



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: 30 November 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 Never Ndlovu

Today the Supreme Court of Appeal (SCA) dismissed an appeal by the first and second appellants with costs and upheld the order of the Eastern Cape High Court, Grahamstown, in favour of the respondent.

The issue before the SCA was whether or not the further detention – from 24 October to 31 October 2008 - of the respondent, whilst awaiting his trial on a charge of possession of suspected stolen property, was lawful.

The respondent, a Zimbabwean national, was requested by an acquaintance to meet him and bring with him a laptop, handed to him earlier by said acquaintance. Unbeknown to the respondent, the acquaintance arrived with eight police officers, who were investigating a case of a stolen laptop. The laptop was then seized by the police officers and they then asked the respondent to lead them to his residence, which he did. Upon arrival at the residence, the police officers, without a warrant, conducted a search of the premises and seized an assortment of the respondent's property. The respondent was thereafter detained and arrested for possession, of what the police officers construed, as stolen

property.

The respondent then appeared before a so-called 'reception court' on 23 October 2008 and was remanded in custody until 30 October 2008; as a so-called 'Bail Information Form', completed by the police officer reflected that the respondent had furnished a false address.

The respondent then instituted proceedings against the appellants for unlawful arrest and detention. At the trial, it was conceded by the first appellant that the arrest and subsequent detention of the respondent from 21 October 2008 until 23 October – when he appeared before the reception court - was indeed unlawful, but the appellants persisted in their defence that the respondent's unlawful detention ceased when the magistrate in the reception court remanded the respondent in custody until 30 October 2008. The high court found in favour of the respondent.

On appeal, the SCA held that the reception court neglected to embark on a judicial evaluation to ascertain whether or not it was in the interests of justice to grant the respondent bail, nor did it afford the respondent an opportunity to address it on his eligibility to be released on bail.

The SCA held further that the appellants failed to discharge the onus of justifying the deprivation of the respondent's liberty, and had the police officers conscientiously performed their duties, they would have realised that the respondent did indeed have a fixed address and was thus not a flight risk. Consequently the ostensible reason for the respondent's further detention had no factual basis.