



## 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:** 15 June 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***

*Olesitse N O v Minister of Police* (470/2021) [2022] ZASCA 90 (15 June 2022)

---

Today, the Supreme Court of Appeal (SCA) upheld an appeal against the decision of the Gauteng Division of the High Court, Pretoria (per Davis J) (the high court) dismissing the appellant's application for condonation of the late filing of the leave to appeal against the high court's judgment and order. Further, the SCA dismissed the appeal in relation to its merits. No order as to costs was made.

The appellant was Ms Mmabasothe Christinah Olesitse, in her capacity as an executrix of the estate of her deceased husband, Mr Tebogo Patrick Olesitse (the deceased). The respondent was the Minister of Police.

The issues before the SCA were whether the high court should have condoned the lateness of the appellant's application for leave to appeal, and whether it should have granted the appellant leave to appeal.

With regard to the application for the late delivery of the application for leave to appeal, the SCA found as follows. The delay was about six months. The explanation proffered for the delay was that due to an administrative error on the part of the appellant's instructing attorney, the judgment dismissing the appellant's claim did not timeously come to his attention. The SCA held that notwithstanding the shortcomings in the appellant's attorney's explanation for the delay, the appellant should not have suffered as a result of her legal representative's neglect. The case was important to her children, who stood to benefit from the deceased estate. The SCA thus held that the high court should have condoned the late delivery of the application for leave.

With regard to the merits of the appeal, the SCA found as follows. In May 2008, the deceased, then a police officer stationed at Mafikeng Police Station vehicle identification section, was arrested by police officers without a warrant of arrest and detained on a charge of theft and corruption. He was detained at the police station on 19 May 2008 and released on bail on 29 May 2008. On 17 May 2011, the charges against him were formally withdrawn when the Director of Public Prosecutions (the DPP) declined to proceed with prosecution of the charges. On 26 May 2011, the deceased instituted an action against the respondent for damages in respect of his alleged unlawful arrest and detention, seeking compensation in the

amount of R400 000 for deprivation of freedom, *contumelia* and discomfort (the first action). Ultimately, the deceased was awarded R90 000 damages occasioned by the unlawful detention. On 12 December 2012, and whilst the first action was still pending, the deceased instituted a new action for damages for malicious prosecution (the second action). This second action arose from the same set of facts or events which gave rise to his claim for unlawful arrest and detention. On 3 March 2020, the respondent served a notice in which he raised a point of law. In his notice of objection, the respondent contended that the appellant's second claim was a duplication of the first claim.

The SCA found that the once and for all rule was part of our common law and found application in the case. This was because, while there was a difference between a claim for malicious prosecution and a claim for unlawful arrest and detention, in the instant case, that difference paled into insignificance having regard to the fact that the event that gave rise to the deceased's claims was the same. The investigations conducted by the police formed the basis on which the decisions were taken to arrest and detain, and to prosecute the deceased. In accordance with the once and for all rule, the deceased should have instituted his claim for all of his damages in one action, so that the lawfulness or otherwise of the respondent's employees' actions, who were involved in taking the challenged decisions, could have been adjudicated in one action. Moreover, in this case the deceased had had all the facts on which to formulate his claims when he instituted his first action. He had the facts to sustain the claims that his arrest and detention was unlawful and that his prosecution was malicious after the DPP had declined to prosecute him. All that had already happened when he instituted the first action. There was therefore nothing that prevented him from instituting his claims in one action.

The SCA thus held that the high court was correct in upholding the respondent's objection that the claim for malicious prosecution was a duplication of the first claim of unlawful arrest and detention. Accordingly, the appeal was dismissed.

~~~~ends~~~~