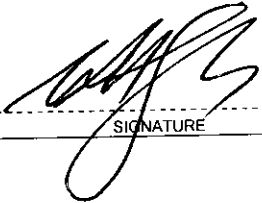


IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 50672/2014

23/10/2015

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: YES / NO. <input checked="" type="checkbox"/> YES
(2)	OF INTEREST TO OTHER JUDGES: YES / NO. <input checked="" type="checkbox"/> YES
(3)	REVISED.
23/10/15	
DATE	SIGNATURE

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA
PRIVATE BAG/PRIVAATSAK X67 PRETORIA 0001
2015 -10- 23
JUDGE'S SECRETARY REGTERS KLERK
GRIFFIER VAN DIE HOË HOF VAN SUID AFRIKA GAUTENG AFDELING, PRETORIA

In the matter between:

SABELO MISELO

APPLICANT

and

MINISTER OF SAFETY AND SECURITY
MINISTER OF JUSTICE
DEON ACKERMAN

1ST RESPONDENT
2ND RESPONDENT
3RD RESPONDENT

Coram: HUGHES J

JUDGMENT

Delivered on: 23 October 2015

Heard on: 21 October 2015

HUGHES J

1. This is an application for leave to appeal to the full Court of this Division against the whole of the judgment delivered on 20 February 2015.
2. The grounds upon which leave to appeal is sought as set out in the notice for leave to appeal are set out below:

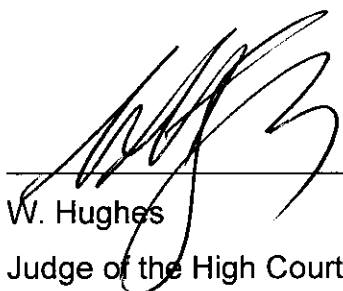
- 2.1. That the cause of action for the unlawful arrest and detention of the Appellant arose on 19 February 2012;
- 2.2. That the only reason for not notifying the organ of state earlier as he had no funds to consult an attorney before June 2014;
- 2.3. That the Appellant became aware of the DNA test results at the time when it was received by the 1st Respondent on 21 May 2012;
- 2.4. That the Appellant did not want to or intend to pursue his claim immediately after he was released;
- 2.5. That the Appellant waited plus minus 2 years and 4 months before giving the Respondents notice in terms of section 3(1)(a) of the Institution of Legal Proceedings against Certain Organs of State Act, Act 40 of 2002. ("the Act");
- 2.6. That the Appellant did not give a cogent explanation for the entire period in his delay in notifying the Respondents;
- 2.7. By not taking into consideration the severe prejudice the Appellant stands to suffer being unlawfully detained for a period of 17 [seventeen] months;
- 2.8. By considering the prospects of success as an (*sic*) requirement for a successful application whilst it is not required in section 3 (4) of the Act;
- 2.9. By ruling that it would not be in the interest of justice to grant the application for condonation filed by the Appellant;
- 2.10. That the late filing of the written notice provided for in section 3(1) of Act 40 of 2002 addressed to the Respondent, not be condoned;
- 2.11. That the costs of this application be paid by the Respondents, only if opposed;

3. It was argued by Adv. Van Niekerk for the Applicant that this leave for appeal is sought in terms of section 17(1)(a) of the Superior Courts Act 10 of 2013. For easy reference, the section appears below:

17 Leave to appeal

- (1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that-
- (a) (i) the appeal would have a reasonable prospect of success; or
 - (ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;

4. Adv. Van Niekerk argued that another court, upon considering the facts in this case with regards to condonation, may come to another conclusion. In addition, he added, there were other judgments, in this Division, in similar circumstances where condonation was in fact granted.
5. I am of the view that the different decisions reached in other judgments are based on the application of the dicta in *Madinda v Minister of Safety and Security* 2008 (4) SA 312 SCA to the facts of one's case.
6. In the circumstances, the examination of the entire facts by another court on a fair basis in order that proper administration of justice takes place, in my view, warrants the granting of leave to appeal to the full Court of this Division.
7. In the conclusion, another court may come to a different conclusion after application of *Madinda* supra.
8. The order made is that leave to appeal to the full Court of this Division is granted and costs are to be costs in the appeal.



W. Hughes
Judge of the High Court

Counsel for the Applicant: Adv. G. Van Niekerk
Instructed by: Cremmer and Strydom Attorneys
Ref: J Strydom/Jackie/2582

Attorney for the Respondent: State Attorney
Ref: 4812/2014/Z79/js/N Rajkoomar