE MINISTER OF POLICE

Respondent

CORAM: JANSSEN, MILLER, JOUBERT, VILJOEN, JJA,  
et VAN HEERDEN, AJA

HEARD: 18 AUGUST 1980

DELIVERED: 25 SEPTEMBER 1980

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J U D G M E N T

MILLER, JA :-

When this appeal was called Mr van Blerk,  
for the appellant, applied from the Bar for leave to

prosecute/.....

prosecute the appeal in forma pauperis. The respondent having consented thereto, it was proper to make the application orally in terms of Rules 4(1) and (2) of the Rules of this Court. The question was raised, however, in regard to the appeal itself (and therefore also in regard to the application for leave to proceed in forma pauperis) whether this Court had jurisdiction to hear the matter in the absence of an order by the Court a quo granting leave to appeal. The order sought to be appealed against was one dismissing an exception to a special plea and the question was whether such order was interlocutory and therefore appealable only with leave of the Court a quo. Counsel were not prepared to argue the point at that stage, not having had any notice thereof. The Court thereupon agreed to hear, and did in fact hear, full argument on the merits of the appeal, subject to Counsel

submitting/.....

submitting written argument on the question of appealability.

On the same day the Court, as now constituted, heard another appeal in which an issue identical with the issue in this case fell to be decided. Judgment in that case (Minister of Police v Subbulutchmi) was reserved and has since been delivered, on 15 September. Because of the complete coincidence of the points at issue in the two cases, it follows that the decision in Subbulutchmi's case would in effect dispose also of the appeal in this case.

We have now received Counsel's written submissions on the question of appealability and are satisfied that although interlocutory in form, the order of the

Court/ .....

Court a quo dismissing the exception to the special plea (which claimed that the plaintiff's action was barred because the notice required by sect 32(1) of the Police Act, <sup>7</sup>~~47~~ of 1958, had not been timeously given) was final and definitive in effect and therefore appealable without leave of the Court a quo. This was not a case in which further evidence could have led to a different conclusion at the final stage of the action; the pleadings contained all the facts relevant to the issue. By dismissing the exception to the special plea the Court a quo therefore spoke "the final word in the suit" and its order was not "reparable at the final stage".

(See Blaauwbosch Diamonds Ltd v Union Government 1915

AD 599 at pp 601 - 2.) The appeal is therefore properly before us and, as I have said, the decision in Subbulutchmi's case, in which it was held that the method of computation of the prescribed one-month period of notice adopted by the

Court/.....

Court a quo in this case was the wrong method, effectively disposes of this appeal in the appellant's favour. All that remains to be done is to make the appropriate orders, which follow:-

- (1) The application to prosecute the appeal in forma pauperis is granted;
- (2) The appeal is allowed with costs; the order made by the Court a quo is set aside and the following order is substituted therefor:-

The exception is upheld and the special plea is struck out, with costs.



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S MILLER  
JUDGE OF APPEAL

JANSEN, JA )  
JOUBERT, JA ) CONCUR  
VILJOEN, JA )  
VAN HEERDEN, AJA )