



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: 5 April 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.

S Songo v Minister of Police and Others (Case No 220/2021) [2022] ZASCA 43 (5 April 2022)

Today the Supreme Court of Appeal (SCA) upheld an appeal from the Gauteng Division of the High Court, Pretoria (high court) and replaced paragraphs 3 and 4 of the high court with one dismissing the sixth special plea. The matter was remitted to the high court for determination of the fourth and fifth special pleas.

The appellant was convicted on two counts of murder and sentenced to 18 years' imprisonment by the North West Division of the High Court. He successfully appealed against his conviction to the full bench and was released with immediate effect. Upon release, the appellant instituted action against the respondents who raised six special pleas. The first and second pleas were abandoned, while the third plea referred to non-compliance with the provisions of s 3(1) and 3(2)(a) of the Institution of Legal Proceedings Against Certain Organs of State Act 40 of 2002, which were peremptory and no condonation was obtained thereto. The fourth and fifth special pleas raised the issue of no cause of action against the first and second respondents whereas the sixth special plea raised the issue of misjoinder of the third respondent.

The gist of the fourth and fifth special pleas was that the appellant was wrongfully imprisoned. It was contended that the appellant failed to set out and aver any grounds by which a causal connection could be established between any of the facts pleaded, a cogent cause of action or

the alleged damages suffered. In terms of the sixth special plea, the respondent averred that the particulars of claim were fatally flawed because of the lack of averments, alternatively because no cause of action against the third respondent was disclosed.

The pleas were argued before the high court, and judgment was delivered on the third plea. However, the remaining pleas were left undetermined. When requested to determine these matters, the learned judge again failed to determine the fourth and fifth special pleas, but proceeded to uphold the sixth special plea. The SCA was of the view that the failure of the high court to deal with these special pleas effectively meant their determination was postponed, and this is what formed the premise of this appeal.

The SCA, however, indicated that the situation was one where leave to appeal was erroneously granted because the fourth and fifth special pleas were still undetermined – the SCA was not a court of first instance and is not at liberty to deal with matters still pending before any other court. The SCA was of the view that the real issue in dispute seemed to have been whether the appellant had a cause of action and, if not, whether the common law ought to have been developed to accord him a cause of action to claim for damages in respect of his wrongful conviction and incarceration. It would, therefore, have been premature to absolve the third respondent at this stage.

In the result, the SCA upheld the appeal and replaced paragraphs 3 and 4 of the order of the high court with one dismissing the sixth special plea. The matter was remitted to the high court for determination of the fourth and fifth special pleas.

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