



## 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:** 3 May 2024

**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***

*Ntoni Jacob Hlope v The Minister of Police (426/2023) [2024] ZASCA 68 (3 May 2024)*

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Today the Supreme Court of Appeal (SCA) dismissed an appeal with costs. The appeal emanated from the appeal court of the Gauteng Division of the High Court, Johannesburg (the appeal court) wherein the appellant, Mr Ntoni Jacob Hlope, had appealed against a decision of the Magistrates' Court for the District of Emfuleni, held at Vereeniging (the magistrates' court) as that court had dismissed the appellant's claim of R200 000 against the Minister of Police (the respondent) for his alleged unlawful arrest and detention. The appeal court similarly dismissed the appellant's claim.

The respondent's evidence was presented by three members of the police, namely Sergeant Sibusiso Sibande (Sergeant Sibande) and Constable Sipho Mlungisi Buthelezi (Constable Buthelezi), who testified as the arresting officers, while, Sergeant Lebogang MacWilliam Phoofolo (Sergeant Phoofolo), testified in regard to the appellant's detention. The appellant testified as the only witness in support of his claim.

The arresting officers testified that, on the evening of 4 May 2018, while on patrol in a marked police van, they were stopped by a community member who informed them that there were males smoking dagga inside a shack at House 6242 in Pelindaba. They went to the house and found the three men smoking. One of them was the appellant. They introduced themselves as members of the police and asked for permission to enter and search the shack. Upon being granted permission to do so, Sergeant Sibande searched the appellant and found a transparent plastic bag containing dagga in the appellant's front right pocket of his trousers. He asked the appellant what he was doing with dagga. The appellant did not respond. Sergeant Sibande explained the appellant's rights to him, and thereafter, informed the appellant that he was arresting him for being in possession of dagga. Sergeant Sibande then took the appellant to the police station where he weighed the dagga in appellant's presence, gave him the notice of rights to sign and handed appellant to the cell commander.

After the appellant was taken to a cell at the police station, Sergeant Phoofolo, who at that time was attached to the crime (investigation) office, took over the docket. He testified that his duties at that time involved conducting a preliminary investigation for the purpose of compiling the profile of the arrestee. In that regard, he had to ascertain whether the person in custody had previous convictions or outstanding cases, or warrants in respect of other offences. Sergeant Phoofolo went to the cells to interview the appellant concerning the necessary particulars required for profiling. During the interview, the appellant declined to provide his name and identity number to the officer, but disclosed his date of

birth. Consequently, no profile could be compiled. Officer Phoofolo testified that he decided to take a warning statement from the appellant, after he informed him of his rights, including the right to be released from custody. The *pro forma* documents, in terms of which he took the warning statement, were admitted as evidence in court. The appellant was held in custody for three days. On Monday 7 May 2018, he was released at court, consequent to the prosecutor withdrawing the charge of unlawful possession of dagga.

The appellant contended that: firstly, the arrest was unlawful because Sergeant Sibande did not exercise the discretion required of him before effecting an arrest; secondly, that his detention was unlawful, as he had a right to be released on bail, but was not informed of this right, and, lastly, the amount of R200 000 he claimed for the damages.

In addressing these contentions, the SCA, with regards to the unlawful arrest, reasoned that the four jurisdictional requirements of s 40(1) of the Criminal Procedure Act 51 of 1977 were met, as Sergeant Sibande was a police officer, who entertained a suspicion after a community member informed him of some male persons smoking dagga in a shack. Possession of dagga was, at that time, an offence in terms of s 4 of the Drugs and Drug Trafficking Act 140 of 1992. The suspicion rested on reasonable grounds that whoever was smoking dagga in that shack, used and logically, therefore, had that dagga in his possession. The appellant confirmed in his evidence that he had dagga in his possession. In addition to the admission, the appellant did not tender any evidence to prove that Sergeant Sibande failed to exercise a discretion to arrest. On this point, the SCA concluded that this allegation must fail as there was no evidence supporting the allegation that there was no exercise of discretion to arrest, or that the arrest was made in bad faith, irrationally or arbitrarily.

With regards to the appellant's detention being unlawful, the SCA held the view that this claim should also fail as the appellant's detention was indeed lawful due to his consistent failure to respond to the police officer and provide him with basic facts which would have enabled them to exercise a discretion or value judgment not to arrest him, or, alternatively, to have him released from detention on bail. Given that the appellant failed on both these claims, there was no need for the SCA to entertain the issue of the quantum of damages.

In the result, the SCA dismissed the appeal with costs.

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