



CONSTITUTIONAL COURT OF SOUTH AFRICA

J E Mahlangu and Another v Minister of Police

CCT 88/20

Date of hearing: 12 November 2020

Date of Judgment: 14 May 2021

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

On Friday, 14 May 2021 at 10h00, the Constitutional Court handed down judgment in an application for leave to appeal against a portion of the judgment and order of the Supreme Court of Appeal (“SCA”). The SCA refused to hold the Minister of Police liable for the applicants’ entire period of detention following their unlawful arrest.

On 25 May 2005 at Middelburg, a couple and their two young children were killed. Without a warrant and not having a reasonable suspicion, a policeman arrested Mr Mahlangu, the first applicant, on 29 May 2005. The said policeman and others assaulted and tortured Mr Mahlangu. As a consequence, Mr Mahlangu caved in and falsely confessed his guilt. When the police pointed out that he could not possibly have committed the crimes all by himself, he falsely implicated an acquaintance of his, Mr Mtsweni. Mr Mtsweni was arrested the following day, 30 May 2005. As Mr Mtsweni has since passed away, the executrix of his estate, Ms Mailela, was substituted and is now the second applicant before this Court.

The prosecutor who received the police docket which contained the false confession was not informed that the confession was the result of assault and torture. At their first appearance in the Magistrates’ Court on 31 May 2005, the applicants were informed of their right to apply for bail. They indicated that they wanted to apply for bail, but the prosecutor applied for a postponement so that further investigations could be conducted. The prosecutor further stated that the State intended to oppose the applicants’ bail applications. The matter was then postponed, and the applicants were remanded in

custody until 14 June 2005. In addition to this first postponement, there was a total of 13 postponements, the last being on 7 February 2006. By this time three other accused had been arrested and joined in the criminal proceedings. The applicants were finally released by the court on 10 February 2006, after the Director of Public Prosecutions decided to withdraw the charges against them but the other three accused were subsequently prosecuted, convicted and sentenced.

The applicants instituted action before the Gauteng Division of the High Court, Pretoria, claiming from the respondent, the Minister of Police, damages arising from the dates of their respective unlawful arrests and detentions. The High Court held that the arrest and police detention of the applicants was unlawful but that the Minister could not be held liable in respect of the period after their court appearance because the applicants' continued detention was as a result of remands by the court. It awarded damages of R90 000 to Mr Mahlangu and R50 000 to Mr Mtsweni, and directed the Minister to pay their legal costs on the Magistrates' scale.

The applicants appealed to the Full Court of the same division against the High Court's refusal to grant them damages for the period after their court appearance. The gravamen of their argument was that the illegally obtained confession was the only basis that grounded their continued detention. The Full Court confirmed the trial court's refusal to award damages for the period of their judicial detention and dismissed the appeal with costs.

On further appeal, the SCA (by a majority of three to two) held that the inclusion by the police of the illegally obtained confession constituted a factual but not a legal cause of the applicants' continued detention beyond 14 June 2005, on which date the applicants could on probability have applied for bail, and would have been released. The SCA set aside the order of the Full Court and increased the amount of compensation to cover the period between 31 May and 14 June 2005. The minority judgment at the SCA would have awarded damages for the entire period of judicial detention.

In the Constitutional Court, the applicants submitted that this matter concerns whether the Minister can, after a wrongful arrest, be held liable for the entire period of an accused person's post-appearance detention, if a confession was obtained through torture and if it resulted in the further detention of the accused. They argued that the confession, which was extracted after the arrest, is the only cause of their continued detention.

The Minister of Police, on the other hand, contended that the arrest and detention are separate and distinct delicts in this matter. Thus, the applicants were obliged to establish on a balance of probabilities that the assault and the confession caused their detention after their second appearance in court. The Minister of Police contended that the further issue in this matter was whether the inclusion of the confession in the docket is the legal cause of the further detention of the applicants after 14 June 2005 and up to 10 February 2006.

In a unanimous judgment penned by Tshiqi J concurred in by (Jafta J, Khampepe J, Madlanga J, Mathopo AJ, Mhlantla J, Theron J and Victor AJ), the Constitutional Court noted that it was not disputed that the arrest of Messrs Mahlangu and Mtsweni was unlawful and amounted to an arbitrary deprivation of freedom substantively and procedurally. In this regard, all that the plaintiff had to establish was that an interference with their constitutional right not to be deprived of physical liberty has occurred. Once this has been established, the deprivation is prima facie unlawful and the defendant bears an onus to prove that there was a justification for the interference. It stated that the further remands by the Magistrate did not relieve the Minister of liability for the full detention period. This is so because the obligation on the police to disclose all relevant facts to the prosecutor remained throughout the period of detention. The wrongful arrest was therefore the basis on which the Minister should be held liable. The Constitutional Court stated that it was unnecessary for the applicants to allege and prove a separate delict as the SCA seemed to have required.

The Constitutional Court further held that the SCA misdirected itself in holding that the applicants' failure to apply for bail, which would have been granted, constituted an intervening act breaking the chain of legal causation. This is so because the majority judgment did not give proper consideration to the fact the trial in the High Court ran for six days with the police vehemently denying any wrongdoing. The majority view that the applicants would have had no problem in convincing a court hearing the bail application that the confession was false disregards this factor. Consequently, the SCA erred in refusing to award damages for the full period of the applicants' detention. The Minister was therefore liable to compensate the applicants for the period of their detention from the date of their arrest, being 30 May 2005, to the date of their release on 10 February 2006. The Minister was accordingly ordered to pay an amount of R550 000 to Mr Mahlangu and R500 000 to Mr Mtsweni with costs.