



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal

Ismail Ebrahim Jeebhai & others
v
Minister of Home Affairs & another

The Supreme Court of Appeal (SCA) today upheld an appeal brought on behalf of Pakistani national Mr Khalid Mahmood Rashid that his detention at the Cullinan Police Station from 1 November 2005 and his subsequent deportation to Pakistan on 6 November were unlawful. It however held that his arrest on 31 October 2005 at a home at Estcourt in KwaZulu Natal where he was staying was lawful because the evidence disclosed that he was an illegal foreigner. The Pretoria High Court had held in February 2007 that his arrest, detention and deportation had been carried out lawfully. Mr Ismail Ebrahim Jeebhai who unsuccessfully brought the application against the Minister of Home Affairs in the high court, then appealed to the SCA.

The facts that were placed before the court revealed that Rashid had entered the country a few months earlier and had obtained documents authorizing his stay in the country fraudulently. As an illegal foreigner he was therefore liable to arrest. On 31 October 2005 an immigration official supported by armed police arrested him at Estcourt. He was then driven to the Cullinan Police Station where he was detained. On 6 November he was removed from detention and deported to Pakistan.

The SCA held that the Immigration Act 13 of 2002 and the Regulations promulgated thereunder required a warrant to be issued by an immigration officer for the detention of an illegal foreigner as also for his removal from that place of detention. As neither Rashid's detention nor his removal from detention for deportation was effected pursuant to a warrant both his detention and deportation were held to be unlawful.

The SCA also set aside the convictions and sentences by the high court of Jeebhai and his attorneys Mr Zehir Omar and Ms Yasmin Naidoo for contempt of court. In the high court Jeebhai was cautioned and discharged but Omar and Naidoo were

each sentenced to a fine of R2 000 or six months' imprisonment which was suspended for a period of three years on condition that they are not convicted of contempt of court committed during the period of suspension. The high court had found that Jeebhai and his attorneys had used a document in violation of an earlier court order that had issued by Judge Poswa on 14 May 2005. The SCA, however, held that that Judge Poswa's order had not prohibited the use of the document in the proceedings before the high court – accordingly the convictions and sentences could not stand.

The SCA rejected two further arguments by Jeebhai's legal representatives. The first was that Rashid's deportation was a disguised extradition; and the second that Rashid's deportation was a 'crime against humanity' because it amounted to an 'enforced disappearance' under the Rome Statute of the International Criminal Court. In both instances the SCA found that the evidence that was placed before the court did not support those contentions.

Nevertheless because Rashid's detention and deportation were held to have been unlawful, the Minister of Home Affairs was ordered to pay the costs incurred by Jeebhai and his attorneys of the legal proceedings both in the high court and in the SCA.
