



**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA**

CASE NO:A702/14

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: ~~YES~~/NO  
(2) OF INTEREST TO OTHERS JUDGES: ~~YES~~/NO  
(3) REVISED

16/3/2016 *[Signature]*  
DATE SIGNATURE

17/3/2016

In the matter between:

**RIAAN KRUGER**

**APPELLANT**

and

**MINISTER OF SAFETY AND SECURITY**

**RESPONDENT**

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**JUDGMENT**

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**RANCHOD J:**

[1] This is an appeal against the decision of the court *a quo* (Molefe J) dismissing the appellant's claim for damages for an alleged unlawful arrest and detention by certain employees of the respondent. The appeal is with the leave of the court *a quo*.

[2] At the commencement of the appeal hearing the appellant sought and was granted condonation for the late filing of his heads of argument.

- [3] The plaintiff's claim was set out in the particulars of claim as follows:  
"3 On 30 May 2008 and at the Thorncliff-Mine in the district of Lydenburg, the plaintiff was arrested without a warrant by various members of the South African Police Services, acting within the course and scope of their employment with the defendant on an alleged charge of fraud and corruption under Nelspruit MAS207/4/2008.

...

7. At all the relevant times hereto the aforesaid members of the South African Police Services did not exercise his/her (sic) discretion to arrest the plaintiff properly."

- [4] A claim in the alternative is based on s 35(3) of the Constitution which provides:

"(3) Every accused person has the right to a fair trial, which includes the right -

To have their trial begin and conclude without delay."

However, this does not appear to have been persisted with in the trial nor was it argued on appeal.

- [5] A perusal of the trial record indicates that the thrust of the plaintiff's case was that he was not shown the warrant when he was arrested, nor later even though he had requested it several times.

- [6] Appellant's counsel said during submissions in this Court that it is not disputed that a valid warrant of arrest had been issued. It was also not disputed that a copy of the warrant was handed in, in the court *a quo* as exhibit A. It is also common cause that a copy was attached to the request for further particulars which was served upon the appellant's attorneys of record on 13 February 2014.

- [7] During the course of the trial the appellant sought, and was granted, two amendments to his particulars of claim but no amendment was sought to the effect that a valid warrant of arrest was issued and acted upon by the

relevant police officials effecting the arrest but that he was not shown the warrant upon demand by him.

[8] The plaintiff based his cause of action on making a factual averment that he was arrested without a warrant but the trial proceeded on the basis that the warrant was not shown to him. This is a different cause of action than the clause relied on in the Particulars of Claim and the evidence thereon ought to have been ruled as being irrelevant and therefore inadmissible. Plaintiff's case as pleaded was not proven.

[9] In these circumstances the appeal cannot succeed and I would dismiss the appeal with costs.

  
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RANCHO D J  
JUDGE OF THE HIGH COURT

I AGREE

  
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PRINSLOO J  
JUDGE OF THE HIGH COURT

I AGREE

  
\_\_\_\_\_  
FABRICIUS J  
JUDGE OF THE HIGH COURT

Appearances:

Counsel on behalf of Appellant	: Adv W Dreyer
Instructed by	: Van Zyl Le Roux Inc.
Counsel on behalf of Respondent	: Adv H.O.R Modisa
Instructed by	: State Attorney
Date heard	: 10 February 2016
Date delivered	: 17 March 2016