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

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Okoro v The Minister of Police (515/2024) [2026] ZASCA 153 (13 November 2026)

Today, the Supreme Court of Appeal (SCA) struck off the roll an application for reconsideration of the refusal of leave to appeal against a decision of the KwaZulu-Natal Division of the High Court, Durban (the high court). The high court had dismissed the applicant's claim for damages against the Minister of Police (the respondent) arising from his alleged unlawful arrest and detention.

The applicant was arrested without a warrant by members of the South African Police Service on 3 July 2002 on suspicion of having committed murder. The arrest followed the discovery of a deceased man hanging from a bedsheet in the shower of a room at Evaleigh Court, which the applicant had rented two days earlier. The arresting officer suspected that the death had been staged as a suicide. The applicant maintained that he had given the two keys to the room to two other individuals. He appeared in court on 8 July 2002 and was remanded in custody. Following unsuccessful bail proceedings, he remained detained until the charges against him were withdrawn on 29 November 2002. He subsequently instituted a claim for damages in the amount of R5 414 000 against the respondent.

The high court dismissed the applicant's claim, finding that the arresting officer had reasonably suspected that he had committed murder, a Schedule 1 offence under the Criminal Procedure Act 51 of 1977. The high court also found that his subsequent detention was lawful. The applicant's applications for leave to appeal in the high court and the SCA were unsuccessful. On 21 June 2024, the President of the SCA referred the refusal of leave to appeal for reconsideration in terms of section 17(2)(*f*) of the Superior Courts Act 10 of 2013 (the Act) and directed that the application be considered after oral argument in terms of section 17(2)(*d*) of the Act.

In a separate judgment, Mjali AJA disagreed with the majority on the interpretation of section 17(2)*(f)* of the Act. She held that the jurisdictional requirements for the President's referral were not open to reconsideration by the SCA and that the SCA was required to reconsider the refusal of leave to appeal on the ordinary test applicable to such applications. On the merits, she found that the arresting officer had not entertained a reasonable suspicion, based on solid

grounds, that the applicant had committed murder. She considered, among other things, the conflicting evidence of the police officers, the applicant's distressed reaction upon discovering the deceased and the fact that other individuals had access to the room. In her view, the suspicion that the deceased had been murdered did not, without a proper basis linking the applicant to the crime, justify his arrest.

Mjali AJA further held that the respondent was liable for the applicant's detention for its entire duration, including the period after his first appearance in court, because the unlawful arrest had caused the subsequent detention. She would have granted leave to appeal, set aside the high court's dismissal of the claim and held the respondent liable for the applicant's proven damages arising from the unlawful arrest and detention.

In the majority judgment, Molitsoane AJA, with Nicholls JA concurring, held that an applicant seeking reconsideration under section 17(2)(*f*) must establish that a grave failure of justice would otherwise result or that the administration of justice may be brought into disrepute. This is an exceptionally high threshold, which requires more than demonstrating that another court might reach a different conclusion or that the refusal of leave to appeal may have been wrong. The majority found that the applicant had failed to establish the required threshold.

On the lawfulness of the arrest, the majority held that the arresting officer had reasonably suspected, on the information available at the time, that the applicant had committed murder. The officer's observations of the deceased's body, the position of the knot and the circumstances in which the body was found, considered together with the applicant's connection to the room, provided reasonable grounds for the suspicion. The majority emphasised that the standard required for an arrest under section 40(1)(*b*) of the Criminal Procedure Act is reasonable suspicion, not proof of guilt beyond reasonable doubt.

Regarding the applicant's continued detention after his first appearance in court, the majority held that liability for such detention does not automatically follow from the lawfulness or unlawfulness of the arrest. It must be established that wrongful and culpable police conduct caused or prolonged the detention. Although the police had a duty to provide accurate and complete information to the prosecution and the court, there was no evidence that they had misled either or materially withheld information. The majority accordingly found no basis to hold the respondent liable for the applicant's detention after his first court appearance.

The majority also expressed concern about the substantial delay in bringing the matter to trial. The incident occurred in July 2002, while the trial only commenced in October 2020, approximately eighteen years later. It considered the delay inordinate and unacceptable, noting its potential prejudice to litigants and its impact on public confidence in the administration of justice.

The SCA accordingly struck the application for reconsideration off the roll with costs, including the costs of two counsel where so employed.

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