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: 06 May 2024

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 Miya (1250/2022) [2024] ZASCA 71 (06 May 2024)

Today the Supreme Court of Appeal (SCA) handed down judgment dismissing an appeal, with costs, including that of two counsel where so employed, against the decision of the Gauteng Division of the High Court, Pretoria (the high court).

Mr Miya, the respondent, sued the appellant, the Minister of Police (the Minister) and the NDPP for damages arising from an alleged unlawful arrest and detention that occurred on 19 December 2017. The trial began with a determination of a special plea which the Minister raised. The special plea related to the failure by Mr Miya to serve the summons on the office of the Minister in terms of s 2(2)*(a)* of the State Liability Act 20 of 1957 (State Liability Act). The summons was only served at the office of the State attorney in terms of s 2(2)*(b)*. Despite this, the State attorney filed a notice of intention to defend on behalf of the Minister and the NDPP.

Before the high court, the Minister submitted that the provisions of s 2(2) of the State Liability Act were obligatory; failure to serve the summons on the Minister was fatal and that service on the State Attorney alone rendered the summons a nullity. In the alternative, the Minister submitted that the claim had prescribed due to non-service on him (the debtor) in terms of s 2(2)*(a)*. The high court dismissed the special plea. Relying on the decision of this Court in *Molokwane*, the high court held that the omission to serve on the Minister did not render the summons a nullity as the purpose of the Act was achieved. The high court did not pronounce on the issue of prescription.

Aggrieved by the high court's order, the Minister appealed to this Court. The central issue in this appeal is whether non-compliance with s 2(2)*(a)* of the State Liability Act rendered the summons a nullity.

Before this Court, the Minister's counsel argued that even though the Minister became aware of the summons and filed all the necessary court processes, service on him or his office was still required to interrupt prescription; the failure to serve could not be condoned as the Prescription Act was also peremptory on the service of the debtor. Furthermore, the Minister's counsel contended that the failure to decide on the issue of prescription was so egregious, rendered the matter *res judicata,* and violated the appellant's right to a fair hearing in terms of s 34 of the Constitution.

In its findings, the SCA first dealt with the issue of prescription. It concluded that the prescription argument together with the arguments related thereto were ill-conceived because prescription did not arise in the context of the facts of this matter; the tenor of the high court's judgment is that prescription was interrupted.

As far as the main issue is concerned, the SCA, in affirming the trite principles of interpretation of statutes as espoused in *Molokwane* held: that there was no basis to revisit *Molokwane* as the Minister failed to demonstrate that the principles as pronounced in *Molokwane* were clearly wrong; the fact that the non-service related to the Minister which was not the case in *Molokwane* did not change the picture; on the particular facts of this matter, no prejudice was suffered by the Minister; it was clear that the

Minister (the debtor) was fully aware of the proceedings against him; the purpose of the State Liability Act was achieved.

As a result, the SCA confirmed the decision of the high court and concluded that the fact that the summons were not served within the prescripts of s 2(2) of the State Liability Act with particular reference to s 2(2)*(a)* in this matter, was not fatal. And thus, the appeal had to fail.

~~