



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: 27 March 2024

Status: Immediate

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Syce and Another v Minister of Police (1119/2022) [2024] ZASCA 30 (27 March 2024)

The Supreme Court of Appeal (SCA) today partly upheld an appeal against an order of the Eastern Cape Division of the High Court, Makhanda, per Van Zyl DJP and Ah Shene AJ (the high court), which dismissed an appeal in relation to the unlawful arrest and detention of the first appellant. The matter came before the SCA by way of an application for special leave to appeal, which had been referred for oral argument in terms of s 17(2)(d) of the Superior Courts Act 10 of 2013.

On the evening of 6 December 2014, Mr Syce (the first applicant), was the driver of a motor vehicle which was stopped by members of the South African Police Service. The vehicle was stopped on the strength of information received about alleged drug-dealing. Mr Syce, Mr Blignaut (the second applicant) and one other person were in the vehicle. They were subjected to a physical search. No drugs were found. During the course of the search, one of the police officers detected the smell of alcohol on Mr Syce's breath. A breathalyser test was administered. It indicated that Mr Syce was over the limit prescribed in s 65 of the National Road Traffic Act 93 of 1996. Mr Syce was arrested on a charge of drunken driving. Mr Syce was detained at the Walmer Police Station. He was taken to the Livingstone Hospital where a blood sample was drawn and returned to the police station. He was seen by the investigating officer the following morning and released on warning to appear in court in terms of s 59 of the Criminal Procedure Act, 51 of 1977 shortly after midday on 7 December.

Mr Syce, Mr Blignaut, and the other passenger in the vehicle each instituted claims in the Magistrates' Court. Mr Syce claimed damages for unlawful arrest and detention and for the unlawful search conducted on him. Mr Blignaut and the other person claimed damages for the unlawful search. The third party withdrew the action at a later stage.

The Magistrates' Court found in favour of Mr Syce and Mr Blignaut on the unlawful search. It awarded an amount of R30 000 as damages and made an order that interest on the award run from date of demand. The magistrate dismissed Mr Syce's claims for unlawful arrest and detention.

The Minister appealed against the interest order made by the magistrate. Mr Syce cross-appealed against the dismissal of his claims for unlawful arrest and detention. There was no challenge to the magistrate's orders in relation to the unlawful search.

Shortly after the Minister's appeal was prosecuted, Mr Syce and Mr Blignaut filed a notice abandoning the order relating to interest running from date of demand. They consented to an order that interest run from the date of judgment. They filed a notice in terms of Rule 51(11) (a) of the Magistrates' Court Rules. When the appeal was heard before the high court, the notice of abandonment was drawn to the court's attention. In light of the absence of a tender for costs in the notice of abandonment, argument was presented on the costs of the Minister's appeal.

The high court disposed of the Minister's appeal on the merits of the matter and ordered Mr Syce and Mr Blignaut to pay the costs of the appeal. It found that the arrest was lawful and that the subsequent detention of Mr Syce was lawful. It therefore dismissed Mr Syce's cross-appeal.

Mr Syce and Mr Blignaut brought an application for special leave to appeal. Mr Blignaut sought leave to appeal against the costs order made against him. Mr Syce sought leave to appeal that issue and against the dismissal of his claims for unlawful arrest and detention. The SCA found that the effect of the notice of abandonment was to dispose of the substantive issue on appeal. It held that the high court's failure to deal with the notice of abandonment meant that it had not properly exercised its discretion in relation to the costs of appeal. Such failure constituted exceptional circumstances which satisfied the test for special leave to appeal. In relation to the dismissal of the unlawful arrest and unlawful detention claims, it considered that important questions concerning the existence of a discretion to arrest arose. It therefore granted special leave to appeal.

Three issues arose in the appeal, namely whether the arresting officer ought to have exercised a discretion to arrest; whether the consequent detention was lawful; and the costs order made by the high court.

In relation to the arrest, the SCA held that the nature of the offence/s provided in s 65 of the National Road Traffic Act, envisaged that the suspect be detained for the purposes prescribed by the section, including that a blood sample be obtained. Execution of an arrest was therefore contemplated. It found that the arresting officer could only exercise a discretion not to arrest if the requirements of s 65 could be met without placing the suspect under arrest. It found that the facts did not trigger the exercise of a discretion. It therefore found that the arrest was lawful as had been found by the high court.

In relation to the unlawful detention, the SCA found that the lawfulness challenge was properly raised on the pleadings. The onus to establish that the detention was lawful, rested throughout upon the Minister. The SCA held that a lawful detention carried out pursuant to a lawful arrest could become unlawful if the suspect was entitled to be released on bail. In this case, Mr Syce had challenged the necessity for his continued detention after a blood sample had been obtained. He also stated that he had not been informed of his right to apply for bail. His right to apply for bail included the right to seek his release in terms of s 59 of the Criminal Procedure Act, 51 of 1977. No evidence was presented by the police.

There was therefore no evidence to gainsay the allegation that Mr Syce had not been informed of his right to apply for bail, nor to explain why Mr Syce was only released, in terms of s 59, after midday on the following day. The SCA found that the Minister had failed to discharge the onus to establish that the detention was lawful. In light of this it found that Mr Syce was entitled to payment of damages. It ordered payment of an amount of R40 000 for the unlawful detention for the period of approximately 13 hours that he was held.

In regard to the order for costs of the Minister's appeal, the SCA found that since the high court had failed to exercise its discretion upon a proper basis, it was entitled to do so. It found that a party who abandons an order on appeal is usually liable for the costs of the appeal up to the date of abandonment. Where those costs are not tendered, the appellant would be entitled to seek such an order. In that event, the appellant may be entitled to costs of obtaining the order. The SCA found that Mr Blignaut took no part in the appeal after the notice of abandonment was filed. In the case of Mr Syce, the only substantive issues which required adjudication were those raised in his cross-appeal. It concluded that the appropriate order would be to one requiring Mr Syce and Mr Blignaut to pay the costs up to the date of abandonment of the order for interest. It set aside the high court order and replaced it with an order to that effect.

In relation to the costs of the appeal, the SCA found that Mr Blignaut was entitled to his costs. In the case of Mr Syce's appeal, it ordered each party to pay their own costs on the basis that both parties to that appeal had achieved substantial success.

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