



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION,
DURBAN**

Case number: 10781/2013

In the matter between

SHIVRAM PARBHOONATH MAHARAJ

APPLICANT/PLAINTIFF

and

**THE MINISTER OF POLICE
DEFENDANT**

FIRST

RESPONDENT/

**THE MINISTER OF JUSTICE AND
CONSTITUTIONAL DEVELOPMENT
DEFENDANT**

SECOND RESPONDENT/

**THE NATIONAL DIRECTOR OF PUBLIC
PROSECUTIONS, KZN
DEFENDANT**

THIRD RESPONDENT /

**THE DIRECTOR OF PUBLIC
PROSECUTIONS**

FOURTH RESPONDENT/ DEFENDANT

ANESH BALRAJ

PROPOSED FIFTH RESPONDENT / DEFENDANT

Case number: 10782/2013

In the matter between

**SOLOMON ELPHUS SIKOBI
/PLAINTIFF**

APPLICANT

and

**THE MINISTER OF POLICE
DEFENDANT**

FIRST

RESPONDENT/

**THE MINISTER OF JUSTICE AND
CONSTITUTIONAL DEVELOPMENT
DEFENDANT**

SECOND RESPONDENT/

**THE NATIONAL DIRECTOR OF PUBLIC
PROSECUTIONS, KZN
DEFENDANT**

THIRD RESPONDENT /

**THE DIRECTOR OF PUBLIC
PROSECUTIONS**

FOURTH RESPONDENT/ DEFENDANT

ANESH BALRAJ

PROPOSED FIFTH RESPONDENT / DEFENDANT

ORDER

The following order is granted:

[1] In the circumstances the application falls to be dismissed with costs to be born jointly and severally by the applicants, the one paying the other to be absolved.

JUDGMENT

D. Pillay J

[1] The applicants are Shivram Maharaj and Solomon Elphus Sikobi. The first second, third, fourth and fifth respondents are the Minister of Police, the Minister of Justice and Constitutional Development, and the National Director of Public Prosecutions, KwaZulu-Natal.

[2] The applicants seek to join the fifth respondent Anesh Balraj as fifth respondent.

[3] Mr Balraj lodged a complaint against the plaintiffs with the South African Police Service on 14 February 2013. As a result, they were arrested on 25 February 2013 charged, prosecuted and convicted on 4 August 2015 for defeating the ends of justice and extortion. On 5 September 2017 the full bench of the KwaZulu-Natal Division of the High Court set aside their conviction and their sentence of three years imprisonment.

[4] The applicants failed to serve a copy of the pleadings on Mr Balraj. On its own this procedural non-compliance would not be sufficient cause for dismissing the application. The facts must be considered.

[5] On 6 March 2019 the applicants delivered this application for joinder. The action for damages arising from the applicants' alleged unlawful arrest and detention and malicious prosecution against the first to fourth respondents was launched on 25 October 2013. Any claim the applicants have against Mr Balraj arose when he lodged a complaint against the applicants allegedly on false premises. Lodging a

false complaint triggered the sequence of events that resulted in the arrest, detention, prosecution, conviction and eventual acquittal. Their cause of action arose on 14 February 2013. While Mr Balraj has a direct and substantial interest in the proceedings, and substantially the same facts give rise to the claims against the first to the fourth respondents, claims against him have prescribed with the effluxion of time. The cause of action did not arise consequent upon the appeal court's criticism of Mr Balraj as a witness. Their acquittal on appeal was not the cause of action. It merely fortified their claim.

[6] In the circumstances the application falls to be dismissed with costs to be born jointly and severally by the applicants, the one paying the other to be absolved.

D. Pillay J

Judge of the High Court of KwaZulu-Natal

APPEARANCES

N.B With the consent of the parties the matter was dealt with on the papers.

Date of Hearing : 2 June 2020

Date of Judgment : 2 June 2020

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