

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 14823/2021

(1)	REPORTABLE: <del>YES</del> / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: ✓
05/06/2021	
DATE	SIGNATURE

In the matter between:

THE MINISTER OF POLICE

1<sup>ST</sup> APPLICANT

THE NATIONAL COMMISSONER  
SOUTH AFRICAN POLICE SERVICES

2<sup>ND</sup> APPLICANT

THE GAUTENG PROVINCIAL COMMISSIONER  
SOUTH AFRICAN POLICE SERVICE

3<sup>RD</sup> APPLICANT

THE NATIONAL DIRECTOR OF  
PUBLIC PROSECUTIONS

4<sup>TH</sup> APPLICANT

AND

ZWANE KATLEHO PHOKA

RESPONDENT

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## J U D G M E N T

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### MABESELE J:

[1] The first, second, and third applicants are applying for leave to appeal against a part of the judgment and orders, dated the 4<sup>th</sup> of March 2025.

[2] The issues raised by the applicants in this application were already dealt with in the judgment, except an additional argument which is dealt with in paragraph 3, below.

[3] Counsel's argument is that the police arrested the accused on the bases of the report made to him by the complainant's mother and he reasonably suspected that offence was committed. His argument that the police officer did not have to ascertain whether the accused at the age of thirteen appreciated the offence alleged to have been committed, is incorrect. What counsel implies is that, for as long as a complaint is made to the police that a minor committed a criminal offence of rape, such a minor should be arrested on a "reasonable suspicion"<sup>1</sup> that he committed an offence without any prior inquiry by the police about the minor's criminal capacity, especially at the age of the accused, and, in the circumstances where the alleged offence was reported by the victim (who was also a minor) to her mother, seven years after the incident had occurred.

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<sup>1</sup>Emphasis

As correctly argued by counsel for the respondent, the police should, at the very least, have liaised with the prosecution for direction. The applicants have no prospects of success on appeal. Neither there are compelling reasons to grant leave to appeal. Accordingly, this application is dismissed. The first, second and third applicants should pay costs on scale B, jointly and severally, the one paying the other to be absolved. The costs should include costs of counsel.

  


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**M.M MABESELE**

(Judge of the High Court Gauteng Local Division)

Date of hearing : 2 June 2025

Date of judgment : 5 June 2025

APPEARANCES

For the Applicants : Adv. Mawila

Instructed by : State Attorneys.

For the Respondent : Adv. Nwakodo

Instructed by : Okafor Ma Attorneys Inc.