

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NUMBERS: 2016/6107

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: YES

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L P HALGRYN AJ

3 MAY 2024

In the matter between:

DANIEL LETHENA MOTLOUNG

First Applicant

**STRIKE EDWARD THOKOANE N.O.
obo SOLOMON PITSI THOKOANE**

Second Applicant

and

THE MINISTER OF POLICE
Respondent

First

**THE NATIONAL DIRECTOR OF PUBLIC
PROSECUTIONS**

Second Respondent

**JUDGMENT
(LEAVE TO APPEAL)**

HALGRYN AJ

Introduction

- [1] This is an application for leave to appeal against the whole of my judgment and order dated the 16th of August 2023.

Ex tempore judgment

- [2] I gave a brief *ex tempore* judgment after argument in which I dismissed the application with costs.
- [3] This judgment has as its purpose to amplify the *ex tempore* judgment.

Nature of the action

- [4] The application for leave to appeal lies against my judgment and order which I made in an action for damages based for the alleged wrongful arrests and detentions of the Plaintiffs and their alleged malicious, alternatively negligent prosecutions for unlawful possession of firearms.

Notice of application for leave to appeal and heads of argument

- [5] In preparation for the argument herein, I had regard to the notice of application for leave to appeal and the heads of argument submitted by both parties.
- [6] The grounds of appeal are many, too many to mention, and not all of it was addressed during argument.
- [7] I will deal with some of the main submissions herein briefly.
- [8] I have also carefully considered the oral arguments by both parties, and I am not convinced that another court would find that I erred in any/all of the respects relied upon.
- [9] I also do not consider that the applicants have any reasonable prospects of success on appeal.
- [10] I proceed to deal with the main issues raised during argument.

Main issues raised during argument

- [11] It was submitted that I erred by not finding that the arrests were triggered by the information received from an informer.

- [12] The arrests were not in my view triggered by the information from an informer.
- [13] The second applicant's arrest was triggered because he was implicated by Moeketsi, who was arrested because of the information from an informer in respect of some armed robberies.
- [14] Acting upon this information the arresting officer clearly had a reasonable suspicion to justify the arrest without a warrant of the second applicant.
- [15] The first applicant was arrested because of the pointing out and identification by Maseko and this clearly shows that his arresting officer had a reasonable to suspicion to arrest him without a warrant.
- [16] Both arresting officers were peace officers.
- [17] Mr Coetzee's enrolment of the matter cannot be faulted in my view.
- [18] In the docket he had sworn statements of the arresting officers and Maseko who identified both.
- [19] I do not find that the fact that Captain Fouche did not inform Mr Coetzee that both accused contended that they attended the premises where Moeketsi resided to borrow money, as tainting the process with unlawfulness.
- [20] It is undeniably so that almost in all cases, accused have some defence, and it is not for the enrolment prosecutor, or the other prosecutors which became involved to make credibility findings; that is the domain of the court.
- [21] I do not think another court would find that I erred in the way I dealt with Maseko's recanting of her earlier statements.
- [22] Counsel for the applicants contended that it amounted to speculation, but this is not so.
- [23] Mr Coetzee quite spontaneously informed me that this called for reconsideration, but if it was up to him, he would have continued with the prosecution.
- [24] I agree with him but acknowledge that a conviction may have been hard to obtain.
- [25] But this does not mean that the further prosecution was malicious or unlawful.

- [26] Maseko could have been called as witness, perhaps declared hostile and she would have had to explain her recanting of her earlier version.
- [27] There was thus every possibility that she may have informed the court that she was coerced or threatened.
- [28] Either way, every possibility existed for the truth to come out.
- [29] Counsel for the applicants urged upon me to find that this is not what happened.
- [30] To my thinking, this is irrelevant.
- [31] What is relevant, is which options existed for the prosecution at the time, to adjudicate whether the further prosecution was malicious or unlawful after Maseko recanted her earlier statements.
- [32] It was contended that I should make a negative inference because Maseko was not called as witness.
- [33] I do not comprehend why she should have been called to testify.
- [34] Counsel for the applicants contended that the applicants stand their ground that their arrests without a warrant for the illegal possession of firearms were not legally competent.
- [35] I have dealt with this comprehensively in my judgment and I do not need to restate it.
- [36] It was also contended that the second applicant stands his ground that their arrests without a warrant based on a confession by a co-accused, was not legally competent.
- [37] I have also dealt with this comprehensively in my judgment.

Conclusion

- [38] I am not convinced that another court would find that I erred in respect of any of the issues raised in the notice of leave to appeal.
- [39] It follows that the application must fail.
- [40] The order that I make herein is as follows:

"The Application for leave to appeal is dismissed with costs."



L. HALGRYN
Acting Judge of the High Court
Gauteng Division, Johannesburg

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Heard:

03 May 2024

Judgment:

03 May 2024

Appearances:

For Applicants:

KP Graham

Instructed by the Wits Law Clinic

For Respondents:

E Mahlangu

Instructed by the State Attorney