



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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Please note that the media summary is for the benefit of the media and does not form part of the judgment.

Naidoo v Minister of Police (20431/2014) [2015] ZASCA152 (2 October 2015)

MEDIA STATEMENT

Today the Supreme Court of Appeal (SCA) upheld the appeal by Ms Charmaine Naidoo (the appellant) and set aside the order of the Gauteng Local Division, Johannesburg. In the result, the Minister of Police (the respondent) was held vicariously liable for the wrongful acts of certain members of the South African Police Service (SAPS) and ordered to pay an amount of R280 000 to the appellant.

The issues before the SCA were whether the respondent should be held vicariously liable for the actions of his employees (members of the SAPS) and ordered to pay compensation to the appellant on three bases: (a) that they had wrongfully and negligently failed to comply with a legal duty owed to her in terms of the Domestic Violence Act 116 of 1998 (the Act) and the Regulations and National Instructions issued in terms of the Act, which comprehensively detail the manner in which victims of domestic violence must be treated and assisted; (b) unlawful arrest and detention; and (c) assault by a police officer.

The facts of the matter were as follows. In April 2010, the appellant was assaulted by her (then) husband at their common home, and rendered unconscious. Their daughter arranged for paramedics to transport her to a hospital, where she received medical treatment and was discharged the next day. She then went to the Lenasia South Police Station to lay a charge of assault against her husband. The police officer who attended to her furnished her with incorrect advice, and sent her to a magistrate's court to obtain a protection order prior to laying a charge. After visiting the magistrate's court and learning that this was not a prerequisite, the appellant returned to the Police Station, to again try to lay a charge.

This time, the police refused to help her until her husband had been consulted, and telephoned him to come in to the station. Upon his arrival, they attempted to convince the appellant to resolve the matter amicably and not to lay a charge. When this failed, the police informed her that should she insist on laying a charge, her husband would do the same, and both would be arrested. This is what then occurred, and they were both held overnight.

The next morning, they were escorted to a police van, to be transported to court. However, instead of being helped into the back of the van, a SAPS member violently hurled the appellant into it, causing her to suffer shock, pain and swelling in the right side of her body. At the hearing, the prosecutor then proceeded to withdraw both sets of charges. The appellant accordingly instituted a delictual action on the bases explained above (as well as three others, but these were abandoned).

The SCA held that in respect of claim (a), the police were under a statutory duty in terms of the Act, the Regulations promulgated under the Act, and the National Instructions to render assistance to victims of domestic violence. Here, instead of helping the appellant, the police hindered her attempts to lay a charge, instigated her husband to lay a counter-charge, and then arrested the appellant. The court held that this was in clear breach of their statutory duty, and found that the appellant had suffered psychological harm, and accordingly upheld claim (a).

In respect of claim (b), the SCA held that on the facts the decision to arrest the appellant was clearly unjustifiable, and so this claim was also upheld.

In respect of claim (c), the court a quo had held that the appellant was not entitled to succeed with this claim as the member of the SAPS responsible for the assault had passed away by the time that the matter had come to trial, and she had failed to join his estate, and that she had signed a statement withdrawing the charges against her husband which amounted to a waiver of her claim against the respondent. The SCA rejected these arguments and upheld this claim as well.

Accordingly, the appeal was upheld in respect of all three claims.

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