

SOUTH AFRICA / JUDGMENT

Nduna v Minister of Safety and Security (90/2014) [2017] ZANWHC 53 (24 July 2017)

[2017] ZANWHC 53

COURT

North West High Court, Mafikeng

BEFORE

GURA

CASE / FILE NUMBER

90/2014

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IN THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION, MAHIKENG

CASE NO: 90/2014

In the matter between:

PENELOPE NDUNA

PLAINTIFF

and

THE MINISTER OF SAFETY & SECURITY DEFENDANT

J U D G M E N T

GURA J:

Introduction

[1] The plaintiff sued the defendant for payment of an amount R350 000 – 00 being damages consequent upon her (plaintiff) unlawful arrest and detention by members of the South African Police Services on 30 May 2012 at Mmabatho. The arrest was carried out without a warrant. The defendant admits the arrest but avers that it was lawful. The defendant called four witnesses. The evidence of such witnesses appears hereafter.

The defendant's version

[2] According to Captain Mabale, on 30 April 2012, he and other police officers were doing routine or random compliance inspections of various taverns in Braklaagte village in the area of Zeerust. They went to a certain tavern known as Sandton Liquor Store owned by Mr

Edward Marope. On their arrival there, the police requested to see the intoxicating liquor licence. Mr Marope produced the licence and upon perusing it, the Captain became suspicious about the validity or authenticity thereof as it was hand-written. According to the Captain, he knew that liquor licences had to be generated by means of a computer. The liquor licence in question appears on page 6 of Bundle A of the trial bundle.

- [3] He then requested Mr Marope to give him the licence so that he could go and make a copy thereof for himself in order to take it to the Liquor Board for verification. To that end he directed a letter to the Liquor Board and attached the said licence. After receipt of these documents, Mr Matonkonyane of the Liquor Board invited him to attend a meeting with officials of the Liquor Board on 11 May 2012. At that meeting, and after perusing the liquor licence, the officials of the Liquor Board realized that it had been forged in that the licence number or reference number appearing thereon had been issued to Barcelos Restaurant in Rustenburg. They further told the Captain that the receipt number appearing on the licence had been issued to Bamboo Eating House and not to Sandton Liquor Store.
- [4] Being satisfied from the explanation of the officials of the Liquor Board that fraud had been committed in the issuing of Mr Marope's licence, the Captain then went to open a criminal case against Mr Marope on 18 May 2012 whereafter the docket was assigned to Warrant Officer Motsikoa for further investigations.
- [5] Warrant Officer Motsikoa received the docket on 21 May 2012. After perusing it, he went to interview Mr Marope. The information he received from Mr Marope was such that he realised that he was innocent because his application for a liquor licence was done by the consultant, being Mr Petrus Molatlhegi. After obtaining the statement from Mr Marope, he then phoned Mr Molatlhegi requesting him to come and see him. Indeed in due course Mr Molatlhegi went to his office where he interviewed him concerning Mr Marope's application for a liquor licence. During the interview, and as he was already having the liquor licence (page 6 of Bundle A) in the docket, the Warrant Officer asked Mr Molatlhegi why it was hand-written. Mr Molatlhegi responded by saying he and Ms Penny Nduna (the Plaintiff) have worked together in regard to the issuing of liquor licences. Mr Molatlhegi even produced a receipt for R100.00 (appearing on page 8 of Bundle A) and gave it to him. When Warrant Officer Motsikoa asked him who filled it in, he said he did so himself.
- [6] He asked him why it was possible for him (Mr Molatlhegi) to fill in documents of the Liquor Board. His answer was that Ms Nduna would usually give him documents belonging to the Liquor Board to fill them in whenever he made applications on behalf of his clients. Warrant Officer Motsikoa showed him the liquor licence (on page 6 of Bundle A) and after looking at it, he asked him who filled it in. Mr Molatlhegi's response was that just like the receipt, he was the one who completed it himself. For certainty purposes, he asked him whether he was saying the writing on the licence and on the receipt was his, Mr Molatlhegi confirmed that. When asked where he got the licence number or reference number from, he said he got it from Ms Nduna. When he asked him how he got it, he told him that Ms Nduna usually had a lot of files on her table and she gave

him one of them from which he could copy that information.

- [7] When he brought it to Mr Molatlhegi's attention that the liquor licence number was that of Barcelos Restaurant and the receipt number that of Bamboo Eating House whereas the receipt issued to Mr Marope had a different receipt number, his response was that he was given the file by Ms Nduna to copy the licence number from it. Warrant Officer Motsikoa then told him that he was going to proceed with the investigations and would return to him in due course. The interview ended there.
- [8] As part of his investigations, Warrant Officer Motsikoa went to Barcelos Restaurant in Rustenburg. On arrival there, he told the owner of that business that his licence number had been issued to someone else. He showed him the liquor licence of Mr Marope as well as the liquor licence number appearing on it. The owner of Barcelos went to fetch his licence and on comparing his to that of Mr Marope, he realized that the liquor licence numbers were the same. Warrant Officer Motsikoa then took down his statement and attached it to the docket.
- [9] In the process of investigations, Warrant Officer Motsikoa and Constable Mosella (the defendant's fourth witness), went to the Liquor Board on 29 May 2012 to see Ms Nduna. There they met Mr Matonkonyane who took them to Ms Nduna's office. They found her alone in her office and Warrant Officer Motsikoa informed her that they had come to see her in connection with a fraud case. He asked her if she knew Yster (i.e. Mr Molatlhegi, the consultant) and she answered in the affirmative. She was further asked how she knew him, whereupon she stated that he was a consultant who dealt with liquor licence applications for his clients at the Liquor Board. He told her that Mr Marope was found in possession of a fraudulent liquor licence which was hand-written and given to him by Yster. When Ms Nduna was asked if it was proper for a licence to be hand-written, she said that there was nothing wrong in issuing it that way. When Warrant Officer Motsikoa told her that according to his knowledge it must be printed, she told him that if there was a backlog, they would issue hand-written licences.
- [10] The Warrant Officer expressed his concern about the licence number as well as the receipt and asked her how did both of them come into Yster's possession. She said as her table was always full of files, she told Yster to take any file on her table to copy information therefrom in order to fill in the licence number. He then asked her if she confirmed that Yster was the one who personally filled in the information appearing both in the licence and the receipt. Her response was that indeed Yster was the one who completed it. He then asked for a copy of the receipt book to check whether the handwriting was the same with the one appearing in the receipt itself. Ms Nduna then called Ms Shuping to bring the receipt book.
- [11] When the receipt book was checked, it was discovered that the relevant book copy of the receipt (page 8 of Bundle A) was missing.

It was at that stage that Ms Nduna and Ms Shuping started blaming each other for that missing page. Ms Shuping then said every time the blame is put on her and she had already reported this to her seniors. Warrant Officer Motsikoa then asked Ms Shuping to make a witness statement, which she did.

[12] Ms Nduna was then told by the Warrant Officer that based on the reasonable suspicion that she was a party to fraud, she was going to be arrested. She then requested that before she could be arrested, they must go to her superior, Ms Jood, to explain all this to her. When Ms Jood was told that the police were going to arrest Ms Nduna, she asked that she should not be arrested at that stage as the Board was still in session. Ms Jood's pleas were considered and a decision was made not to arrest Ms Nduna in order to avoid causing a disruption of services. The two police officers then drove back to Zeerust. On the way back to Zeerust, and as Ms Nduna had admitted her participation in the fraudulent issuing of the liquor licence in question, Warrant Officer Motsikoa instructed Constable Mosella to go and arrest Ms Nduna the following day, 30 May 2012 as he was going to Pretoria in connection with another case.

[13] The third witness, Mr Molatlhegi (Yster) testified that he had a consultancy business known as Pusuloso Consultants, and during

December 2011, he was processing applications for liquor licences on behalf of his clients. He knew Mr Marope as he approached him (Yster) with a request to process an application for a liquor licence. He confirmed that he personally completed the details appearing on the liquor licence and the receipt (being documents appearing on pages 6 and 8 respectively of Bundle A). He said he got these documents from the Liquor Board, specifically from Ms Nduna. According to him, he had gone to the Liquor Board to check progress in connection with the application for a licence for Sandton Liquor Tavern since it had been a while that it had been lodged. He was told that the new Board had not yet processed it.

[14] Ms Nduna then gave him documents and instructed him to fill them in. This was done in order to complete the renewal licence. To achieve this purpose Ms Nduna gave him some files which were on her table from which to take down the liquor licence number / reference number as well as the receipt number.

[15] He was subsequently called by the police who informed him that a case of fraud had been opened against him and he should come to Zeerust Police Station. He confirmed meeting Warrant Officer Motsikoa who referred to him to page 6 of Bundle A and informed him that it formed the subject-matter of the fraud case. When Warrant Officer Motsikoa asked him if he knew anything about it, he said he got the document from Ms Nduna. At that stage the Warrant Officer did not have the document on page 8 of Bundle A, so Yster told him about it. The Warrant Officer requested Mr Molatlhegi to give him a copy thereof which he brought the subsequent day.

[16] The events leading to the arrest of Yster and Ms Nduna were as follows: He (Yster) was at the Liquor Board for a hearing.

The two of them (Yster and Ms Nduna) were then taken to Mahikeng Police Station by the police where some documents were completed.

The police then told them that they were under arrest but they were not detained at Mahikeng because they were instructed to go home and to report at Zeerust Police Station at 07H00 the subsequent day. Indeed the subsequent day at 07H00 Yster and Ms Nduna met at the Police Station in Zeerust. At that Police Station, they were in the charge office but they were never taken to the police cells. After the police completed some documents they were instructed to wait at the charge office because a vehicle would come in order to convey them to Court. In Court they were granted bail of R1000-00 each on that very same morning.

- [17] Cross-examination on Yster revealed the following information: he was asked if he paid any money at the Board before he was given the documents on pages 6 and 8 of the trial Bundle. He said he paid more than R100-00. Counsel insisted on the exact amount he had paid and he said Ms Nduna told him that before she could give him the papers he should buy lunch for her. Yster did comply with this request. On his return, he paid R150-00 to Ms Nduna at the Board. He was asked if he was not surprised to be given a R100-00 receipt when he had actually paid R150-00 and he stated that he was surprised. This was his first time to pay an official for services. He was asked if on the afternoon of 30 May 2012, at Mahikeng Police Station, they were arrested. His response was that they were told verbally that they were under arrest. However, thereafter they were told to go home and to report at Zeerust Police Station the subsequent day.
- [18] The next witness was Constable Mosella who confirmed that on 29 May 2012 she accompanied Warrant Officer Motsikoa to the Liquor Board in the course of the investigation of a fraud case. The purpose of their visit was to interview Ms Nduna. Upon their arrival at the Board Mr Matonkonyane lead them to Ms Nduna's office. After introducing themselves to Ms Nduna, the Warrant Officer interviewed her. Finally he informed her that he was now arresting her. Ms Nduna took the two police officers to Ms Jood's office and she informed her (Jood) that the police were arresting her. Ms Jood told the police that they should not arrest her (Nduna) because the Liquor Board was still in session. Warrant Officer Motsikoa told them that they (the police) would come back but he did not specify when. Along the way from Mahikeng to Zeerust, Warrant Officer Motsikoa instructed Constable Mosella to go back to Ms Nduna the subsequent day, 30 May 2012, to arrest her.
- [19] On 30 May 2012 Constable Mosella left Zeerust together with Constable Mosiane and they arrived at the Liquor Board between 9H00 and 10H00. They found the Liquor Board in session. They waited the whole day there. The Board dispersed shortly after 16H00. Thereafter, they saw Ms Nduna and Mr Molatlhegi going to the parking lot. They approached them, introduced themselves and informed them that they were under arrest in connection with the fraud case. They explained their rights to them. From there they all proceeded to Mahikeng Police Station and arrived there around 17H00. They took them to the crime office to do paperwork. They were able to take only their fingerprints and could not fill in bail forms

and warning statements as these forms were not available. Due to the absence of other forms, Constable Mosella called the late Lieutenant Nko, her commander in Zeerust, for an advice, telling him that they were at Mahikeng Police Station but they only got fingerprints forms and not the bail and warning statements forms. Lieutenant Nko then told her that if all other forms were unavailable, the proper thing to do was to give them form 496 (summons to appear in court), but seeing that other forms were not available, they should warn them to come to the police station the following day to finalise charging them.

[20] According to Constable Mosella, on 31 May 2012 both Yster and Ms Nduna reported at the offices of the Detective Branch at Zeerust

Police Station at 07H00. She said she again explained their rights and informed them further that they were under arrest.

[21] She then requested them to accompany them to the charge office at the police station to complete the process of charging them.

Thereafter section 35 notices were completed. At the charge office, they remained in the Radio Room and were never detained in the police cells. After all the paperwork had been completed, they were handed over to members of the charge office to take them to court.

The plaintiff's version

[22] The plaintiff's only witness was Ms Nduna personally. What follows is her account of the events leading to her arrest. During 2012 she was in the service of the Department of Finance, Economic and Enterprise Development; the Directorate Liquor Regulations, stationed at the North West Development Corporation building at Mmabatho. Her duties were that of a data capturer, checking the list of all liquor applications and the issuing of new licences and certificates for removal and transfer of liquor licences. At that time she was working with Ms Shuping together with one Ms Rebecca Balepile. Ms Jood was a Director in the Liquor Regulations Directorate.

[23] On 11 May 2012 Captain Mabale together with Constable Goniwe were brought to her office by Mr Nkosana Msimanga. They were investigating a hand-written licence, i.e. a renewal licence and not necessarily a licence. Captain Mabale and Costable Goniwe were having the document appearing on page 6 of Bundle A, being a renewal of a liquor licence. She confirmed that it had been issued to Mr Marope. She recognised the handwriting on that document as that of Yster. She saw the document for the first time when it was produced by Captain Mabale. She confirmed that the receipt number at the bottom of the renewal licence was 2627749. The receipt number was the same as the one appearing on the document on page 11 of Bundle A. The handwriting on page 11 was that of Ms Shuping. The handwriting on the receipt appearing on page 8 of Bundle A was that of Yster.

- [24] The renewal licence on page 9 of Bundle A was that of Barcelos Restaurant and the receipt number appearing on it was the same as that on page 10 of Bundle A. Both documents were filled in by Ms Shuping. Ms Nduna could not tell Captain Mabale and Constable Goniwe about the handwriting as they did not have these documents in their possession.
- [25] On 29 May 2012 Warrant Officer Motsikoa, Constables Bentley and Mosella visited her. They were not brought to her office by any of her colleagues because they met her at the door of her office. Warrant Officer Motsikoa, who was the leader of the trio, told her that they had come to see her in connection with a forged licence and further that they were there to effect an arrest. At that stage the police did not have the forged licence but only the receipt appearing on page 8 of Bundle A. The Warrant Officer never asked anything nor made any enquiries about the receipt on page 8 of Bundle A. He only told her that he had been furnished with names, and that Yster had furnished him with her name. She further said Warrant Officer Motsikoa told her that Yster told him that he gave her papers with money in them. The Warrant Officer did not say how much money was allegedly given to her (Ms Nduna).
- [26] She then asked Warrant Officer Motsikoa as to when did he do his investigations because she (Ms Nduna) had been waiting for the police to get a search warrant so that she could open a case. The search warrant would authorise the police to search at Yster's house to check if he did not do this on his own. She denied Warrant Officer Motsikoa's version that she had confirmed having given the documents to Yster. She only heard about this version for the first time in court. She said at the time when Warrant Officer Motsikoa spoke to her, she was with three of her colleagues, being Rebecca, Ms Annie Mabodi and Ms Shuping. Ms Shuping brought the receipt book which they showed to the police. Although the police did not explain the purpose of their visit to Ms Jood, they nevertheless talked about a forged licence and further that they had come there to effect an arrest.
- [27] Ms Jood then warned them to be careful not to arrest her witness and further that she (Ms Nduna) had taken the matter up with the Board which had been tabled for the next day, i.e. on 30 May 2012. When she was asked by her Counsel if Warrant Officer Motsikoa ever said anything about arresting anybody, her response was that the police said they were going to arrest the four of them, though no arrest was effected that afternoon of 29 May 2012.
- [28] Constables Mosella, Mosiane and Bentley came on 30 May 2012 but proceeded to the Board meeting wherein they found Ms Nduna.

They waited for the whole day and were the last to be called in at about 16H00. After Ms Jood had explained everything about the case, Ms Shuping was called to come to the Board room and she told the people that she did not know how the documents landed in the hands of Yster. Asked what was Yster's response to this allegation, she said he said he got the papers from her (Ms Nduna). When he said that, Ms Nduna reminded him that it had been for a long time since they were not on talking terms.

- [29] After the Board meeting, the police remained inside the Board room with Yster, Ms Nduna and Ms Shuping. It was then that Constable Bentley asked her (Nduna) to explain what actually happened, to which she responded by saying she did not know what happened. Ms Shuping told them that somebody might have taken the receipt book from her custody, used it and returned it. Yster then said it appeared that Ms Nduna did not want to work on his licences. He further said she (Nduna) had asked for an amount of R150.00 from him. She told Molatlhegi that he knew that he was not telling the truth. Asked if Ms Shuping was asked to give an explanation about her hand-writing on documents on pages 9 and 10 of Bundle A, she said Ms Shuping was never asked about it.
- [30] After the deliberations they were taken to Mahikeng Police Station where the police took their fingerprints, filled in certain forms which they were asked to sign. She then signed the document on page 24 of Bundle A only at Mahikeng and not at Zeerust. She was arrested on 30 May 2012 at Mahikeng Police Station. They were requested to report at Zeerust the following day, 31 May 2012.
- [31] She reported at Zeerust Police Station on 31 May 2012 at 07H05 and was put in some sort of a cage. Mosiane came to her and explained her rights to her and about an hour later they were taken to Lehurutshe Magistrate's Court in a police van and she was seated in the front seat. She was kept in a cell at court. She was released on bail towards lunch time.

Legal Principles

- [32] Section 40(1)(b) of the Criminal Procedure Act[1] provides:

“(1) A peace officer may without a warrant arrest any person –

- (a) — — —
- (b) who he reasonably suspects of having admitted an offence referred to in Schedule 1, other than the offence of escaping from lawful custody.”

The jurisdictional facts which must exist before the power conferred by section 40(1)(b) of the Act may be invoked are as follows: (1) The arrestor must be a peace officer, (2) he/she must have entertained a suspicion, (3) the suspicion was that the arrestee

committed a Schedule 1 offence and (4) the suspicion was based on reasonable ground.[2]

- [33] The peace officer does not necessarily have to effect an arrest simply because a Schedule 1 offence is reasonably suspected to have been committed. He/she has a discretion whether or not to effect an arrest. In this regard Harms DP[3] expressed himself as follows:

“Discretion

- [28] Once the jurisdictional facts for an arrest, whether in terms of any paragraph of s 40(1) or in terms of s 43 are present, a discretion arises. The question whether there are any constraints on the exercise of discretionary powers is essentially a matter of construction of the empowering statute in a manner that is consistent with the Constitution. In other words,

once the required jurisdictional facts are present the discretion whether or not to arrest arises. The officer, it should be emphasised, is not obliged to effect an arrest. This was made clear by this court in relation to s 43 in *Groenewald v Minister of Justice*.

[29] As far as s 40(1)(b) is concerned, Van Heerden JA said the following in *Duncan* (at 818H-J):

‘If the jurisdictional requirements are satisfied, the peace officer may invoke the power conferred by the subsection, ie, he may arrest the suspect. In other words, he then has a discretion as to whether or not to exercise that power (cf *Holgate-Mohammed v Duke* [1984] 1 All E R 1054 (HL) at 1057). No doubt the discretion must be properly exercised. But the grounds on which the exercise of such a discretion can be questioned are narrowly circumscribed. Whether every improper application of a discretion conferred by the subsection will render an arrest unlawful, need not be considered because it does not arise in this case.’

At para [39], the Court stated:

“[39] This would mean that peace officers are entitled to exercise their discretion as they see fit, provided that they stay within the bounds of rationality. The standard is not breached because an officer exercises the discretion in a manner other than that deemed optimal by the court. A number of choices may be open to him, all of which may fall within the range of rationality. The standard is not perfection, or even the optimum, judged from the vantage of hindsight and so long as the discretion is exercised within this range, the standard is not breached.”

[34] It is trite law that any arrest without a warrant is *prima facie* wrongful and unlawful. The arresting officer, who exercises the powers in section 40(1)(b) of the Act must, at the time of the arrest, have a reasonable suspicion that the plaintiff had committed

a Schedule 1 offence.[4] In *Mabona and Another v Minister of Law and Order and Others*,[5] Jones J made the following emphasis:

“It seems to me that in evaluating his information a reasonable man would bear in mind that the section authorizes drastic police action. It authorizes an arrest on the strength of a suspicion and without the need to swear out a warrant, it is something which otherwise would be an invasion of private rights and personal liberty. The reasonable man will therefore analyze and assess the quality of the information at his disposal critically. He will not lightly accept information to his disposal or without checking it where it can be checked. It is only after an examination of this kind that he will allow himself to ascertain a suspicion which will justify an arrest. . . . if not, it will be arbitrary and not reasonable suspicion.”

Evaluation of the evidence

[35] It is common cause that the liquor licence (renewal licence) which was issued to Mr Marope is fraudulent. Mr Molatlhegi (Yster) made an affidavit to Warrant Officer Motsikoa alleging that he is the one who wrote out the licence on the instructions of Ms Nduna (the plaintiff). He explained in full the circumstances surrounding the fraudulent issue of the licence. He acknowledged that the handwriting on the licence was his. Not only did Mr Molatlhegi implicate Ms Nduna in this fraudulent transaction, but he also implicated himself. He never

tried to down-play the role which he played in the commission of this offence. His evidence before this Court is consistent with what he is alleged to have told Warrant Officer Motsikoa at his (detective's) office. Cross-examination did not do any damage to his evidence-in-chief. He was bold and certain about what he told Court. He responded to questions promptly without waste of time. During cross-examination, he brought in new evidence to the effect that on Ms Nduna's request he bought her food for lunch and further gave her R150-00 just before the fraudulent licence was issued. I am convinced that Mr Molatlhegi is an honest witness.

[36] Warrant Officer Motsikoa did not know Ms Nduna prior to the day when he interviewed her. He did not even know Ms Shuping who was at that time, working with Ms Nduna. He has no motive to falsely implicate the plaintiff. The Warrant Officer testified that Ms Nduna admitted to him that the fraudulent licence was issued by Mr Molatlhegi per her instruction. It was only when he demanded to see the licence book copy when he discovered that the book copy of this licence, had been unlawfully torn out – seemingly by an unknown person. Despite the plaintiff's denial of the alleged admission to Warrant Officer Motsikoa, I am satisfied that the Warrant Officer was an impartial and reliable witness.

[37] In paragraph 3 of her particulars of claim, the plaintiff avers that she was detained at Mmabatho Police Station on 30 May

2012. In Court she testified that she was not detained at Mmabatho Police Station. Ms Nduna conceded that the documents mentioned at pages 6 and 8 of Bundle A are normally in the custody of the Liquor Board officials and that someone who works in the Liquor Board must have co-operated with Mr Molatlhegi in this fraud. She (Nduna) denied that Warrant Officer Motsikoa interviewed her in her office; all he did was to inform her that he had come to arrest her. It is worthy to note that Warrant Officer Motsikoa's version in this regard was not challenged in cross-examination. In cross-examination she testified that the relationship between her and Mr Molatlhegi was strained to such an extent that the latter is alleged to have told Ms Nduna's colleagues that she (Nduna) was "laastig" and deserved to be dismissed from work. All this information was not canvassed with Warrant Officer Motsikoa during cross-examination. The version of Ms Nduna, being a denial of wrong doing stands against a strong body of evidence from two witnesses (Warrant Officer Motsikoa and Mr Molatlhegi) who have been found to be honest witnesses.

Conclusion

[38] It is my view that at the time just before Warrant Officer Motsikoa warned the plaintiff that she was under arrest, he was armed with more than enough information which justified an arrest without a warrant. From Mr Molatlhegi's explanation to the police, it was clear that a crime of fraud had been committed by Mr Molatlhegi and an official of the Liquor Board. Not only did Molatlhegi implicate Ms Nduna in her absence when he was with the police but in Court, face to face with her (Nduna) he did not hesitate to elaborate the details of her participation. This Court finds that the defendant has sufficiently discharged the onus which

rests upon him. I am satisfied that any reasonable police officer, armed with the same information would have entertained a suspicion based on reasonable grounds that a crime of fraud had been committed. Consequently, the police's conduct in arresting Ms Nduna was not wrongful and she is not entitled to recover any damages from the defendant.

Order

[39] In the result, the following order is made:

The plaintiff's claim is dismissed with costs.

SAMKELO GURA

JUDGE OF THE HIGH COURT

NORTH WEST DIVISION

APPEARANCES:

DATE OF HEARING:

07 FEBRUARY 2017

DATE OF

JUDGMENT:

24 JULY 2017

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COUNSEL FOR DEFENDANT: ADV J. HOLLAND-MUTËR

ATTORNEYS FOR PLAINTIFF: W. J. COETZER ATTORNEYS

ATTORNEYS FOR DEFENDANT: THE STATE ATTORNEY

[1] Act 51 of 1977

[2] Duncan v Minister of Law and Order 1986 (2) SA 805 (AD) at 816F-H; Minister of Safety and Security v Sekhoto 2011 (5) SA 367 (SCA)

[3] At paras [28] and [29] of Sekhoto case

[4] Harms, Amler's Precedents on Pleadings 6th ed page 40

[5] 1988 (2) SA 654 (SE) at 658F-H

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