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

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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

Earl Rensburg v Minister of Police and Another (557/2021) [2022] ZASCA 105 (29 June 2022)

The Supreme Court of Appeal (SCA) today dismissed an appeal with costs against the judgment and order of the Eastern Cape Division of the High Court, Grahamstown (the high court), wherein the appellant's arrest and detention was held to be lawful.

At issue in the appeal was whether the arrest of the appellant, Mr Earl Rensburg (Mr Rensburg), without a warrant on 15 September 2016 by members of the South African Police Service (the police) and his detention until his first court appearance on 19 September 2016 was wrongful, unlawful and unjustified. Linked to this issue was whether his subsequent detention after his first court appearance until his release from detention on warning on 23 September 2016 was also wrongful, unlawful and unjustified.

The facts underpinning the appeal were as follows. On Thursday, 15 September 2016, Mr Rensburg was brought to Humewood Police Station by three male persons, Mr Ingram, Mr Jaftha and Mr Williams, who alleged that he had stolen a laptop. At Humewood Police Station, the trio spoke to Sgt Cimani. However, Sgt Cimani demanded that the owner of the laptop be brought to her to be interviewed and for confirmation that their laptop was stolen. Mr Ingram fetched the complainant, Ms Mohamed, who confirmed to Sgt Cimani that Mr Rensburg admitted to her that he had stolen her laptop and that he had apologised to her for stealing the laptop. Thereafter, Sgt Cimani, without a warrant, arrested and detained Mr Rensburg in terms of the provisions of s 40(1)*(b)* of the Criminal Procedure Act 51 of 1977 (CPA).

The SCA held that Mr Rensburg's arrest without a warrant was justified. The SCA found that Sgt Cimani's suspicions were rested on reasonable grounds; and that the Minister could, therefore, not be held liable for the contended damages resulting in Mr Rensburg's alleged wrongful, unlawful and unjustified arrest; and that the high court could not, thus, be faulted for concluding that Mr Rensburg's arrest in terms of s

40(1)*(b)* of the CPA was not unlawful, and for finding that the claim against the Minister ought to have been dismissed by the regional court.

The SCA held further that the police did not act unlawfully in detaining Mr Rensburg and thus depriving him of his liberty. Mr Rensburg was brought to court within a reasonable time and the 48-hour period referred to in terms of s 50 of the CPA had not yet expired. The SCA found further that the actions of the police, post the first court appearance, were lawful. This was because, inter alia, the issue of Mr Rensburg's previous convictions had still not been resolved and his address had not been verified, with the result that he could not therefore be considered for bail until these issues had been resolved. Once those outstanding issues had been resolved, and the undertaking given to the court by his cousin to reside with her, the court, in the exercise of its discretion, released him on warning. The SCA held that the Minister could, thus, not be found to have acted unreasonably, wrongfully, unlawfully and unjustifiably in depriving Mr Rensburg of his liberty.

The SCA found that where, such as in this matter, the police acted within the prescript of the law, no fault should have been attributed to them. To hold otherwise would have been placing unreasonable constraints on the police when carrying out their duties to enforce the law for the benefit of all. Thus, the SCA held that the finding of the high court that the police acted correctly and lawfully could not be faulted. There was thus no reason to hold the Minister liable for the contented unlawful arrest and detention of Mr Rensburg until 23 September 2016.

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