



## THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

### MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

**From:** The Registrar, Supreme Court of Appeal

**Date:** 14 April 2023

**Status:** Immediate

***The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal***

*Minister of Justice and Constitutional Development and Others v Pennington and Another*  
(162/2022) [2023] ZASCA 51 (14 April 2023)

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Today, the Supreme Court of Appeal (SCA) upheld an appeal with costs, including those of two counsel, against the judgment of the Gauteng Division of the High Court, Pretoria (the high court), which dismissed the special plea of prescription and the plea of non-joinder raised by the appellants in reply to a damages claim brought by the respondents.

Mr Franklin Pennington (first respondent) and his wife, Mrs Gail Pennington (second respondent), instituted an action in the high court for damages against the appellants. The first appellant was the Minister of Justice and Constitutional Development, the second appellant was the Minister of Police, and the third appellant was the Minister of Home Affairs. In response, the appellants raised, inter alia, a special plea that the respondents' claims had prescribed.

The facts of the matter were the following. The first respondent was arrested on 6 September 1994 on charges including fraud, forgery, and uttering. He was convicted on 2 June 1997 and sentenced to a term of imprisonment on 17 November 1997. He noted an appeal against his convictions and sentences. On 18 June 2015, the high court set aside the first respondent's convictions and sentences. The respondents issued summons in this matter on 15 June 2016.

The claims of the respondents were premised on the alleged unlawful arrest and detention of the first respondent; his alleged malicious prosecution; and the inordinate delay in the finalization of the appeal noted by him against his conviction and sentence, and that during 1994 to June 2015, the first respondent was prohibited from earning income.

As a result of concessions made by the respondents in the appeal, the SCA found that the only question for determination was whether the claim for loss of income against the Minister of Justice because of the purported unlawful conduct of its employees in failing to deal with the appeal without delay, had prescribed.

The SCA found in this regard that on the argument advanced by the appellants, prescription in relation to the unlawful conduct of the servants of the Minister of Justice commenced running on 31 December 1998, as, on the pleadings, the respondents were aware by that stage of the fact that the servants of the Minister of Justice knew that 'it was impossible to

provide a proper record suitable for the appeal'. There was thus much to be said for the contention that prescription commenced to run on that date.

Nevertheless, the SCA found further that there was a further (and perhaps narrower) basis upon which the special plea could be decided. In April 2012, the first respondent made application to the Gauteng Division of the High Court, Johannesburg for an order setting aside his conviction and sentence due to the failure of the Director of Public Prosecutions (DPP) to prosecute the appeal. By the date of the launch of that application in April 2012, the first respondent had all the necessary facts at his disposal, sufficient to found a cause of action. The SCA found that prescription in respect of that claim would, therefore, have commenced to run at the latest on the day after this application was launched in April 2012. And, it would have prescribed three years later, in May 2015. Accordingly, the SCA found that on the most generous construction for the respondents, by the time the respondents issued summons in this matter on 17 June 2016, the respondents' claim had prescribed, more than a year earlier.

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