

FORM A
FILING SHEET FOR EASTERN CAPE JUDGMENT

ECJ no : 137

PARTIES:

MINISTER OF SAFETY & SECURITY

APPLICANT

and

TERSIA TELANA ROUX MOSS

RESPONDENT

REFERENCE NUMBERS -

- Registrar: **749/04**
- Magistrate:
- High Court: **South Eastern Cape Local Division**

HEARD: **12 May 2006**

DATE DELIVERED: **1 June 2006**

JUDGE(S): **Dambuza J**

LEGAL REPRESENTATIVES -

Appearances

- for the State/Applicant(s)/Appellant(s): **Adv Wessels**
- for the accused/respondent(s): **Adv Mouton**

Instructing attorneys:

- Applicant(s)/Appellant(s): **Office of the State Attorney**
- Respondent(s): **GP Van Rhyn Minnaar & Co Inc c/o Ungerer Struwig Hattingh Peo**

CASE INFORMATION -

- *Nature of proceedings:* **Leave to Appeal**
- *Topic:*
- *Keywords:*

**IN THE HIGH COURT OF SOUTH AFRICA
(SOUTH EASTERN CAPE LOCAL DIVISION)**

CASE NO: 749/04

In the matter between:

MINISTER OF SAFETY & SECURITY

APPLICANT

and

TERSIA TELANA ROUX MOSS

RESPONDENT

JUDGMENT ON APPLICATION FOR LEAVE TO APPEAL

DAMBUZA J:

1. The main ground on which this application is brought is that there is a reasonable prospect that another court might find that the probabilities favour the version of the defendant's witnesses. The argument is founded on a perceived absence in the judgment of a finding on the credibility and reliability of the various factual witnesses and a consequent evaluation of probabilities. It is contended, on applicant's behalf, that I should have found that the probabilities favoured applicant's version rather than respondent's.
2. It is also contended on applicant's behalf that another court might find that the probabilities favour **Rudman's** version on the events that led to the confrontation between respondent and **Rudman** and that the combination of the manner in which the respondent drove her motor vehicle and **Rudman's** subsequent observations, viewed objectively constituted reasonable grounds for **Rudman** to have subjectively

entertained the suspicion that respondent was driving under the influence of liquor.

3. The second leg of the argument seems to me to be quite probable and I am persuaded that another court, having found that the confrontation was preceded by some irregular driving on respondent's part, might then find that the subsequent events, objectively viewed, served to confirm **Rudman's** initial suspicions.
4. I also agree with **Mr Wessels'** submission that as the police find themselves in circumstances similar to this case quite often, it is important that factors giving rise to reasonable suspicion be established as clearly as possible.

Consequently the following order will issue:

- (a) Leave is granted for applicant to appeal to the full bench of this division;
- (b) The costs will be costs on appeal.

N DAMBUZA
JUDGE OF THE HIGH COURT

30 May 2006

