



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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**THE MINISTER OF SAFETY AND SECURITY v TSHEI JONAS
SEKHOTO**

The Supreme Court of Appeal (SCA) today overruled various decisions of the high courts that had held that a peace officer may not arrest a suspected offender without a warrant, even in the case of serious offences, without first assessing whether the suspect will or will not appear in court if a notice or summons to do so is issued instead. The high courts purported to find such a requirement in the provisions of the Constitution.

The case arose from the arrest by police officers, without warrant, of two persons suspected of having contravened the Stock Theft Act 57 of 1959. The suspects were subsequently charged with offences under that Act but were acquitted. They then sued the Minister of Safety and Security for damages for unlawful arrest.

The magistrate who heard the claim – basing his decision upon various judgments of the high courts – found that the police officers had had reasonable grounds for believing that the suspects had committed the offence, but they had not satisfied themselves that the suspects would not appear in court if they were called upon to do so by notice or summons, and the arrests were accordingly unlawful. An appeal to a full court of the Free State High Court failed, and the Minister appealed to the SCA.

The SCA held that the Constitution did not import such a requirement into the Criminal Procedure Act. It pointed out that the purpose of an arrest is to bring the suspect before a court within 48 hours to enable that court to decide whether the suspect should be detained pending his or her trial. To import that additional requirement would undermine that process because police officers would then be assuming the role of the court.

It held that a police officer could not be criticized for arresting a suspect for that purpose in the case of serious offences. It added, however, that it would clearly be irrational, and thus unlawful, to arrest for that purpose in the case of relatively trivial offences.