



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA MEDIA SUMMARY

FROM: The Registrar, Supreme Court of Appeal
DATE: 15 July 2022
STATUS: Immediate

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

Minister of Police and Others v Samuel Molokwane (730/2021) [2022] ZASCA 111 (15 July 2022)

Today, the Supreme Court of Appeal, per Makgoka JA (Van der Merwe, Schippers and Musi and Makaula AJJA concurring), handed down a judgment dismissing an appeal against an order of the Gauteng Division of the High Court, Pretoria, which had dismissed two special pleas by the Minister of Police (the Minister). The respondent, Mr Molokwane, had issued a summons against the Minister and the second to fourth appellants for damages allegedly suffered due to unlawful arrest and assault by the second to fourth appellants.

At that time, and before its amendment, s 2(2) of the State Liability Act 20 of 1957 (State Liability Act) provided that a copy of a summons against the Minister had to be served on the State Attorney within seven days of it being issued. Mr Molokwane did not comply with this requirement. Instead, he caused a copy of the summons to be served on the Minister at his official place of business in Pretoria. The State Attorney became aware of the legal proceedings after default judgment had been obtained against the Minister. The respondent abandoned the default judgment, whereafter, the State Attorney filed a notice of intention to defend and a plea. Later, the State Attorney filed a special plea asserting that the non-service on it, rendered the summons a nullity. Alternatively, it was contended that the respondent's claim had become prescribed by the time the State Attorney gained knowledge of the summons.

The high court dismissed the special pleas on the basis there had been substantial compliance with the provision, but subsequently granted leave to appeal to the Supreme Court of Appeal.

Before the Supreme Court of Appeal, it was contended on behalf of the Minister that because the provisions of s 2(2) State Liability Act were couched in 'peremptory' terms, non-compliance therewith was fatal, and rendered the summons a nullity. The Court rejected this submission, and pointed that in our law, the approach is no longer focussed on whether a statutory provision was peremptory or directory, but on the purpose of the provision. In the present case, the purpose of s 2(2) of the State Liability Act was to ensure that the Minister is afforded effective legal representation by the State Attorney. If the State Attorney provides such legal representation, in any manner whatsoever, despite it not having been served by the sheriff within seven days of the process commencing such proceedings, this purpose would have been served.

In the present case, the Court took into consideration that the State Attorney delivered a notice of intention to defend on behalf of the Minister after it became aware of the legal proceedings; delivered a plea; participated in a pre-trial conference and expressed his readiness to proceed with the trial in the

event the special plea failed. The Court also considered the fact that the non-service of a copy of the summons on the State Attorney occasioned no prejudice to the Minister.

As regards the alternative special plea of prescription, the Court found it to be without merit. The Court pointed out that, for purposes of prescription, service on the Minister would have been effective to interrupt prescription, albeit not within the prescripts of s 2(2).

Accordingly, the Court dismissed the Minister's appeal with costs.

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