



THE SUPREME COURT OF APPEAL  
REPUBLIC OF SOUTH AFRICA

**MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL**

From: The Registrar, Supreme Court of Appeal  
Date: 22 March 2012  
Status: Immediate

*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.*

**MINISTER OF SAFETY AND SECURITY & ANOTHER V SWART (194/11) [2012] ZASCA 016  
(22 MARCH 2012)**

The Supreme Court of Appeal (SCA) today dismissed an appeal by the Minister of Safety and Security and a police officer in his employ (the second appellant) against an order of the Western Cape High Court, Cape Town declaring the arrest and detention of Mr Swart (the respondent) to have been unlawful and directing them to pay the respondent an amount of R50 000 plus interest as damages.

The second appellant had arrested and detained the respondent without a warrant on suspicion of driving a motor vehicle on a public road whilst under the influence of intoxicating liquor. The only evidence relied upon by the second appellant in making the arrest was the fact that the respondent smelt of alcohol and that his vehicle had left the road and landed in a ditch. The criminal charge against the respondent was later withdrawn after medical evidence showed that his blood alcohol level was below the permissible legal limit. He then instituted an action against the Minister and the second appellant in a magistrates' court claiming damages for the arrest and detention, arguing that they were unlawful. The action was dismissed. He successfully appealed to the high court. The Minister then appealed to the SCA against the order of the high court.

Before the SCA the key issue was whether the mere smell of alcohol was sufficient to give rise to a

reasonable suspicion on the part of the second appellant that the respondent was under the influence of intoxicating liquor and for that reason he could not drive a vehicle. The SCA answered the question in the negative. It held that the second appellant's suspicion was not based on reasonable grounds and therefore that the respondent's arrest and detention were unlawful. The SCA stated that the respondent had behaved like a person in full control of his faculties at the time of his arrest. On the issue of the quantum of damages, the SCA, with reference to the aggravating features accompanying the arrest and detention, held that it was unable to find any misdirection in the award made by the high court warranting its interference.