

# Does Swearing and/or the Use of Foul Language at a Police Officer Constitute the Unlawful and Intentional Resistance?

## INTRODUCTION

This article shall consider whether swearing and/or the use of foul language at a police officer constitutes the unlawful and intentional resistance, wilful hindrance, or obstruction of a police officer in the performance of his duties.

## THE LEGISLATION

In terms of section 67(1) of the South African Police Service Act 68 of 1995 ("the Act"):

"Any person who:

- a. resists or wilfully hinders or obstructs a member in the exercise of his or her powers or the performance of his or her duties or functions or, in the exercise of his or her powers or the performance of his or her duties or functions by a member wilfully interferes with such member or his or her uniform or equipment or any part thereof; or
- b. in order to compel a member to perform or to abstain from performing any act in respect of the exercise of his or her powers or the performance of his or her duties or functions, or on account of such member having done or abstained from doing such an act, threatens or suggests the use of violence against, or restraint upon such member or any of his or her relatives or dependents; or threatens or suggests any injury to the property of such member or of any of his or her relatives or dependents,

shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 months."

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## CASE LAW

The Court in *Mbovane v Minister of Police* (23852/11) [2013] ZAGPJHC 270 (30 October 2013) ("Mbovane"), at paragraph 35, held: "Whether an arrestee acted willfully in obstructing the execution of a duty of a peace officer must be considered objectively. The obstruction must consist of some or other physical conduct, a positive action although conduct need not always be positive."

It follows, that for the State to successfully prosecute an individual for interfering with the duties of a police official as envisaged in section 67(1) of the Act, the State must be in a position to prove, beyond a reasonable doubt, that:

- 1.1. the accused objectively acted wilfully in hindering or obstructing a police officer in the execution of their duties; and
- 1.2. the aforesaid hindrance or obstruction consists of some or other physical conduct.

In the matter of *Devenish v Minister of Safety and Security* (07151/2013) [2016] ZAGPJHC (20 May 2016) ("Devenish"), the arresting police officer held the opinion that a person must be arrested for wilfully obstructing police officers in the course of their duties if they had sworn at a police officer.

In this regard the Court, at paragraph 32, unequivocally stated that, "...swearing does not give rise to obstructing the police in the execution of their duties."

## CONCLUSION

Having regard to the judgement and principals contained in *Mbovane* and *Devenish*, the law is clear. Swearing at a police officer, whilst not advised, does not constitute the obstructing or hinderance of a police officer in the execution of their duties since it does not amount to a physical obstruction. It should, however, be noted that the act of swearing at an individual (including a police official), may constitute the crime of *crimen iniuria* (i.e. criminal defamation), and thus, it is certainly not advisable to swear at police officials.



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