



## 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  
**DATE** 23 September 2014  
**STATUS** Immediate

*Please note that the media summary is for the benefit of the media and does not form part of the judgment.*

***Minister of Safety and Security v Tyokwana  
(827/13) [2014] ZASCA 130 (23 September 2014)***

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#### **MEDIA STATEMENT**

Today the Supreme Court of Appeal (SCA) furnished its reasons for dismissing the appeal by the appellant, the Minister of Safety and Security, and upholding an order of the Eastern Cape High Court, Grahamstown.

The issue before the SCA was whether the appellant was liable to compensate the respondent for such damages as he may have suffered as a consequence of his unlawful arrest, detention and subsequent malicious prosecution by members of the South African Police Service (the SAPS), acting within the course and scope of their employment with the appellant.

On 2 October 2007, the respondent – a 19 year old male – was assigned to the washing of police motor vehicles as part of his community service sentence at the Kenton-on-Sea Police Station. One of the vehicles had been allocated to Warrant Officer Kani (Kani). Kani subsequently alleged that his firearm had been stolen from the cubbyhole of his vehicle and arising from this, Kani arrested the respondent, without a warrant of arrest, on a charge of the theft of the firearm. The respondent denied any involvement in the theft but was nevertheless detained in the cells at the police station.

The matter was then postponed from time to time with the respondent remaining in custody and on 19 December 2007 the magistrate refused the respondent's application for bail. The matter was remanded for trial with the respondent to remain in detention. There was a further delay and the trial only commenced on 20 July 2009, when the respondent was acquitted on all charges.

The respondent then, on 1 October 2009, issued summons against the appellant for the payment of damages suffered as a consequence of the events of 2 October 2007 and their

aftermath. Due to the weight of the objective evidence, the appellant formally admitted, after its initial denial of liability, that Warrant Officer Kani had viciously assaulted the respondent.

The SCA in considering the respondent's delictual claim for damages, stated that it was clear that the respondent's constitutional right to freedom and security of the person, as enshrined in s 12(1)(a) of the Constitution, was unjustifiably and unreasonably violated by the members of the SAPS, and in particular by the malicious conduct of Kani. The SCA held further that the respondent had shown that the circumstances in which the police had arrested him and instigated and persisted with his prosecution, rendered the appellant delictually liable to the respondent for his wrongful arrest, malicious prosecution and unlawful detention for the full period from 2 October 2007 to 20 July 2009.

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