



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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Diljan v Minister of Police (Case no 746/2021) [2022] ZASCA 103 (24 June 2022)

Today the Supreme Court of Appeal (SCA) handed down a judgment upholding, with costs, an appeal against the decision of the Gauteng Division of the High Court, Pretoria (the high court).

The issue before the SCA concerned the question of whether the peace officers who effected the arrest of the appellant, properly exercised the discretion vested in them.

On 18 September 2015, Constables Ntombela and Tsile (peace officers) were on patrol duty when they received a telephone call from the Community Service Centre (CSC) about a complaint lodged telephonically by a Ms Goliath in Eldorado Park. They proceeded to the address provided to them by the CSC. Upon their arrival at the scene, Ms Goliath informed them that the appellant had damaged her carport by throwing stones and rubbish through the appellant's first floor window onto the top of her (Ms Goliath's) carport. The officers inspected the carport and observed that it was damaged. The officers were unanimous in their view that an offence of malicious damage to property had been committed by the appellant. As a result, they immediately arrested and subsequently detained her in the holding cells at the Eldorado Police station. Both officers testified that they detained the appellant because they were satisfied that she had committed an offence listed in Schedule 1 of the Criminal Procedure Act 51 of 1977 (the CPA). They further testified that they had no power to release her either on warning or on bail. They asserted that only members of the detective branch and, in particular, the assigned investigating officer were vested with such powers

For her part, the appellant testified that she was arrested on Friday, 08 September 2015, between 15h30 and 16h00. The officers asked her to accompany them to the police station under the pretext that they were to discuss the complaint lodged against her by Ms Goliath. Upon arrival at the CSC, she was arrested and detained. She was never advised of the reason for her arrest and detention. She was released from custody on Monday, 21 September 2015, without appearing in court. She testified that the conditions under which she was detained were appalling.

At the conclusion of the trial, the magistrate found that 'the arresting officer exercised reasonable suspicion as required in section 40(1)(b) of the CPA on reasonable grounds. There is no basis for concluding that the discretion to arrest was wrongly exercised. Consequently, I find that the arrest and detention of the plaintiff was lawful.' On appeal, the high court confirmed the decision of the magistrate and held that 'having given a proper and due consideration to all circumstances, this Court cannot find that the court a quo, misdirected itself, nor can it be said that the arrest and detention of the appellant was unlawful.'

According to the SCA, s 40(1)(b) of the CPA allowed a peace officer to arrest a suspect without a warrant when the said peace officer reasonably suspected that the suspect had committed an offence listed in Schedule 1, other than the offence of escaping from lawful custody. Relying on case law, the SCA held that the jurisdictional facts required to sustain a s 40(1)(b) defence are: (a) the arrestor must be a peace officer; (b) he or she must entertain a suspicion; (c) the suspicion must be that the suspect committed

an offence listed in Schedule 1; and (d) the suspicion must be based on reasonable grounds. Accordingly, if these factors are established, the arrestor becomes vested with a discretion as to how best to secure the attendance of the suspect to face the charge. Moreover, the SCA held that, once the jurisdictional facts were established, the peace officer had the discretion of whether or not to arrest the suspect. However, if the suspect was arrested, a peace officer was vested with a further discretion whether to detain the arrestee or warn him or her to attend court. Relying on case law, the SCA held that the arrest and detention of the suspect was but one of the means of securing the suspect's appearance in court.

In addition, the SCA held that likewise, the high court erred when it reasoned as follows: 'I am alive to the fact that constable Ntombela indicated during his evidence that he could not warn the appellant or decide on the issue of whether to grant bail or not, as a means of securing her attendance in court. Having said that once the decision has been made to effect an arrest and not consider issuing a warning, it cannot be said that there was no exercise of a discretion. Having a discretion simply means having the freedom to decide what should be done in a particular situation.' According to the SCA, this statement manifested a misconception on the part of the high court as to the nature of the appellant's case. What emerged from the record was that both officers who effected the arrest did not know that they had a discretion. They laboured under the mistaken belief that their obligation was to arrest the appellant once it was reasonably suspected that she had committed a Schedule 1 offence. Thus, they could not have exercised a discretion they were unaware of. As a result, the SCA held that it must therefore follow axiomatically that both the arrest and subsequent detention of the appellant were unlawful.

Prior to determining the quantum, the SCA held that a balance should be struck between the award and the injury inflicted. Much as the aggrieved party needed to get the required solatium, the defendant (the Minister in this instance) should not be treated as a 'cash-cow' with infinite resources. Thus, the compensation must be fair to both parties, and a fine balance must be carefully struck, cognisant of the fact that the purpose was not to enrich the aggrieved party. According to the SCA, the acceptable method of assessing damages includes the evaluation of the plaintiff's personal circumstances; the manner of the arrest; the duration of the detention; the degree of humiliation which encompassed the aggrieved party's reputation and standing in the community; deprivation of liberty; and other relevant factors peculiar to the case under consideration.

In addition, the SCA found that whilst as a general rule, regard may be had to previous awards, sight should, however, not be lost of the fact that previous awards only served as a guide and nothing more. Reverting to the facts of the present case, for purposes of determining quantum, the SCA considered the relevant factors in this matter, with the appalling circumstances under which the appellant was detained. As a result, taking into account all those relevant factors, the SCA was satisfied that a fair and reasonable amount in the circumstances was R120 000.

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