

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 44821/21

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
18/02/2026	
DATE	SIGNATURE

In the matter between:

Minister of Police

Applicant

and

Mangena Azon Mkhonza

Respondent

Delivered:

This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties' legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date and time for hand-down is deemed to be 10:00 on 18 February 2026.

JUDGMENT - APPLICATION FOR LEAVE TO APPEAL

THACKWELL, AJ

- [1] This is an application for leave to appeal against the judgment and order I delivered on 27 May 2025. In the trial, I found the applicant liable for damages arising from the unlawful arrest and detention of the respondent. The respondent was arrested on 28 March 2019 and detained for approximately 505 days until his release on 14 August 2020. I ordered the applicant to pay R1,500,000.00 in damages together with interest and costs.
- [2] The applicant initially advanced five grounds of appeal, but abandoned ground 5 at the hearing. It does not take issue with the quantum awarded. The grounds relate, in essence, to: (a) my finding that the arresting officer lacked objectively justifiable grounds for suspicion; (b) my treatment of the arrest and detention as a single causative chain rather than separate processes; (c) my finding that the applicant bears responsibility for the additional month's detention after charges were withdrawn; (d) alleged inconsistencies in the evidence of the respondent and his son.
- [3] The test for leave to appeal is quite clear. In terms of section 17(1) of the Superior Courts Act 10 of 2013, leave may only be granted where the court is of the opinion that the appeal would have a reasonable prospect of success, or where there is some other compelling reason why the appeal should be heard.
- [4] I am not persuaded that any of the grounds advanced disclose a reasonable prospect of success.
- [5] On the first ground, the applicant contends that I erred in finding that Sergeant Mehlomakulu's suspicion was not founded on objectively justifiable grounds. As I explained in my judgment, the law is clear: any arrest without a warrant is *prima facie* unlawful, and the onus rests on the defendant to prove its lawfulness. The applicant bore that onus and failed to discharge it. The evidence demonstrated that Sergeant Mehlomakulu failed to conduct even basic further enquiries before arresting the respondent - he did not question the other alleged victim (Khethiwe), nor did he investigate the threats allegedly made by the complainant's mother. These were not peripheral matters; they went to the heart of whether a

reasonable person in the sergeant's position would have had solid grounds for suspicion, as required by *Mabona and another v Minister of Law and Order and others* 1988 (2) SA 654. I cannot foresee another court arriving at a different conclusion here.

- [6] On the second ground, the applicant argues that I erred by conflating unlawful arrest with unlawful detention, contending these are separate legal processes and that the detention may be lawful, even if the arrest was not. I disagree that my judgment committed this error. I applied the well-established 'but for' test of causation as articulated in *Minister of Police v Skosana* 1977 (1) SA 31 (A). But for the unlawful arrest on 28 March 2019, the respondent would never have been detained at Primrose Police Station, never transferred to Boksburg Prison, never subjected to the degrading conditions he endured for 505 days, and never stigmatised as a child molester. The causation was direct and unbroken. This is not a case where the initial arrest was lawful but some intervening act broke the chain. The entire edifice of the respondent's detention rested on an arrest that I found to be unlawful because the arresting officer failed to discharge the onus of establishing that his suspicion rested on reasonable grounds. The respondent's subsequent bail refusal does not alter this analysis - the proceedings that led to that refusal would never have occurred but for the initial unlawful act.
- [7] On the third ground, regarding the additional month's detention after charges were withdrawn on 14 July 2020, it is not, in my opinion, relevant who specifically was to blame for the additional period of detention. Presumably and logically, there will always be some gap between charges being withdrawn and a detained person being released; although in this instance the gap of approximately 30 days was probably excessive. More fundamentally, this additional detention would never have occurred but for the unlawful arrest at the outset. In any event, even if I am wrong on this ground, it makes no difference to my overall assessment of the matter, as set out in my judgment dated 27 May 2025. The respondent endured over 16 months of unlawful imprisonment in degrading conditions; whether it was 505 days or 475 days makes no material difference to the assessment of his damages.

- [8] On the fourth ground, concerning alleged inconsistencies between the evidence of the respondent and his son Amos, I considered the evidence in its totality. Any discrepancies did not undermine the essential credibility of their accounts, which I found to be genuinely given. I remain of that view, and I cannot see a different conclusion being reached by another court.
- [9] The applicant has not identified any compelling reason why leave should nonetheless be granted.
- [10] Accordingly, the application for leave to appeal is dismissed with costs.

RC THACKWELL
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

For the applicant:

Adv EP Kotsoana instructed by the
State Attorney

For the respondent:

Adv BB Ntsimane instructed by TN
Ramollo Inc.