

REPUBLIC OF SOUTH AFRICA



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

Case Number: **2101/2018**

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
09 November 2023	
DATE	SIGNATURE

In the matter between:

MBELWA DANIEL

First Applicant

NICHOLAS SIYABONGA MELITHAFA

Second Applicant

And

THE MINISTER OF POLICE

First Respondent

THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS Second Respondent

JUDGMENT

Mia, J

- [1] The appellants brought an application for leave to appeal against the judgment and order handed down on 14 June 2023, where the plaintiffs' claims for wrongful arrest and detention were dismissed with costs.
- [2] The appellants' grounds of appeal are listed in detail in the application for leave to appeal. In summary, the appellants' contend that the court erred in its summary of the facts and findings as well as its analysis of the evidence. Furthermore, it failed in properly applying the test to the applicable detention of the 21 April 2016 which was not in contention. The court also failed to consider material evidence in relation to the arrest on 25 April 2016 and incorrectly found that the respondent had met the onus in justifying the arrest. The submission was that the evidence of the arrest on 21 April 2016 and 25 April 2016 was conflated resulting in an error and misdirection with regard to the arrest, the submissions relating to the post arrest detention.
- [3] It was submitted on behalf of the appellants that the bar had not been raised relating to the grant of leave to appeal in terms of section 17 of Superior Court Act 10 of 2013. The appellant's relied upon the decision of the Supreme Court of Appeal which they submitted has now settled the debate and makes it plain that there is no higher threshold as postulated in previous High Court decisions. On this basis, it was argued the Supreme Court of Appeal in *Ramakatsa & Others v African National Congress & Another*¹ had resolved the debate on the issue of the threshold, resulting the standard not having changed or the bar having been raised.
- [4] On the basis that the court considered the arrest on 21 April 2016 as well as the arrest on 25 April 2016, it was submitted that there was a misdirection by this court and another court would come to a different conclusion on the arrest, detention after the arrest on 25 April 2016 and the claim for damages.
- [5] Counsel appearing for the respondents submitted the respondents agreed that it appeared there was an error with regard to who the arresting officer was. The respondent advanced that it relied on Captain Nkosi as the arresting officer. Notwithstanding the error relating to the arresting officer, counsel submitted that

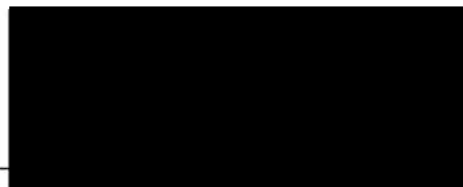
¹ [2021] ZSCA 31

the arrest was justified and the subsequent detention was correct. The court correctly found that the appellants abandoned the bail application.

- [6] I have considered the judgment as well as the submissions made on behalf of both appellants and the respondents. The submission that the standard for leave to appeal has not changed is contrary to the decisions which accepted that the bar has been raised. The appellants' reliance on the bar not having been raised is misplaced and counsel's submission was not persuasive.
- [7] On the basis that there was consensus that there was an error in relation to the arresting officer, the evidence of the arresting officer was led. To the extent that there was an error with regard to the arresting officer, it is appropriate that leave to appeal is granted to a Full Court of this Division in relation to the arrest on 25 April 2016 and subsequent detention.
- [8] For the reasons above, I make the following order:

Order

1. The appellants are granted leave to appeal to the Full Court of this Division with costs to be costs in the appeal.



SC MIA

**JUDGE OF THE HIGH COURT
JOHANNESBURG**

For the Applicant:

Mr L Naidoo
instructed by Logan Naidoo Attorneys

For the Respondent:

Adv. L Abrahams
instructed by State Attorney

Heard: 02 November 2023

Delivered: 09 November 2023