



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

**Reportable
Case No: 18320/2019**

In the matter between:

**MEMBER OF THE EXECUTIVE COUNCIL FOR THE
DEPARTMENT OF TRANSPORT AND PUBLIC WORKS**

**FIRST DEFENDANT/
FIRST APPLICANT**

MINISTER OF POLICE

**SECOND DEFENDANT/
SECOND APPLICANT**

and

HYMIE ZILWA

PLAINTIFF/RESPONDENT

Coram: ANDREWS AJ

Heard: 20 March 2026

Delivered: 26 March 2026

Summary: Leave to appeal partly granted on a confined Schedule 1 issue arising from conflicting authority; warrantless arrest for s 59(4)(b) NRTA speeding held unlawful for lack of jurisdictional facts, and ensuing SAPS detention likewise unlawful for want of an independent, constitutionally compliant discretion.

Leave to Appeal — Superior Courts Act 17(1): Leave granted only where reasonable prospects of success exist, or some other compelling reason warrants appellate intervention. A merely arguable case does not satisfy the statutory threshold.

Arrest — s 40(1)(b) Criminal Procedure Act — Schedule 1: Contravention of s 59(4)(b) of the National Road Traffic Act (exceeding a posted speed limit) is not a Schedule 1 offence. Section 89(3) prescribes “a fine or imprisonment”, which falls outside the residual Schedule 1 category requiring a penalty of imprisonment without the option of a fine. Jurisdictional facts for a warrantless arrest were absent.

Conflicting first-instance authorities: Divergent High Court judgments on whether NRTA speeding offences fall within the concluding category of Schedule 1 constitute a compelling reason under s 17(1)(a)(ii) to permit appellate clarification. Limited leave granted on this issue alone.

Administrative instruments (Code Book / NAG): A provincial offence code book and “no admission of guilt” notation cannot expand or create powers of arrest; they may guide operations only once CPA jurisdictional facts are met.

Detention — SAPS discretion: Detention is not automatic upon receipt under s 50 CPA. SAPS must independently exercise a constitutionally compliant discretion. Short-lived detention does not cure unlawful deprivation of liberty.

Pleadings: No new case was read in. The court applied settled legal consequences to pleaded and proved facts concerning unlawful arrest and ensuing detention.

Order: Leave to appeal granted on the single Schedule 1 issue; all remaining grounds dismissed; costs to be costs in the appeal.

ORDER

1. Leave to appeal is granted to a Full Court of the Western Cape Division, confined to the issues set out in paragraph [43] of this judgment.
2. All other grounds of appeal advanced by the Applicants are dismissed at the leave stage.
3. The costs of the applications for leave to appeal shall be costs in the appeal.

JUDGMENT

ANDREWS, AJ:

Introduction

[1] The First and Second Applicants seek leave to appeal to the Full Court of this Division, against the whole of the judgment and orders delivered on 9 January 2026. In that judgment, I upheld the Plaintiff's claim for unlawful arrest and subsequent detention, dismissed the Second Defendant's special plea of non-joinder, and dismissed the claim for malicious prosecution.¹ For the sake of convenience, I refer to the parties as per the main action.

[2] At the hearing, counsel for the Plaintiff recorded instructions to concede that leave to appeal should be granted, but only because there is a conflicting High Court judgment on the Schedule 1 point relied on by the First Defendant, namely *Tshangela v Minister of Police* ("Tshangela")², an unreported decision from the Gauteng Division (not binding on this Court). The Defendants contended that a Full Court of this Division is the appropriate forum and not the Supreme Court of Appeal ("SCA") as contended for by counsel for the Plaintiff.

¹ Court *a quo* judgment at para 173:

'Order

In the result, I grant the following orders:

1. *In respect of Claim A, judgment is granted in favour of the Plaintiff for the agreed or proven damages in respect of his unlawful arrest and subsequent detention on 28 March 2019 from between the time of 17h50 and 18h00 to 23h50, with costs including the cost of Counsel to be taxed on Scale B.*
2. *The Second Defendant's Special Plea is dismissed with costs, including the cost of Counsel to be taxed on Scale B.*
3. *In respect of Claim B, the Plaintiff's claim for malicious prosecution is dismissed with costs, including the cost of Counsel to be taxed on Scale B.*
4. *The trial on quantum is postponed sine die.'*

² *Tshangela v Minister of Police* (31264/20171) [2022] ZAGPPHC 719 (21 September 2022).

[3] Notwithstanding the concession, I was requested to deliver a reasoned judgment addressing the grounds advanced by both Defendants; I do so below.

Legal framework

[4] The test to be applied in an application for leave to appeal is set out in s 17(1)(a) of the Superior Courts Act³ which provides-

'(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that-

- (a) (i) the appeal would have a reasonable prospect of success; or*
(ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;
- (b) the decision sought on appeal does not fall within the ambit of Section 16(2)(a); and*
- (c) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties.'*

[5] Our courts have emphasised that leave should not be granted unless there truly is a reasonable prospect of success. There must be a sound, rational basis to conclude that another court would (not merely might) reach a different result. The "compelling reason" ground in s 17(1)(a)(ii) does not float free of the merits; though it may be satisfied, for example, by conflicting judgments, an important question of law, or a discrete issue of public importance, the merits will often remain decisive.⁴

[6] I have also considered the further authorities cited in argument on s 17(1). It is pellucid that none departs from the SCA's settled approach that reasonable prospects are required, and where absent, leave may still be granted only for a compelling reason, with the merits remaining decisive.⁵ It is trite that a mere possibility of success falls short of the statutory threshold.⁶ That approach has repeatedly been affirmed by the SCA and remains the controlling standard. The additional authorities cited by the

³ Act 10 of 2013.

⁴ See also *Notshokovu v S* (157/15) [2016] ZASCA 112 (7 September 2016).

⁵ *Mont Chevaux Trust v Goosen* 2014 JDR 2325 (LCC) para 6; *Adonisi v Minister of Transport and Public Works: Western Cape* 2021 (3) SA 1 (WCC) paras 15–16; *Four Wheel Drive Accessory Distributors CC v Rattan NO* 2019 (3) SA 451 (SCA) para 34; *Jacobs v Beacon Island Share Block (Pty) Ltd* 2016 (5) SA 557 (WCC) paras 8–12; *Zweni v Minister of Law and Order* 1993 (1) SA 523 (A) at 532I–533B; *S v Western Areas Ltd* 2005 (5) SA 214 (SCA) para 28; *Philani-Ma-Afrika and Others v Mailula and others* 2010 (2) SA 573 (SCA) para 20.

⁶ *Tansnat Durban (Pty) Ltd v eThekweni Municipality* (D4178/2020) [2021] ZAKZDHC 3 (8 February 2021) para 70.

First Defendant accord with the approach in *Ramakatsa v African National Congress*⁷, *Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd*⁸ and *MEC for Health, Eastern Cape v Mkhitha*⁹ and do not suggest a different standard.

Summation of the grounds of appeal advanced

[7] The First Defendant challenges *inter alia*, (i) the conclusion that exceeding a posted speed limit under s 59(4)(b) of the National Road Traffic Act¹⁰ ("NRTA") is not a Schedule 1 offence for purposes of s 40(1)(b) of the Criminal Procedure Act¹¹ ("CPA"); (ii) the court's approach to the Offence Code Book and the "no admission of guilt" ("NAG") annotation; (iii) the finding that the arresting officer retained and failed properly to exercise a discretion to arrest; and (iv) the reference to *Egerer v Minister of Police and Others*¹² in finding against the First Defendant.

[8] The Second Defendant contests (i) the finding that the detention was unlawful, contending that, once a traffic officer presents an arrested person, s 50 of the CPA obliges SAPS to receive and detain mechanically, leaving no scope to assess lawfulness or necessity of detention; (ii) that the Plaintiff's pleadings did not raise an unlawfulness-of-detention case and the court impermissibly "read into" the pleadings to assist the Respondent with his case; (iii) that SAPS members exercised their discretion by processing and releasing the Plaintiff the same evening; and (iv) that *De Klerk v Minister of Police*¹³ was misapplied because SAPS did not effect the arrest.

Whether contravention of s 59(4)(b) of the National Road Traffic Act falls within Schedule 1 to the Criminal Procedure Act

[9] S 40(1)(b) authorises a warrantless arrest only for an offence "referred to in Schedule 1". The residual category in Schedule 1 encompasses offences "*the punishment wherefor may be a period of imprisonment exceeding six months without the option of a fine*". By contrast, s 89(3) of the NRTA stipulates that a contravention

⁷ *Ramakatsa and Others v African National Congress and Another* (724/2019) [2021] ZASCA 31 (31 March 2021) para 10.

⁸ *Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd* 2020 (5) SA 35 (SCA) para 2.

⁹ *MEC for Health, Eastern Cape v Mkhitha* (1221/15) 2016 ZASCA 176 (25 November 2016) para 16.

¹⁰ National Road Traffic Act, 93 of 1996.

¹¹ Criminal Procedure Act, 51 of 1977.

¹² *Egerer v Minister of Police and Others* (1679/2018) ZAGPPHC 77 (1 February 2024).

¹³ *De Klerk v Minister of Police* 2020 (1) SACR 1 (CC).

of s 59(4) (exceeding a posted speed limit) is punishable by “a fine or imprisonment for a period not exceeding three years”. Because this penalty structure offers an option of a fine, s 59(4)(b) does not fall within the residual category of Schedule 1; the s 40(1)(b) threshold is therefore not met.

[10] This conclusion follows directly from the statutory text. Whatever policy considerations may underlie the provision, the analysis turns solely on the statute as enacted. A court is not at liberty to replace the statutory wording with its own view of the offence’s seriousness.

Conflicting judgments

[11] The First Defendant relied on *Tshangela*, although the factual matrix in that matter differs from the present case. In *Tshangela*, the court dealt with s 61 of the NRTA and adopted a purposive construction of the catch-all category in Schedule 1, reasoning that the penalty provision allows for direct imprisonment and therefore treated the offence as falling within Schedule 1.¹⁴

¹⁴ *Ibid* at para 26 – 27: ‘[26] On the issue whether the offence of contravention of section 61(1) of the National Road Traffic Act 93 of 1996 (NRTA) falls under Schedule 1 of the CPA there is legal dispute. Adv. Mbhalati contends that it does on the basis that section 89 of NRTA makes provision for a sentence without an option of a fine which a court can impose. On the other hand Adv. Jacobs argues that it does not. The starting point is to have regard to the wording of section 89 of NRTA and Schedule 1 of the CPA and to give the correct interpretation. In order to get the correct interpretation thereto, it is important to have regard to well- established interpretation principles which call for a contextual and normative approach. Interpretation principles can be summed up as follows-

- [22.1] The statutory provisions should always be interpreted purposively;
 - [22.2] The relevant statutory provision must be properly contextualised;
 - [22.3] All statutes must be construed consistently with the Constitution and where possible legislative provisions ought to be interpreted to preserve their constitutional validity and [22.4] When interpreting legislation that implicates a fundamental right entrenched in the Bill of Rights, a court must read that particular statute through the prism of the Constitution.
- [27] Schedule 1 lists various offences and then provides ‘any offence, except the offence of escaping from lawful custody in circumstances other than the circumstances referred to immediately hereunder, the punishment wherefor may be a period of imprisonment exceeding six months without the option of a fine’. Section 89 (4)(a) –(c) of NRTA provides for penal jurisdictions for the contravention of section 61 of NRTA by giving discretion to impose either a fine or different imprisonment periods ranging from one year; three years up to nine years. I am in agreement with the legal arguments by Adv. Mbhalati that contravening section 61 of NRTA falls under Schedule 1. Applying purposive and contextual interpretation to section 89 of NRTA, it appears to me to give a sentencing court the discretion to impose direction imprisonment. The mere fact that in practice a fine is often imposed does not detract from the discretion to impose direct imprisonment. I reach this interpretation on the basis of the word “or” in the section 89. It follows that section 61 of NRTA falls within Schedule 1.’

[12] A further authority relied upon to illustrate a divergent interpretive approach is *Lethena v Minister of Police*¹⁵. In that matter, the court held that an arrest for unlawful possession of a firearm was competent under s 40 of the CPA because the offence falls within Schedule 1. This conclusion rested on s 121 of the Firearms Control Act, which permits a sentencing court to impose a term of imprisonment without the option of a fine for contraventions listed in Schedule 4. On that basis, the court rejected the contention that the mere presence of a discretion to impose a fine necessarily excludes an offence from Schedule 1.

[13] The reasoning in *Lethena* turned, however, on the statutory framework governing firearm offences; offences which the court regarded, by their nature and penalty structure, as falling squarely within the category of serious contraventions for which the Legislature contemplated warrantless arrest. The considerations in *Lethena* are therefore distinguishable from the present case, where the offence actually relied upon was a contravention of s 59(4)(b) of the NRTA, a penalty provision that expressly offers an option of a fine. Nonetheless, *Lethena* illustrates the existence of an interpretive divergence on the meaning and application of the concluding Schedule 1 category. This divergence reinforces the need for appellate clarification and forms part of the broader conflict in first-instance authority justifying the confined grant of leave.

[14] Although the differing interpretive approaches in the authorities create practical tension, I remain satisfied that, on a proper construction of the concluding category of Schedule 1, a contravention of s 59(4)(b) does not fall within its ambit. At the same time, it must be acknowledged that there is now a lack of uniformity in first-instance authority regarding the correct interpretive approach to that category in the NRTA context. That conflict, while not altering the conclusion *in casu*, where the statutory scheme is materially different, forms part of the basis for the confined grant of leave under s 17(1)(a)(ii).

¹⁵ *Lethena v Minister of Police* 2024 (1) SACR 92 (GJ); [2023] 4 All SA 185 (GJ) (16 August 2023) paras 110 - 114.

The Offence Code Book and the “no admission of guilt” (NAG) designation

[15] The First Defendant contends that: (i) the Western Cape “Offence/Traffic Code Book” is a departmental instrument issued under the NRTA framework and used operationally by traffic authorities; (ii) the “no admission of guilt” (NAG) designation for s 59(4)(b) at speeds of 161 km/h+ signposts the gravity of the conduct and, in practice, informs the response to technology-assisted detections; (iii) the officer was entitled to have regard to the Code Book as “riglyne/guidance” when deciding on next steps; and (iv) in that light, the arrest should not have been faulted merely because the Code Book, rather than the CPA alone, featured in the officer’s reasoning (the ultimate source of power being the CPA).

[16] The Code Book is an administrative guide. It does not source, create, or expand powers of arrest, which are conferred by the CPA, more particularly ss 38–40, and constrained by the Constitution, in particular s 1(c) and s 2 (legality and constitutional supremacy), s 12(1) (freedom and security of the person), s 33 (lawful, reasonable and procedurally fair administrative action), and s 35(1) (rights of arrested persons). A “no admission of guilt” notation indicates only that an admission-of-guilt fine is not administratively available. It does not transform the underlying offence into a Schedule 1 offence, nor authorise a warrantless arrest where s 40(1)(b) is not engaged. Official practice cannot enlarge the statute. At most, where CPA jurisdictional facts already exist, such instruments may inform the operational exercise of discretion.¹⁶ A policy determination that an admission of guilt fine will not be offered does not elevate the offence into Schedule 1. Even if treated as ‘quasi-administrative legislation’, a provincial Code Book and a “no admission of guilt” notation cannot confer or expand coercive powers beyond those conferred by the CPA and the Constitution; to the extent of any conflict, the latter prevail.

¹⁶ See *Minister of Safety and Security v Sekhoto and Another* 2011 (5) SA 367 (SCA) paras 28–30, 39–44; *Ahmed v Minister of Home Affairs* 2019 (1) SA 1 (CC) paras 44–46; *Skole-Ondersteuningsentrum NPC and Others v Minister of Social Development and Others* [2020] 4 All SA 285 (GP); The Constitution of the Republic of South Africa, s 12(1), s 35(1), s 33, s 1(c), s 2.

Jurisdictional facts and discretion to arrest

[17] The jurisdictional facts in *Duncan v Minister of Law and Order* (“*Duncan*”)¹⁷ include that the suspect committed a Schedule 1 offence. Because that requirement was absent, the arrest was unlawful at the threshold. The discretion debate cannot cure the failure of the jurisdictional facts. In any event, the arresting officer’s evidence reflected a misunderstanding that a NAG outcome compelled arrest, a view inconsistent with *Minister of Safety and Security v Sekhoto and Another* (“*Sekhoto*”)¹⁸, which emphasises that the discretion is not displaced by internal policy. For the avoidance of doubt, even accepting, without deciding that the arrestor held a reasonable suspicion, s 40(1)(b) was not triggered absent a Schedule 1 offence.

[18] For completeness, I have also had regard to *Mabona & Another v Minister of Law and Order & Others*¹⁹, and *Biyela v Minister of Police*²⁰. Reasonable suspicion must rest on credible information, and any discretion to arrest must be properly exercised. Those principles do not assist the Defendants where the Schedule 1 jurisdictional fact is absent. If that threshold is not met, the s 40(1)(b) power does not arise.

Offence selection and the s 40(1)(b) inquiry

[19] It may be that very high speed could, on different facts, sustain a charge of reckless or negligent driving under s 63 of the NRTA. That possibility does not assist here. The lawfulness of the warrantless arrest must be determined *ex ante* with reference to the offence actually invoked, namely s 59(4)(b). The Schedule 1 enquiry turns on the penalty structure of that offence. Because s 89(3) prescribes “a fine or imprisonment”, a contravention of s 59(4)(b) does not fall within the residual category of Schedule 1. The jurisdictional facts for s 40(1)(b) were therefore not established.²¹ Nothing in this judgment turns on the availability of a summons under s 54 or a written

¹⁷ *Duncan v Minister of Law and Order* 1986 (2) SA 805 (A) at 818G–H.

¹⁸ *Ibid* paras 39–44.

¹⁹ *Mabona & Another v Minister of Law and Order & Others* 1988 (2) SA 654 (SE) at 658E–H.

²⁰ *Biyela v Minister of Police* (1017/2020) [2022] ZASCA 36; 2023 (1) SACR 235 (SCA) (1 April 2022) at paragraphs 35–36.

²¹ See *Duncan v Minister of Law and Order* 1986 (2) SA 805 (A) at 818G–H; *Minister of Safety and Security v Sekhoto and Another* 2011 (5) SA 367 (SCA) paras 28–30, 39–44.

notice; even if such alternatives were unavailable, the dispositive point remains that s 40(1)(b) did not arise because s 59(4)(b) is not a Schedule 1 offence.

Reference to *Egerer*

[20] One of the First Defendant's grounds for leave is that I erred in referring to *Egerer v Minister of Police and Others*²² ("*Egerer*"), on the basis that it is an unreported, unopposed decision that neither undertook a Schedule 1 analysis nor authoritatively established a rule that ordinary speeding can never ground a warrantless arrest. I note the criticism. I referred to *Egerer* because there are factual similarities which included *inter alia*, a warrantless roadside arrest by traffic officials for alleged speeding, subsequent SAPS detention, release on warning, multiple court appearances, and eventual withdrawal of the charge. The court there held the arrest and detention to be unlawful and awarded damages.

[21] My reasoning in the court *a quo* did not turn on *Egerer*. It turned on the proper construction of s 40(1)(b) of the CPA read with Schedule 1 and the NRTA penalty scheme for s 59(4)(b). On that textual footing and applying the established approach to jurisdictional facts and discretion, the arrest failed at threshold because s 59(4)(b) does not fall within the residual category of Schedule 1. *Egerer* was cited as contextual support, illustrating the practical alignment where "ordinary speeding, without more" does not justify a warrantless arrest; not as binding authority nor as the basis on which leave is decided.

Detention by SAPS (Second Defendant)

[22] The Second Defendant roots as a ground of appeal, that once a traffic officer delivers an arrestee to the charge office under s 50 CPA, SAPS performs a mechanical reception function. On this footing, members were obliged to accept and process the Plaintiff because the arrest had already been effected, and any later short-lived detention culminating in a same-night s 72 release on warning could not be unlawful. The Second Defendant also suggests that my approach imposed an independent duty on SAPS that is inconsistent with the statutory scheme and pleads

²² *Egerer* supra – see fn 12 above for full citation.

that, on the evidence, members did exercise their discretion by receiving, registering and releasing the Plaintiff.

[23] That contention cannot be sustained. Detention is not automatic and must be substantively lawful in its own right. It engages s 12(1) of the Constitution and cannot be treated as a perfunctory sequel to arrest. SAPS members are required to apply a discretion consonant with the Constitution and the CPA and as such, reception may not be mechanical. The fact that the Plaintiff was processed and released on warning the same evening does not cure unlawfulness.

[24] The Constitutional Court in *Zealand v Minister of Justice and Constitutional Development and Another*²³ affirms that the State bears responsibility for ensuring that any deprivation of liberty is not arbitrary and remains lawful at each stage of custody. *Louw v Minister of Safety and Security*²⁴ underscores the constitutional premium on liberty when arrest and detention are assessed, even if its “last resort” dictum on arrest was later refined by *Sekhoto*²⁵; it remains a reminder that liberty-impairing steps are not to be routine. Moreover, *De Klerk v Minister of Police*²⁶ confirms that police liability for detention may extend beyond the moment of hand-over or first appearance where, on the facts, the initial unlawful arrest *foreseeably* results in continued detention. On these principles and on the facts *in casu*, the Plaintiff’s detention cannot be justified as a mere incident of processing. SAPS was required to exercise an evaluative discretion and did not do so. *Zealand* makes plain that lawfulness is a continuing requirement; it is not fixed at the moment of arrest.

[25] In any event, because the arrest failed at the Schedule 1 threshold, the ensuing detention lacked a lawful foundation from the outset and fell to be set aside on that basis alone. This conclusion accords with the reasoning earlier in this judgment on s 40(1)(b), read together with Schedule 1 of the CPA.

²³ *Zealand v Minister of Justice and Constitutional Development and Another* 2008 (2) SACR 1 (CC), paras 24–25.

²⁴ *Louw v Minister of Safety and Security* 2006 (2) SACR 178 (T), 185i–186e (liberty premium and caution against routine arrest/detention).

²⁵ *Ibid* paras 28–30, 39–44.

²⁶ *De Klerk* *supra* – see fn 13, paras 32–40 (causation and liability for detention flowing from unlawful arrest).

Pleadings and the “reading-in” complaint

[26] The Second Defendant contends that the Court impermissibly expanded the Plaintiff's case by treating unlawful detention as though it had been pleaded with greater particularity than was in fact the case. They argue, in substance, that: (a) arrest (by the First Defendant) and detention (by the Second Defendant) are distinct functions that ought to be considered separately; (b) under s 50 of the CPA, SAPS performs a mechanical reception function and is neither expected nor empowered to interrogate the lawfulness of an arrest effected by another authority; (c) the onus rested on the Plaintiff to plead and prove the unlawfulness of the detention, and his particulars were said to be “scant”; (d) the Court misapplied settled principles by treating detention as unlawful merely because the arrest was unlawful; and (e) in holding that SAPS failed to apply a detention discretion, despite evidence of standing orders, rank constraints, and the short s 72 release on warning, the Court ventured beyond the issues raised on the pleadings, contrary to *Minister of Safety & Security v Slabbert* (“*Slabbert*”)²⁷ and *Fischer and Another v Ramahlele and Others* (“*Fischer*”)²⁸.

[27] That characterisation is not supported by the facts *in casu*. The issues joined under Claim A were unlawful arrest and the ensuing unlawful detention, and the relief sought and granted pertained to both. The Second Defendant admitted the fact of detention and pleaded that it was lawful. In those circumstances, once the Plaintiff established that he had been deprived of his liberty, the law required the Second Defendant to justify that deprivation. This accords with the established approach to warrantless arrest and detention, both in respect of onus and the applicable thresholds, and with the principle that, once liberty has been infringed, the State must substantively justify the detention at each stage.

[28] On the merits, the Court applied settled consequences to pleaded and proved facts. First, where an arrest is unlawful, the ensuing detention is likewise unlawful unless a new, independent lawful basis supervenes. Second, even after a lawful arrest, detention is not automatic. It is a distinct interference with the right in s 12(1) and requires an evaluative discretion compatible with the Constitution and the

²⁷ *Minister of Safety & Security v Slabbert* (668/2008) [2009] ZASCA 163 (30 November 2009); reported as 2010 (2) SACR 474 (SCA).

²⁸ *Fischer and Another v Ramahlele and Others* (203/2014) [2014] ZASCA 88 (4 June 2014); reported as 2014 (4) SA 614 (SCA); [2014] 3 All SA 395 (SCA) paras 13–14.

CPA. Short-lived processing or a same-night release on warning does not convert an otherwise unlawful detention into a lawful one. This reflects the Constitutional Court's approach in *Zealand* to the substantive lawfulness of detention under s 12(1).

[29] The Second Defendant's submission that s 50 of the CPA renders SAPS reception a purely mechanical exercise cannot be sustained. Section 50 sets out the procedural requirements, including that an arrested person must be brought to a police station and then to court within the statutory time limits. Those procedural duties do not, however, extinguish the obligation to ensure that any continued deprivation of liberty remains lawful and reasonable by constitutional standard. The administrative steps taken at reception are therefore required to comply with s 33, which demands lawful, reasonable and procedurally fair administrative action, and must also accord with the liberty guarantee contained in s 12(1).

[30] Nor do standing orders or rank limitations absolve SAPS of the need to apply mind. *Louw* reminds that liberty-restrictive steps are exceptional and not to be treated as routine. While *Sekhoto* clarifies the statutory source and sequencing of arrest powers, nothing in it converts post-arrest detention into a mere formality.

[31] The pleaded issues were unlawful arrest and detention. The Second Defendant placed the lawfulness of the detention in issue and led evidence concerning SAPS reception practices, standing orders, rank limitations, and the s 72 release process. The Court's finding that detention was treated mechanically and that no evaluative discretion was exercised is a legal characterisation of the evidence on matters squarely within the issues as pleaded, not a departure from the pleadings. This accords with *Slabbert*, which confirms that a court must confine itself to the issues as pleaded and that a Plaintiff may not plead one case and seek to prove another.

[32] Finally, *De Klerk* does not assist the Second Defendant. The point here does not turn on post-first-appearance liability, but on the pre-appearance detention that followed an unlawful arrest and on the distinct duty to apply a discretion when receiving a person into custody. To the extent *De Klerk* speaks to foreseeability and the continuity of harm, it underscores that detention cannot be treated mechanically

and that liability turns on a fact-sensitive application of principle, which is precisely what the Court did.

[33] *JE Mahlangu and Another v Minister of Police ("Mahlangu")*²⁹ confirms, consistently with *Zealand*, that the lawfulness of detention is an ongoing, independent inquiry that the State must justify at each stage of custody. The SCA emphasised that police liability may arise where continued detention is not substantively justified, and that causation and wrongfulness are to be assessed on the facts with due regard to constitutional norms safeguarding personal liberty. Properly understood, *Mahlangu* supports rather than undermines the approach adopted here; even where an earlier step is in issue, SAPS bears responsibility to ensure that any subsequent deprivation of liberty is lawful and constitutionally compliant and may not treat reception and processing as mechanical.

[34] Counsel also referred to *Van Zyl, Petrus and Steyn, Marianne Desiree* (Gauteng Division, Pretoria, case no. 83856/15, unreported) ("*Van Zyl*"). Whatever persuasive value that judgment may have, it neither binds this Court nor displaces the controlling principles articulated by the SCA in *Slabbert* and by this Court's application of *Fischer*. On the facts before me, the issues of unlawful arrest and ensuing detention were pleaded, the Second Defendant admitted detention and pleaded lawfulness, and the Court confined itself to the issues as pleaded, applying settled legal consequences to proved facts. To the extent *Van Zyl* is read as cautioning against courts deciding matters beyond the pleadings, that principle is already honoured in the present reasoning and does not assist the Second Defendant.

Compelling reason (s 17(1)(a)(ii))

[35] Although I am not persuaded that any ground shows reasonable prospects under s 17(1)(a)(i), there is now a conflict in first-instance authority on the residual Schedule 1 limb in the NRTA context. The question is recurring, of public importance, and has national implications for warrantless arrests informed by

²⁹*JE Mahlangu and Another v Minister of Police* (1393/2018) [2020] ZASCA 44; [2020] 2 All SA 656 (SCA); 2020 (2) SACR 136 (SCA) (21 April 2020)

technology-assisted speed enforcement. I am therefore satisfied that this constitutes a compelling reason under s 17(1)(a)(ii) to permit appellate clarification.³⁰

Judicial economy

[36] Granting limited leave on the single, dispositive question promotes judicial economy as it confines the appeal to the true controversy, avoids unnecessary proliferation of secondary issues lacking merit, fosters uniformity of first-instance practice, and provides appellate guidance likely to prevent piecemeal future litigation on warrantless arrests for s 59(4)(b) speeding. Conversely, refusing leave on the conflict issue risks re-litigation across the Division and inconsistent application in the Lower Courts.

[37] Judicial economy is a principle directed at the efficient administration of justice. It counsels courts to deploy scarce adjudicative resources in a manner that promotes finality, coherence of doctrine, consistency of outcomes, and prompt resolution of the real issues dividing the parties. Within the leave-to-appeal framework, it aligns with the statutory gatekeeping in s 17(1) (reasonable prospects or compelling reason), read with s 16(2)(a) and s 17(1)(c), which together discourage piecemeal or academic appeals and prioritise appeals that will determinatively advance the litigation and the law.

[38] Applied here, limiting leave to the single, dispositive conflict, namely, the proper construction of the residual Schedule 1 limb in the NRTA context, serves judicial economy in at least four ways. First, it focuses the appellate court on the true controversy that warrants clarification and avoids the proliferation of collateral issues (Code Book status, discretion narratives, detention disputes) which, on the facts *in casu*, cannot alter the outcome of the arrest's lawfulness. Second, it promotes uniformity in first-instance practice across this Division (and, if necessary, beyond) by securing a clear ratio on a recurring question with national impact for warrantless arrests in speed-enforcement matters. Third, it advances finality for the parties by

³⁰ See *Ramakatsa* (supra) para 10; *Caratco* (supra) para 2.

confining the appeal to an issue that, once settled, will resolve downstream disputes without inviting advisory opinions. Fourth, it reduces cost and delay by streamlining the record and submissions to the determinative legal question, which accords with the “just and prompt resolution” objective reflected in s 17(1)(c).

[39] Conversely, granting leave on every ground urged would dilute the appellate exercise, risk piecemeal adjudication, and invite determinations that are either academic (because dependent on a contrary outcome to the Schedule 1 issue) or immaterial (because, even if decided for the Applicants, they would not displace the threshold defect in the warrantless arrest). Judicial economy therefore favours a targeted grant of leave, not a general one.

[40] The same considerations inform the forum choice. A Full Court of this Division is well-placed to issue a coherent, authoritative statement on the Schedule 1 question with the benefit of a full record and full argument, while maintaining procedural efficiency. Should further clarification be required, the path to the SCA remains open. This sequenced approach promotes doctrinal development without unnecessary duplication.

[41] Finally, the confined order also respects the parties’ autonomy and the trial record. It preserves the court’s findings on issues where no reasonable prospects are shown, avoids advisory rulings, and ensures that the appellate court’s attention, and the parties’ resources, are directed to the single question that genuinely warrants appellate clarification.

Conclusion

[42] For completeness, I record that all other grounds advanced by the Applicants are rejected at the leave stage for want of reasonable prospects and for want of any compelling reason to hear them. In particular, the ground concerning the discretion to arrest raised by the First Defendant fails because the jurisdictional facts were absent; alternatively, on the record, the discretion was not properly exercised. Reference to *Egerer* is not determinative of the reasoning. As to the detention ground raised by the Second Defendant, detention is not automatic and no discretion was applied in a constitutionally compliant manner. Lastly, the court did not “read in” a new

case; rather that legal consequences were applied to pleaded and proved facts. In view of the dispositive conclusion on jurisdictional facts, it is unnecessary to decide any pleaded objection regarding an arrest-discretion challenge.

[43] Therefore, leave is confined to the proper construction and application of the concluding category of Schedule 1 to the CPA in relation to a contravention of s 59(4)(b) of the NRTA. Any ancillary questions arising directly from that determination, including the offence-specific nature of the inquiry and the bearing, if any, of administrative instruments such as the provincial Code Book and a “no admission of guilt” notation, may be addressed by the Full Court only to the extent necessary to resolve the Schedule 1 issue.

[44] Granting leave on this confined basis accords with s 17(1)(a)(ii). I have reconsidered the record with the appropriate caution at the leave stage and am satisfied that there is a compelling reason to permit appellate clarification in light of conflicting first-instance judgments on the correct interpretation of the concluding Schedule 1 category in the NRTA context. The question is recurring, raises an important issue of law, and has practical implications for warrantless arrests in speed-enforcement matters. To my mind, the limited grant will provide needed clarity while avoiding a proliferation of issues that lack reasonable prospects.

[45] In my view, a Full Court of this Division is an appropriate forum to resolve the identified conflict. The SCA remains available thereafter should the matter warrant further appeal. I therefore direct that the appeal be heard by a Full Court.

Costs

[46] The Plaintiff and First Defendant sought that costs be costs in the appeal. The Second Defendant sought costs on scale B, submitting that the concession could have been made earlier. I am not persuaded that an elevated scale is justified. In my view, the concession was responsibly made and no prejudice is shown. Consequently, the fair and appropriate order is that costs be costs in the appeal.

ORDER

[47] The following order is made:

The following order is made:

1. Leave to appeal is granted to a Full Court of the Western Cape Division, confined to the issues set out in paragraph [43] of this judgment.
2. All other grounds of appeal advanced by the Applicants are dismissed at the leave stage.
3. The costs of the applications for leave to appeal shall be costs in the appeal.




ANDREWS AJ

**Acting Judge of the High Court of
South Africa, Western Cape Division,
Cape Town**

Appearances:

Counsel for the 1 st Applicant / 1 st Defendant:	Advocate R Jaga (SC) Advocate T Ruiters
Instructed by State Attorney:	Mr S Appalsamy
Counsel for the 2 nd Applicant / 2 nd Defendant:	Advocate S Naidoo
Instructed by State Attorney:	Mr S Appalsamy
Counsel for the Plaintiff / Respondent:	Advocate M Gwala (SC)
Instructed by:	Zilwa Attorneys c/o Finini Attorneys

This judgment was handed down electronically by circulation to the parties' representatives by email.