



**IN THE HIGH COURT OF SOUTH AFRICA,  
FREE STATE DIVISION, BLOEMFONTEIN**

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|------------------------------|----|
| Reportable:                  | NO |
| Of Interest to other Judges: | NO |
| Circulate to Magistrates:    | NO |

Case number: 433/2019

In the matter between:

**TSHIDISO PAUL TOLAONE**

**PLAINTIFF**

and

**THE MINISTER OF POLICE**

**DEFENDANT**

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**HEARD ON:**                      **16 AUGUST 2022**

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**BEFORE:**                      **CHESIWE, J**

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**DELIVERED ON:**              **This judgment was handed electronically by circulation to the parties' representatives by email. The date and time for hand-down is deemed to be at 13h00 on 13 January 2023.**

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- [1] The Plaintiff issued combined summons to sue the Defendant for damages in the amount of R1 415 600.00, for wrongful and unlawful arrest and for being kept in detention for a period of 66 days, allegedly on a charge of business robbery and theft of motor vehicle, wherein a firearm was used.
- [2] The claim is based on the premises of vicarious liability, it being that at the time of arrest, the Police Officers were employed by the Defendant and committed the alleged unlawful act during the course of their employment and whilst in the

execution of their duties. And that they acted unlawful as stated in the particulars of claim as follows:

- "10.1 Constable Mokone and his colleague arrested and detained the Plaintiff without reasonable or probable cause;*
- 10.2 Constable Thabang Mokone and his colleague had no reasonable grounds to suspect that the Plaintiff did commit any criminal offences accused of;*
- 10.3 The said Investigating officer misled the Court that a case against the Plaintiff was strong and that the latter" bail application had to be declined."*

- [3] According to the Plaintiff as a consequence of the above, he suffered the following:

- "11.1 Violation of his freedom and human dignity;*
- 11.2 Contumelia'*
- 11.3 Emotional pain and suffering;*
- 11.4 Deprivation of his property and violation of privacy; and*
- 11.5 Loss of income, 2 month salary."*

- [4] The Plaintiff in the particulars of claim attached to the summons alleged that on the 10 July 2018, he was at a surgery in Thaba Nchu when he was arrested by two officials, and among them was Constable Mokone. On 8 August 2018, he appeared at the Magistrate Court for a bail hearing, which was postponed to 27 August 2018 for a formal bail hearing. The bail was opposed by the State. And same was denied. On the 13 September 2018 the charges against the Plaintiff were withdrawn by the State due to lack of evidence that linked the Plaintiff to the offences he was charged with.
- [5] In terms of Rule 33 (4) and the Pre-Trial minutes, as well as submissions placed on record by the Legal Representatives of both parties, it was agreed that merits and quantum will not be separated and will be adjudicated simultaneously.
- [6] The Defendant's bundle was admitted by agreement between the parties as exhibits that contains the case docket CAS 35/07/2018. It included the first and additional statements, as well as the warning statements of the Plaintiff.

- [7] The Defendant pleaded that the arrest was lawful and was effected in term of Section 40 (1) (b) of the Criminal Procedure Act of 1977, (CPA) as Mokone had a reasonable and bona fide belief and/or suspicion that the Plaintiff had committed criminal offence as referred to in Schedule 1 of the CPA.
- [8] This court has to therefore determine whether the arrest and the detention was lawful. Whether the arresting officer had reasonable suspicion that the Plaintiff have committed the offence. And whether the Defendant is liable for any damages suffered by the Plaintiff, as well as determine the quantum of damages suffered by the Plaintiff.
- [9] The Plaintiff testified and called no further witnesses. The Defendant called Constable Mokone to testified and also no further witnesses were called.

## **PLAINTIFF'S EVIDENCE**

- [10] The Plaintiff testified as follow: On 10 July 2018, he was arrested at a surgery in Thaba Nchu. He was accompanied by a friend, a Thandaza Mathosa. He was informed by Constable Mokone that he was a suspect in a business robbery and was thereafter arrested. The Plaintiff was kept at Selosesha Police Station. He appeared on 12 July 2018 for a bail hearing. He was in court again on 8 August 2018, for a formal bail hearing. According to the Plaintiff, bail was denied due to Detective Mokone's evidence, in that the Plaintiff would threatened the complainant and that the State had a strong case against the Plaintiff.
- [11] The Plaintiff remained in custody for a period of 66 days. Plaintiff said while in custody at Selosesha Police Station, he did not have warm clothes to wear; the cells were dirty; the blankets were dirty; the water was cold and he could not wash himself; the food was bad and they were six (6) up to seven (7) people in one cell. He did not have visitors while in custody. He was transferred to Grootvlei Correctional Centre, where the living conditions were even worse as they were up to 70 in one cell. Plaintiff said he was released when the charges against him were withdrawn on 13 September 2018.

- [12] Under cross-examination the Plaintiff denied that the Complainant correctly identified him as the suspect, as the Complainant had said in her statement that the suspect's face was covered. The Plaintiff denied that he is the only person who is slender and short and wore black sneakers, as pointed out by the Complainant. The Plaintiff indicated that it was possible that he might have a twin or someone that looks like him. Plaintiff mentioned that the police, specifically Mokone, should have investigated the matter first, before arresting him. The Plaintiff explained that he told Mokone that he was employed as a taxi driver and worked for Papie Kgasapane. He said taxi drivers do not get a salary advices and thus it was difficult to prove that he was employed. He insisted that the bail was denied due to Detective Mokone's evidence. That was the Plaintiff's evidence.

## **DEFENDANT'S EVIDENCE**

- [13] Detective Mokone testified as follow: On 10 July 2018, he was on duty when he received a call from the Complainant's father that the Complainant was at the surgery of Dr Thekisho and saw the suspect that robbed her on 7 July 2018. He went to the surgery where he met the Complainant. The Complainant told him that the suspect that robbed her on 7 July 2018 was in the surgery. He asked the Complainant to show him the suspect. The Complainant pointed out the Plaintiff to him. He called out the Plaintiff to come outside. He explained to the Plaintiff the reason he called him outside. That the Complainant had identified him as the suspect that robbed her on 7 July 2018. Mokone said the Plaintiff informed him that he had nothing to explain and will speak at court. He said because the offence was a serious offence and that the Complainant pointed out the Plaintiff, he could not do much but arrest the Plaintiff. He arrested the Plaintiff and charged him the next day, that is on 11 July 2018.
- [14] Mokone further testified that he was a witness in the bail application. He was also the Investigating Officer and did not have a say in the bail application nor its refusal. He completed the required bail information form,<sup>1</sup> as the Investingating Officer. He conducted further investigation by checking the

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<sup>1</sup> Thaba Nchu Cas 35/07/2018, A8 page 36 of Defendant's Bundle.



finger prints in the vehicle, including the CCTV at the complex. He could not find anything that linked the Plaintiff. Mokone said he had a bona fide believe that the Plaintiff was the suspect. And that the decision not to prosecute was taken by the Prosecutor. That was the defendant's evidence.

- [15] Adv. Mazibuko, Counsel on behalf of the Plaintiff, submitted in oral argument that: The Defendant admitted the arrest and had the onus to justify the arrest. The statements of the Complainant, that is the **A1** and the additional statements both mentioned that the suspects' faces were covered. He indicated that the issue of the sneakers was dealt with, as the Plaintiff explained that there was nothing special about his sneakers and that there are many people who are slender and short. Counsel submitted that the Plaintiff only had to prove that the arrest was unlawful. And that the conduct of Mokone was unlawful by having infringed on the Plaintiff's Constitutional Rights to freedom. Counsel concluded that the legislature was clear in Section 40(1)(b) of the Criminal Procedure Act, 51 of 1977 (herein after referred to as the CPA), that an arresting officer should on reasonable suspicion arrest a suspect. According Adv. Mazibuko stated that, in this instance, Mokone did not have any reasonable suspicions.
- [16] Adv. Bomela, Counsel on behalf of the Defendant submitted that had the Plaintiff not been arrested, he would not have been detained. Counsel mentioned that based on Mokone's evidence and the alleged offence committed, which in this case is a criminal offence referred to in Schedule 1 of the CPA, namely, armed robbery and hijacking. Counsel mentioned that based on the alleged offence, Plaintiff could not get bail. The bail form as completed by Mokone, had all the boxes ticked. Counsel indicated that the Defendant pleaded that the arrest was lawful and it was effected in terms of Section 40(a)(b) of the CPA and that it was reasonable and *bona fide*.

## LEGAL FRAMEWORK

- [17] The Plaintiff to institute a claim for damages for unlawful arrest and detention has to meet specific requirements, namely:

- (a) *The Plaintiff must establish that his liberty has been interfered with;*
- (b) *The Plaintiff must establish that this interference occurred intentionally;*

- (c) *The Plaintiff needs to show that the Defendant acted intentionally in depriving his liberty and that the Defendant knew that it was wrongful to do so;*
- (d) *The Plaintiff must establish that the conduct of the Defendant must have caused, both legally and factually, the harm for which compensation is sought.<sup>2</sup>*

[18] *Section 40 of the Criminal Procedure Act 51 of 1977 provides that;*

- “(1) Peace Officer may without a Warrant arrest a person –*
  - (a) Who commits or attempts to commit any offence in his presence.*
  - (b) Whom he reasonably suspects of having committed an offence referred to in schedule 1, other than the offence of escaping from unlawful custody.*
  - (c) .....*
  - (d) .....*
  - (e) Who is found in possession of anything which the police officer reasonably suspects to be stolen or property dishonestly obtained and whom the Peace Officer reasonably suspects of having committed an offence with respect to such a thing.*
- (2) If a person may be arrested under any law without warrant and subject to conditions or the existence of circumstances set out in that law, any peace officer may without warrant arrest such person subject to such conditions or circumstances.”*

[19] *Section 41 of the CPA further provides that;*

- “(1) A Peace Officer may call upon any person –*
  - (a) Whom he has power to arrest,*
  - (b) Who is reasonably suspected of having committed or of having attempted to commit an offence.*
  - (c) Who in the opinion of the Peace Officer may be able to give evidence in regard to the commission or suspected commission of any offence, to furnish such Police Officer with full name, address,*

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<sup>2</sup> See *De Klerk v Minister of Police* (CCT 95/18) [2019] ZACC 32; 2019 (12) BCLR 1425 (CC); 2020 (1) SACR 1 (CC); 2021 (4) SA 585 (CC) (22 August 2019).

*and if such person fails to furnish his full name and address, the Peace Officer may fourth with and without a warrant arrest him, or of such person furnishes to the Peace Officer a name or address which the Peace Officer reasonably suspects to be false, the Peace Officer may arrest him without warrant and detain him for a period not exceeding twelve hours until such name and address is verified."*

At the time of the arrest the peace officers were acting within the course and scope of employment.

- [20] The Plaintiff testified as a single witness. Even though in his evidence in chief, the Plaintiff made mention of a friend who was with him on the night the offence was committed and that same friend was with him at the surgery, the Court would have expected the Plaintiff to have informed Mokone about this friend and brought the friend before the Court to corroborate his version. Not only did the Plaintiff fail to inform Mokone about this friend, he also failed to call this friend to testify. Instead the Plaintiff told Mokone he will rather give evidence in court.
- [21] The Plaintiff in his evidence-in-chief could not explain the issue of his employment. When he was arrested, he informed the arresting officer he was unemployed. In the Particulars of Claim, the Plaintiff avers that he was employed as a taxi driver and during his evidence-in-chief, he explained that he was a taxi driver and that the arresting officer told the Plaintiff that he was not a registered employee. The Plaintiff explained that while he was in custody he could not obtain proof of employment and that the employer had already replaced him. The Plaintiff during the bail application was legally represented. He could have easily requested his legal representative to request proof of employment from the employer. Even though the Bail Information Form on the question of employment, the box was ticked "NO". Thus confirming again that the Plaintiff failed to produce evidence of employment. The Plaintiff in this instance failed to provide any evidence with regard to his employment. Furthermore, the Plaintiff's evidence about being mistaken with his twin, or there may be someone who looks like him, cannot hold. The Plaintiff's

explanation on these aspects was incoherent and not clear, neither consistent. In my view this is evidence that the Plaintiff could have cleared with the arresting officer, or even with the Investigating Officer, so that such information could be followed up.

- [22] The evidence of the Defendant was placed before Court by Constable Mokone. Mokone at that stage had to weigh and consider the information given to him on whether or not to arrest the Plaintiff. As already stated that the offence was an offence as referred to in a Schedule 1 offence, which involved armed robbery and hijacking, his evidence was clear that he arrested the Plaintiff in the presence of the Complainant. Based on the investigation of the crime and being involved from the first day when he was called to the scene, Mokone had reasonable suspicions to arrest the Plaintiff when the Complainant informed him and described the sneakers and the physique of the Plaintiff that he had to arrest the Plaintiff. In my view, the offence was still fresh in the Complainant's mind as it happened within two days of the arrest of the Plaintiff. Therefore, Mokone had no reason to doubt the Complainant's information.
- [23] It is trite that the onus rests on the Defendant to justify an arrest. In **Minister of Law and Order and Others v Hurley and Another**,<sup>3</sup> Rabie CJ stated that: *"An arrest constitutes an interference with the liberty of the individual concerned, and it therefore seems fair and just to require that the person who arrested or caused the arrest of another person should bear the onus of proving that his action was justified in law."*
- [24] While it is clearly established that the power to arrest may be exercised only for the purpose of bring the suspect to justice, the arrest is only one step in that process.<sup>4</sup> Once an arrest has been effected, the Peace Officer must bring the arrestee before court as soon as reasonably possible and at least within 48 hours (depending on court hours) once that has been done the authority to detain the suspect further is then in the discretion of the court and what happened in court cannot be placed squarely on the Defendant.

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<sup>3</sup> 1986 (3) SA 568 (A) at 589E-F

<sup>4</sup>Minister of Safety and Security v Sekhoto and Antohar (2011 (1) SACR 315 (SCA); [2011] 2 All SA 157 (SCA); 2011 (5) SA 367 (SCA)) [2010] ZASCA 141; 131/10 (19 November 2010)

- [25] It is common cause that the Plaintiff was arrested for being a suspect in an armed robbery and hijacking. According to the Defendant, the Plaintiff was identified within two days after the offence was committed and thus the issue of the sneakers and the physique of the Plaintiff was still fresh in the Complainant's mind. In my view, the Defendant's arrest of the Plaintiff was in terms of section 40 of the CPA. Where an arrest was effected by the employees of the Defendant without a warrant of arrest, this will fall within the provisions of Section 40(1)(a) read with Section 40(1)(h) of the CPA.
- [26] The relevant contents of the docket with regard to the Complainant's statement, Exhibit A, page 43 of Defendants' bundle are noted as follows:

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"ON SATURDAY 2018- 07-07 AT ANOUT 18.30 WHEN I WAS ROBBED OF THE CAR AND MONEY, ONE OF THE SUSPECTS THAT WAS SITTING WITH ME AT THE BACK OF THE CAR WEARING BLACK SNEAKERS, DARK HOOD AND HE WAS COVERING HIS MOUTH AND NOSE WTH BLACK AND WHITE BANDANA BUT I COULD SEE HIS UPPER PART OF THE FACE, HE WAS SLENDER AND SHORT HEIGHT."

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"ON TUESDAY 2018-07-10 AT ABOUT 13.20 I WENT TO DR THEKISHO AT SELOSESHA TO CONSULT WITH THE DOCTOR. AS I ENETRED THE RECEPTION ROOM I THEN NOTICED THE SAME AFRICAN MALE WHO HAD POINTED ME WITH A FIREARM AND ROBBED ME- ON SATURDAY 2018-07-07. HE WAS STILL WEARING THE BLACK SNEAKERS THAT HE WORE ON THE DAY OF THE ROBBERY."

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"I DID NOT MAKE THAT PERSON AWARE THAT I RECOGNISE HIM BUT HE BECAME VERY SHOCKED TO SEE ME BUT DID NOT LEAVE THE PLACE. I PROCEEDED TO THE RECEPTION FOR ASSIATNCE THEN AFTER I WENT OUT AND CALLED MY FATHER IN ORDER FOR HIM TO CALL THE POLICE. THE POLICE CAME AND I POINTED THE PERSON TO THE POLICE AND THEY TOOK HIM AWAY."

- [27] The Complainant's statements (**A1 and Additional Statements**) clearly showed that the suspect was identified within two days after the offence was committed and that she explained that the sneakers were the same as those that were worn on the day of the offence. The Complainant was with the perpetrator in the back of the vehicle for a period sufficient enough to recognise the person's physique, the sneakers and well as the upper part of his face. Within two days she was able to indicate that the person in the surgery was the Plaintiff. Mokone on receipt of the call from the Complainant's father, was obliged to act as the offence committed was quiet serious and that it involved armed robbery and hijacking. For the fact that the victim was a woman, that worsens the situation. Mokone cannot not be faulted for having acted by arresting the Plaintiff and therefore acted lawful.
- [28] In **Minister of Safety and Security v Magagula**,<sup>5</sup> the Court quoted with approval from **Shabaan Bin Hussein and Others v Chong Fook Kam and Another [1969] 3 ALL ER 1627** as follows: "*A suspicion in its ordinary meaning is a state of conjecture or surmise where proof is lacking; 'I suspect but I cannot prove'. Suspicion arises at or near the starting point of an investigation of which the obtaining of prima facie proof is the end.*"
- [29] In **Duncan v Minister of Law and Order**,<sup>6</sup> the court held that the jurisdictional facts which must exist before the power conferred by Section 40 (1)(b) defence are that (i) the arrestor must be a peace officer; (ii) the arrestor must entertain a suspicion; (iii) the suspicion must be that the suspect (the arrestee) committed an offence referred to in Schedule 1; and (iv) the suspicion must rest on reasonable grounds. Once these jurisdictional facts for arrest have been established, the discretion arises. Which in this instance Mokone had established and as such, the discretion to arrest was effected.
- [30] In **Shidiack v Union Government (Minister of the Interior)** <sup>7</sup>, Innes ACJ stated as follows:

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<sup>5</sup> 2017 JDR 1486 (SCA) at para 9

<sup>6</sup> 1986 (2) SA 805 (A) at 818 g-h

<sup>7</sup> 1912 AD 642 at 651 – 652



*“Now it is settled law that where a matter is left to the discretion or the determination of a public officer, and where his discretion has been bona fide exercised or his judgement bona fide expressed, the Court will not interfere with the result. Not being a judicial functionary no appeal or review in the ordinary sense would lie; and if he has duly and honestly applied himself to the question which has been left to his discretion, it is impossible for a Court of Law either to make him change his mind or to substitute his conclusion for his own. There are circumstances in which interference would be possible and right. If for instance such an officer had acted mala fide or from ulterior and improper motives, if he had not applied his mind to the matter or exercised his discretion at all, or if he had disregarded the express provisions of a statute – in such cases the Court might grant the relief. But it would be unable to interfere with a due and honest exercise of discretion, even if it considered the decision inequitable or wrong.”*

- [31] Mokone in this instance had established that a suspicion existed, as an arresting officer he had to exercise his discretion to arrest and that discretion, in my view, was exercised rationally. Based on these grounds, which Mokone had met, he had to arrest the Plaintiff. Mokone did not know the Plaintiff and had no reason to act with dishonesty or inappropriately by arresting a person that he did not know. I therefore, find that the Defendant has established all the jurisdictional facts based on Section 40 (1)(b) and that as the arresting officer properly exercised his discretion to arrest the Plaintiff and this Court will not interfere with that discretion to arrest. The arrest was therefore lawful.

## **DETENTION**

- [32] It is common cause that the Plaintiff was arrested without a warrant of arrest by Constable Mokone. It is also common cause that Mokone is still in the employment of the Defendant. The Plaintiff's contention is that Mokone should have foreseen that after the first appearance the case would be remanded for a formal bail application. As a consequence of Mokone's conduct, Plaintiff's bail was denied. The Defendant on the other hand asserts that post the first court appearance, such detention was at the discretion of the Court of which the police played no part in keeping the Plaintiff in custody. Further that the

detention of the Plaintiff falls within the ambit of the Minister of Justice and that the Defendant had no part in keeping the Plaintiff in custody.

[33] Section 50 of the CPA provides as follows:

*"50 Procedure after arrest - (1)(a) Any person who is arrested with or without a warrant for allegedly committing an offence, or for any other reason, shall as soon as possible be brought to a police station or, in the case of an arrest by warrant, to any other place which is expressly mentioned in the warrant."*

[34] The Plaintiff was brought before court for his first appearance on 12 July 2018, and that was within the required 48 hours of an arrested accused person. The Plaintiff from the time of his arrest, was kept at the Selosesha Police Station. After his bail was denied, he was kept at Grootvlei Correctional Centre. In **Minister of Safety and Security v Sekhoto and Another**,<sup>8</sup> the court stated as follows:

*"Once an arrest has been effected the peace officer must bring the arrestee before court as soon as reasonably possible and at least within 48 hours (depending on court hours). Once that has been done the authority to detain that is inherent in the power to arrest has been exhausted. The authority to detain the suspect further is then within the discretion of the court."*

[35] The Plaintiff was throughout informed of his rights, including his rights when the warning statement was taken (**Exhibit 3 page 38 of Defendant's Bundle**). The Plaintiff had Legal representation at the bail application. The Plaintiff was brought before court within the required 48 hours. The Plaintiff averments that he was never told of his rights cannot therefore not stand.

[36] With regard to further detention post-first court appearance, of which the Defendant denied liability, Mokone as an employee of the Defendant, was legally justified to arrest and detain the Plaintiff in terms of Section 50 (1)(a) of the CPA until his first appearance. Due to the seriousness and nature of the offence, that is armed robbery and hijacking. The Plaintiff bore the onus to show exceptional circumstances to be released on bail. If the Plaintiff failed to show

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<sup>8</sup> (2011 (1) SACR 315 (SCA); [2011] 2 All SA 157 (SCA); 2011 (5) SA 367 (SCA)) [2010] ZASCA 141; 131/10 (19 November 2010)

that any exceptional circumstances existed during the bail application, it is not the Defendant that has to be held liable after bail was denied. The court had the discretion to keep the Plaintiff in custody and not the Defendant. Therefore the authority to detain a suspect further is within the discretion of the court.<sup>9</sup>

## DAMAGES

- [37] I now turn to deal with the issue of quantum. The assessment of damages for unlawful detention of an aggrieved party is not to enrich such a party, but to offer some much needed solatium for the aggrieved party's injured feelings, as well as the deprivation of his/her liberty. The court has to determine the extent to which the damage was inflicted on the aggrieved person. It is indeed difficult for the court to make a definite determination in respect of an award for damages for injured feelings or deprivation of damages, other than to look at comparable cases.
- [38] Adv. Mazibuko in oral argument submitted that the loss of income of the Plaintiff was not properly proven. He indicated that even if the loss of income was not proven, the Plaintiff was deprived of his liberty and that the conditions of his detention in custody was undesirable. Counsel submitted that an appropriate amount that the court can award would be R25 000 per day for the period of 66 days that Plaintiff spent at Selosesha Police Station and Grootvlei Correctional Centre.
- [39] Adv. Bomela submitted that the Plaintiff has conceded that he was unemployed and thus suffered no damages. He stated that the court is not to award any damages post the Plaintiff's first appearance. Counsel submitted that if the court is to award damages to the Plaintiff, then the Court must place a value judgment on the Plaintiff, that is his standing in the community, personal circumstances, his medical condition and whether he was denied medical attention or suffered any trauma while in custody. Counsel submitted that a reasonable amount for the Plaintiff's injured feelings and deprivation of his liberty would be an amount of R150 000.

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<sup>9</sup> The minister of Safety and Security v Sekhoto and Another *Supra*

[40] In **Sandler v Wholesale Coal Suppliers Ltd** <sup>10</sup>, it was stated that:

*"It is no doubt exceedingly difficult to value damage in terms of money, but that does not relieve the Court of the duty of doing so upon evidence placed before it. This is a principle which has been acted on in several cases in South African Courts."*

[41] The Plaintiff placed no evidence before this Court for loss of income and it cannot be said he suffered damages in terms of his income. In **Rudman v Road Accident Fund** <sup>11</sup>, the court said: *"there must be proof that the reduction in earning capacity indeed gives rise to pecuniary loss."*

[42] The Plaintiff while in custody suffered no trauma, nor did the Plaintiff prove any medical condition that he has and did not get medical attention for, except that the Plaintiff complained about the food, clothes, blankets and conditions of the cells as well as overcrowding in the cells. I pause to mention that I have on several occasions conducted Judicial Inspection at Grootvlei Correctional Centre and in my view the facility is well maintained. The prisoners as well as those awaiting trial are well taken care off. They all get three meals per day and the medical facility is up to standard. Furthermore, overcrowding of the prison cells is no secret as it is a well-known issue.

[43] It is now accepted that in the assessment of these kinds of damages, which cannot be assessed with any amount of mathematical accuracy, the court has a wide discretion.<sup>12</sup>

[44] 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. The correct approach is to have regard to all the facts of the particular case and to determine the quantum of damages on such facts.<sup>13</sup> Furthermore, a claim for damages against the Defendant should not be allowed to triumph out of control, as employees such as Mokone will be unable

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<sup>10</sup> 1941 (A) 194 at 198

<sup>11</sup> 2003 (2) SA 234 (SCA) para [11]

<sup>12</sup> See *AA Mutual Insurance Association Ltd v Maqula* 1978 (1) SA 805 (A)

<sup>13</sup> *Rudolph and Others v Minister of Safety and Security and Another* 2009 (5) SA 94 (SCA) ([2009] ZASCA 39) paras 26 – 29). [22]

to do their work for fear of unreasonably high claims for damages against the employer, in this case the Defendant. .

[45] In **Minister of Safety and Security v Seymour** <sup>14</sup>, the court said the following:

*“The assessment of awards of general damages with reference to awards made in previous cases is fraught with difficulty. The facts of a particular case need to be looked at as a whole and few cases are directly comparable. They are a useful guide to what other courts have considered to be appropriate but they no higher value than that.”*

At page 326, paragraph [20], the learned Judge went on to express the view that when assessing damages for unlawful arrest and detention, Courts are not extravagant in compensating the loss as there are many legitimate calls on the public purse to ensure that other rights that are no less important also receive protection.

[46] The Court will always be guided by the facts of each case and not taking its eyes off the purpose and object of the protection of such rights as enshrined in the Constitution. In this instance, I shall be guided by the particular facts and circumstances of the case in determining the appropriate amount of damages.

[47] Taking into consideration that deprivation of one's liberty is always a serious matter and bearing in mind that any damages awarded will be from the public purse, the principle on awarding damages should be fair to both sides. Compensation must be given to the Plaintiff, but not to pour out largesse from the horn of plenty <sup>15</sup>.

[48] Both parties made reference to **De Klerk v Minister of Police**,<sup>16</sup> in which the Plaintiff was awarded an amount of R300 000. In **Minister of Safety and Security v Seymour**,<sup>17</sup> the Supreme Court of Appeal reduce a R500 000 award to R90 000, as the Plaintiff did suffer any degradation in respect of an arrested person nor suffer any financial damages.

<sup>14</sup> 2006 (6) 320 (SCA) paragraph [17] at 325

<sup>15</sup> Pitt v Economic Insurance Co. Ltd 1957 (3) SA 284 (N) at 287 E- F

<sup>16</sup> 2021 (4) SA 585 (CC)

<sup>17</sup> (295/05 [2006] ZASCA.

- [49] In **Mahlangu and Another v Minister of Police**,<sup>18</sup> the Plaintiffs were tortured and forced to make confessions by the police. The Constitutional Court awarded an of R550 000,00 & R500 000,00 towards the Plaintiffs. **Mahlangu** in this regard is distinguishable in that the Plaintiffs were tortured and as result suffered trauma.
- [50] The Plaintiff in my view did not suffer any damages that warrants an amount of R1 415 600,00. Even though Counsel for the Plaintiff submitted that the amount to be awarded should be R37 500 multiplied by the 66 days, which equals R2 475 000,00. This will be a typical case of an unfair and unjust award.
- [51] Having considered the facts as well as the circumstances of the Plaintiff post the first court appearance, in my view an amount of R250 000 would be fair and appropriate to compensate the Plaintiff. As stated above that deprivation of a person's liberty is a serious matter.

## **COSTS**

- [52] The Plaintiff seeks costs for the action. The Plaintiff is partially successful in respect of quantum. I find no reason why the costs should not be allowed.
- [53] I accordingly make the following order:
1. The Defendant is liable to pay the Plaintiff damages he suffered for the detention post the first appearance;
  2. The Defendant shall pay the Plaintiff an amount of R250 000 for damages suffered as a result of the detention;
  3. The Defendant shall pay the Plaintiff's costs on a party and party scale.

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<sup>18</sup> 2021 (7) SACR 595 (CC)



  
S. CHESIWE, J

On behalf of the Plaintiff:

Instructed by:

Adv. M S Mazibuko  
Mokhomo Attorneys  
BLOEMFONTEIN

On behalf of the Defendant:

Instructed by:

Adv. L R Bomela  
State Attorney  
BLOEMFONTEIN