



## 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:** 10 April 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***

*Van der Nest NO v Minister of Police* (154/2024) [2025] ZASCA 42 (10 April 2025)

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Today the Supreme Court of Appeal (SCA) upheld an appeal, with costs, against an order of the North West Division of the High Court, Mahikeng (the high court) and set aside paragraph (i) of the order of the high court.

On 11 November 2019, the late Ms Lend Mogapi was arrested at her home by Warrant Officer Kgananyane, without a warrant, who was acting in the course and scope of his employment as a police officer with the respondent, the Minister of Police. Following her arrest, she was transported in the back of a police van until she was eventually detained for a period of over 20 hours, whereafter she was released on warning. The appellant issued summons in the high court for general damages suffered as a result of the unlawful arrest and detention. The matter proceeded to trial on both merits and quantum before the high court and it granted an order against the respondent in the amount of R15 000, and made no order as to interest. Dissatisfied with the order on quantum, the appellant successfully applied for leave to appeal to the full court. The full court held that the oath was not properly administered to the appellant during the trial and consequently set aside the order of the high court and remitted the matter for trial before another presiding officer on both the merits and quantum. The appellant regrettably passed away before the hearing of this appeal and was substituted by the Executor of her estate, Ms Trisce Jane van der Nest NO.

The core issues before the SCA were firstly, whether the full court correctly raised, *mero motu*, as an issue the swearing-in of a witness at the trial; secondly, whether the full court correctly concluded that the witness was not properly sworn-in, as contemplated in s 39(2) of the Civil Proceedings Evidence Act 25 of 1965 (the Act); and, thirdly, the quantification of damages on appeal .

The SCA restated the trite position that a court can raise an issue *mero motu* where raising it is necessary to dispose of the matter, and it is in the interests of justice to do so, which depends on the circumstances of each case. The SCA held that a court is not only entitled but is also obliged, *mero motu*, to raise a point of law which is apparent on the papers but the common approach of the parties proceeds on a wrong perception of what the law is. The SCA held further that despite the peremptory language used in s 39(2) of the Act, the exercise envisaged was not formalistic to the point of preferring form above substance and that the provisions thereof must be applied practically.

Lastly, the SCA in finding that the record before the full court was sufficient in order to determine the quantum, criticised the one-size-fits all approach adopted by that division, and restated the approach which has to be undertaken by a court when assessing the amount of damages to be awarded, was to have all the facts of the particular case and to determine the quantum of damages on such facts. The SCA held further that the assessment of the amount of damages to award a plaintiff who was unlawfully

arrested and detained is not a mechanical exercise that has regard only to the number of hours a plaintiff had spent in detention.

Accordingly, the appeal was upheld with costs and paragraph (i) of the order of the high court was set aside.

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