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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
DATE:	<u>14-02-2018</u>
SIGNATURE:	<u><i>[Signature]</i></u>

14/2/18

Case No. 68732/2012

In the matter between:

MAROPE, IKAGENG SAMUEL

PLAINTIFF

And

MINISTER OF POLICE

DEFENDANT

JUDGMENT

MILLAR AJ

1. The Plaintiff brought an action for damages against the defendant for damages arising out of what was alleged to be his unlawful arrest and detention. The defendant admitted the arrest but placed in issue its unlawfulness and that the plaintiff had suffered any damages.
2. It was common cause that on 23 October 2010 and at the Grobler's Bridge border post, between the Republic of South Africa and Botswana, located in the Limpopo Province, the plaintiff was, while he was on duty there as a serving police officer, arrested and thereafter detained for a period of 5 days until his release on bail.
3. Furthermore that Isuzu truck with registration number ZBL 107 GP bore false registration plates, had been stolen in Gauteng and had been passed through the departure checkpoint at the border, this despite the fact that when it was subsequently returned and checked, according to the police "Standard Operating Procedure" – it was found to have two sets of number plates, one behind the other (front and back) and that checking its' VIN (vehicle identity number also called chassis number) on the computer system had immediately revealed that ZBL 107 GP was false and that the vehicle was stolen.
4. In respect of the evidence led five witnesses testified. The defendant called four witnesses and the plaintiff one, to testify. The first witness was Sergeant Chauke ("Chauke") who had effected the arrest. He testified that he was attached to the anti-corruption unit in Polokwane. On the 22nd of October 2010 he and fellow officers had been informed that they were to take part in an operation at the Grobler's Bridge border post. Information had been obtained that a truck that had been stolen in Gauteng was going to be taken across the border at that border post and that a police official, Warrant Officer Marope, the plaintiff, was named as the person who would facilitate this. He had travelled to the vicinity

of the border post with other officers and they had waited there keeping a lookout for the truck. When the truck did not appear, they had all gone home.

5. Early the next morning he had received a call that the truck was parked at the border. He left his home to go there and, on the way, had been informed by surveillance at the border that the truck had passed through to Botswana. He had called for assistance on the radio and by the time he had arrived at the border the truck was parked there. The driver of the truck, Patrick Mashaba ("Mashaba") was also there. He had gone to speak to Mashaba and asked him who had passed the truck through to Botswana and he had pointed to the plaintiff who was standing nearby.
6. He had then gone to the plaintiff and asked him to accompany him. He informed the plaintiff that he was under arrest and had disarmed him and then taken him to his vehicle. He testified that he had not handcuffed the plaintiff when he arrested him as it would have been in full view of the public and so he waited until he was in the vehicle before he did so.
7. He drove the plaintiff to Tom Burke Police Station where a docket was opened, and the plaintiff was formally taken into custody.
8. Lieutenant Colonel Phudufudu testified in regard to the standard operating procedure. His evidence was largely common cause. He testified that having regard to the documentation presented at the checkpoint for the truck, that it should never have been passed. His evidence was that in particular the letter purporting to be from the owner of the truck authorizing Patrick Mashaba to travel with the truck to Zimbabwe and Mozambique would have raised a concern and he should have been asked to obtain a

further letter or been advised to cross the border into Zimbabwe. The crux of his evidence was that with the documentation that had been presented for the truck, if the standard operating procedure had been followed, the truck would not have been allowed to pass.

9. The defendant also called Constable Sekgobane ("Sekgobane"). He testified that on the day in question he had reported for duty to the Grobler's Bridge border post where he was stationed. A parade was held at 07H00. Although he was attached to the same detail as the plaintiff which was to check vehicles and persons departing the Republic, he had been instructed that morning by his commander Warrant Officer Shingange ("Shingange") to drive fellow officers who had just finished their shift, home. He had done so and as he was arriving back at a 08H00, he had been instructed to go with the plaintiff to fetch a truck that had been incorrectly passed through the border. They had gone to the Botswana side but the truck, an Isuzu was already gone. They had then driven into Botswana and after about 10 km they had located it at a filling station. The driver, Patrick Mashaba was in the process of filling the truck with diesel. They told him there was an issue with the truck and that he should return with them to the Republic.
10. Sekgobane had then driven the truck back while Mashaba had accompanied the plaintiff in the police vehicle. When he had arrived back he had parked the truck and gone about his duties. Later that day he had been called in by Shingange and asked whether he had passed the truck through and he had informed him that he had been taking officers home when the truck had gone through.
11. Constable Ramotebele ("Ramotebele") corroborated the evidence of Chauke as to what had transpired on the 22nd. He had gone to Tom Burke Police Station on the 23rd and

had found the truck there as well as Marope and Mashaba. He had spoken to Mashaba who had implicated Marope. He had thereafter charged Mashaba and his passenger Hamish Dlamini ("Dlamini"). Mashaba had told him that Dlamini was just a person he had given a lift and the charges against him had been subsequently been withdrawn. Mashaba was subsequently convicted of being in possession of stolen property. He testified that he had investigated the case and had even come to Gauteng to take statements from the owner of the truck and the person who had been driving it when it had been stolen. The charges against Marope had subsequently been withdrawn.

12. The plaintiff, a Warrant Officer who had served for 17 years, testified that he had arrived for work on the 23rd October 2010 and attended the parade. He had gone to the departure checkpoint but had not inspected any vehicles or pedestrians that had passed. He had received a message from Shingange that an Isuzu truck had been passed that had problems and that it should be found. He went to Sekgobane and they had gone to the Botswana side only to find the truck had gone. They had driven into Botswana to look for the truck and had come upon it at a filling station about 10km from the border. They had spoken to the driver Mashaba and had told him he needed to return with them. Sekgobane had driven the truck back and he brought Mashaba back with him. When they got back the truck had been parked and he had handed Mashaba over at the CSC (Community Service Centre). He had then gone back to his duties.
13. Around midday, he was called to the CSC where he met Chauke and a Colonel. He was asked to sit down and then disarmed, arrested and handcuffed. He was told he was being arrested for letting the truck pass and that Mashaba had said he had been the one that had let it pass.

14. He was taken by Chauke to Tom Burke Police Station where he was charged. He was kept in the waiting area for some time and then, in full uniform, taken to the cells at approximately 18H00. He was kept in the cells until Monday morning when he was taken to court. He had managed to phone his family on Sunday and had arranged for them to bring him a change of clothes. He changed before court and did not appear in his uniform. The case was remanded to the Thursday for bail and he was then granted bail. He paid the bail and was released.
15. The plaintiff testified that he had spent a total of 5 nights in the cells. The other inmates had been cruel and abusive to him, particularly as he was wearing his uniform and had made disparaging remarks about him. He was prevented from eating as the other inmates took his food from him. He was degraded and humiliated by them and beaten on the back while having to simulate riding a bicycle. The plaintiff thereafter appeared in court on a number of occasions until 25 March 2012 when the charges against him were withdrawn. Although he returned to work, he found it impossible to gain the trust of his colleagues and so he resigned in October 2012.
16. The evidence led by both parties, was given by the respective witnesses who, with the exception of Ramotebele, testified through an interpreter, acceptable. The versions were for the most part consistent, save for the difference between the plaintiff and Chauke as to where he was actually arrested. This difference is in my view immaterial. This case can be decided on the whole of the evidence led by the parties and it is not necessary for me to prefer one over the other.
17. It is common cause that the plaintiff was arrested without a warrant. Section 40(1)(b) of the Criminal Procedure Act 51 of 1977 provides that, "*a peace officer may without*

warrant arrest any person whom he reasonably suspects of having committed an offence referred to in Schedule 1".

18. It was held by the Supreme Court of Appeal in *Duncan v Minister of Law and Order*¹ that "The so-called jurisdictional facts which must exist before the power conferred by s 40(1)(b) of the present Act may be invoked, are as follows:

- (1) the arrestor must be a peace officer;
- (2) the arrestor must entertain a suspicion;
- (3) the suspicion must be that the suspect committed an offence referred to in schedule 1;
- (4) the suspicion must rest on reasonable grounds."

19. The test to be applied is an objective one.² It is not in issue that Chauke is a peace officer as defined in the Act nor that given the information furnished to him on the 22nd together with Mashaba's pointing out of the plaintiff, that he entertained a suspicion of the commission of an offence contemplated in Schedule 1.

20. What is in issue is whether, objectively, Chauke's suspicion rested on reasonable grounds.

¹ 1986 (2) SA 805 (A) at 818 G-H

² *Duncan* supra at 814 D-E where it was stated "it seems clear that the test is not whether a policeman believes that he has reason to suspect, but whether, on an objective approach he in fact has reasonable grounds for his suspicion"; see also *Mvu v Minister of Safety and Security and Another* 2009 (2) SACR 291 (GSJ)

21. In *Mabona and Another v Minister of Law and Order*³ it was stated that *"The test whether a suspicion is reasonably entertained within the meaning of s 40(1)(b) is objective (S v Nel and Another 1980(4) SA 28 (E) at 33H). Would a reasonable man in the second defendant's position and possessed of the same information have considered that there were good and sufficient grounds for suspecting that the plaintiffs were guilty of conspiracy to commit robbery or possession of stolen property knowing it to have been stolen? It seems to me that in evaluating his information, a reasonable man would bear in mind that the section authorises drastic police action. It authorises an arrest on the strength of a suspicion and without the need to swear out a warrant, ie something which otherwise would be an invasion of private rights and personal liberty. The reasonable man will therefore analyse and assess the quality of the information at his disposal critically, and he will not accept it lightly or without checking it where it can be checked. It is only after an examination of this kind that he will allow himself to entertain a suspicion which will justify an arrest. This is not to say that the information at his disposal must be of sufficiently high quality and cogency to engender in him a conviction that the suspect is in fact guilty. The section requires suspicion not certainty. However the suspicion must be based on solid grounds. Otherwise it will be flighty or arbitrary, and not a reasonable suspicion."*
22. The onus of proving the lawfulness of the arrest in a matter such as the present one lies with the defendant.⁴

³ 1988 (2) SA 654 (SE) at 658 E-H

⁴ *Minister of Law and Order v Hurley* 1986 (3) SA 568 (A) at 589 E-F; *Minister van Wet en Orde v Matshoba* 1990 (1) SA 280 (A).

23. While the evidence of Chauke shows clearly that he harbored a suspicion, this was based exclusively on the information furnished on the 22nd and on the pointing out of the plaintiff by Mashaba. It seems to me that based solely on this evidence that further enquiry by Chauke was reasonably necessary in the circumstances. The fact that the plaintiff had been one of the officers to go and fetch the truck in Botswana and bring it and Mashaba back ought to have alerted him to the fact that further enquiry was necessary.
24. Besides the evidence of Sekgobane that he had been called in by Shingange, there was no evidence that any of the other police officers who had been stationed at the departure point were questioned. Furthermore, there was no attempt to verify on the computer system whether the plaintiff had indeed been checking vehicles or whether anyone else had. Neither Chauke nor Ramotebele interviewed Hamish Dlamini, an independent witness who was in custody and available to them in order to ascertain whether the plaintiff had indeed been the one to pass the truck through the departure point and no statement was taken from Mashaba to confirm his pointing out of the plaintiff.
25. In the circumstances, I find that Chauke could and should have conducted further enquiries before his summary arrest of the plaintiff and that accordingly the arrest and detention of the plaintiff were unlawful. During argument of this matter, defendant's counsel formally conceded liability and in the circumstances no order need be made in this regard.

26. In regard to the quantum of damages to be awarded, the approach to be followed is set out in *Mbanjwa v Minister of Police*⁵ where it was stated:

"[39] The Supreme Court of Appeal has, however, warned that a process of comparison should not be a meticulous examination of awards that interferes with the court's general discretion in awarding a fair amount of damages. [See: Minister of Safety and Security v Seymour 2006 (6) SA 320 (SCA).]

[40] An award should adequately compensate a claimant for the deprivation of personal liberty and freedom and the attendant mental anguish and distress. [See: Minister of Safety and Security v Tyulu 2009 (5) SA 85 (SCA).]

[41] The award should, however, also be fair to the defendant and should not be the product of an overly emotional response by the court. No amount of money will compensate the plaintiff for what he has lost."

27. I have considered awards made in other cases⁶. A distinguishing feature of the present case is that the plaintiff was a police officer who besides being incarcerated in uniform, had been previously stationed at the station concerned. This must certainly have added to the humiliation felt by him.

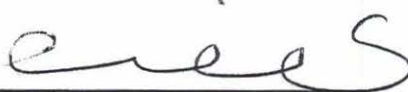
28. While awards in cases where the arrest and detention of the party was found to be without any justification, seem to be higher than those where there was a justification, there does not seem to me to be a difference in principle. Once the deprivation is found

⁵ An unreported decision (17447/2008) in this Division delivered on 5 April 2017

⁶ See for example *The Quantum of Damages in Bodily and Fatal Injury Cases*, Volume v ii, Corbett & Honey, Juta 2014 and in particular *Hendricks v Minister of Police* K6-152 at paragraph 11 where comparative awards in 2015 values were set out.

to be unlawful, the determination of the quantum of damages must be made taking all of the circumstances of the particular case into account.

29. In my view a fair quantification of the damages suffered by the plaintiff for the unlawful arrest, deprivation of his freedom, humiliation and degradation, pain and suffering is the sum of R 275 000,00. I find that the plaintiff suffered such damages from the time of the arrest and due to the composite and ongoing nature of the arrest and detention, it would be inappropriate to arbitrarily apportion a specified amount for each of the specific heads of damage.
30. Given the nature of the plaintiff's claim and the circumstances giving rise to it, I am of the view that the claim was wisely brought before this court and in the circumstances, I intend to make the costs order that I do.
31. It is ordered:
 - 31.1 The defendant is ordered to pay to the plaintiff the sum of R275 000,00;
 - 32.2 The defendant is ordered to pay interest at the prescribed rate *a tempore mora* from date of this order to date of payment, both days inclusive;
 - 33.3 The defendant is to pay the plaintiff's costs of suit on the scale as between party and party.



A MILLAR
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

HEARD ON: 12,13 & 14 FEBRUARY 2018

JUDGMENT DELIVERED ON: 14 FEBRUARY 2018

COUNSEL FOR THE PLAINTIFF: ADV S MANGOLELE

INSTRUCTED BY: CHEUE INCORPORATED

REFERENCE: MR CHEUE

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REFERENCE: MR MASHABELA