



**IN THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)**

Case No: 1402/2008

Heard On 08/05/2014

Delivered: 23/05/2014

In the matter between

THE MINISTER OF SAFETY AND SECURITY Applicant

And

HERBERT TEBOGO BOOI Respondent

JUDGMENT ON APPLICATION FOR LEAVE TO APPEAL

PAKATI J

1. The applicant, the Minister of Safety and Security of the Republic of South Africa (“the Minister”), applies for leave to appeal my judgment granted on 28 February 2014. Ms S Erasmus appears for the Minister and Mr J Schreuder for the respondent, Mr Herbert Tebogo Booi.
2. In their notice of appeal dated 20 March 2014 the applicant listed the following grounds:

2.1 That I erred in deciding on the issue of quantum whereas the parties had agreed that the merits and quantum be separated and that they conducted the trial on the basis that the merits and quantum were indeed separated; and/or

2.2 The other grounds listed by the applicant need not be alluded to because they flow from para 2.1 above and I am disposed to grant leave.

3. The respondent opposes the application. In reply to the applicant's submissions Mr Schreuder argued that the parties had not been prejudiced that the quantum and merits were not dealt with separately. In relying to the case of **MVU v MINISTER OF SAFETY AND SECURITY AND ANOTHER 2009 (6) SA 82 (GSJ)** at 89G-90D Mr Schreuder submitted that in the event that the court grant leave to appeal to the applicant the respondent in a cross-application seek leave to appeal in respect of the ruling that the applicant/plaintiff is not liable for the whole period of the respondent's incarceration and that its claim did not succeed in respect of that period. Willis J in the Mvu case held at para 10:

“[10] In Hofmeyr v Minister of Justice and Another [1992 (3) SA 108 (C)] King J, as he then was, held that even where an arrest is lawful, a police officer must apply his mind to the arrestee's detention and the circumstances relating thereto, and that the failure by a police officer properly to do so is unlawful. The minister's appeal was unanimously dismissed by what was then known as the Appellate Division of the Supreme Court. It seems to me that, if a police officer must apply his or her mind to the circumstances relating to a person's detention, this includes applying his or her mind to the question of whether detention

is necessary at all.... On the question of unlawful detention per se, as a concept to be considered separately from the question of arrest, it is, in my respectful view, instructive to read the Tobani case in which Jones and Leach JJ, together with Govender AJ, upheld, in an appeal to the full court, the judgment of Froneman J. I also agree with the general approach of Howitz AJ in the Van Rensburg case even though, in that case, the facts are distinguishable from the present one at least inasmuch as a warrant for arrest had been issued.”

4. Ms Erasmus in reply correctly argued that it is the duty of the judicial officer to guard against an accused being detained unlawfully once he appears before court.
5. The Mvu case was decided in 2009. I reiterate what I said in para 33 of my judgment that when an accused is brought before a magistrate by the prosecutor and the magistrate orders his further detention that is the role of the court and not of the arrestor or the police. In **MINISTER OF SAFETY AND SECURITY AND ANOTHER v SEKHOTO AND ANOTHER 2011 (5) SA 367 (SCA)** at para 42 Harms DP had this to say:

““[42] While it is clearly established that the power to arrest may be exercised only for the purpose of bringing the suspect to justice, the arrest is only one step in that process. Once an arrest has been effected the peace officer must bring the arrestee before a court as soon as reasonably possible; and at least within 48 hours, depending on court hours. Once that has been done, the authority to detain, that is inherent in the power to arrest, is exhausted. The authority to detain the suspect further is then within the discretion of the court.”

See also **ISAACS v MINISTER VAN WET EN ORDE 1996 (1) SACR 314 (A)** where the court found that the unlawful detention of an accused ceases when the magistrate issues the detention order in terms of s 50 of the CPA.

6. In my view there is no reasonable possibility that another court may arrive at a different decision with regards to the issue raised by the respondent.
7. Regarding the issues raised by the applicant in relation to the issue of quantum it is my view that leave to appeal be granted to the Full Bench of this division as that issue was not adequately ventilated.

ORDER:

- 1. The applicant, the Minister of Safety and Security, is granted leave to appeal to the Full Bench of this Division.**
- 2. Costs to be costs in the appeal.**
- 3. The respondent's (Mr Herbert Tebogo Booi's) application for leave to appeal is dismissed.**

BM PAKATI
JUDGE

<u>On behalf of the Applicant:</u>	<u>Adv S. Erasmus</u>
<u>Instructed by:</u>	<u>Office of the State Attorney</u>
<u>On behalf of the Respondent:</u>	<u>Adv J. Shreuder</u>
<u>Instructed by:</u>	<u>Gary Botha Attorneys</u>

