



SUPREME COURT OF APPEAL, SOUTH AFRICA

MEDIA SUMMARY - JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal

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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.

Earl Flanagan v Minister of Safety and Security (497/2017) [2018] ZASCA 96 (1 June 2018)

Today, the Supreme Court of Appeal (SCA) upheld an appeal brought by the appellant, Mr Earl Flanagan, against a judgment of the Eastern Cape Local Division of the High Court, Port Elizabeth. The issue on appeal concerned the question whether the Minister of Safety and Security (now Police) is liable for damages suffered by the appellant when he was sodomised in police custody.

The appellant was arrested in the early hours of Saturday, 10 October 2012, for drunken driving and related charges. The investigating officer recommended that he should be released on bail in terms of s 59(1) of the Criminal Procedure Act 51 of 1977. He was not released because of communication breakdown between the police station where he was charged, and the one where he was detained for the rest of the weekend. In the early hours of Monday, 12 October 2009, he was sodomised by a group of inmates. His claim against the Minister for damages was dismissed by the High Court on two bases. First, that the assault on him was not reasonably foreseeable, and second, that his evidence that he had alerted the police of possible harm to him, was not credible.

On appeal, the Supreme Court of Appeal found that in addition to the failure by the police to release the appellant on bail as recommended by the investigating officer, the police had also failed to detain the appellant separately from detainees charged with violent crimes. This was in violation of the police's Standing Order, which provides that whenever reasonably possible, persons in custody who are alleged to have committed violent crimes,

must be detained separately from other persons in custody. This, the Court found, was negligent on the part of the police.

The Court accordingly found that, failure to grant bail in the circumstances where the appellant was entitled to be released, cumulatively considered with the failure of the police to detain the appellant separately from persons who had been arrested for violent crimes, gives rise to delictual liability on the part of the Minister for the police's conduct.

In the circumstances, the Court (per Makgoka AJA with Lewis, Seriti and Saldulker JJA and Schippers AJA concurring) upheld the appeal with costs, including costs of two counsel.