



HIGH COURT OF AUSTRALIA

5 June 2013

THE STATE OF NEW SOUTH WALES v GREGORY WAYNE KABLE

[2013] HCA 26

Today the High Court unanimously allowed an appeal by the State of New South Wales and held that a detention order made by a judge of the Supreme Court of New South Wales under legislation later held to be unconstitutional was a defence to a claim for false imprisonment. The order was held to be valid until it was set aside.

Mr Gregory Wayne Kable was detained in custody for six months in 1995 pursuant to an order of the Supreme Court made under s 9 of the *Community Protection Act 1994* (NSW) ("the Community Protection Act"). Mr Kable unsuccessfully appealed against the detention order to the Court of Appeal. After Mr Kable was released from detention, he successfully appealed to the High Court. The High Court ordered that the detention order be set aside on the basis that the Community Protection Act was unconstitutional and was therefore invalid.

Following the decision of the High Court setting aside the detention order, Mr Kable commenced proceedings in the Supreme Court, ultimately claiming damages against the State for abuse of process, false imprisonment and malicious prosecution. A number of preliminary questions were decided by the primary judge against Mr Kable and judgment was entered for the State. Mr Kable appealed to the Court of Appeal. That Court allowed the appeal in part, holding that Mr Kable should have judgment against the State for damages to be assessed on his claim for false imprisonment.

By special leave, the State appealed to the High Court. The Court unanimously allowed the appeal, and held that the detention order was valid until set aside. It had therefore provided lawful authority for Mr Kable's detention. The primary judge's orders dismissing Mr Kable's claims were reinstated.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*