



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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Mohlala v MEC for Transport, Limpopo and Others (843/2024) [2026] ZASCA 55 (17 April 2026)

Today, the Supreme Court of Appeal (SCA) granted special leave to appeal and upheld the appeal against a judgment of the Limpopo Division of the High Court, Polokwane, sitting as a court of appeal. The appeal concerned a claim for damages arising from the unlawful detention of the applicant, Mr Makofane William Mohlala, prior to his first court appearance.

Mr Mohlala was lawfully arrested on suspicion of driving under the influence of alcohol and detained at Dennilton Police Station for approximately 48 hours before being released on warning following his first court appearance. He claimed that his continued detention was unlawful because the police failed to consider his release on police bail in terms of s 59 of the Criminal Procedure Act 51 of 1977 (the Act). The magistrate and the high court dismissed his claim on the basis that he had failed to prove that he had applied for police bail or that an authorised police officer was available and refused to release him.

The SCA (in the majority judgment) held that this approach was incorrect. It reaffirmed the principle that a deprivation of liberty is prima facie unlawful and that the burden rests on the state to justify continued detention. The SCA held that, even where an arrest is lawful, the police are under a duty to consider whether continued detention is justified, including whether the detainee may be released on police bail. The police had failed to comply with the statutory safeguards governing police bail. Mr Mohlala's uncontested evidence was that he was never informed that he could apply for bail while in police custody and there was also no evidence that the possibility of his release on police bail was ever considered. In the absence of any explanation from the Minister of Police justifying the continued detention, the detention was unlawful.

The SCA accordingly upheld the appeal, set aside the orders of the high court and the magistrates' court, and substituted them with an order holding the Minister of Police liable for Mr Mohlala's unlawful detention. The Court awarded Mr Mohlala general damages in the amount of R80 000, together with interest and a portion of his costs.

The minority judgment (Unterhalter JA, dissenting) agreed that special leave to appeal should be granted and concurred in the statutory framework governing police bail. It held that s 59 of the Act confers a right to request police bail and a corresponding duty on the police to consider that request, not a right to be released. On that approach, a failure by the police to inform a detainee of the right to request police bail, or to consider such release, does not render the continued detention unlawful. The minority judgment would therefore have held that Mr Mohlala had not established a cause of action for unlawful detention and would have dismissed the appeal.

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