



## CONSTITUTIONAL COURT OF SOUTH AFRICA

### **Michell Joyce Raduvha v Minister of Safety and Security**

**CCT 151/15**

**Date of hearing: 25 February 2016**

**Date of judgment: 11 August 2016**

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### **MEDIA SUMMARY**

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*The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.*

Today the Constitutional Court handed down its judgment in a matter concerning a claim for damages brought by a minor following her arrest and detention for allegedly interfering with a police officer during the execution of his duties.

The applicant, Ms Raduvha, was arrested without a warrant. She was 15 years old at the time. The police officers were responding to a complaint of assault and resultant breach of a protection order against the applicant's mother. When the applicant's mother was arrested, the applicant physically intervened and was ultimately arrested for obstructing the police officers. The applicant and her mother were detained together in a cell at Brixton Police Station for a period of 19 hours. Both were released on warning the next day and the charges were later dropped by the Public Prosecutor.

The applicant instituted an action in the South Gauteng High Court for damages arising from her arrest and detention. But the High Court dismissed her claim on the ground that her arrest and detention were lawful. An appeal to the Full Court was unsuccessful and the Supreme Court of Appeal refused to grant her leave to appeal, hence the present application.

Before the Constitutional Court, the applicant argued that her rights as a child were violated. The fact that her father was present throughout the arrest and went to the police station and requested her to be released into his custody meant that the decision to arrest her was irrational, and that her continued detention could also not be justified. The

applicant argued that the police should have considered all possible alternatives when arresting and detaining her and that arrest should have been a last resort.

The Centre for Child Law, having been admitted as a friend of the Court, argued that the constitutional right of children “not to be *detained* except as a measure of last resort” should, in the light of international legal instruments, be interpreted broadly so as to include an arrest as well as detention. It argued that the police officers failed to exercise their power of arrest properly.

During the hearing, the Minister conceded that the arrest and detention of the applicant were unlawful. It was also conceded that the police officers had failed to prove that the applicant had acted wilfully. The police officers also failed to consider the applicant’s best interests in terms of section 28(2) of the Constitution in exercising their discretion to arrest her. It was also conceded that the applicant’s detention was not a measure of last resort as required by section 28(1)(g) of the Constitution.

In a unanimous judgment, by Bosielo AJ, the Court upheld the appeal and found that the arrest and detention of the applicant were unlawful. It held that, despite the jurisdictional facts being present, police officers have a discretion to arrest in terms of section 40(1) of the Criminal Procedure Act. This discretion must be properly exercised in accordance with the facts of the case and the dictates of the Bill of Rights. Since the police officers failed to consider the applicant’s best interests as a child in exercising their discretion to arrest her, the arrest was unlawful. The Court also held that the applicant’s detention was unlawful. The applicant’s father was at the station and willing to take her home. As a result, the police officers’ decision to detain her was not a measure of last resort and was therefore inconsistent with section 28(1)(g) of the Constitution and invalid. The Court ordered that the matter be remitted to the High Court to determine the quantum payable to the applicant.