



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: 05 May 2026

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 Justice and Correctional Services and Others v Leso (1465/2024) [2026] ZASCA 64 (05 May 2026)

Today, the Supreme Court of Appeal (SCA) handed down judgment upholding with costs, including the costs of two counsel, an appeal against a judgment of the Gauteng Division of the High Court, Pretoria, (the high court).

This appeal concerned whether the trial court was correct in applying the principle of issue estoppel in favour of the respondent and, consequently, proceeding on the basis that the only issue remaining for consideration in the civil action was that of quantum. If not, whether this Court should remit the matter back to the high court to determine the merits of the matter.

The respondent, Mr Leso, instituted a civil claim against the appellants for damages resulting from his unlawful detention. He was one of the parolees who participated in the Correctional Services Electronic Monitoring Pilot Project, a form of monitoring of persons who are subject to community corrections in terms of s 68 of the Correctional Services Act, 111 of 1998 (the CSA), as amended, read with regulation 28 of the CSA Regulations. He commenced serving his sentence on 29 April 2002, the date of his sentencing. He was subsequently granted parole by the Correctional Supervision and Parole Board (the Parole Board) on 28 August 2013. His parole conditions required, amongst others, that he be tagged with an electronic monitoring device, allowing the Department of Correctional Services (the department) to track his movements. The electronic monitoring device consisted of two components: an anklet permanently attached to his ankle and a Global Positioning System (GPS) receiver. On 27 June 2014, he lost his GPS receiver and reported it to the department. The head of Community Correction immediately issued a detention warrant under s 70 of the Correctional Services Act, 111 of 1998 (the CSA), and the respondent was arrested and detained on the same day.

It was common cause between the parties that once detained, he was not brought before court within 48 hours as required by s 70(2)(b) of the CSA. He successfully applied to the high court for his detention in excess of 48 hours to be declared unlawful. During the civil trial, the appellant denied liability. The respondent raised a plea of issue estoppel, claiming that the issue of liability has been disposed of. The trial court ruled in his favour, proceeded to hear quantum only, and eventually awarded him R1 million damages. Aggrieved by this order, the appellants appealed on the ground that the principle of issue estoppel was not correctly applied.

The SCA agreed with the appellants and held that the trial court accordingly erred in upholding the plea of issue estoppel. The SCA reasoned that the high court's declaration was limited in scope, as it concerned only a finding that detention in excess of 48 hours was unlawful and nothing more. Further that, for delictual liability to ensue, more was required to be proved by the respondent. Amongst others, the elements of causation (factual and legal) remained open, as did that of wrongfulness. Moreover, the period of unlawful detention also remained open. The SCA concluded that the declaration of unlawfulness was inadequate to permit the trial court to apply the principles of issue estoppel to the facts of this case and to proceed exclusively to the determination of the quantum of damages.

The SCA held further that a remittal to the trial court for the adjudication of the merits would be futile, as it found that the respondent's claim had become prescribed before the institution of the claim. Accordingly, the SCA set aside the trial court's order and substituted it with one dismissing the respondent's claim.

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