THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

Reportable
Case no: 458/03

In the matter between:

JUANINE SHARON TAYLOR Appellant

and

THE MINISTER FOR SAFETY AND SECURITY First Respondent

HENDRIK JACOBUS STEPHANUS RAUTENBACH Second Respondent

Coram: *Navsa, Conradie et Van Heerden JJA*

Date of hearing: **18 November 2004**
Date of delivery: **30 November 2004**

Summary: **Special plea — notice of intention institute action against the Minister and a member of the South African Police Service not in compliance with s 57(2) of the South African Police Service Act 68 of 1995 in that it was not served on the Provincial Commissioner — upheld in court below — held in this court that on the evidence the Provincial Commissioner maintained two offices and that service on either sufficed — appeal upheld.**

JUDGMENT

NAVSA JA:

[1] The question in this appeal is whether the Court below, the Port Elizabeth High Court (Norman AJ), was correct in upholding the special plea of the two respondents to the effect that the provisions of s 57(2) of the South African Police Service Act 68 of 1995 (the Act) were not complied with by the appellant, Juanine Sharon Taylor, before she instituted an action against them claiming, *inter alia*, damages for unlawful arrest and detention.

[2] The court below dismissed the appellant's application for leave to appeal. The present appeal is with the leave of this Court.

[3] Section 57 of the Act, which has subsequently been repealed, provided as follows:

'(1) No legal proceedings shall be instituted against the Service or any body or person in respect of any alleged act performed under or in terms of this Act or any other law, or an alleged failure to do anything which should have been done in terms of this Act or any other law, unless the legal proceedings are instituted before the expiry of a period of 12 calendar months after the date upon which the claimant became aware of the alleged act or omission, or after the date upon which the claimant might be

reasonably expected to have become aware of the alleged act or omission, whichever is the earlier date.

(2) No legal proceedings contemplated in subsection (1) shall be instituted before the expiry of at least one calendar month after written notification of the intention to institute such proceedings, has been served on the defendant, wherein particulars of the alleged act or omission are contained.

(3) If any notice contemplated in subsection (2) is given to the National Commissioner or to the Provincial Commissioner of the province in which the cause of action arose, it shall be deemed to be notification to the defendant concerned.

(4) Any process by which any proceedings contemplated in subsection (1) is instituted and in which the Minister is the defendant or respondent, may be served on the National or Provincial Commissioner referred to in subsection (3).

(5) Subsections (1) and (2) shall not be construed as precluding a court of law from dispensing with the requirements or prohibitions contained in those subsections where the interests of justice so require.'

[4] The question in this appeal is whether the appellant's notice of intention to institute action, served at the Mount Road police station in Port Elizabeth on 22 April 2002, was proper notice in terms of s 57(2) of the Act. The adequacy of the contents of the notice for the purposes

of s 57 is not in dispute. It is accepted that notice on 22 April 2002 is within the time limits contemplated in s 57. The question for decision in this appeal is thus confined to whether service on the Mount Road police station was service on the Eastern Cape Provincial Commissioner. The facts against which this question has to be decided are set out hereafter.

[5] The appellant is a businesswoman. The first respondent is the Minister for Safety and Security, cited in his official capacity as the Minister responsible for the South African Police Service (SAPS). The second respondent is Captain Hendrik Jacobus Stephanus Rautenbach (Rautenbach), a member of the SAPS.

[6] It is common cause that the appellant was arrested on 24 May 2001 at Johannesburg International Airport by Rautenbach in terms of a warrant of arrest, obtained at his instance, on the basis of an alleged breach by the appellant of bail conditions. The appellant was subsequently detained and transported to Port Elizabeth via Kroonstad, where she was detained in a police cell. The appellant was released after her arrival in Port Elizabeth.

[7] In her particulars of claim the appellant alleged that, in arresting and detaining her, the police acted unlawfully and, in consequence, she was injured in her good name, her right to bodily integrity was infringed and she suffered mental anguish. She alleged that, as a result, she sustained damages in an amount of R250 000-00 for which the two respondents are jointly and severally liable.

[8] In their plea on the merits the respondents denied that the arrest was unlawful. Indeed, they denied any unlawful behaviour on the part of the police. It is common cause that, in arresting the appellant and transporting her to Port Elizabeth, Rautenbach and other members of the SAPS were acting within the course and scope of their employment.

[9] As stated earlier, the arrest and detention took place on 24 May 2001. In terms of s 57(1) of the Act the appellant was required to institute action within 12 months after that date and to give notice of the intended action to the respondents at least one month before the institution of the action. The summons in this case was issued on 23 May 2002 and served on the respondents on the same day. Proceedings were therefore instituted within the prescribed time. In

their special plea the respondents contended that notice of intention to institute action as contemplated by s 57(2) of the Act was not given. At the pre-trial conference the respondents informed the appellant that their case in respect of the special plea was that neither the Provincial nor the National Commissioner were given proper notice in terms of s 57(2) of the Act.

[10] At the commencement of proceedings in the Court below it was agreed that only the special plea would be dealt with and that evidence would be led in this regard.

[11] The only witness to testify was Captain Jacobus Gerrit Paxton (Paxton). The present appeal is to be determined on the basis of his evidence. It is therefore necessary to discuss in some detail, in the paragraphs that follow, the relevant parts of his evidence.

[12] Paxton is the Acting Commander, Loss Management, in the office of the Eastern Cape Provincial Commissioner of Police. He testified that his office was a section within the Provincial Commissioner's office. He was stationed at the Mount Road police station in Port Elizabeth. He was also so stationed and so designated

at the time that the appellant's notice of intention to institute action against the respondents was delivered there on 22 April 2002.

[13] Paxton explained that, when a notice of intention to institute action against the first respondent or a member of the SAPS is served on the Provincial Commissioner's office, it is sent to him and he then considers whether there has been compliance with s 57 of the Act.

[14] The official letterhead used by Paxton, in correspondence with potential litigants or others, describes his office as *Office of the Provincial Commissioner, Loss Management.* The postal address stated is a private bag address in Port Elizabeth.

[15] It is common cause that the appellant's notice of intention to institute action in respect of the unlawful arrest and related incidents was addressed to the first respondent, care of the legal division of the Commissioner of Police at the Regional Head Office, Mount Road, Port Elizabeth.

[16] When the notice was delivered at the Mount Road police station on 22 April 2004 it was duly stamped with an official stamp, recording receipt in the name of an Assistant Police Commissioner,

PZ Nomvuka. It was also stamped with an official stamp of the South African Police Service's Provincial Head of Detective Services, Eastern Cape, bearing the date 22 April 2002. It appears that the notice was stamped in this manner because the abovementioned Assistant Commissioner, who during April 2002 was still stationed at Mount Road in the same building as Paxton, was the Provincial Head of Detective Services.

[17] On 23 April 2002 the appellant's notice, as per the usual procedure, was placed on Paxton's desk at his office at the Mount Road police station. Paxton's official stamp bearing the words 'Legal Services Eastern Cape Port Elizabeth' and 'South African Police Service' and the date '2002-04-23' was placed on the appellant's notice. On the same day Paxton himself signed the notice.

[18] According to Paxton the process of relocating the Commissioner's office from the Mount Road police station in Port Elizabeth to Zwelitsha commenced on 7 January 2002. The Commissioner himself and members of his senior management staff had moved to Zwelitsha. At the time that the notice was delivered, Assistant-Commissioner Nomvuka had not yet relocated to Zwelitsha.

He remained behind in the same building that housed Paxton's office. During the course of the year other members of the Commissioner's staff, including some Assistant-Commissioners, followed the Commissioner and moved to Zwelitsha.

[19] Paxton's evidence concerning the relocation of the office of the Commissioner of Police requires careful scrutiny. Paxton gave evidence in the court below on 23 April 2003. At that time, according to Paxton, the Commissioner's office had only partially relocated to Zwelitsha. Paxton explained that some of the sections, such as his own, were still located at the Mount Road police station.

[20] Paxton testified that even though the Commissioner himself had moved to Zwelitsha, the Legal Services Department under which his office fell decided to continue accepting notices of intention to institute action at the Mount Road police station. This was done for a period of several weeks after 7 January 2002. Later a decision was made that no future notices received at the Mount Road police station would be regarded as proper notices in terms of s 57 of the Act. Paxton could not recall the date of this decision, but testified that, at the time that the appellant's notice was served, the decision had already been made.

[21] According to Paxton, when a notice was served on the Commissioner's office in Zwelitsha, it was, nevertheless, redirected to his office at the Mount Road police station to be dealt with.

[22] Paxton testified that notices were never, in either instance (Mount Road or Zwelitsha), served on or received by the Commissioner personally. Such a notice was received by a member of the Commissioner's staff and directed to Paxton for attention and reply.

[23] It is common cause that members of the public were not notified by way of any communication from the Commissioner's office that he had partially relocated to Zwelitsha. Representative bodies of the legal profession did not receive notice of the relocation either.

[24] Against this background, where the Commissioner in fact maintained two offices at the relevant time, service on any one of the offices would in my view suffice as proper notice in terms of s 57(2) of the Act. The arbitrary decision by the Legal Services Department not to continue to accept notices at the Mount Road police station did not change the fact that the Commissioner continued to maintain an office there.

[25] This is not a case like *Groepe v Minister of Police and Others* 1979 (4) SA 182 (E), where the notice was not served on the Commissioner at his office, but rather at a police station where the acts complained of had been committed. It was held that the notice was not proper notice as contemplated in the then applicable statute.

[26] Likewise, in *Minister of Police v Mamazela* 1977 (1) SA 113 (T), the notice was addressed to a Divisional Commander of the South African Police at a police station and to a station commander at another police station, neither police station being an office of the relevant Commissioner. It was held that notice to those officers was not notice to the Commissioner.

[27] In the *Groepe* case the purpose of the notice contemplated in a section like s 57 was stated as follows (at 184H):

'The purpose for which this notice is required to be given is of importance. That purpose is to ensure that the State, or the person to be sued, receives warning of the contemplated action and is given sufficient information so as to enable it or him to ascertain the facts and consider them. The section is enacted for the benefit of the recipient of the notice, and that purpose must be served.'

[28] This purpose was achieved in the present case. The Commissioner maintained two offices simultaneously. Service of the notice was effected on an Assistant-Commissioner who was based at the Commissioner's Mount Road police station office. The stamp indicating his designation as Head of Detective Services was incidental. The notice was after receipt thereof despatched to Paxton, the very person charged with the responsibility of dealing with such notices on behalf of the Provincial Commissioner. The court below erred in concluding that the notice was received by the Provincial Head of Detective Services and not by the office of the Commissioner and that s 57(2) had therefore not been complied with.

[29] In her judgment, Norman AJ stated that if one were to permit service on any employee who is a member of the SAPS, other than the Commissioner, there would be chaos and the provisions of the Act would thereby be disregarded. The learned judge stated further that it would be untenable to contend that, when notice to the Commissioner is enjoined, notice to any of his inferior officers will be sufficient. She relied on the *Mamazela* case for these propositions. As stated above the *Mamazela* case is clearly distinguishable. The statements by Norman AJ are in general not contentious, but the learned judge erred

in construing the facts. Each case must, of course, be decided on its own facts.

[30] It is difficult to understand why, in the circumstances referred to above, the respondents adopted the attitude evidenced in the litigation that ensued.

[31] I record that before us the appellant appeared in person. In the light of the conclusions reached by me I make the following order:

1. The appeal is upheld with costs.

2. The order of the court below is set aside and in its place is substituted the following:

'The special plea is dismissed with costs.'

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MS NAVSA
JUDGE OF APPEAL

CONCUR:

CONRADIE JA
VAN HEERDEN JA