



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

CASE NO: 23541/2018

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

22 November 2024

EJ Francis

In the matter between:

NTOMBELA, BONGANI

Plaintiff

and

MINISTER OF POLICE

Defendant

JUDGMENT

FRANCIS J

1. This is an opposed application by the applicant for leave to appeal to the full bench of this court, alternatively to the Supreme Court of Appeal against the whole of my judgment and order, delivered on 22 March 2024. This was after I had upheld the defendant's special plea and had dismissed the plaintiff's claim for wrongful arrest and detention as a result of his failure to have applied for condonation. Each party were ordered to pay its own costs.

2. The applicant has raised 12 grounds for leave to appeal contained in his application for leave to appeal dated 3 April 2024. It is unnecessary to repeat those grounds for leave to appeal. I had found that the plaintiff should have applied for condonation which he initially did but then withdrew it on the first day of the hearing. But for the withdrawal of the application for condonation I would have found that the plaintiff's arrest and detention was unlawful.
3. The parties were instructed to file heads of arguments and were informed that the application for leave to appeal would be decided on the documents that were so filed. These were duly filed.
4. I do not deem it necessary to deal with the grounds for leave to appeal since I have dealt with all of the issues that is raised in my comprehensive judgment.
5. The applicant's application for leave to appeal is brought in terms of the provisions of section 17(1)(a)(i) and (ii) of the Superior Courts Act 10 of 2013 (the Superior Courts Act). The aforesaid section provides that leave to appeal may only be given where the judge or judges concerned are of the opinion that the appeal would have a reasonable prospect of success and that there is a compelling reason why the appeal should be heard including conflicting judgments on the matter under consideration.
6. The applicant has raised nothing new in his application for leave to appeal. All the issues that he has raised were dealt with by me in my judgement. It is unclear why the applicant had abandoned his application for condonation.

Ultimately the appeal centres around the special plea which is linked to the application for condonation. The applicant has some prospects of success on whether a proper case was made out for him not to pursue the issue of condonation.

7. I am persuaded that a proper case has been made out by the applicant for leave to appeal.
8. Costs are costs in the appeal.
9. In the circumstances the following order is made:
 - 9.1 The application for leave to appeal to the full bench of this court is granted.
 - 9.2 Costs are costs in the appeal.


FRANCIS J
HIGH COURT JUDGE
GAUTENG LOCAL DIVISION

FOR PLAINTIFF : D MOODLIYAR INSTRUCTED BY LEON JJ
VAN RENSBURG ATTORNEYS

FOR DEFENDANT : R E MAGONGWA INSTRUCTED BY STATE
ATTORNEY, JOHANNESBURG

DATE OF JUDGMENT : 22 NOVEMBER 2024

This judgment was handed down electronically by circulation to the parties' and/or parties' representatives by email and by being uploaded to caselines. The date and time for hand-down is deemed to be 10h00 on 22 November 2024.