



**THE SUPREME COURT OF APPEAL OF SOUTH AFRICA**  
**MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF**  
**APPEAL**

**From:** The Registrar, Supreme Court of Appeal

**Date:** 11 October 2024

**Status:** Immediate

*The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal*

*Minister of Police v Nontsele (547/2022) [2024] ZASCA 137 (11 October 2024)*

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Today the Supreme Court of Appeal (SCA) handed down a judgment in which it upheld an appeal by the Minister of police against an order of the Mthatha high court. That court upheld a claim by Mabhaso Nontsele (Mr Nonstele) against the Minister of Police (the Minister) for his arrest and detention on a charge of rape.

Mr Nontsele was arrested and detained for a period of 527 days, from 8 December 2013 to 19 May 2015, for allegedly raping the complainant at a traditional ceremony. At the trial held on 15 July 2015, he was acquitted in terms of s 174 of the Criminal Procedure Act 51 of 1977 (the CPA), after the evidence of the State witnesses was led and the State conceded that there was no *prima facie* evidence against him. Mr Nontsele then instituted an action for damages against the Minister and the National Director of Public Prosecutions (the NDPP) for wrongful arrest and detention, malicious detention and malicious prosecution in the high court. The high court found that he had failed to prove the claims of unlawful arrest and malicious prosecution but found his detention to have been unlawful from the date of refusal of bail to date of his release. It awarded damages in the amount of R1.6 million.

The Minister applied for leave to appeal which was refused by the high court but granted by the SCA on petition to it. The respondent did not seek leave to cross-appeal, either from the high court or the SCA, but filed a notice to cross-appeal in the SCA against the high court's findings that neither unlawful arrest nor malicious prosecution had been proven by the respondent.

The core issues for determination by the SCA were whether a cross-appeal could be entertained in the absence of leave to appeal having been granted, and whether the high court was correct in finding that Mr Nontsele was wrongfully detained from the date of the refusal of bail to the date of his release.

The SCA was unanimous in its finding that it did not have jurisdiction to consider the cross-appeal in the absence of leave to cross-appeal. The majority of the SCA (the majority), per Dambuza JA (with Makgoga and Mabindla-Boqwana JJA concurring), further found that Mr Nontsele's damages claim in respect of the extended detention, from the date of refusal of bail, centred on his allegation, in the summons, that, in opposing bail the police acted maliciously and in collusion with the prosecution. According to the majority, Mr Nontsele's damages claim for the extended detention, was not founded on wrongful detention. Mr Nontsele had failed to provide evidence of this collusion and/or demonstrate that the opposition to bail was without reasonable cause or driven by improper

motive. As a result, the SCA struck from the court roll Mr Nontsele's attempt to cross-appeal and upheld the Minister's appeal.

The minority of the SCA, per Tolmay AJA (with Smith JA concurring), would have dismissed the Minister's appeal on the basis that the strength of the case against Mr Nontsele did not justify the opposition to bail as the evidence against him was circumstantial.

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