



THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal
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Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

The Minister of Safety and Security v Schubach (437/13) [2014] ZASCA 216 (1 December 2014)

The Supreme Court of Appeal (SCA) today delivered a judgment partially upholding the appeal by the appellants, the Minister of Safety and Security and the Director of Public Prosecutions against the judgment of the North Gauteng High Court, Pretoria.

The issues before the SCA were whether the respondent's prosecution by the second appellant was malicious and if so, whether the amount of damages awarded to the respondent was correctly assessed.

The respondent's claim arose in the following circumstances:

The respondent, a former colonel in the South African Police, was on 14 March 2005 arrested for being in possession of unlicensed firearms, ammunition and explosives. Some of those firearms belonged to him and his wife, some were kept by him for investigation and others he kept for safekeeping on behalf of his friends. He was charged and in due course appeared in the Regional Court, Pretoria, but he was acquitted of all of the charges. Thereafter the respondent sued the Minister of Safety and Security and the Director of Public Prosecutions contending that his arrest and detention by the police officers was unlawful and that his prosecution was malicious. The high court found that the Director of Public Prosecutions should not have prosecuted the respondent on charges relating to the firearms and ammunition for which he and his wife had licences and accordingly found that the Director of Public Prosecutions had failed to show that its prosecution of the respondent on those charges was based on reasonable and probable cause. It found, however, that there was a reasonable and probable cause to prosecute the respondent on the other charges and that his prosecution on those charges were thus not malicious.

The SCA was in agreement that the Director of Public Prosecutions' decision to prosecute the respondent on charges relating to the firearms and ammunition for which he and his wife had licences was malicious. The SCA held, however, that the high court had erred in awarding him damages for the legal costs he alleged he had incurred in defending the criminal proceedings which were terminated in his favour as there was no proof that he had in fact incurred those costs. With regard to the amount awarded to the respondent for general damages the SCA held that the high court had incorrectly assessed the damages suffered by the respondent by ignoring the fact that his prosecution on the other charges was reasonable and therefore not malicious. The SCA accordingly reduced the amount of damages.