

NATIONAL ASSEMBLY

FOR WRITTEN REPLY**QUESTION 1387**

DATE OF PUBLICATION IN INTERNAL QUESTION PAPER: 22 APRIL 2022
(INTERNAL QUESTION PAPER NO 14-2022)

1387. Ms A M Siwisa (EFF) to ask the Minister of Police:

Whether the police officers involved in the investigation of the case of rape and abduction of Andy Kawa have been relieved of their duties after the victim, Andy Kawa, won the case at the Constitutional Court against the Minister of Police for negligence in her case of rape that occurred in 2010; if not, what is the position in this regard; if so, what are the relevant details?

NW1679E

REPLY:

No, the members of the South African Police Service (SAPS) were not relieved of their duties, as there was no misconduct committed in relation to the performance of their duties and this is confirmed by the dissenting judgement of the Constitutional Court.

The details are reflected below:

Advocate Bruinders, SC, on behalf of Miss Kawa, accused the SAPS of negligently failing to discharge their Constitutional and statutory duties relating to the search for the Plaintiff, as well as the subsequent investigation of the crime. He categorised it as follows:

- o Failure to conduct a foot search.
- o Failure to search between the areas F-G with the search and rescue dog.
- o Failure by the air crew to properly search area F-G, or to notice the Plaintiff.
- o Failure to properly investigate the docket.

Failure to conduct a foot search

The Constitutional Court found in the majority judgment that the Defence did not present any evidence as to why it was reasonable for SAPS not to have conducted a thorough foot search. The minority judgment explained that the search should be viewed in context, being that it was just after midnight with a very rough terrain consisting of sand dunes and vegetation.

It must be noted that the judgment is not unanimously in favour of the Plaintiff and that the dissenting judgment supports the efforts made by the SAPS to search for the Plaintiff and investigate the case.

Failure to search between the areas F-G with the dog.

The majority judgment found that SAPS should be commended for managing to deploy the search and rescue dog with a handler and the helicopter search at such short notice. The question remains as to whether they utilised their deployed resources with the required degree of diligence, care and skill reasonably expected of them.

Failure by air crew to properly search area F-G or to notice the Plaintiff

The members did not know what they were looking for as there was no information to indicate that the Plaintiff had been abducted. It was also established that the pilot was not able to fly over the no-fly zone and he testified that he had to return to the base as the incoming fog made it dangerous to continue.

Failure to properly investigate the docket

The court evaluated the efficiency of the Forensic Science Laboratory (FSL) and found it to be under resourced. It highlighted the importance of DNA testing in identifying perpetrators, as well as the role these challenges have on bringing perpetrators of gender-based violence to justice. It was found that the laboratory tested the DNA of the first suspect and found that he could not be linked to the crime. The court assessed the conduct of the investigator and found that the investigator and the Plaintiff did not establish a good rapport. It was clear that the Plaintiff preferred the services of the first investigator. The subsequent investigator was appointed by his superiors as he is a seasoned rape investigator and thus more qualified to investigate the matter.

All the members involved in the investigation fulfilled their duties with diligence. This also formed the basis for the defence of the Plaintiff's claim and thus the SAPS is of the view that it will not be correct to institute disciplinary steps or relieve the members and officers of their duties, as there is no legal basis for such, given the facts and the defence proffered on behalf of the Minister of Police.

Reply to question 1387 recommended/~~not recommended~~ *A*



**NATIONAL COMMISSIONER: SOUTH AFRICAN POLICE SERVICE
SF MASEBOLA**

GENERAL

Date: 2022-05-24

Reply to question 1387 approved/~~not approved~~



**MINISTER OF POLICE
GENERAL BH CELE, MP**

Date: 27/05/2022