

Prosecutor throws out badly-prepared case, gets arrested by police

By Tania Broughton

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A senior prosecutor who was arrested by police because he refused to prosecute a case, has won a damages claim against the National Director of Public Prosecutions (NDPP).



Senior prosecutor Sijoyi Robert Mdhlovu was arrested and charged with fraud after he refused to prosecute a case he considered badly prepared. The Mpumalanga High Court has awarded him damages. Graphic: Lisa Nelson / GroundUp

Mbombela High Court Acting Judge Pieter Sieberhagen ruled that the NDPP must pay whatever damages Sijoyi Robert Mdhlovu can prove as compensation for damage to his “dignity”.

Mdhlovu was seeking R1.8m for loss of income, reputational damage and emotional trauma.

The judge said most of the facts of the matter were either common cause or were not in dispute.

[Read the judgment](#)

Mpumalanga regional court prosecutor Mdhlovu, who has 26 years experience, received two related case dockets involving armed robbery and attempted murder in June 2015 from a Sergeant B Nkambule.

He told Nkambule the dockets were not “trial ready” because of problems with the identification of the firearm linked to the cases. Later that day, he withdrew the charges.

Nkambule was unhappy and laid a complaint against him.

More than a year later, in October 2016, Mdhlovu was arrested at his office and taken to the Nelspruit police station where he was charged with fraud and then taken to court - the same court where he worked - and granted bail, all of this in front of his colleagues.

He said he felt “humiliated”.

His criminal trial began in the Nelspruit regional court at the end of August 2017. He was discharged on all charges the following day in terms of law where an accused does not have to present a defence because, after the state had led its witnesses, there was no case for him to answer.

In his civil claim, Mdhlovu testified that he had acted within his discretion as a prosecutor when he withdrew the charges and, given the same facts, he would have done exactly the same again. He pointed out that the charges against the accused could have been re-instituted if the case had been properly investigated.

The judge said it appeared that Deputy Director of Public Prosecutions Elaine Moonsamy, who took the decision to lay charges against Mdhlovu, had “got carried away by her sense of duty as influenced by the general adoption of the presupposition that corruption and fraud should be stamped out in the province”.

She issued an instruction for him to be charged with fraud, alternatively obstructing and defeating the administration of justice.

Judge Sieberhagen said it appeared that Moonsamy had only considered the problem with the evidence relating to the firearm when she was confronted by it during cross examination before him. She had also testified that in her view, it was not necessary for her to have reasonable and probable cause to institute the prosecution, which was not correct, the judge said.

He said Moonsamy had acted with *animus iniuriandi* (intention to injure) and the NDPP was thus liable to pay damages to Mdhlovu for malicious prosecution.

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