



**IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case Number: 5524/2019

In the matter between:

MINISTER OF POLICE

Applicant / Defendant

And

THABISO ANDRIES RAPUDINGWANE

Respondent / Plaintiff

HEARD ON:

This matter was disposed of without the hearing of oral arguments as provided for in s 19 (a) of the Superior Courts Act 10 of 2013.

JUDGMENT BY:

DANISO, J

DELIVERED ON:

29 DECEMBER 2023

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- [1] This is an opposed application for leave to appeal against the judgment and the consequent order that I delivered on 4 August 2023 in terms of which I upheld the respondent's claim arising from unlawful shooting, arrest and detention. The respondent was awarded damages in the amount of R2 416 822.00 incorporating the following amounts:

1.1. R2 400 000.00 as damages consequent to unlawful shooting, arrest and detention;

1.2. R16 822.00 for past medical and related costs.

- [2] In the grounds of appeal, the applicant essentially asserts that this court erred in its finding that the respondent had proved on a balance of probabilities that he was shot by the police and that the applicant failed to justify the lawfulness of the respondent's arrest and detention which entitled the respondent to the damages he was subsequently awarded. According to the applicant, the plaintiff's evidence should have been rejected as false as it was riddled with inconsistencies and improbabilities. The damages awarded were also excessive for that reason, another court will arrive at a different conclusion.
- [3] The principles governing applications for leave to appeal are trite: in terms of section 17(1)(a) of the Superior Courts Act 10 of 2013 I am enjoined to grant leave to appeal only where I am certain that there is a reasonable possibility that another court in this instance, the full bench of this division would come to a different conclusion. It is for the applicant to convince me that the issues raised in the grounds of appeal have prospects of success on appeal and that based on those grounds another court would come to a different conclusion.
- [4] The applicant also seeks an order in terms of Uniform Rule 42 for the rectification of the amount of R100 000.00 as reflected in paragraph 40 of the judgment to reflect the amount of R1 million. The argument is that the amount of R100 000.00 is a patent or arithmetic error as the total amount in the order includes R1 million and not R100 000.00.
- [5] I have dealt with all the issues raised by the applicant in the grounds of appeal including the heads of argument in my judgment. From paragraph 23 to 31, I painstakingly evaluated all the evidence that was proffered and having

considered the merits and demerits of each version I came to the conclusion that the respondent's version had to be preferred to that of the applicant. The reasons for that conclusion are also well elucidated therein.

- [6] There is no merit to the applicant's request for the correction of paragraph 40 of my judgment by replacing the amount of R100 000.00 with R1 000 000.00. Rule 42 (1) (b) is intended to correct errors in the order or judgment and not the reasons for the order or judgment. In this matter there are no errors patent or otherwise in the order that was subsequently issued. There can be no confusion as to the amount that I awarded because the amount is also written in words.
- [7] I am not persuaded that the issues raised by the applicant in this application would have reasonable prospects of success. There are also no compelling reasons why the appeal should be heard.
- [8] In the result the following order is made:
1. The application for leave to appeal is dismissed with costs.

For the applicant:

Adv. M S Mazibuko
Office of the State Attorney
BLOEMFONTEIN


N S DANISO, J

For the respondent

Adv. M A Mashinini
Seobe Attorneys
BLOEMFONTEIN