



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 2014/6624

1. Reportable: No 2. Of interest to other judges: No 3. Revised 27 September 2024  SIGNATURE
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In the matter between:

SIYABULELA MSUDULU

Applicant

and

THE MINISTER OF POLICE

Respondent

JUDGMENT – APPLICATION FOR LEAVE TO APPEAL

WRIGHT J

1. On 20 August 2024 I handed down a typed, signed judgment in an action brought by Mr Msudulu against the Minister for wrongful arrest and detention. I upheld Mr Msudulu's claim to a limited extent, granting him damages of R2 000 of a claimed far larger amount. Mr Msudulu's particulars of claim had alleged wrongful arrest followed by detention for less than a day. The evidence showed that the arrest was wrongful and the unlawful detention was for almost three days.
2. Mr Msudulu now seeks leave to appeal, on various grounds. The grounds include whether or not the pleaded case was wide enough to allow evidence, and consequently damages, for three days of unlawful detention or for less than a day. Leave is also sought on the question of quantum.
3. There is now a suggestion made on behalf of Mr Msudulu, in the grounds for appeal, that I should, during the trial, have allowed Mr Msudulu's particulars of claim to be amended to bring the pleadings in line with the evidence and in line with what had been alleged by Mr Msudulu's legal practitioner during a pre-trial meeting between the opposing attorneys.
4. During the trial, Ms N Cingo for the Minister objected, albeit not immediately it was tendered, to evidence being led beyond what had been pleaded. No application was made before me for an amendment to Mr Msudulu's pleadings. I upheld the objection.

5. That said, in my view Mr Msudulu has a reasonable prospect on appeal and this case raises compelling reason why an appeal should be heard on the question of quantum.
6. Our law would benefit from a finding about the decisions in *Mahlangu and another v Minister of Police* (CCT 88/20) [2021] ZACC in which the Constitutional Court handed down judgment on 14 May 2021 and *Motladile v Minister of Police* (414/2022) [2023] ZASCA 94 a judgment of the Supreme Court of Appeal handed down on 12 June 2023.
7. I accept that an award for damages for wrongful detention is not just a linear number crunching exercise where the time in detention is multiplied by a standard rate per unit of time. Length of time in detention and conditions of detention in one case may differ from those in another case and conditions in a given case may change, for better or for worse, as time passes. Until there is a change in economic reality, money devalues over time. Each case has to be decided on its own pleadings and proven facts.
8. In *Mahlangu*, the globular awards to the two plaintiffs on appeal of R550 000 and R500 000 worked out at roughly R2 200 per day for over eight months of wrongful detention, of which about two months had been in solitary confinement. The court in *Mahlangu* found torture and the extraction of confessions. The Constitutional Court did not divide the award into separate compartments for arrest, detention, solitary confinement or assault.
9. In *Motladile*, the award on appeal by the Supreme Court of Appeal of R200 000 worked out at about R40 000 per day for five days' and four nights' detention in

conditions substantially less harsh than those in Mahlangu. Apparently, the attention of the Supreme Court of Appeal in Motladile had not been drawn to the earlier decision in Mahlangu.

10. This matter warrants the attention of the Supreme Court of Appeal.

11. This application was set down, on ample, clear notice to both sides, for hearing over Teams at 9am on 25 September 2024. That date had been requested by the State Attorney. On that date, there was no appearance by or for the State Attorney and the matter was rescheduled for 27 September 2024. In my view, the question of these wasted costs should be reserved. It may be that both sides wish to place facts before a court on affidavit.

ORDER

1. The applicant is granted leave to appeal the judgment and order of Wright J of 20 August 2024.
2. Leave is to the Supreme Court of Appeal.
3. The question of the wasted costs of 25 September 2024 is reserved. The parties are free to launch any proceedings they wish regarding these costs.
4. Costs, apart from those of 25 September 2024, are to be in the appeal.



GC Wright

Judge of the High Court

Gauteng Division, Johannesburg

HEARD : 27 September 2024

DELIVERED : 27 September 2024

APPEARANCES :

Applicant Adv I Heyman

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