



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: 21 July 2022

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 Police v Van der Watt and Another* [2022] ZASCA 114 (21 July 2022)**

Today the Supreme Court of Appeal (SCA) dismissed an appeal from the Gauteng Division of the High Court, Pretoria (high court). The appeal concerned the unsuccessful application for the rescission of two consent orders granted by the high court pursuant to two settlement agreements concluded between the State Attorney on behalf of the appellant, the Minister of Police (the Minister) and the first respondent's legal representatives.

The cause of action arose from a claim for damages by the First respondent against the Minister for unlawful arrest, detention and assault in the high court. The matter was defended. The minister was represented by the office of the State Attorney. On the day of the trial, the police officer responsible for litigation in the South African Police Service in the North West Province was phoned by the attorney in question for a mandate to settle the issue of liability. The mandate was refused, as the police were previously advised that they had a strong case against the first respondent. Nevertheless, the expressed mandate to resist liability was ignored and the issue of liability was settled on the basis that the Minister was responsible for 50% of the first respondent's proven damages. The settlement agreement in terms of the merits was accordingly made an order of court. In the meantime, the issue of quantum had been enrolled for trial in the high court. The quantum was also settled between the legal representatives and the resultant settlement agreement was also made an order of court.

The Minister launched an application in terms of rule 42(1)(a) of the Uniform Rules of Court for the rescission of the order made by the high court, and argued that the order was erroneously sought or granted. In the alternative, it was argued that the orders were granted as a result of *iustus error*. The application was dismissed.

Aggrieved by the dismissal, the Minister launched an application for leave to appeal in the high court. The application was dismissed which prompted the Minister to launch an application for leave to appeal to this Court, which application focused on the alleged lack of authority of the State Attorney to have concluded settlement agreements on behalf of the Minister. However, this Court held that the real issue in the appeal was whether the State Attorney had the ostensible (apparent) authority to conclude the settlement agreements at all. This Court held that the Minister created the impression that the State Attorney, at all relevant times, had the ostensible or apparent authority to act on his behalf, and the first respondent's counsel were under the same impression. In fact, counsel for the Minister expressly disavowed any reliance on fraud or any kind of improper conduct on the part of the first respondent's legal representatives. Accordingly, this Court held that, in the interests of justice, the Minister should be held liable for the settlement agreements; the SCA held that the action between the parties had become *res judicata* and that the court orders concerned are valid and enforceable.

In the result, the SCA dismissed the appeal. Furthermore, the SCA directed that paragraphs 30 and 31 of this judgment, which deals with the state attorney's apparent disregard of the Minister's express instructions not to settle the action, be brought to the attention of the Minister of Justice and Correctional Services as well as the Legal Practice Council.

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