



## 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:** 7 May 2025

**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***

*Nakana v Claassens & Others (137/2024) [2025] ZASCA 52 (7 May 2025)*

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Today the Supreme Court of Appeal (the SCA) handed down a judgment in which it upheld, the appellant's appeal against an order of the Limpopo Division of the High Court, Polokwane (the full court)

The central question in this appeal was whether the SCA could interfere with the order of the full court, awarding the first respondent, Mr Johannes Claassens (Mr Claassens) damages in a malicious prosecution claim against the appellant, Mr Frans Maropeng Nakana (Mr Nakana).

The facts that gave rise to the claim for malicious prosecution were largely common cause. Mr Nakana and Mr Claassens lived on neighbouring farms in Polokwane. Mr Nakana operated a chicken business on his farm and Mr Claassens operated a conservation business on his. They had a very acrimonious relationship which culminated in the arrest and detention of Mr Claassens by the South African Police Service (the SAPS).

On 1 July 2015, Mr Claassens instructed his employee to remove a damaged boundary fence between his farm and Mr Nakana's, intending to replace it. Mr Nakana reported this to the SAPS. Shortly thereafter, the third respondent, Warrant Officer Williams (W/O Williams) and other members of the SAPS, arrested and detained Mr Claassens. He was detained at the police station for almost three days. He was charged with theft and breaching a protection order, but the charges were later withdrawn by the prosecution on 11 January 2016.

Mr Claassens instituted a claim for unlawful arrest, detention and malicious prosecution against Mr Nakana, the Minister of Police (the Minister) and W/O Williams. The Minister was cited as the second respondent in the action. At the commencement of the trial Mr Nakana, through his attorney, conceded liability in the claims for malicious prosecution, unlawful arrest and detention. The Minister and W/O Williams also conceded liability, but only in respect of the claim for unlawful arrest and detention. By

agreement between the parties, the trial proceeded on the issue of the quantum of the damages in respect of both claims.

Mr Claassens was 60 years old at the time of his arrest and detention and 67 years old when he testified. He described a traumatic arrest and detention. Over 16 aggressive police officers, including W/O Williams, arrested him in front of his son and employee, causing him pain and injury during the process. At the police station, he was mocked and struggled physically. In the overcrowded, filthy, and freezing cell, he was body searched by inmates, forced to sit on a cold, wet cement bench, and exposed to disturbing noises and severely unsanitary conditions. He could not sleep, needed help standing, and was deeply traumatised by the experience, breaking down during his testimony, even though it was many years later.

The court of first instance found Mr Nakana, the Minister, and W/O Williams liable for the unlawful arrest and detention of Mr Claassens and ordered them to pay him R40 000 in general damages and R25 524 in legal costs, jointly and severally, with interest accruing from the date of issue of the summons until final payment. They were also ordered to pay his party and party costs jointly and severally the one paying the other to be absolved. However, Mr Claassens' claim for malicious prosecution was dismissed with costs.

Mr Claassens applied for leave to appeal against that judgment and order. The court of first instance granted him leave to appeal against the claim for malicious prosecution, only. Dissatisfied, Mr Claassens applied to the SCA for leave to appeal against the remainder of the order. The SCA granted him leave to appeal to the full court against paragraphs 2 and 5 of the order ie that Mr Nakana, the Minister and W/O Williams must jointly pay Mr Claassens R40 000 in general damages, jointly and severally the one paying the other to be absolved; and they must pay Mr Claassens' party and party costs jointly and severally the one paying the other to be absolved.

The full court overturned the earlier judgment and ordered the Minister to pay Mr Claassens R400 000 for unlawful arrest and detention; and Mr Nakana to pay R250 000 for malicious prosecution, with interest from 21 January 2021. Both were also ordered to pay the costs of the action jointly and severally, the one paying the other to be absolved. Dissatisfied, Mr Nakana applied to the SCA for special leave to appeal, which was granted. He also sought to introduce new evidence on appeal, being a protection order allegedly violated by Mr Claassens, to challenge his liability for malicious prosecution.

The SCA found that since Mr Nakana had already conceded liability at trial based on the legal advice he had received from his attorney, that issue was not before it on appeal as it was settled at the commencement of the trial. By conceding liability, Mr Nakana agreed to compromise or settle the question of his liability for damages in the claim against him. This brought an end to the litigation on the merits of the claim. The SCA held that his only recourse was a separate action against his former attorney if he believed that he had been poorly advised. The SCA held further that absent an order setting aside a concession made in open court, that resolved the merits of the claim, the concession remains valid. Therefore, the SCA could not hear an appeal on the merits or consider new evidence related to it.

In respect of Mr Nakana's appeal concerning the question of the quantum of damages awarded to Mr Claassens, the SCA held that although Mr Nakana omitted to state the grounds of appeal against the full court's order, in the notice of appeal, this did not preclude it from determining the appeal, as the parties were given an opportunity to make full submissions on this aspect in supplementary heads of argument, which they did subsequent to the hearing of the appeal. The SCA reviewed the R250 000 damages awarded against Mr Nakana for malicious prosecution and found that the full court had relied on facts not supported by the trial record. Particularly in respect of Mr Nakana's motive and prior conduct. The SCA noted that Mr Nakana's role was limited to reporting Mr Claassens to the police and that he had no control over the prosecution. The SCA further found that the full court committed a misdirection on the facts. Consequently, the SCA was therefore at large to interfere with the full court's award of general damages and substitute its discretion for that of the full court. The SCA found further that the full court had duplicated its consideration of the detention conditions when awarding damages against both the Minister and Mr Nakana. As a result, the SCA held that the award against Mr Nakana was excessive.

As a result, the SCA made an order in which it upheld Mr Nakana's appeal with no order as to costs; reduced the damages award against him to R80 000 and struck the from the roll, with costs, the application to adduce further evidence.

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