



CASE NO: A3074/2022

MINISTER OF POLICE v EDWARD KEKANA

SUMMARY

- [1] The respondent was awarded R75 000.00 in the court *a quo* owing to the fact that when he was 18 years old, he was arrested by the police on a charge of possessing 3 grams of marijuana and was subsequently detained for three days and nights before being released at court. The respondent was a first offender and could not afford bail. The court *a quo* had found that he should have been released on warning about two hours after his arrest and that his detention thereafter was unlawful.
- [2] The basis of the appeal was solely against the merits of the case.
- [3] The Court considered the judgment in *Diljan*¹ in which it was highlighted that peace officers are vested with a discretion whether to arrest a person and a further discretion regarding the detention of the arrestee. The Court found that in the present matter, the peace officers involved were not aware that they had the authority to release the respondent. Furthermore, they had a limited understanding of the provisions of the sections 56, 59 and 59A of the Criminal Procedure Act.² Accordingly they could not have exercised a discretion they were unaware of. One of the peace officers testified that he was aware that the respondent could qualify for bail but was not authorised to release him on bail. His discretion was fettered by the bureaucratic process of the station. . The Court further found that the Station Commander had also not exercised any discretion

¹ *Diljan v Minister of Police* [2022] ZASCA 103.

² 51 of 1977.

pertaining to whether the respondent should have been detained for longer than 2 hours.

- [4] The Court held that the respondent, owing to the fact that he was an 18-year-old first offender found in possession of 3 grams of marijuana who was co-operative with the police, qualified to be released on notice in terms of section 56 of the Criminal Procedure Act. The Court held that the police not only had a discretion to release the respondent, but they also had a duty to exercise this discretion in the respondent's favour. The Court concluded that the respondent's detention beyond 2 hours of his arrest was unlawful and that he was entitled to damages.
- [5] The appeal was dismissed with costs.