

**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE DIVISION – PORT ELIZABETH**

Case No.: 01/2015

In the matter between:

MINISTER OF POLICE

Applicant

And

LUVUYO FUNDILE DUNJANA

First Respondent

SAMKELISIWE MZAMO HOPA

Second Respondent

CHUMA FUYISIZWE KOSANA

Third Respondent

SINEKAYA MCOPELA

Fourth Respondent

LUYANDA NZO

Fifth Respondent

SINETHEMBA PAYI

Sixth Respondent

MELIKHAYA TANCA

Seventh Respondent

JUDGMENT

REVELAS J:

1. The appellant seeks leave to appeal against the whole of the judgment of Tshiki J delivered on 4 May 2017. Pursuant to an action for damages instituted by the plaintiffs for their alleged unlawful arrest and detention, the court *a quo* awarded each of the respondents an amount of R500 000,00 as damages having found that their arrest and detention was unlawful in the circumstances.
2. It is common cause that a retail store (Kwikspar) in Gelvandale was robbed on 15 June 2013 by several men. Warrant Officer Botha found an empty white Nissan bakkie close to the scene of the robbery. He found it suspicious. He alleged that a bystander advised him that the bakkie had been at the scene of the robbery, but that the occupants of the bakkie had left in a silver Polo vehicle. This informant could not remember the numbers of the Polo's registration plate, but was able to recall the letters on the number plate being FYZ ... EC. A silver Polo with registration

number FYZ 815 EC was later detected in Ngalo Street where the plaintiffs were arrested.

3. No weapons nor any proceeds of a robbery were found on the plaintiffs who were made to lie on the ground for three hours. Captain Dippenaar conferred with Warrant Officer Botha about clothes found in the vehicles in question and the clothes worn by the robbers as seen by Dippenaar on images captured on a Close Circuit Television Security camera installed at the Kwikspar.
4. The respondents argue that the clothing identified was actually just a black leather jacket, a type of garment, very popular amongst the general population.
5. In addition, the respondents also relied on the discrepancies in the testimonies of Botha and Dippenaar which justified the rejection of the applicant's version and bolstered the case for the respondents (as held by the court *a quo*).
6. In my view, the evidence regarding the information given about a certain silver Polo with – albeit only part of a registration number - seen at the robbery, which was then found at the place of arrest, is not insignificant. Another court may very well find that the aforesaid information, plus what Dippenaar had told Botha, was a justifiable basis for a reasonable suspicion. Therefore the applicant has prospects of success.

Order:

1. In the circumstances, the applicant is granted leave to appeal to the Full Bench of the Eastern Cape Division.
2. Costs are to be costs in the appeal.

E REVELAS

Judge of the High Court

Appearances:

For the Applicant: Adv Moorehouse instructed by the State Attorney, Port Elizabeth

For the Respondents: Adv Wolmarans instructed by Egon A Oswald Attorneys at law, Port Elizabeth

Date heard: 8 August 2019

Date delivered: 13 August 2019