THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Reportable

Case no: 511/2024

In the matter between:

THE MINISTER OF POLICE **FIRST APPLICANT**

NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS **SECOND APPLICANT**

and

KHOTSO JULIUS RAMABANTA **RESPONDENT**

Neutral citation: *The Minister of Police and Another v Ramabanta* (511/2024) [2025] ZASCA 95 (24 June 2025)

Coram: MBATHA JA and SALDULKER and DLODLO AJJA

Heard: 20 May 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives via email, publication on the Supreme Court of Appeal website, and release to SAFLII. The date and time for hand-down is deemed to be 24 June 2025 at 11h00.

Summary: Application in terms of s 17(2)*(f)* of the Superior Courts Act 10 of 2013 – reconsideration of a decision of the Supreme Court of Appeal to refuse

special leave – powers of the President of the Supreme Court of Appeal in 'exceptional circumstances' to refer a decision of this court on petition for reconsideration and, if necessary, variation – second applicant has not demonstrated 'exceptional circumstances' – application for reconsideration dismissed.

ORDER

On application for reconsideration: referred by President Molemela in terms of s 17(2)*(f)* of the Superior Courts Act 10 of 2013:

The application for reconsideration in terms of s 17(2)*(f)* of the Superior Courts Act is dismissed with costs which are to include the costs of two counsel where so employed.

JUDGMENT

Dlodlo AJA (Mbatha JA and Saldulker AJA concurring):

[1] This is a reconsideration of an order, issued by two judges of this Court, denying a petition for special leave to appeal. The petition for special leave to appeal was lodged by the National Director of Public Prosecution (NDPP) against the judgment and order of the Free State Division of the High Court, Bloemfontein (the full court). It is prudent to have regard to the jurisprudence of both the Constitutional Court and this Court on s 17(2)*(f)* of the Superior Courts Act 10 of 2013 (the Superior Courts Act), in order to determine whether exceptional circumstances exist to warrant revisiting the dismissal of the petition for special leave to appeal.

[2] The respondent, Mr Khotso Julius Ramabanta (Mr Ramabanta) instituted action against the applicants for damages arising from his arrest on 27 February 2019 and subsequent detention until 20 March 2019, when the charges against him were withdrawn by the prosecution. The trial court dismissed the claims, finding that the arrest was lawful under s 40(1)*(b)* of the Criminal Procedure Act 51 of 1977 and that there was no evidence of malicious prosecution. The application for leave to appeal was also dismissed. The matter then came on petition to this Court, whereafter this Court granted leave to appeal to the full court. The full court upheld the appeal and made an award of R70 000 against the Minister of Police, the first applicant (the Minister) and R650 000 against the NDPP. Thereafter, the NDPP petitioned this Court for special leave to appeal the award against it. The petition was dismissed. Aggrieved by the dismissal, the NDPP applied to the President of this Court for reconsideration and, if necessary, variation as contemplated in s 17(2)*(f)* of the Superior Courts Act. The President of this Court referred the matter for oral argument in respect of the special leave to appeal.

[3] The NDPP argues that the refusal of special leave to appeal should be reconsidered because the full court fundamentally misapplied the legal principles governing malicious prosecution. She relies heavily on this Court's decision in *NDPP v Mdhlovu (Mndlovu)*,[1] which emphasised that prosecutors need only reasonable suspicion to initiate a prosecution, not conclusive proof, and that withdrawal of charges when new evidence emerges is a demonstration of good faith as opposed to malice.[2] The NDPP contends that the prosecutor had reasonable and probable cause to prosecute, as established in *Relyant Trading v Shongwe*,[3] due to the evidence suggesting Mr Ramabanta's involvement in a shooting under the doctrine of common purpose, particularly since the respondent

[1] *National Director of Public Prosecutions v Mdhlovu* [2024] ZASCA 85; 2024 (2) SACR 331 (SCA) (*Mdhlovu*).
[2] Ibid paras 21; 29-30; and 36.
[3] *Relyant Trading (Pty) Ltd. v Shongwe and Another* [2006] ZASCA 162; [2007] 1 All SA 375 (SCA) paras 5 and 14.

was identified alongside two other suspects and initially failed to disclose his passport or provide an exculpatory statement during investigations.

[4] The NDPP contends that the prompt withdrawal of charges upon production of the passport demonstrates prosecutorial diligence as opposed to malice and asserts that there is no evidence to support the finding that the prosecutor acted with *animus iniuriandi* (malicious intent) or consciousness of wrongfulness. In this regard, she relies on *Minister of Justice and Constitutional Development and Others v Moleko*[4] and *Moaki v Reckitt and Colman (Africa) Ltd*,[5] which held that malice requires proof of intent to injure, not merely an error in judgment. She emphasises that the prompt withdrawal of charges upon production of the passport, as occurred here, was exactly the type of responsible prosecutorial conduct endorsed in *Mdhlovu*.[6]

[5] Furthermore, the NDPP challenges the full court's award of R650 000 in damages as grossly disproportionate to comparable cases, citing precedents where significantly lower amounts were awarded for similar or more egregious detentions. She compares this case to *Minister of Safety and Security v Tyulu and Another* (*Tyulu*),[7] where an award of R50 000 was reduced on appeal to this Court to only R15 000, for a short detention and *Minister of Safety and Security v Seymour* (*Seymour*),[8] where this Court reduced an award from R500 000 to R90 000 for five days' detention. She contrasts these with *Woji v Minister of Police*,[9] where R500 000 was awarded for 13 months' detention involving rape

[4] *Minister of Justice and Constitutional Development and Others v Moleko* [2008] ZASCA 43; [2008] 3 All SA 47 (SCA); 2009 (2) SACR 585 (SCA) (*Minister of Justice v Moleko*).
[5] *Moaki v Reckitt and Colman (Africa) Ltd* 1968 (3) SA 98 (A).
[6] *Mndlovu* paras 28; 3-36; and 38.
[7] *Minister of Safety and Security v Tyulu and Another* [2009] ZASCA 55; 2009 (5) SA 85 (SCA); 2009 (2) SACR 282 (SCA); [2009] 4 All SA 38 (SCA).
[8] *Minister of Safety and Security v Seymour* [2006] ZASCA 71; [2007] 1 All SA 558 (SCA); 2006 (6) SA 320 (SCA).
[9] *Woji v Minister of Police* [2015] 1 ALL SA 68 (SCA).

and extreme trauma, arguing that Mr Ramabanta's 21-day detention, without comparable suffering, makes the R650 000 award patently excessive.

[6] The NDPP submits that these cases collectively demonstrate the full court's errors in both the malicious prosecution finding and the damages award, creating exceptional circumstances justifying reconsideration. She argues that this situation raises important questions about prosecutorial discretion under *Mdhlovu* and damages consistency under *Tyulu* and *Seymour*, with strong prospects of success on appeal.

[7] The NDPP ultimately seeks to have the special leave application reconsidered, contending that exceptional circumstances exist that justify the application for leave to appeal, and that a grave injustice would occur if it is not granted. Further, she contends that this case raises important legal issues pertaining to the interpretation of s 42 of the National Prosecuting Authority Act 32 of 1998 (the NPA Act),[10] otherwise there would be no certainty as to whether the prosecution is taken in good faith or with *animus iniuriandi*.

[8] Mr Ramabanta argues that the application for reconsideration of the refusal of special leave to appeal should be dismissed, as the NDPP has failed to demonstrate the 'special circumstances' warranting a further appeal to this Court.[11] Mr Ramabanta relies on *National Union of Metal Workers of SA v Fry's Metals* (*Fry's Metals*),[12] which held that a mere dissatisfaction with a decision of the high court or alleged prospects of success are insufficient for special leave. The NDPP's belated attempt, Mr Ramabanta continues, to frame special

[10] Section 42 of the NPA Act provides that '[n]o person shall be liable in respect of anything done in good faith under *this Act'*.
[11] *Director of Public Prosecutions, Gauteng Division, Pretoria v Moabi* [2017] ZASCA 85; 2017 (2) SACR 384 (SCA) para 21.
[12] *National Union of Metalworkers of SA and Others v Fry's Metals (Pty) Ltd* [2005] ZASCA 39; [2005] 3 All SA 318 (SCA); 2005 (5) SA 433 (SCA); (2005) 26 ILJ 689 (SCA); 2005 (9) BCLR 879 (SCA); [2005] 5 BLLR 430 (SCA).

circumstances around the interpretation of s 42 of the NPA Act and the quantum of damages is unpersuasive, as the full court properly applied common law principles of malicious prosecution without needing to engage with statutory immunity (*Kruger v National Director of Public Prosecutions*).[13] Mr Ramabanta emphasises that the full court explicitly considered *animus iniuriandi* and good faith, aligning with *Minister of Justice v Moleko*, which requires proof that the prosecutor lacked an honest belief in the accused's guilt.[14]

[9] On the merits, Mr Ramabanta contends that the NDPP lacked reasonable and probable cause to prosecute, as demonstrated by the complainant's statement, which clearly identified Rorisang, Mr Ramabanta's brother and not Mr Ramabanta, as the shooter, with no evidence implicating Mr Ramabanta in common purpose.[15] Mr Ramabanta highlights that the prosecutor conceded under cross-examination that his initial testimony misrepresented the docket's contents, and his diary entry, upon withdrawing charges, admitted that there was 'insufficient evidence to argue common purpose'. This, he asserts, is in line with *Minister of Police and Another v Du Plessis*,[16] which obliges prosecutors to critically assess docket evidence before proceeding.[17] Mr Ramabanta argues that the NDPP's subjective belief in guilt cannot override the objective unreasonableness of the prosecution,[18] and the withdrawal of charges, motivated only by the belated production of a passport, further undermines claims of good faith.

[10] Regarding the question of damages, Mr Ramabanta contends that the R650 000 award was proportionate to the injuries suffered by himself. Mr

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[13] *Kruger v National Director of Public Prosecutions* [2019] ZACC 13; 2019 (6) BCLR 703 (CC) (*Kruger*) para 78.
[14] Ibid paras 19 and 20.
[15] *S v Lubaxa* [2002] 2 All SA 107 (A); 2001 (4) SA 1251 (SCA) (*S v Luxaba*) paras 32 and 33.
[16] *Minister of Police and Another v Du Plessis* [2013] ZASCA 119; 2014 (1) SACR 217 (SCA).
[17] Ibid paras 12 and 34.
[18] *S v Luxaba* para 79.

Ramabanta relies on *De Klerk v Minister of Police (De Klerk)*,[19] where the Constitutional Court made an award of R300 000 for a detention of seven days, and *Motladile v Minister of Police*,[20] where this Court made an award of R200 000 for a detention of five days. Mr Ramabanta notes the full court's careful consideration of his 22-day detention, prison conditions, and comparable precedents. Mr Ramabanta rejects the NDPP's reliance on *Tyulu* (R15 000) and *Seymour* (R90 000) as inapposite, given the gravity of wrongful prosecution and deprivation of liberty.[21] Mr Ramabanta concludes that the NDPP's appeal lacks merit and should be dismissed with costs, including those for two counsel, as the full court's judgment was neither irrational nor misdirected itself.

[11] The core issue to be determined by this Court is whether the NDPP has demonstrated exceptional circumstances for the granting of special leave to this Court. Prior to its amendment in April 2024, s 17(2)*(f)* of the Superior Courts Act read as follows:

'The decision of the majority of the judges considering an application referred to in paragraph (b), or the decision of the court, as the case may be, to grant or refuse the application shall be final: Provided that the President of the Supreme Court of Appeal may, in *exceptional circumstances*, whether of his or her own accord or on application filed within one month of the decision, refer the decision to the court for reconsideration and, if necessary, variation.' (Emphasis added.)

[12] With effect from 3 April 2024, the section now reads:

'The decision of the majority of the judges considering an application referred to in paragraph (b), or the decision of the court, as the case may be, to grant or refuse the application shall be final: Provided that the President of the Supreme Court of Appeal may, in circumstances *where a grave failure of justice would otherwise result or the administration of justice may be brought into disrepute,* whether of his or her own accord or on application filed within one month of

[19] *De Klerk v Minister of Police* [2019] ZACC 32; 2019 (12) BCLR 1425 (CC); 2020 (1) SACR 1 (CC); 2021 (4) SA 585 (CC).
[20] *Motladile v Minister of Police* [2023] ZASCA 94; 2023 (2) SACR 274 (SCA).
[21] *Dikoko v Mokhatla* [2006] ZACC 10; 2006 (6) SA 235 (CC); 2007 (1) BCLR 1 (CC) para 74. See also *Diljan v Minister of Police* (746/2021) [2022] ZASCA 103 (24 June 2022) para 18.

the decision, refer the decision to the court for reconsideration and, if necessary, variation.'[22] (Emphasis added.)

[13] The application for consideration was made prior the amendment, therefore the standard remains a showing of 'exceptional circumstances'. In *Avnit v First Rand Bank Ltd* (*Avnit*),[23] this Court stated:

'In the context of s 17(2)*(f)*, the President will need to be satisfied that the circumstances are truly exceptional before referring the considered view of two judges of this court to the court for reconsideration. I emphasise that the section is not intended to afford disappointed litigants a further attempt to procure relief that has already been refused. It is intended to enable the President of this Court to deal with a situation where otherwise injustice might result. An application that merely rehearses the arguments that have already been made, considered and rejected will not succeed, unless it is strongly arguable that justice will be denied unless the possibility of an appeal can be pursued. A case such as Van der Walt may, but not necessarily will, warrant the exercise of the power. In such a case the President may hold the view that the grant of leave to appeal in the other case was inappropriate.'[24]

[14] In *S v Liesching and Others* (*Liesching I*),[25] the Constitutional Court held that s 17(2)*(f)* of the Act applies once special leave has been refused, which implies that the applicant must demonstrate something beyond the requirements for special leave. It held:

'The proviso in section 17(2)*(f)* is very broad. It keeps the door of justice ajar in order to cure errors or mistakes, and for the consideration of a circumstance, which, if it was known at the time of the consideration of the petition, might have yielded a different outcome. It is therefore a means of preventing an injustice. This would include new or further evidence that has come to light or became known after the petition had been considered and determined.'[26]

[15] The parties seemingly confuse the role played by the President of the Supreme Court of Appeal in these matters. This was, however, put to rest by the

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[22] Section 28 of the Judicial Matters Amendment Act 15 of 2023.
[23] *Avnit v First Rand Bank Ltd* [2014] ZASCA 132 (*Avnit*).
[24] Ibid para 6.
[25] *Liesching and Others v S* [2016] ZACC 41; 2017 (4) BCLR 454 (CC); 2017 (2) SACR 193 (CC) (*Liesching I*).
[26] Ibid para 54.

Constitutional Court in *Cloete and Another v S; Sekgala v Nedbank Limited*[27] as follows:

'[30] On the one hand, the President is not given a power to grant leave to appeal herself or make a final decision in this regard. The extent of her power under section 17(2)(f) is to "refer" the decision "to the court" for reconsideration or variation. She is but one member of that Court, but not the "court" herself. Section 17(2)(f) makes this plain by saying that the President may refer the matter to "the court" for decision.

[31] The Act generally requires that every decision of the Supreme Court of Appeal, as a court, must be made by at least two Judges. Section 17(2)(f) does not necessarily alter this. Indeed, the section expressly provides that the decision of the President is merely a decision about whether to refer an already dismissed application for leave to appeal, for reconsideration. It is not a decision to grant or refuse leave to appeal. A referral by the President, as a single Judge and member of the Court, can thus not be said to be a decision of the Supreme Court of Appeal.

[40] Does the exercise of the President's power under section 17(2)(f) give rise to a final decision? The answer invariably depends on the facts. In the ordinary course, the President's power under section 17(2)(f) is merely a limited procedural power to ensure that, in truly exceptional cases, a further decision can be taken by the Supreme Court of Appeal. In essence, the power of the President is a power of referral to the Court. It does not dispose of any of the issues or portion thereof. The decision not to refer cannot be said to be appealable, if only because it does not meet the requirements outlined in *Zweni*. It is not itself a final decision, nor definitive of the rights of the parties, nor has the effect of disposing of at least a substantial portion of the relief sought in the main proceedings. This means that in the ordinary course, the decision is not appealable, unless there are some other overarching interests of justice that require this Court to grant leave to appeal.' (Emphasis added)

[16] In *Mbatha v S*,[28] this Court delved into the concept of exceptional circumstances. It stated:

'The concept of exceptional circumstances, in terms of s17(2)*(f)*, was dealt with in *Malele v S*; *Ngobeni v S*,[29] where it was stated that on a correct application of these principles, on the facts of that case, another court might reach a different conclusion.[30] It concluded that "a grave

[27] *Cloete and Another v S*; *Sekgala v Nedbank Limited* [2018] ZACC 6, 2019(4) SA 268 (CC).
[28] *Mbatha v S* (928/20) [2020] ZASCA 102 (15 September 2020) (*S v Mbatha*).
[29] *Malele v S; Ngobeni and Others v S* [2016] ZASCA 115.
[30] Ibid paras 8-9.

injustice may otherwise result" if the decision dismissing the applicants' application for leave to appeal was not referred to the court for reconsideration, and that a grave injustice "in itself constitutes exceptional circumstances enabling [the Court], mero motu, to refer the decision . . . to the court for reconsideration."[31]

In *Manyike v S*,[32] this Court dealt with the concept as follows:

'What constitutes exceptional circumstances depends on the facts of each case. …. Thring J in *MV Ais Mamas Seatrans Maritime v Owners, MV Ais Mamas & another* 2002 (6) SA 150 (C) at 156H remarked that:

"1. What is ordinarily contemplated by the words 'exceptional circumstances' is something out of the ordinary and of an unusual nature; something which is accepted in the sense that the general rule does not apply to it; something uncommon, rare or different . . .

2. To be exceptional the circumstances concerned must arise out of, or be incidental to, the particular case.

3. Whether or not exceptional circumstances exist is not a decision which depends upon the exercise of a judicial discretion: their existence or otherwise is a matter of fact which the Court must decide accordingly.

4. Depending on the context in which it is used, the word 'exceptional' has two shades of meaning: the primary meaning is unusual or different; the secondary meaning is markedly unusual or specially different.

5. Where, in a statute, it is directed that a fixed rule shall be departed from only under exceptional circumstances, effect will, generally speaking, best be given to the intention of the Legislature by applying a strict rather than a liberal meaning to the phrase, and by carefully examining any circumstances relied on as allegedly being exceptional."

In a nutshell the context is essential in the process of considering what constitutes exceptional circumstances.'' (footnotes omitted)

The reconsideration is not the consideration of the merits of the appeal. It is the reconsideration of the decision of this Court refusing leave to appeal. This Court is required to decide whether the magistrate, the judges of the Gauteng Division, and the two judges of this Court should have found that reasonable prospects of success existed to grant leave to appeal.[33] For the purposes of this reconsideration, this Court is not called upon to make a decision on the merits of the appeal. However, for the purposes of assessing whether special circumstances exist, it is

[31] Ibid para 12. See also *Gwababa v S* [2016] ZASCA 200 (SCA).
[32] *Manyike v S* (527/17) [2017] ZASCA 96 (15 June 2017) para 3.
[33] *Liesching II* fn 28 above; Notshokovu v S [2016] ZASCA 112; 2016 JDR 1647 (SCA).

necessary to traverse the merits in order to decide whether there are reasonable prospects of success on appeal.'[34] (See emphasis added)

[17] In *Motsoeneng v South Africa Broadcasting Corporation Soc Ltd and Others*,[35] this Court held that:

'[t]he necessary prerequisite for the exercise of the President's discretion is the existence of "exceptional circumstances". If the circumstances are not truly exceptional, that is the end of the matter. The application under subsection (2)*(f)* must fail and falls to be dismissed.'

Once the President has referred the decision of the two judges refusing leave to appeal for reconsideration, the court effectively steps into the shoes of the two judges and may, upon reconsideration, grant or refuse the application.

[18] The only question before us is whether there are any exceptional circumstances. Regrettably, neither of the counsel referred us to recent decisions of this court on this issue. In any event, the applicants' counsel accepted that they bore the onus of establishing exceptional circumstances, either in the sense of a probability of a grave failure of justice or the administration of justice being brought into disrepute. In this regard, counsel submitted that a failure to reconsider the decision refusing leave to appeal will result in a 'grave injustice'.

[19] The Constitutional Court cautioned in *Liesching II* that s 17(2)*(f)* is not intended to afford litigants a further attempt at procuring relief that has already been refused. It is instead 'intended to enable the President to deal with a situation where an injustice might otherwise result.[36] It does not afford litigants a parallel appeal process in order to pursue additional bites at the proverbial cherry'.[37]

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[34] *S v Mbatha* paras 15-17.
[35] *Motsoeneng* para 14.
[36] *Liesching II* para 139.
[37] *Lorenzi v The State* (1171/2023) [2025] ZASCA 58 (13 May 2025).

[20] The NDPP's application for reconsideration in terms of s 17(2)*(f)* of the Superior Courts Act pivots on whether exceptional circumstances exist to warrant revisiting the dismissal of the petition for special leave to appeal. The provision before amendment explicitly requires 'exceptional circumstance' and the NDPP argues that such circumstances exist, contending that the full court misapplied the legal principles on malicious prosecution and awarded disproportionate damages. She relies on cases such as *Mdhlovu*, *Tyulu*, and *Seymour* to assert that the prosecutor acted with reasonable suspicion and that the damages are not in line with precedent. However, these arguments largely reiterate the merits of the appeal as opposed to demonstrating exceptional circumstances justifying reconsideration. The cases relied on, while relevant to the substantive issues, do not establish that the initial refusal of leave was so fundamentally flawed as to risk a grave injustice or disrepute to the administration of justice.

[21] Mr Ramabanta correctly points out that mere dissatisfaction with the full court's decision or perceived prospects of success are insufficient, in accordance with *Fry's Metals*. The NDPP's attempt to present this case as involving exceptional circumstances, by invoking the interpretation of s 42 of the NPA Act and the quantum of damages, is not persuasive. The full court's findings on malicious prosecution were based on an assessment of the prosecutor's conduct, including the lack of reasonable and probable cause and the belated withdrawal of charges, which undermined claims of good faith. The damages award, while substantial, was not so out of line with comparable cases, such as *De Klerk* and *Motladile*, as to suggest a manifest injustice. The NDPP's reliance on *Tyulu* and *Seymour* is misplaced, as those cases involved shorter detentions and less severe consequences, whereas Mr Ramabanta's 22-day detention and the circumstances surrounding it justified a larger award.

[22] The jurisprudence on s 17(2)*(f)* establishes that reconsideration is an extraordinary remedy, not a routine second chance. *Avnit*, *Liesching I* and

Liesching II clarify that it is not an appeal on the merits but a safeguard against manifest injustice, requiring circumstances so exceptional that the initial refusal of leave would bring the administration of justice into disrepute. *Mbatha* and *Manyike* further hold that such circumstances must be 'markedly unusual', not merely arguable errors.

[23] The NDPP has failed to demonstrate exceptional circumstances warranting reconsideration of the dismissal of the petition for special leave to appeal. Her arguments largely rehash the merits of the case and do not establish that the refusal of leave would result in a grave injustice or disrepute to the administration of justice. The full court's decision was neither irrational nor misdirected, and the damages award, while high, was not so disproportionate so as to justify intervention.

[24] In the result, I make the following order:

The application for reconsideration in terms of s 17(2)*(f)* of the Superior Courts Act is dismissed with costs which are to include the costs of two counsel where so employed.

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D V DLODLO
ACTING JUDGE OF APPEAL

Appearances

For the applicants:	B S Mene SC and K Nhlapho-Merabe.
Instructed by:	The State Attorney, Bloemfontein.
For the respondent:	M S Mazibuko and P G Chaka.
Instructed by:	Mazibuko and Wesi Incorporated, Bloemfontein.