THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Non-Reportable

Case no: 1040/2017

In the matter between:

ANDILE SILATSHA **APPELLANT**

and

THE MINISTER OF CORRECTIONAL SERVICES **RESPONDENT**

Neutral citation: *Silatsha v The Minister of Correctional Services* (1040/2017) [2018] ZASCA 145 (02 October 2018)

Coram: Ponnan, Seriti, Willis, Zondi and Dambuza JJA

Heard: 30 August 2018

Delivered: 02 October 2018

Summary: Delict – claim for unlawful and wrongful detention – separated issue not dispositive of the matter – defence raised to be considered together with the rest of the issues – appeal upheld.

ORDER

On appeal from: Eastern Cape Local Division of the High Court, Port Elizabeth (Erasmus AJ sitting as court of first instance):

1 The appeal is upheld with costs.
2 The order of the Eastern Cape Local Division of the High Court, Port Elizabeth is set aside and the matter is remitted to that court for trial before a differently constituted court.

JUDGMENT

Dambuza JA (Ponnan, Seriti, Willis and Zondi JJA concurring):

[1] From 14 March 2008 to 24 March 2012 the appellant, Mr Andile Silatsha (Mr Silatsha) was an inmate at St Albans Correctional Facility in Port Elizabeth following various convictions and sentences to terms of imprisonment. On 24 October 2012 he instituted proceedings in the Eastern Cape Local Division of the High Court, Port Elizabeth (the high court), against the Minister of Correctional Services (the Minister), claiming damages for his unlawful and wrongful detention in a single cell. The claim was defended by the Minister. Of relevance to these proceedings is the Minister's contention, in the plea, that because Mr Silatsha had not sought to review and set aside the administrative decision to detain him in a single cell, he was barred from bringing a claim for damages based on the detention.

[2] At the pre-trial stage the parties agreed that the following would be decided as a separated issue:

'. . . whether the fact that the said decision [to accommodate Mr Silatsha in segregated/single cell accommodation] has not been set aside, is a bar to [him] contending, in an action for damages, that his detention was unlawful and wrongful. . . .'

[3] Before Erasmus AJ the matter proceeded on the separated issues only. The high court found that because the decision to detain Mr Silatsha in segregated conditions had not been challenged, and remained valid, his detention in terms thereof was not unlawful. The court proceeded to dismiss Mr Silatsha's claim with costs. This appeal, with the leave of the high court, is against that order.

[4] In the summons Mr Silatsha alleged that he was kept in segregated detention, in a single cell, which restricted him from accessing various amenities. He contended that being detained in that fashion was wrongful and unlawful, and constituted torture and/or cruel, inhumane and/or degrading treatment. He also alleged that his rights to human dignity, freedom and personal security, freedom from violence, and the right to be detained in conditions which were consistent with human dignity, were infringed.

[5] The Minister pleaded that Mr Silatsha's detention under the circumstances complained of was sanctioned by various provisions of the Correctional Services Act 111 of 1998. His detention resulted from his classification 'in terms of [s]ection 29 and the Security Policy Procedures of the Department' together with a correctional sentence plan 'countersigned' and concurred in by Mr Silatsha on 14 March 2008. The classification decision was informed by the nature and number of offences of which Mr Silatsha was convicted, together with the fact that he had previously escaped from custody. This decision, according to the Minister, was an administrative decision as defined in the Promotion of Administrative Justice Act 3 of 2000 (PAJA) and had to be reviewed and set aside before Mr Silatsha could bring a claim for unlawful detention.

[6] Apart from the finding that I have already referred to, not much can be gleaned from the judgment of the high court, as to its approach and reasoning in reaching its conclusion to dismiss the plaintiff's claim. I have difficulty in understanding this conclusion, particularly in the light of the remarks by the learned judge that she

considered that some issues were not before her at the time and would still have to be ventilated and decided by the court. In this regard the learned judge said:

'For purposes of this judgment I have not dealt with a variety of other issues mentioned by counsel for the plaintiff as it is their prerogative to continue or deal with the remainder of the claim as they see fit.'

Yet the learned judge dismissed Mr Silatsha's claim without more.

[7] The procedure adopted by the high court is unclear. It appears to have been something akin to the procedure on exception.

'When an exception is upheld, it is the pleading to which exception is taken which is destroyed. The remainder of the edifice does not crumble. The upholding of an exception to a declaration or a combined summons does not, therefore, carry with it the dismissal of the summons or the action.' [1]

[8] On the other hand, Rule 33(4) provides for determination of a point of law or fact separately from other issues where such separation is convenient. In *Denel (Edms) Bpk v Vorster*[2] this court warned against robotic resort to separation. At para 458A-B the following was said:

'In many cases, once properly considered, the issues will be found to be inextricably linked, even thought, at first sight, they might appear to be discreet. And even where the issues are discrete, the expeditious disposal of the litigation is often best served by ventilating all the issues at one hearing, particularly where there is more than one issue that might be readily dispositive of the matter. It is only after careful thought has been given to the anticipated course of the litigation as a whole that it will be possible properly to determine whether it is convenient to try an issue separately.'

[9] In this case the issue decided by the court a quo was inextricably bound up with the facts. It did not lend itself to separate adjudication. Nor was it dispositive of the matter. It follows that the order of the court a quo cannot stand and the matter must proceed to trial for a full ventilation and adjudication of all the issues.

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[1] Erasmust et al, *Superior Courts Practice* at D1-296.
[2] *Denel (Edms) Bpk v Vorster* 2004 (4) SA 481 (SCA).

[10] In the result the following order is made:

1 The appeal is upheld with costs.

2 The order of the Eastern Cape Local Division of the High Court, Port Elizabeth is set aside and the matter is remitted to that court for trial before a differently constituted court.

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N Dambuza

Judge of Appeal

APPEARANCE

For Appellant:	A C Moorhouse
	Instructed by: Egon A Oswald Attorneys, Port Elizabeth Lovius Block Attorneys, Bloemfontein
For Respondent:	N Mullins SC (with him R B Laher)
	Instructed by: State Attorney, Port Elizabeth State Attorney, Bloemfontein