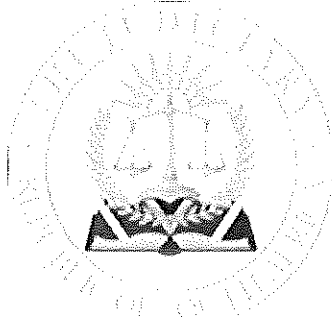
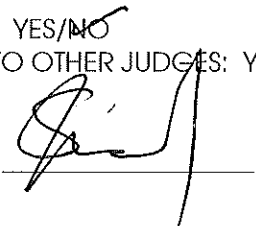




**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

CASE NUMBER: 09284/2016

(1)	REPORTABLE: YES/ NO
(2)	OF INTEREST TO OTHER JUDGES: YES/ NO
(3)	REVISED: YES.
DATE: 05 June 2023	



In the matter between: -

THUSI S'BONELO VUKANI

Plaintiff

and

MINISTER OF POLICE

Defendant

Neutral citation: *Thusi S'Bonelo Vukani v Minister of Police* (Case No. 09284/2016)
[2023] ZAGPJHC 638 (05 June 2023)

JUDGMENT

MAHOMED AJ,

This is a claim for unlawful arrest and detention of the plaintiff who was detained for a period of four days. The matter proceeded as a default judgment, as the defendant's defence was struck off. The plaintiff was arrested without a warrant. He was detained for four days without being taken to court. The plaintiff counsel submitted a sum of R600 000 was fair compensation in the circumstances.

The court is to determine both the issues of liability and quantum.

THE EVIDENCE

- [1] The plaintiff testified that he had left home on the morning of 4 February 2016, at about 10h00. He was on his way to a store in the city, where he was hoping to apply for a position which he saw advertised.
- [2] He had his curriculum vitae in his possession and was walking in the direction of the city centre via Wolmarans Street, Johannesburg, when two persons from the security company Bad Boys, grabbed him off his path and bundled him off to their offices nearby.
- [3] They accused him of being involved in a robbery. The security persons kept him at their offices for about 45 minutes.
- [4] A person unknown to him was in their offices and he complained that the plaintiff had robbed him off his cellphone and R300.00
- [5] The evidence is that his identifying feature were his blue shoes.
- [6] The complainant stated that he saw his assailant was wearing blue shoes and that he was robbed of his possessions.
- [7] The plaintiff denied any knowledge of the robbery. He testified that at the time he did not own a cell phone and had only R150.00 on him.
- [8] An hour into his being arrested the two persons took him to the Hillbrow Police station where they told the officer on duty that he is guilty of common robbery.

- [9] He insisted that the bad boys security personnel never observed him rob any persons.
- [10] The police officer booked him in, he was not told anything further and kept in the cells in Hilbrow from Thursday until Monday.
- [11] He was arrested without a warrant and there was no evidence of any offence he was alleged to have committed.
- [12] The plaintiff testified that during his stay, he was told by the police on duty that he could arrange for his release if he paid him R5 000. The plaintiff did not have the money and called upon his sister's assistance.
- [13] The evidence is that his sister who lives in KwaZulu Natal, sent him R3 000, which he paid over to the police.
- [14] His evidence is that he was put into the cells around 12h00 on the day and he was served his first meal at around 16h00. He struggled to eat some of the meals, in that he did not eat fish and it was the only meal served.
- [15] His evidence is that there was no privacy in the cells.
- [16] The toilets were dirty and open in full view of others in the cell.
- [17] The blankets he was given were dirty and smelly.
- [18] During the course of his stay the cells filled up as more people were incarcerated. A fight broke out amongst the inmates and he was also attacked in the chaos.
- [19] He feels very bad about his situation and arrest, where he was simply pulled off the street and arrested, whilst he was trying to seek employment and be a responsible citizen.

[20] On 8 February 2026 the state withdrew charges against the plaintiff.¹

THE LAW

[21] Section 40 (1) (b) of the Criminal Procedure Act 77 of 1959 provides:

“a peace officer may, without warrant arrest any person whom he reasonably suspects of having committed an offence referred to in Schedule 1, other than the offence of escaping from custody.”

[22] The jurisdictional requirements for a defence to the above section are that:

- 22.1 the arrestor must be a peace officer,
- 22.2 the arrestor must entertain a suspicion.
- 22.3 the suspicion must be that the suspect committed an offence referred to in Schedule 1; and
- 22.4 the suspicion must be on reasonable grounds.

JUDGMENT

[23] The plaintiff was not arrested by a peace officer as is provided for in Act.

[24] The officer in the charge office relied on the say so of security guards. In **DUNCAN v MINISTER OF LAW AND ORDER** ² the court is clear that the discretion to arrest must be properly exercised. There is no evidence that they even had the necessary powers to arrest.

[25] In my view the arrest and charge of the plaintiff was arbitrary.

[26] The officer in charge could not have formulated any reasonable suspicion that the plaintiff had committed an offence, for which he could have been arrested without a warrant. There was no evidence before him, the plaintiff did not have a cellphone and there is nothing to gainsay this before this court.

¹ Caselines 037-1 to 5

² 1986(2) SA 805 AD

- [27] No items were found which may have been another's property and no complainant was before him.
- [28] In **NKAMBULE v MININSTER OF LAW AND ORDER**³, the court stated that when a peace officer holds an initial suspicion, he must take steps to have it confirmed in order for the suspicion to be a reasonable one for him to arrest the plaintiff.
- [29] There was no evidence of any steps which were taken to verify the allegations made by the two security guards.
- [30] The arresting officer lacked any reasonable suspicion to arrest the plaintiff nor to detain him. In my view, the plaintiff's arrest and detention was unlawful.
- [31] There is no evidence as to why it was necessary to detain him for that period either.
- [32] The deprivation of ones liberty is a serious matter. Such arbitrary acts by the police, only serve to build distrust and erodes confidence of the public in those entrusted to keep the peace and ensure public security and safety.
- [33] The payment of compensation cannot be the remedy to restore the trust that is lost.
- [34] As to the appropriate compensation to be awarded, in **MINISTER OF SAFETY AND SECURITY v TYULU**⁴ , court stated:
- "in the assessment of damages for unlawful arrest and detention, it is important to bear in mind that the primary purpose is not to enrich the aggrieved party but to offer him some much needed solatium for his or her injured feelings.*
- [35] The damages awarded must be commensurate with the injury inflicted, whilst also bearing in mind the importance of the right to liberty.
- [36] In casu, the plaintiff was on his way to seek employment, no doubt filled with a sense of hope, particularly in these very difficult economic times.

³ 1993 (1) SACR 434 TPD

⁴ 2009 (5) SA 85 SCA

- [37] He left his home and travelled on foot toward his destination, minding his business, when he was grabbed off the street. He was wearing blue shoes, which caused him trouble, and led to his detention in prison for four days.
- [38] No reasonable person could ever have anticipated such fate.
- [39] He was also forced to communicate his misfortune with his sister, and to seek her assistance to get him out of his predicament. She too may have tried her best to come up with some monies, out of her love for her sibling. This too proved futile for the plaintiff.
- [40] He was forced to endure further humiliation living in the conditions in the cells. He could not even eat the food on some days when he was served fish.
- [41] In **DILJAN v MINISTER OF POLICE** ⁵ the court having considered similar conditions where the plaintiff was detained for three days, the court awarded R120 000, as fair compensation.
- [42] I am of the view an amount of R150 000, would be fair in the circumstances. In **MGELE v MINISTER OF POLICE AND OTHERS**⁶, where the plaintiff was also detained for 4 days, the court granted compensation of R150 000 in similar conditions.

Accordingly, I make the following Order:

1. The defendant is to pay the plaintiff the sum of R150 000.
2. Interest thereon, at the prescribed rate from date of judgment to date of payment.
3. Costs of the suit.

MAHOMED AJ

⁵ (case no 746/2021 [2022] ZSCA 103

⁶ 1257/2011, [2015]

This judgment was prepared and authored by Acting Judge Mahomed. It is handed down electronically by circulation to the parties or their legal representatives by email and by uploading it to the electronic file of this matter on caselines. The date for hand down is deemed to be 5 June 2023.

Date of hearing: 20 April 2023

Date of judgment: 5 June 2023

Appearances:

For Plaintiff: Adv M G Makhoebe

081 043 3517

No Appearance for Defendant.