



IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES / NO.	
(2) OF INTEREST TO OTHER JUDGES: YES / NO.	
(3) REVISED.	
26/7/2023	[REDACTED]
<u>DATE</u>	<u>SIGNATURE</u>

Case Number: 13342/2013

In the matter between:

P MANALA OBO ESTATE ANDRE TSELEDI MANALA

Plaintiff

and

MINISTER OF POLICE

First Defendant

CAPTAIN G T HOYS

Second Defendant

CAPTAIN JOSEPH MASHABANE

Third Defendant

CONSTABLE A PLATJIE

Fourth Defendant

JUDGMENT

POTTERILL J

Introduction

- [1] On 12 December 2010 the plaintiff, Mr Andrew Tseledi Manala [Mr Manala], was arrested. He was himself a police officer with 20 years' service. He was brought before court on 18 December 2010 whereafter the matter was remanded for a week for a bail application. In total he was detained for 11 days. The charges of robbery were withdrawn against Mr Manala. As a result Mr Manala proceeded to institute an action for unlawful arrest and detention as well as assault against the Minister of Police and three employees of the South African Police Service. For ease of reference I will refer to the defendants collectively as the Minister. I was informed that unfortunately Mr Manala had passed away pursuant to judgment being delivered on the merits of the claim by my brother Sardiwalla J. I see no substitution of the plaintiff by an executor, but both parties argued that any damages must be paid to the executor of the estate.
- [2] The High Court found that *"the defendants had not satisfied the Court on a balance of probabilities that the arrest was lawful or even based upon section 40(1)(e) of the Criminal Procedure Act 51 of 1977 or any other related charge."* The Court found the arrest and detention was unlawful. The Court found that Mr Manala had not proven the assault and dismissed that claim.

Arguments on the quantum

The plaintiff's submissions

- [3] On behalf of Mr Manala it was argued that based on the *De Klerk*¹-matter the further detention after the remand by the Magistrate for bail must also be ascribed to the Minister and the damages amount must be for a period of 11 days. Reliance was also placed on the matter of *Motladile v Minister of Police* [2023] ZASCA 94 where the Supreme Court of Appeal found that no mechanical approach is to be adopted when awarding damages for unlawful arrest and detention and awarded R200 000 damages for the unlawful arrest and 5 days' subsequent detention. The evidence therein was that he was assaulted by other inmates, his food was stolen and the cell was filthy. The detention prevented him from attending his sister-in-law's wedding in Gaborone. The non-attendance due to his incarceration was a great embarrassment to him and his family. He had testified that it was traumatic for him not to spend Christmas with his wife and family. He was a traditional healer who enjoyed the respect of his community, but after his arrest and detention he lost their respect.
- [4] In this matter, unfortunately the only evidence relied on is the conclusion of the psychiatrists as agreed to in the joint minutes. This evidence only supports the damages specified as emotional and psychological stress due to the unlawful arrest and detention.
- [5] The psychiatrists concluded that prior to this incident there was no history of mental illness. Mr. Manala after the incident experienced psychopathology. Mr Manala *"continues to experience psychopathology albeit in an ameliorated manner."* Mr Manala had two episodes of depression in 2012 and 2013, but that the symptoms would resolve in five years. The balance of the consensus related to how much psychotherapy sessions (six) should be undertaken and that medication could be prescribed which costs would vary depending on what medication is prescribed. Provision for two hospital admissions over a five year period was reasonable.
- [6] On this evidence and the fact that Mr Manala was detained for 11 days it was submitted that an amount of R500 000 was reasonable compensation.

¹ *De Klerk v Minister of Police* [2018] ZACC 32; 2021 (4) SA 585 (CC)

The defendant's argument

- [7] On behalf of the Minister it was argued that in view of the **De Klerk**-matter, the Minister can only be held liable for two days' detention. The remand order by the Magistrate rendered the subsequent detention lawful. There was no finding of malice by the High Court and therefore the manner in which the remand order was made, was lawful.
- [8] Reliance was placed on the matter of **Isaacs v Minister of Law and Order [1995] ZASCA 152; [1996] 1 All SA 343 (A)** wherein the court found that where a person was unlawfully arrested, his or her detention is unlawful until such time as a magistrate, exercising a judicial function decides to order the continued detention of the person arrested, obviously rendering the further detention lawful. The **De Klerk**-matter did not alter this position and was distinguished due to the malice.
- [9] It was further submitted on behalf of the Minister that an award of R500 000 would be completely unreasonable. This was demonstrated with reference to **Mahlangu and Another v Minister of Police [2021] ZACC 10; 2021 (2) SACR 595 (CC)** where an award of R550 000 was made under circumstances where the arrested person was detained for eight months and was tortured.

Reasons for finding

- [10] The reliance on the **De Klerk**-matter to sustain a period of 11 days' unlawful detention is misplaced. This matter is distinguishable from the **De Klerk**-matter. In the **De Klerk**-matter the arresting officer recorded in the docket that she recommended that Mr De Klerk be released on bail in the amount of R1 000, however Mr De Klerk was not afforded the opportunity to apply for bail at his first appearance. In the **Mahlangu**-matter the police officers failed to disclose that the confessions were obtained under duress and that Mr Mahlangu was tortured. These actions rendered the post appearance detention attributable to the unlawful arrest and the Minister was held liable.

- [11] In this matter no conduct of the police officers was placed in evidence that rendered the remand for bail attributable to the Minister. No malice or misrepresentations were recorded. In the merits trial it was found that *“This Court is satisfied that the pleadings lacked the jurisdictional requirements and the facts supporting thereto.”* The Court found that there was no assault. Thus although the arrest was unlawful, the further detention order by a Magistrate, was not. There was nothing that the police had to disclose to the prosecutor that was relevant to the detention.
- [12] The assessment of the amount of damages is to have regard to all the facts of the particular case and on these facts determine the quantum of damages. In *Tyulu*² the Court found *“... it is important to bear in mind that the primary purpose is not to enrich the aggrieved party but to offer him or her some much-needed solatium for his or her injured feelings. It is therefore crucial that serious attempts be made to ensure that the damages awarded are commensurate with the injury inflicted. However, our courts should be astute to ensure that the awards they make for such infractions reflect the importance of the right to personal liberty and the seriousness with which arbitrary deprivation of personal liberty is viewed in our law. I readily concede that it is impossible to determine an award of damages for this kind of injuria with any kind of mathematical accuracy. Although it is always helpful to have regard to awards made in previous cases to serve as a guide, such an approach if slavishly followed can prove to be treacherous.”*
- [13] The unlawful deprivation of liberty always leads to the infringement of the right to human dignity. This is a serious inroad into the freedom of a person. I also accept that Mr Mahlangu suffered psychological stress from this incident, although it is common cause that it was ameliorated. The Minister must compensate the deceased for two days’ detention; the date of arrest to the date of remand.
- [14] In the *Mahlangu*-matter the circumstances included torture and eight months’ detention. This matter is not comparable. In the *Motladile*-matter the person was detained for four days, there was evidence pertaining to the dire

² *Minister of Safety and Security v Tyulu* 2009 (5) SA 85 (SCA)

circumstances in the cell, his diminished reputation, his shame and embarrassment in not attending the wedding. This matter is not comparable at all. I am of the view that R100 000 is fair and reasonable compensation on the facts put before court.

[15] I accordingly make the following order:

- 15.1 The first defendant is to pay the executor of the estate the amount of R100 000 together with interest at the prescribed rate per annum from date of service of summons to date of payment.
- 15.2 The expert fees of Dr Naidoo are to be paid by the first defendant.
- 15.3 The first defendant is to pay the costs on High Court scale.



S. POTTERILL
JUDGE OF THE HIGH COURT

CASE NO: 13342/2013

HEARD ON: 24 July 2023

FOR THE PLAINTIFF: ADV. M.R. MAPHUTHA

INSTRUCTED BY: Makhafola & Verster Attorneys

FOR THE DEFENDANTS: ADV. J.C. VAN EEDEN

INSTRUCTED BY: Gildenhuys Malatji Incorporated

DATE OF JUDGMENT: 26 July 2023