



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: 3 February 2021

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

Canelli v Canelli and Others (Case no 205/2019) [2021] ZASCA 012 (3 February 2021)

Today the Supreme Court of Appeal (SCA) handed down judgment where the appeal against the dismissal of the claims against the first respondent for malicious prosecution and defamation was upheld against an order of the Western Cape Division of the High Court, Cape Town.

The issues before the SCA were whether the high court was correct in holding that the evidence did not establish that the first respondent had acted *animo iniuriandi* in relation to both the claims for damages for malicious prosecution and defamation; that she acted without reasonable and probable cause when laying the criminal charges; and that the appellant's arrest and detention was wrongful.

The plaintiff and defendant were married in September 2004. They lived on a farm, Driefontein, in the district of Ceres, near Cape Town, until they began living separately, in December 2009. He moved to the town and she remained on the farm. They were divorced on 24 July 2012. The claims arose from a false complaint the first respondent made to the police, wherein she alleged the appellant had brutally assaulted and raped her on 18 September 2012. Following her complaint, the police arrested, charged and detained the appellant. He was released on bail, after spending 18 days in custody. The charges were withdrawn a year later, on 11 September 2013. The appellant explained that he was innocent, which was clear from the fact that he had been elsewhere at the time of the alleged incident. This notwithstanding, he was taken into custody and charged which led to the case against the Minister for unlawful arrest and detention. Two years after the incident, the appellant issued summons against the respondent, the Minister and the NPA for malicious prosecution and defamation. The appellant claimed

damages from: the first respondent for malicious prosecution and defamation; the Minister for unlawful arrest and detention; and the NPA, for wrongful prosecution.

In response to the claims for malicious prosecution and defamation, arising from the false allegations against the appellant, the first respondent instructed her attorneys not only to defend the claim and file a plea, but also to counterclaim for damages arising from the alleged assault and rape. The allegations relied upon for this claim were the same she had made in her complaint to the police, two years earlier.

The appellant's action against the respondents proceeded in the high court. The appellant's evidence was that he had never physically or sexually abused the defendant, and that the charges against him regarding the violent sexual assault were false. The high court found that the appellant had not assaulted and raped the first respondent, as alleged. Nevertheless, it dismissed both the appellant's claims against the first respondent on the ground that she reasonably believed he had attacked her.

On appeal the SCA found that there was no dispute that the parties had a destructive marriage, which ultimately led to their separation and divorce. The SCA held that on a conspectus of the evidence, the appellant had not attacked the first respondent. It held further that the high court erred in dismissing the plaintiff's claims for malicious prosecution and defamation against the defendant.

The majority concluded that it was evident from the high court's judgment that it failed to appreciate and consider the requirements for the admission of evidence. The statement, admitted as evidence, was made by the first respondent, whose marriage with the appellant had ended in an acrimonious divorce. She had a strong motive to falsely implicate him in an unspeakable crime. The SCA stated further that the trial court showed no awareness of the danger of admitting the statement. The first respondent's allegations against her husband in the statement were indisputably false, as the high court was compelled to accept.

The dissenting judgment herein found that the high court's findings that the appellant had mentally, psychologically, emotionally and verbally abused the first respondent, which had a debilitating effect on her and caused her to suffer unwanted stress and harm were unassailable and that it was beyond question that the first respondent had suffered severe trauma at the time of the attack. The minority judgment found that the appellant had failed to demonstrate that the findings of fact by the trial court were plainly wrong and his claim was rightly dismissed on this ground. The minority concluded that a proper conspectus of the evidence did not lead to the plausible or probable conclusion that the prosecution was instigated without reasonable and probable cause.