



SUPREME COURT OF APPEAL SOUTH AFRICA

MEDIA SUMMARY - JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal

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STATUS Immediate

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Bryan James de Klerk v Minister of Police (329/17) [2018] ZASCA 45 (28 March 2018)

Today, the Supreme Court of Appeal (SCA) upheld an appeal brought by the appellant, Bryan James de Klerk, against a judgment of the Gauteng Division, Pretoria. The crux of the issue on appeal concerned a delictual damages claim resulting from an alleged unlawful arrest and detention. The appellant was arrested on a charge of assault with intent to do grievous bodily harm (assault GBH) on 21 December 2012 and was taken to the Randburg magistrate court for his first appearance on the same day of his arrest. At court, his case was postponed and he was remanded in custody at the Johannesburg prison, bail was not entertained. The appellant remained in custody for approximately eight days after-which the complainant withdrew the charges levelled against him. He was subsequently released on 28 October 2012. The appellant instituted action against the Minister of Police (the respondent), on 28 October 2014, claiming damages for unlawful arrest and detention and malicious prosecution in the sum of R1 million.

The facts of this case were largely common cause save for the lawfulness or otherwise of the arrest and the quantum of damages. In the court a quo the appellant contended that assault GBH is not one of the offences referred to in schedule 1 of the Criminal Procedure Act 51 of 1977 (the Act) and as such the police were required to apply for a warrant of arrest when effecting such an arrest. Therefore, the arrest was unlawful. The respondent, on the other hand, contended that an arrest can be made in terms of s 40 (1) (b) of the Act which authorizes a peace officer to effect an arrest without a warrant. The court a quo held that the police were entitled to arrest without a warrant for “any offence, except the offence of escaping from lawful custody in circumstances other than circumstances referred to hereunder, the punishment whereof may be a period of imprisonment exceeding six months without the option of a fine”. It held further that in accordance with s 40 (1) (b), there was a reasonable suspicion garnered by the police officer that the appellant did in fact commit a schedule 1 offence. The court a quo further held that the appellants’ detention was not unlawful for the fact that he, upon his arrest, was taken to court to enable him to apply for bail, which the police did not object to. As a result, the appellants claim was dismissed with costs.

In this Court, the majority (per Shongwe ADP and Majiedt JA and Hughes AJA concurring) held that the arresting officer wrongfully assumed that the assault was committed with intent to do grievous bodily harm and that the offence is listed in schedule 1. The Court reasoned that schedule 1 lists an offence of assault when a dangerous wound is inflicted and the respondent, in its plea, did not rely on this relevant portion of schedule 1. Nothing was said about whether or not the wound inflicted was dangerous and there was no evidence adduced showing that an investigation was carried out to ascertain the nature and extent of the wound. It was further held that the arrest without a warrant, in the circumstances, was not lawfully permissible.

Dealing with the appellants’ second issue raised, of the unlawful detention, the majority held that the arresting officer plays a limited role in what transpires after the first appearance in court. His or her role is only to bring the suspect before court, which then determines whether the suspect ought to be detained pending the trial. The Court held that the respondent cannot be held liable for what transpired in court and for the further detention of the appellant. It further held that the respondent can

only be liable for the detention of two hours until the appellant appeared in court. The Court did not adjudicate over the malicious prosecution claim as it seemed to have been abandoned by the appellant.

In the circumstances, the Court upheld the appeal, and as compensation for the appellant ordered the respondent to pay a sum of R30 000 for general damages.

The minority, per Rogers AJA and Leach JA, would have upheld the appeal and ordered that the respondent pay the appellant the sum of R330 248, which includes the further detention after the first appearance in court and, the cost of suit including qualifying costs of two experts.