



**IN THE HIGH COURT OF SWAZILAND  
JUDGMENT**

Case No. 2855/2009

In the matter between

**LUCKY PHIRI**

**PLAINTIFF**

and

**THE COMMISSIONER OF POLICE**

**1<sup>ST</sup> DEFENDANT**

**THE ATTORNEY GENERAL**

**2<sup>ND</sup> DEFENDANT**

**Neutral citation:** Lucky Phiri vs The Commissioner of Police and another (2855/2009) 20th September **2012 [SZHC] 240**

**Coram:** **OTA J.**

**Trial ended:** **10<sup>th</sup> September 2012**

**Delivered:** **20<sup>th</sup> September 2012**

**Summary:** **Claim for damages for unlawful arrest and detention:- reasonable grounds for suspicion leading to an arrest pursuant to section 22 (b) of the Criminal Procedure and Evidence Act 67/1938, as amended:- Principles thereof.**

**OTA J.**

[1] The Plaintiff instituted action proceedings against the Defendants namely:-  
The Commissioner of Police and the Attorney General, claiming *inter alia*  
the sum of E50,000=00 (Fifty Thousand Emalangeni) being damages for  
unlawful arrest and detention, interest at the rate of 9% a tempora morae and  
costs of suit.

[ 2] It is common cause in this case that on the 22<sup>nd</sup> of March 2009, the Police  
arrested the Plaintiff without warrant, and thereafter detained him until the  
following day, the 23<sup>rd</sup> of March 2009 when he was admitted to bail by a  
Magistrate around 3 p.m.

[3] In paragraphs 4 to 10 of his particulars of claim the Plaintiff alleged the  
following facts:-

“

4. *On or about the 22<sup>nd</sup> March, 2009 at Matsapha, the Plaintiff was  
unlawfully arrested by Matsapha Traffic Police and charged with*

*driving under the influence of intoxicating liquor and failing to comply with police instructions to be detained, and was accordingly detained at Matsapha Police Station.*

5. *The Traffic Police were at all material times acting within the course and scope of their employment as members of the Royal Swaziland Police.*
6. *The arrest of the Plaintiff was unlawful as Plaintiff was not driving under the influence of intoxicating liquor when Plaintiff was arrested by the police*
7. *As a result of this unlawful arrest and detention Plaintiff's motor vehicle was towed away and Plaintiff had to pay a sum of E400=00 for the following services*
8. *On the 23<sup>rd</sup> March 2009, the Plaintiff was admitted to a bail of E1000=00 and his trial was set for the 31<sup>st</sup> March 2009.*
9. *On the 31<sup>st</sup> March 2009 the charges against the Plaintiff were withdrawn as there was no evidence against him.*
10. *As a result of the arrest and detention, Plaintiff sustained damages in the sum of E50,000=00 made up as follows:-*

<i>Loss of liberty and freedom-</i>	<i>E20,000=00</i>
<i>Loss of comfort -</i>	<i>E 9,600=00</i>
<i>Humiliation-</i>	<i>E10,000=00</i>
<i>Legal expenses-</i>	<i>E10,000=00</i>
<i>Cost of towing of the motor vehicle-</i>	<i>E 400=00</i>
	_____
	<i>E50,000=00</i>
	=====

[4] In proof of the above allegations of fact, the Plaintiff testified and called no other witnesses. He told the court that his arrest and detention were unlawful in that he does not drink alcohol and did not drink any alcohol on the day in question. That he passed the breathalyzer test, in the sense that the result of the test administered on him was negative, which warranted his release. However, the Police Officers continued to detain him. He also told the court that there was no stop sign along the road he was travelling, where he allegedly failed to stop warranting his arrest. Plaintiff further told the court that apart from charging him for driving under the influence of alcohol, the police also charged him for refusing to be detained by a police officer in

uniform as evidenced by exhibit B. It was further the Plaintiff's evidence, that he did not refuse to be detained by the Police Officer, but only asked him why he was being detained in view of the fact that the breathalyzer test administered on him was negative. Plaintiff thus contended that there was therefore no basis for the reasonable suspicion warranting his arrest and detention for 17 hours before he was granted bail, as is borne out of the fact that the charges preferred against him were subsequently withdrawn on the 31<sup>st</sup> of March 2009.

[5] For their part the Defendants while admitting arresting and detaining the Plaintiff, however deny that the Plaintiff's arrest and detention was unlawful. They allege that Plaintiff was lawfully arrested and detained because he was reasonably suspected to have been driving under the influence of alcohol and he failed to stop at a stop sign.

[6] There are two issues that arise for determination in this case which are

- (1) whether Plaintiff's arrest and detention was justified?
- (2) If it was not, then what is the appropriate measure of damages?

[7] Now section 22 (b) of the Criminal Procedure and Evidence Act, says the following:-

*“Every peace officer and every officer empowered by law to execute criminal warrants is hereby authorized to arrest without warrant every person:-*

*(b) Whom he has reasonable grounds to suspect of having committed any of the offences mentioned in part 11 of the first schedule”*

[8] Offences against the road traffic Act e.g driving under the influence of alcohol, are offences the punishment whereof may be for a period of imprisonment, exceeding six months, as is detailed in part 11 of the first schedule, thus bringing them within the purview of section 22 (b) of the CP&E. Therefore, a Police Officer who is recognized by section 2 of the Criminal Procedure and Evidence Act, as a peace officer, is thus in line with section 22 (b) well within his rights to arrest without warrant, a person whom he reasonably suspects of drinking under the influence of alcohol and

failing to stop at a stop sign. However, for the arrest to be lawful, there must be reasonable basis for the suspicion leading to the Plaintiff's arrest.

- [9] Since the Defendants admit the fact of the Plaintiffs arrest and detention but deny that the conduct of the police was unlawfully, they bear the onus of proving the justification of the conduct of their officers on the balance of probabilities. For as the supreme court stated in the case of **Mfanafuthi Mabuza v The Commissioner of Police and Two Others Appeal Case No. 11/2004 at page 2.**

*“It is well settled law that the onus rests upon the arresting authority to prove that the requirements of section 22 (of the Criminal Procedure and Evidence Act, 1938) were met when an arrest without a warrant was made. Thus in **Minister of Law and Order v Hurley and another 1986 (3) SA 568 (A) at 589 E-F Rabie CJ referred to the earlier decision of the South African Appellate division in **Brand v Minister of Justice 1959 (4) SA 712 (A)** which held that a peace officer who makes an arrest in reliance with the provisions of subsection (1) (a) of section 22 of the Act, bears the onus of***

*proving that those provisions were complied with. The learned Chief Justice then went on to say. “I consider it to be good policy that the law should be as there stated. An arrest constitutes an interference with the liberty of the individual concerned, and it seems to be fair and just that a person who arrested or caused the arrest of another person should bear the onus of proving that his action was justified in law”*

[10] The question at this juncture therefore, is, have the defendants demonstrated the basis for the reasonable suspicion warranting the arrest and detention of the Plaintiff?

[11] The Defendants called two witnesses in their venture to discharge this burden. The first defence witness DW1 was 2422 Sergeant A Kunene, the arresting police officer. He told the court that on the day in question he was on duty on the road carrying out a road side check. That the Plaintiff came along driving a van. That the van was moving in an unusual manner, slower than a car would ordinarily move and in a zig zag fashion . That the Plaintiff failed to stop where they had placed a stop sign on the road. That the Plaintiff also did not stop where DW1 stopped him, but drove and stopped



behind another car which DW1 had already stopped. DW1 further told the court that he asked the Plaintiff why he was not stopping but the Plaintiff did not respond. That DW1 then opened the drivers door and stopped the ignition because the Plaintiff was not complying with instructions. That the Plaintiff then came out of the car and took his keys with him. DW1 told the court that he then introduced himself to the Plaintiff as a police officer and after cautioning him in accordance with the Judges rules, DW1 asked the Plaintiff to take the breathalyzer test because the car was smelling of alcohol and he was staggering. DW1 told the court that Plaintiff refused to take the test. It was further DW1's evidence that because he was worried about the Plaintiff's safety he took him in the police van to the Police Station and called a tow truck to tow his vehicle since the Plaintiff had refused to surrender the keys to him. That when they got to the Police Station he again asked the Plaintiff to take the breathalyzer test. The Plaintiff refused but was rather asking for water a lot of times, which made DW1 realize that his intention was to reduce the alcohol content in his blood before taking the test. That after 2 to 3 hours, the Plaintiff submitted to the breathalyzer test and it was negative. DW1 further told the court that irrespective of this he

detained the Plaintiff because he had already satisfied himself that he was drunk before the breathalyzer test was administered.

[12] DW1 also told the court that it is not true that Plaintiff was detained up till 3 p.m. the following day. He said this is because they took the Plaintiff to court in the morning. He told the court that the law allows the police to arrest without a warrant when an offence is committed in their presence and that was what happened in this case. That though the Plaintiff was not charged for failing to stop at a stop sign, however he committed several other offences on the day of the incident apart from driving under the influence of alcohol and failing to stop at a stop sign warranting his detention. That he was however not charged for these other offences. DW1 told the court that the Plaintiff's claim for £50,000 for his arrest is not justified because the arrest was proper.

[13] Under cross examination DW1 agreed that the Plaintiff was not charged for failure to stop at a stop sign and failure to obey instructions from a police officer. He told the court that they however put these offences in the charge which was subsequently reinstated. He said that police officers normally

stand in the middle of the road when conducting a road side check and that they were not carrying stop signs, He said that Plaintiff drove past the stop sign on the road, drove past where he directed him to stop and stopped behind the vehicle which DW1 had already stopped almost hitting it. DW1 further told the court that it is not true that an attempt was made by the police to take the Plaintiff to the Mbabane Government Hospital to take a blood test. DW1 agreed that the fact that the breathalyzer test was negative procedurally demanded that the Plaintiff be freed. He however told the court that they continued to detain the Plaintiff because of the other offences he committed which included refusal to be detained in a cell and to obey instructions of police officers in uniform. DW1 further told the court that these offences were included in the charge sheet which was reinstated which is still pending in court. DW1 further admitted that he does not know whether or not the Plaintiff was summoned on any reinstated charges because they are still waiting for the prosecution to tell them to attend court.

[14] It was put to DW1 that if the Plaintiff had refused to take the breathalyzer test, refused to obey police instructions, these questions would have been put to the Plaintiff under cross examination. DW1 denied the questions put to

him. DW1 further told the court that he manned the road side check with Constable 5555 T Vilakati. Under re examination DW1 maintained that there was a stop sign where they manned the road side check.

[15] DW2 was Constable 5555 T Vilakati. He told the court that on the day in question himself and DW1 were manning the road side check. That he was facing the Manzini direction stopping cars coming from that direction and that DW1 was stopping cars coming from the Matsapha Police College direction. He said he noticed a commotion from DW1's side of the road where DW1 was trying to effect arrest on Plaintiff who was resisting the arrest. DW2 then crossed over to the others side of the road where he found that Plaintiff had parked his car behind another vehicle and it was almost hitting the rear side bumper of the other vehicle. DW1 further told the court that he noticed that Plaintiff's breath smelt of alcohol, DW1 was trying to obtain the car keys from the Plaintiff and the Plaintiff was refusing to release them. DW2 further told the court that when the Plaintiff stepped out of the car he was staggering and could not stand properly. That on the day in question Plaintiff had taken alcohol.

[16] It was further DW2's evidence that right at the scene DW1 tried to make Plaintiff take the breathalyzer test but the Plaintiff refused. DW2 also told the court that there was a stop sign where they manned the road side block, but that because he was facing the Manzini direction of the traffic flow he did not see whether or not the Plaintiff failed to stop at the stop sign. DW2 further told the court that though he was present when the breathalyzer test was eventually administered to the Plaintiff at the Police Station, but that he did not see what the result was because he was caught up with other duties. DW2 also told the court that the Plaintiff is not entitled to the E400 he is claiming for towing fees because he refused to give his keys to DW1 and that Plaintiff is not entitled to the E50,000=00 claimed because his arrest was lawful.

[17] Under cross examination when it was put to DW2 that there was no stop sign where they were manning the road side check but that the stop sign was further down the road, DW2 replied that the stop sign was on the 3 way junction from the police college and that they had placed the road side check just after the 3 way junction so that vehicles would have to go through the stop sign before getting to the road side check. DW2 agreed that the fact that

a persons breath is smelling of alcohol does not mean that he has contravened the traffic Act, until it is determined if the blood alcohol level is above the required limits. DW1 told the court that he cannot recall if the Plaintiff committed other offences at the Police Station upon getting there, because he got busy when they got to the Police Station. It was put to DW2 that if the Plaintiff had refused to take the breathalyzer test at the scene of crime, the defence would have disputed his evidence to the effect that he was not instructed to take the breathalyzer test at the scene. DW2 replied that DW1 instructed the Plaintiff to take the breathalyzer test and he refused.

[18] Now, in weighing the totality of the evidence tendered in this case, it is expedient for me to remind myself that the position of the law is that where a person is arrested without a warrant the basis for the reasonable suspicion for the arrest must not be whimsical or contrived, but must be such as to induce a reasonable man to have such a suspicion. This position of the law is embodied in the pronouncement of the court in the case of **Rex v Van Heerden 1958 (3) SA 150 (T)**, where the court declared as follows:-

*“It is not enough for him (arresting authority) to show that he did in fact have suspicion. These words (reasonable grounds to suspect) must be those which induce a reasonable man to have the suspicion”*

[19] Then there is the case of **Mabona and Another v Minister of Law and Order and Others 1988 (2) SA 654 at 658**, where the court said the following:-

*“The section requires a suspicion not certainty. However the suspicion must be based upon solid grounds. Otherwise it will be flighty or arbitrary and not a reasonable suspicion”*

[20] In the same vein, I also remind myself of the position of the law that reasonable suspicion in terms of section 22 of the CP&E, requires a suspicion and not certainty. It resides in the realm of conjecture and surmise and not proof. As the court said in the case of **Shaaban Bin Hussein and Others v Chong Fook Kam and Another 1969 (3) All ER 1626 at 1630, per Lord Detrin,**

*“Suspicion in its ordinary meaning is a state of conjecture or surmise where proof is lacking. I suspect but I cannot prove. Suspicion arises at or near the starting point of an investigation of which the obtaining of prima facie proof is the end”*

[21] Furthermore, is the pronouncement of the court in the case of **Timothy Bhembe v The Commissioner of Police and Another, Appeal Case No. 55/2004, 8**, where **Beck J** said the following:-

*“It is not the duty of a Police Officer to elevate a reasonable suspicion to the level of certainty before a suspect may lawfully be arrested without a warrant. It is the function of a trial court, and not of the arresting authority, to reach a conclusion as to the reliability and sufficiency of the evidence gathered by the police, as the authorities show.”*

[22] Then there is the case of **S v Ganiyu 1977 (4) SA 810**, where **Macdonald CJ** stated that in deciding whether a reasonable suspicion has been proved, it must of necessity be recognized that a reasonable suspicion never involves



certainty as to the truth. When it does, it ceases to be suspicion and becomes fact.

[23] In casu, inspite of the fact that the Plaintiff has maintained that he does not take alcohol and was not drunk on the day of this incident, DW1 and DW2 have however tendered consistent evidence to the fact that there was a stop sign on the road which DW1 says that the Plaintiff drove past without stopping and refused to stop at the spot where DW1 directed him to stop. Even though the Plaintiff alleged both in his pleadings and evidence that there was no stop sign on the road on which he was travelling, however, under cross examination of DW2, learned counsel for the Plaintiff put it to DW2 that the stop sign was not at the point where the police officers placed the road side check, but further down the road. This line of questioning shows that indeed there was a stop sign on the road where this incident occurred, contrary to the Plaintiff's assertions. DW1 also testified that the Plaintiff was driving the car at a slower speed than normal and in a zig zag manner. DW1 and DW2 have also told the court that the Plaintiff drove his car and parked behind another vehicle already stopped almost touching the rear bumper of the vehicle. That the Plaintiff refused to alight from the

vehicle or surrender his car keys to DW1 when asked by DW1 to do so leading to his vehicle being towed away by a breakdown. These two witnesses also told the court that both the Plaintiff and his car were smelling of alcohol and that Plaintiff was staggering when he alighted from his vehicle. That these factors formed the basis of their reasonable suspicion that the Plaintiff was driving under the influence of alcohol, justifying his arrest and detention. DW1 and DW2 corroborated each other in material respects in relation to these facts. It is my considered view in these circumstances, that these facts gave rise to a reasonable suspicion.

[24] In coming to these conclusions, I am mindful of the fact that Plaintiff's counsel, in paragraphs 4 of the written submissions he filed on behalf of the Plaintiff, called upon the court to disregard the evidence tendered by DW1 and DW2, to the effect that the Plaintiff refused to take the breathalyzer test at the scene of crime, refused to give his car keys to DW1 when instructed to do so, refused to take the breathalyzer test at the police station and drank a lot of water at the police station, as an afterthought. It is the Plaintiffs position, that failure by the defence to put these crucial issues to the Plaintiff during cross examination, was suicidal to the case for the defence, as an

adverse inference can be drawn by the court that these issues raised for the first time in defence, are an afterthought.

[25] This position of the Plaintiff raises the question as to when a witness can be said to have engaged in an afterthought? There is no doubt that the established position of the law is that failure of a party to put its case across to his adversary entitles the court to treat the evidence led by that party as an afterthought. I hold the view however that this issue cannot simply arise because a witness had failed to cross examine on a point. This is because the question of afterthought is more often said to arise where before the case comes to court a person has an opportunity to say something e.g instant recitation of an allegation, or where a person tells a story and did not include certain vital aspects which clearly, a reasonable person should be able to state. He will be regarded as engaged in afterthought, if subsequently during trial he says those things he earlier had the opportunity to say, but did not say.

[26] However, in treating the testimony of a witness in court as an afterthought, the court must tread with caution. This is because such a failure in all

situations may not be an afterthought. It may result from the witnesses' peculiarity like timidity or whether he may have considered it really not necessary to say so at that time. It will not be helpful to the course of justice for the court to just simply assume that a party is engaged in an afterthought in the circumstances, because he failed to adduce a particular evidence at the earliest opportunity. Each case must thus be dealt with according to its peculiar facts and circumstances.

[27] In casu, the defence alleged that they had reasonable grounds for the suspicion leading to the Plaintiff's arrest. The onus lay on them to prove the reasonable grounds for that suspicion. The defence could have been called to lead evidence first in these circumstances, pursuant to Rule 39 (9) read with sub rule (5) of the High Court rules.

Sub Rule (5) provides:-

*“Where the burden of proof is on the Plaintiff, he or counsel for the Plaintiff may briefly outline the facts intended to be proved and the Plaintiff may then proceed to the proof thereof.*

Sub rule (9) states:-

*“If the burden of proof is on the Defendant, he or his counsel shall have the same rights as those accorded to the Plaintiff or his counsel by sub – rule (5)”.*

See the case of **Wilson Ngidi v Swaziland Government case no. 2758/2004**

[28] DW1 and DW2 in a bid to discharge the onus on the defence, led consistent and corroborative evidence on the material facts upon which their suspicion was premised leading to the Plaintiff’s arrest. I uphold their evidence.

[29] In the light of the totality of the foregoing, I find as a fact that the basis for DW1’s suspicion that the Plaintiff was driving under the influence of alcohol was indeed reasonable. This state of affairs makes the Plaintiff’s arrest lawful in terms of section 22 of the CP&E. I thus hold that the Plaintiff’s arrest was lawful.

[30] Having found that the Plaintiff's arrest was lawful, the next poser is: was the Plaintiff's detention lawful?

[31] The Plaintiff's contention is that when the breathalyzer test was administered on him and the result was negative, he was entitled to be released. He also contended that there was no stop sign on the road on which he was travelling where he allegedly failed to stop warranting his continued detention. That he was not charged with failing to stop at a stop sign and that the charges against him were subsequently withdrawn. Therefore, his continued detention was unlawful.

[32] It is not in dispute in this case that when the Plaintiff was breathalyzed, the test was negative. DW1 and DW2 have admitted before court, that the normal procedure in such circumstances where a breathalyzer test shows a low alcohol level, is that the person arrested is released. They however contend that in this case, apart from the suspicion that the Plaintiff was driving under the influence of alcohol, that the Plaintiff committed other offences which warranted his continued detention, to ensure his appearance

in court to be granted bail to secure his further attendance in court to answer to the charges preferred against him.

[33] Even though in their plea the Defendants alleged that the second offence which the Plaintiff committed, was that he failed to stop at a stop sign, it however became obvious from the Plaintiff's pleadings and evidence, as backed up by exhibit B, that indeed the pre criminal process the Plaintiff was subjected to was in respect of the allegation of committing two offences. Exhibit B which was urged by the Plaintiff himself, clearly shows that he was charged before the Manzini Magistrates Court on two counts of offences namely, driving under the influence of intoxicating liquor or drug contrary to section 91 (1) as read with section 122 (2) of the Road Traffic Act 6 of 2007 and failure to comply with police instruction by refusing to be detained by a police officer in full uniform contrary to section 11 (1) (b) as read with section 122 (4) of the Road Traffic Act. The Plaintiff is bound by his pleading.

[34] In these circumstances, it is my considered view, that it matters not that the two sides disagree as to the nature of the second offence, in their pleadings.

This is because refusal to be detained by a police officer, which the Plaintiff has amply demonstrated that he was detained for and charged with, also amounts to an offence, and a person reasonably suspected of having committed such an offence, can lawfully be subjected to such a pretrial criminal process of arrest and detention.

[35] Therefore, when the breath.a.lyzer test administered on Plaintiff showed that his alcohol level was within normal, the Defendants were right to have continued to detain him because of the pending second allegation against him, of refusal to be detained, as pleaded and testified to by the Plaintiff himself. This is because he was not yet absolved of the second offence, which was still pending and which he was answerable to. This state of affairs entitled the Defendants as part of the exercise of their law enforcement power, to detain him and bring him before a court within the time frame prescribed by law.

[36] Every person reasonably suspected of committing an offence has a duty to submit to due criminal process, like stop, search, questioning, arrest and detention. To resist any of these acts carried out by police officers in the



lawful exercise of their powers to prevent, control and investigate crimes, amounts to an offence in itself, quite independent of the primary crime he or she is suspected of committing.

[37] It is also my considered view, that the withdrawal of the charge against the Plaintiff, may very well be a ground for an action for damages for malicious process, but it cannot sustain an action for damages for unlawful arrest and detention.

[38] Now, Plaintiff alleges that he was detained for a period of about 17 hours, from the 22<sup>nd</sup> of March 2009, until 3 pm on the 23<sup>rd</sup> of March 2009 when he was brought before a court and admitted to bail of E1,000=00 by a Magistrate.

[39] DW1 engaged in an unnecessary waste of precious judicial time in contending that the detention of the Plaintiff by the police ended when he was produced in court at 8 am, on the 23<sup>rd</sup> of March 2009, when the court took over. Therefore, the Plaintiff was not detained up till 3 pm as alleged. This contention of the defence is preposterous and they ought to know

better. This is because the position of the law is that the person arrested and detained is only liberated from detention when released on bail, but he still remains in the custody of the law even after his release on bail, until the case is decided. This is why the law demands that criminal cases be disposed expeditiously. See **Army Commander and Another v Bongani Shabangu Appeal Case No. 42/2011**. I therefore uphold the Plaintiff's case that he was in detention for about 17 hours.

[40] Now, Section 16 (1) (e), (3) (b), (4) and (7) of the Constitution of Swaziland Act, 2005, state as follows:-

*“16 (1) A person shall not be deprived of personal liberty save as may be authorized by law in any of the following cases:-*

*(e) Upon reasonable suspicion of that person having committed or being about to commit a criminal offence under the laws of Swaziland*

*(3) A person who is arrested or detained:-*

- (b) *Upon reasonable suspicion of that person having committed or being about to commit an offence shall, unless sooner released, be brought without undue delay before a court.*
- (4) *Where a person arrested and detained pursuant to the provisions of subsection (3), is not brought before a court within forty eight hours of the arrest or detention, the burden of proving that provisions of subsection (3) have been complied with shall rest upon any person alleging that compliance.*
- (7) *If a person is arrested or detained as mentioned in subsection (3) (b) without prejudice to any further proceedings that may be brought against that person, that person shall be released either unconditionally or upon reasonable conditions, including in particular such conditions, as are reasonably necessary to ensure that that person appears at a later date for trial or for proceeding preliminary to trial”*

[41] It is undoubtedly obvious from the Constitutional provisions ante, that for the detention of a person who has been arrested upon a reasonable suspicion

of having committed an offence to be lawful in terms of our law, such a person detained must be brought before a court of law within 48 hours of such arrest and detention. See **Army Commander and Another v Bongani Shabangu** (Supra).

[42] It appears to me therefore, that the detention of the Plaintiff was lawful in these circumstances. This is because the detention of the Plaintiff for 17 hours before he was brought before a court and granted bail, fell within the 48 hours time frame contemplated by section 16 (4) of the Constitution Act and was therefore lawful.

[43] In the light of the totality of the foregoing, I find that the Plaintiff's claim is lacking in merits. It fails accordingly. I therefore make the following orders on these premises.

(1) That the Plaintiff's claim be and is hereby dismissed.

(2) No order as to costs

For the Plaintiff:

S. Bhembe

For the Defendants:

S. Khumalo  
(Crown Counsel)

**DELIVERED IN OPEN COURT IN MBABANE ON THIS  
THE .....DAY OF.....2012**

**OTA J.**

**JUDGE OF THE HIGH COURT**