

IN THE NORTH GAUTENG HIGH COURT, PRETORIA
(REPUBLIC OF SOUTH AFRICA)

20/11/13
Case no: 48774/09

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES /NO.	
(2) OF INTEREST TO OTHER JUDGES: YES /NO.	
(3) REVISED.	
20/11/2013	R Keightley
DATE	SIGNATURE

In the matter of:

PIETER ABRAHAM RAUTENBACH

Plaintiff

and

MINISTER OF SAFETY AND SECURITY

First Defendant

THOMAS FOSO MOKGATLE

Second Defendant

PETRUS PINI MAKGOPELA

Third Defendant

KEALEBOGO BENEDICT BOHELO

Fourth Defendant

JUDGMENT

KEIGHTLEY, AJ

1. This is an action for malicious prosecution against the Minister of Safety and Security and three police officers, being the second to fourth defendants. When I refer collectively to "the defendants" this should be read as a reference to the second to third defendants.

2. The plaintiff, Mr Rautenbach, was at the material time the Chair of the Community Policing Forum ("the CPF") in Hartbeespoort, where the events in question took place. The defendants were all officers in the detective branch at the Hartbeespoort police station.
2. It is common cause that the plaintiff was arrested on 30 October 2008 and charged with intimidation and with interfering with police in the execution of their duties. The police originally attempted to arrest the plaintiff on 29 October at a public venue where he was, together with the Station Commander of the Hartbeespoort police station, Senior Superintendent Lebese, addressing a public meeting of pensioners. It was only with Senior Superintendent Lebese's intervention that the plaintiff was not arrested then, but was allowed to present himself at the police station the following day for the arrest to be effected.
3. The complainant in the criminal case against the plaintiff was the second defendant, Detective Mokgatlhe. It is common cause that he made the original statement of complaint in the matter, and that he caused the docket to be opened against the plaintiff.
4. The plaintiff was held in custody at the cells at the Hartbeespoort police station for approximately 2 hours. Members of the press were present and at least one photograph of him behind bars was posted on an internet news site. There was also press coverage of his arrest and the charges against him in local newspapers.
5. The plaintiff subsequently appeared in court four or five times after his arrest until the charges were withdrawn on 9 April 2009 on the instructions of the Director of Public Prosecutions ("the DPP"). This followed representations to the DPP by the plaintiff's

attorney. It is common cause that the plaintiff expended R29 884.80 in legal fees as a result of the charges that were brought against him. This amount forms part of his damages claim for patrimonial loss.

6. In addition to the statement made by the second defendant, the third and fourth defendants also made formal statements in support of the charges. It was on the strength of these statements that a warrant of arrest in respect of plaintiff was issued and the prosecution commenced.
7. The plaintiff avers that the charges were based on statements by the defendants containing allegations that the plaintiff attempted to assault the second defendant; he threatened second defendant with physical violence; he intimidated the second defendant; he used violence in an attempt to remove a docket from second defendant's possession; and he barged into an office where the second defendant was busy interviewing a suspect.
8. In short, the plaintiff's case is that the statements made by the defendants were false, and that the charges against the plaintiff were instituted with the defendants knowing that such statements were false. The plaintiff avers that the subsequent criminal proceedings against him were malicious.
9. The crux of the case therefore turns on this issue and, specifically, on whether the defendant's version of the events that occurred on 22 October 2008, as set out in these statements, is true or, as the plaintiff avers, false.
10. The following background facts are relevant to the matter:

- 10.1. On 22 October 2008 a Mr Jonker attended the Hartbeespoort police station accompanied by his attorney Mr Loubser.
- 10.2. Mr Jonker's family previously had obtained a protection order against an ex-boyfriend of their daughter. The ex-boyfriend had breached the protection order and the police were called to the Jonker's house to arrest him.
- 10.3. On the evening of 21 October 2008 Detective Constable Memwe, the investigating officer, telephoned Mr Jonker to request that he attend the police station the following morning. What he did not tell Mr Jonker on the telephone was that the police actually intended to arrest Mr Jonker the following day on a charge of pointing a firearm at the ex-boyfriend. This was alleged to have occurred on the evening that the ex-boyfriend had breached the protection order and climbed over the wall of the Jonker's property. Mr Jonker was led to believe by DC Memwe that he would be providing the police with further information in the protection order case. Quite why Mr Jonker was misled in this manner was never satisfactorily explained when DC Memwe gave evidence at the trial.
- 10.4. When Mr Jonker and Mr Loubser arrived the next morning they were not interviewed by DC Memwe but by the second defendant. The second defendant made it clear to Mr Jonker that he was actually the suspect on a charge of pointing a firearm and that the second defendant intended arresting him. Mr Jonker and his attorney were understandably shocked at this news.
- 10.5. This prompted Mr Loubser to phone the plaintiff and to request that he attend the police station in his capacity as Chair of the CPF.

- 10.6. The reason for this request is that the plaintiff had recently put an advert in the local newspaper alerting the public to the fact that there had been complaints about the conduct of police officers at the Hartbeespoort police station. These complaints were to the effect that the police officers had threatened to arrest people who were actually complainants in criminal cases on spurious charges. The allegations were that this seemed to be done with the purpose of extracting bail money and money for lawyers' fees out of the complainants when they suddenly found themselves to be facing arrest as suspects.
- 10.7. The advert called on the public to report any such incidents to the plaintiff, and it gave the plaintiff's phone number. I pause to point out that this case does not turn on whether or not the complaints of police misconduct were valid or not. However, for reasons that will become apparent below, the fact that the complaints had been made is a relevant factor for purposes of determining whether the plaintiff has made out a case for malicious prosecution.
- 10.8. Mr Loubser contacted plaintiff because in his view the threat to charge Mr Jonker was spurious and fell into the kind of conduct to which the advert referred. Mr Loubser also contacted a local journalist. It is common cause that she was present at the police station when the events in question unfolded.
- 10.9. It is common cause that the plaintiff arrived at the police station in response to this request.

10.10. It is also common cause that at this stage, the second defendant, Mr Jonker and Mr Loubser were in what is referred to as the detective's office interviewing Mr Jonker for purposes of his arrest. I shall refer to it as "the office".

11. It is what occurred next that lies at the heart of this case. The court is faced with two mutually destructive versions of the events that followed.

12. The defendants' version is that:

12.1. Plaintiff walked down the passage towards the office complaining and making a noise.

12.2. He then entered the office. He was extremely aggressive.

12.3. He instructed the second defendant to stop the process against Mr Jonker because he was a well-known member of the community.

12.4. Plaintiff was pointing his finger at the second defendant, and then he tried to grab the docket from him. A physical tussle over the docket ensued. Fourth defendant and DC Memwe had to intervene to try to push the plaintiff out of the office. In the course of this, plaintiff pushed the fourth defendant on the chest.

12.5. The officers managed to get the plaintiff out of the office.

- 12.6. Thereafter, second and fourth defendants, together with other officers and Mr Jonker drove to the Total garage owned by Jonker to collect Jonker's firearm from the safe.
- 12.7. On their return the plaintiff was waiting in the parking area and once again he shouted at the second defendant and threatened him.
- 12.8. On the basis of this conduct on the part of the plaintiff, second defendant laid the charges of intimidation and interfering with the police in the execution of their duties against the plaintiff and the prosecution was set in motion.

13. The plaintiff's contrary version is that:

- 13.1. Plaintiff indeed attended the police station on the afternoon in question in response to a call from Mr Loubser.
- 13.2. He was accompanied by Mr Van Der Spuy and Mr Kekana, both fellow committee members of the CPF.
- 13.3. Plaintiff did not know precisely what the situation was except that the call from Mr Loubser was in response to the advert, and that he understood from Mr Loubser that a similar incident was taking place at the police station.
- 13.4. When he arrived at the police station, plaintiff, together with his fellow committee members, first went to see the Station Commander, Senior Superintendent, Lebese to tell him about the telephone call he had received and to ask for someone to accompany him to the detectives office. The Station Commander's response was to the effect that he did not want to

interfere. He said that the plaintiff should go to the office via the head of detectives, Captain Dikgang's, office.

- 13.5. Plaintiff and his fellow committee members did this, and Captain Dikgang thereafter went ahead of them down the passage to the detectives' office.
- 13.6. When they got to this office, Captain Dikgang went inside, but plaintiff did not. Plaintiff could not see into the office as there were police officers standing in the doorway.
- 13.7. Mr Loubser put his head out of the office door and confirmed that he had made the phone call to the plaintiff. He told plaintiff that he would be out shortly. Plaintiff indicated that he was going down to the Station Commander's office and would meet him there. He then left the area outside the detectives' office.
- 13.8. Needless to say, the plaintiff's version is in stark contrast with that of the defendants. He testified that he never went into the detectives' office, he did not give any instructions to the second defendant to cease the arrest of Mr Jonker. He says that did not shout at anyone, make threats, point fingers, or push any officers. He also testified that he was not involved in any tussle over Mr Jonkers' docket.

13.9. The plaintiff also avers that there was absolutely no threatening interaction with the second defendant in the parking lot when second defendant and his fellow officers arrived back from Mr Jonker's garage.

13.10. The plaintiff's case is that the allegations made in the defendants' statements in support of the charges against him were false. He says that the defendants trumped up the charges against him because he had placed the advert in the newspaper. In addition, he had made a number of formal complaints against the second defendant and other members of the Hartbeespoort police station, based on public complaints, and he had requested that a Task Team be formed to investigate. The plaintiff contends that this provided a motive for the detectives to trump up the charges against him as they were in the frame in terms of the Task Team investigation.

14. On this latter point, the defence's initial line of attack was to suggest that the plaintiff had only laid these complaints and requested the initiation of the Task Team after the incident of 22 October 2008 and the laying of criminal charges laid against him. Had this been the case, it would have removed the possibility of there being any ulterior motive on the part of the defendants in laying criminal charges against the plaintiff. Indeed, it would have suggested that it was plaintiff himself who had acted out of malice and revenge.

15. However, this line of defence came to nought after the plaintiff tendered evidence to confirm that the plaintiff's complaints process had indeed been set in motion before the 22 October.

16. It is clear therefore that this court is faced with two mutually destructive versions of events: either the defendants' version is correct and the plaintiff aggressively tried to interfere with the investigation against Mr Jonker, or the plaintiff's version is correct and he did no such thing. If the defendants' version is correct, and their statements correctly recorded the incident and the plaintiffs conduct, there can be no question of any malicious prosecution. On the other hand, if the plaintiffs version is correct, then the defendants' statements were patently false, and the court will have to find that the proceedings instituted on the basis of them were wrongful and unlawful.
17. In light of the mutually destructive versions, I must make my decision on the basis of which version is the more probable.
18. As far as the plaintiff's evidence before this court is concerned, he and three additional witnesses testified in support of his case. They were Mr Van Der Spuy, Mr Loubser and Mr Jonker.
19. The evidence of all of these witnesses corroborated that of the plaintiff in all material respects. They were all clear in their testimony that the plaintiff never entered the detectives office and that no incident such as the one described in the defendants' statements ever took place. It is common cause that Mr Loubser and Mr Jonker were present in the office when the alleged incident took place and that they could not have avoided observing it, had it occurred.
20. They were also clear that no incident took place later in the parking area either. In this regard, Mr Jonker testified that he was with the second defendant the whole time

before, on and after their arrival back from the Total garage, as he was under arrest at that time and the second defendant was the arresting officer. He confirms that during this whole time there was no altercation between the plaintiff and the second defendant. Once again, it is common cause that he could not have avoided witnessing any altercation if it had taken place.

21. Mr Loubser and Mr Jonker both testified that it was the second defendant who acted unreasonably and aggressively towards them when he was charging Mr Jonker. They testified that he had been insistent on pressing ahead with the charges despite being told about the fact that Mr Jonker and his family were the real complainants, and despite Mr Jonker telling the second defendant that he did not even have a firearm in his possession on the night of the alleged incident with the ex-boyfriend, as the firearm was stored in the safe at this Total garage at all times. They testified that the second defendant would not listen to reason. Mr Loubser's evidence was to the effect that it was this conduct on the part of the second defendant that had prompted him to phone the plaintiff as the head of the CPF to alert him and to request his assistance.

22. The defence was unable to shake any of the plaintiff's witnesses in cross-examination.

The best the defence could do was to put to them that they were lying and that the version that the defence witnesses would give was the true version of events. The suggestion was also made that Mr Jonker and Mr Loubser had an interest in supporting plaintiff's version. However, their uncontested testimony demonstrates that neither of these men knows the plaintiff well at all, and that they knew him only as the Chair of the CPF. Mr Jonker took no steps against second defendant after the charges against Mr Jonker were withdrawn the following day, and he testified that the second

defendant apologised to him for his conduct. There does not appear to me to have been any reason for either Mr Loubser or Mr Jonker to support the plaintiff's case out of any ulterior motive. Mr Loubser testified that he was both a prosecutor and a Magistrate before he commenced practising as an attorney, and there was no real attempt on the part of the defence to convince me that Mr Loubser was acting contrary to his duty as an officer of the court with extensive experience of court proceedings by lying in his testimony.

23. The plaintiff's witnesses came across to the court as being credible witnesses.

24. Unfortunately the same cannot be said of the witnesses for the defence. To a man, they gave evidence that was internally contradictory, as well as contradicting the evidence given by the other defence witnesses in very material respects. They were evasive when pressed on issues that were problematic for their version and they had no qualms in adapting their evidence as they went along in an attempt to paper over obvious cracks.

25. As each new defence witness took the stand the court heard a somewhat different version of events. For example, the fourth defendant said that the whole incident was part of a plot by another officer, Mr Phego, who he said had used the plaintiff to issue threats to the second defendant. There was no evidence to support this, nor did fourth defendant give any reason why the plaintiff would have been willing to be used in this way. Then, when the second defendant took the stand, he said that the incident was part of a carefully planned plot by the plaintiff himself, and he said he knew of no plot by Mr Phego.

26. The various contradictions in the defendants' witnesses' evidence are too numerous to set out in detail. I highlight only the following more significant contradictions:

- 26.1. Fourth defendant testified that he was in the detectives' office from the time that the plaintiff entered and that he witnessed the full events that took place there. He said that he had followed plaintiff down the passage.
- 26.2. However, DC Menwe, the third defence witness, testified that fourth defendant only came into the office during the wrestling match over the docket. He further testified that this took place about 5 minutes after he and the plaintiff had first entered the office.
- 26.3. This contradiction places in question the veracity of the fourth defendant's evidence as to what he saw and heard before the tussle over the docket ensued.
- 26.4. Captain Dikgang testified that he came into the detectives' office within less than a minute of plaintiff leaving his, Captain Dikgang's office. He says that he saw plaintiff in the detectives' office when he entered.
- 26.5. However, DC Menwe testified that Captain Dikgang only came into the Detectives office after the plaintiff had already left that office. On his version, this would have been about 15 minutes after the plaintiff had first entered the detectives' office.

- 26.6. Critically, this places fundamental doubt on the veracity of Captain Dikgang's version that he saw plaintiff in the detectives' office.
- 26.7. Furthermore, the second defendant gives two different versions as to when Captain Dikgang came into the office. He first testified that he came in while he, second defendant, was processing Mr Jonker's arrest after coming back from fetching the firearm at the Total garage. Later he testified that Captain Dikgang had come into the office during the earlier incident with plaintiff, while the fourth defendant and DC Menwe were trying to push the plaintiff out of the office. However, Captain Dikgang himself says he never witnessed any of the incident that was alleged to have taken place in the office, and that he simply found the plaintiff in the detectives' office and that at that stage everything had looked to be under control.
- 26.8. Once again, we are left doubting both Captain Dikgang's version and the second defendant's version. This doubt is significant, bearing in mind that the plaintiff testified that Captain Dikgang went ahead of him to the detectives' office and that although the Captain entered the office, the plaintiff never did.
- 26.9. In addition to the contradictions regarding which of the officers involved was actually in the office when the plaintiff was allegedly interfering in the arrest of Mr Jonker, there are other related contradictions. So, for example, Captain

Dikgang says he heard no noise coming from the detectives' office or from the common passage outside his and the detectives' office.

26.10. On the other hand, fourth defendant testified that plaintiff was complaining loudly as he walked down the passage towards the office. The defence witnesses describe the plaintiff as being aggressive and making a noise when he was threatening the second defendant. By all accounts the struggle over the docket was physical and must have given rise to a fair amount of noise. Yet, despite all of this evidence, Captain Dikgang testified that he never heard any noise in the passage or from the detectives' office at the material time even though his office was in relatively close proximity to the detectives office, and he would normally hear noise coming from there.

26.11. These contradictions cannot be reconciled and they place fundamental doubt on whether the defence witnesses could, in truth, have witnessed what they say they witnessed.

27. In this regard, the second defendant must be singled out as being a particularly unimpressive witness. I highlight a few examples to demonstrate this:

27.1. In his evidence in chief he was adamant that he had laid the complaint and opened the docket against the plaintiff on the day of the incident, i.e. on 22 October 2008. In cross-examination it was pointed out to him that the cover page of his statement was clearly dated 23 October, being the following day. He was unable to explain this discrepancy.

27.2. When it was also pointed out to him that the very statement that he made to support the laying of charges against the plaintiff was not commissioned by a Commissioner of Oaths, he could not explain this either. The best he could do was to say that he was in such a state because of the plaintiff's alleged conduct that he could not remember what had transpired before the Commissioner of Oaths, although he was adamant he went before one. According to the second defendant, he was shaking and crying and was in such a bad way that he had gone home early. He said that he even had to ask fourth defendant for his assistance when he took Mr Jonker's fingerprints, as he, second defendant, was shaking so much.

27.3. Strangely, none of the other defence witnesses who were with the second defendant at the relevant time mentioned that he had shown any such signs of distress. In fact, the fourth defendant in particular said that he did not regard the incident as being very serious. Fourth defendant also never mentioned that second defendant was in such a bad way that he, fourth defendant, had had to assist him in taking Mr Jonker's fingerprints. This is surprising indeed given that it would be unusual for a police officer to see his superior reduced to an emotional wreck by a civilian, and it is unlikely that the fourth defendant would have simply forgotten to mention it in his testimony had it truly been the case. Captain Dikgang also said that he was satisfied when he went into the detectives' office that the second defendant had everything under control. Had the second defendant truly had the kind of

emotional reaction that he now claims to have had, it is highly unlikely that his superior, Captain Dikgang would not have noticed it.

27.4. There is no other reasonable conclusion to draw in this regard than that second defendant's reference to his emotional state was a convenient explanation concocted by him to try to cover for his material error in failing to execute a duly commissioned affidavit for purposes of instituting charges against then plaintiff.

27.5. The second defendant's evidence was such as to leave me in no doubt that he acted only on the following day, i.e. 23 October 2008, to set things in motion against the plaintiff, and that he did so as an afterthought. His later, and clearly untruthful, evidence was an attempt to conceal this fact.

27.6. Had the plaintiff in truth conducted himself as the defendants and the other defence witnesses described in their statements and in their testimony, the reasonable response would have been for them to use their powers under section 41(j) of the Criminal Procedure Act to arrest the plaintiff on the spot for hindering them in their duties. At the very least, they would have appealed to Captain Dikgang, as their head, to intervene and to take plaintiff in hand. When all the facts of the case are taken into account, I cannot accept that they did not do so simply because, as they suggested, they wanted to act cautiously.

28. The full conspectus of the testimony of the witnesses for the defence, particularly when the material differences in this testimony is taken into account, demonstrates that while these witnesses were all adamant in their assertion that the plaintiff had entered the

office and conducted himself in the manner described in their various statements, they were unable to sustain this version once the details were placed under the microscope of cross-examination.

29. The discrepancies were so material and so pervasive that they rendered the defendants' version completely implausible and improbable. What makes it worse is that the defence witnesses were the authors of their own demise in this regard as it is their performance in the witness box that ultimately leads me to reject their evidence on the contested issues as false.

30. I find that the plaintiff's version is the more probable. The plaintiff testified that he raised the issue of the conduct of the detectives with both the Station Commander and with Captain Dikgang when plaintiff and his fellow committee members arrived at the police station on 22 October 2008. The arrest of Mr Jonker took place against the background of a series of complaints that the plaintiff had made to the police hierarchy concerning public complaints about the conduct of the detectives. These complaints were of a serious nature, involving alleged corruption on the part of the police officers. A Task Team was even instituted to investigate. This must have been known to the officers involved, who included, inter alia, the second and fourth defendants, and even Captain Dikgang, as they had all been implicated in the complaints. Despite their attempts to evade admitting that they had knowledge about these complaints, most of the defences' witnesses were forced to concede that they did.

31. No doubt, the officers felt aggrieved at having been accused of such serious misconduct, particularly by the Chair of the CPF with whom they had all previously enjoyed a good relationship. When plaintiff arrived and raised the issue of police

misconduct with the Station Commander and with Captain Dikgang while the second defendant was busy interviewing Mr Jonker, this must have been the straw that broke the camel's back.

32. Against this background, I accept as more probable, the plaintiff's version that he did not conduct himself in the manner described by the defendants and their witnesses in their statements and in court. Had he done so, this would have been a pressing and serious problem and the reasonable and logical process for all police officers involved would have been to take immediate action against the plaintiff in order to nip the problem in the bud, and to allow them to continue with Mr Jonker's arrest without hinderance. However, they did not do so.

33. Instead, it was only long after the alleged threat was already over, on the following day that the second defendant took steps to make a statement and register a criminal complaint against the plaintiff. By this time, Mr Jonker had already been arrested, charged and had the charges withdrawn against him. Tellingly, the second defendant did this without attesting to an affidavit before a commissioner of oaths and without a plausible explanation for his failure to do so. He also initially falsely stated in his testimony that he had made the statement the same day. This was a patent falsehood designed to draw attention away from the fact that the criminal charges against the plaintiff were an unwarranted afterthought.

34. Also tellingly, third and fourth defendants, and DC Menwe all made supporting statements only on 24 October. Their statements were all written by their colleague, Detective Thsabalala, and commissioned by him.

35. I conclude from all of this, and bearing in mind the problems with the defence witnesses' evidence I have already dealt with above, that the charges against the plaintiff were initiated as a carefully planned and executed attempt by the defendants to exact revenge against the plaintiff for initiating his complaints campaign against them and their colleagues. The evidence indicates that it was the second defendant who took charge of this process, and that the third and fourth defendants assisted him by providing supporting statements in an attempt to substantiate what were essentially false charges and to obtain a warrant for the plaintiff's arrest.

36. In the circumstances, I accept as more probable the plaintiff's case to the effect that the statements made by the second to fourth defendants were false and that these defendants made them knowing that they were false.

37. These false statements led to the warrant of arrest being issued against the plaintiff, his subsequent arrest and detention at the Hartbeespoort police station for approximately two hours, and to his prosecution and appearance in court on a number of occasions before the charges ultimately were withdrawn.

38. Accordingly I find that the plaintiff has proved all of the elements of the delict of malicious prosecution in that the defendants instituted the prosecution against the plaintiff; they did so without reasonable and probable cause and with the requisite *animus iniuriandi*. It is common cause that the prosecution failed.

39. In the circumstances, the plaintiff succeeds on the merits of his action.

40. As regards the issue of quantum, I take into account the following relevant facts:

- 40.1. The presence of an improper and malicious motive on the part of the defendants in making the false statements against the plaintiff with the purpose of seeking revenge against him for his actions as the Chair of the CPF.
- 40.2. The fact that it was police officers themselves who initiated the false charges against the plaintiff.
- 40.3. The disturbing fact that as police officers, the defendants have a constitutional and civic duty to act as the defenders, and not the perpetrators, of the basic rights of civilians and protectors of what is right and true. In this case, the defendants deliberately flouted their obligations in their own interests, and contrary to the public interest.
- 40.4. The fact that the defendants went further and used their false statements as a basis to obtain a warrant of arrest against the plaintiff. This led to his arrest and detention at the police station in circumstances where his arrest was patently unnecessary to ensure his attendance at court.
- 40.5. The fact that there was extensive media coverage in the community of the plaintiff's arrest and prosecution, including the dissemination of a photograph of him behind bars on an internet news site.
- 40.6. The fact that the Hartbeespoort community is a relatively small one and that the plaintiff was well known to the community as the Chair of the CPF, and thus as someone who should be dedicated to upholding law and order and assisting the police.

40.7. In the circumstances, the false charges not only undermined the plaintiff's general standing as a well-known member of the community, but fundamentally damaged his standing as the community's representative in the policing sector. The effect of the charges was to accuse the plaintiff of committing a serious breach of what this position required of him.

40.8. The length of time that the charges hung over the plaintiff's head is also a relevant factor. They were only withdrawn 6 months after they were initiated and in this time the plaintiff was required to attend court on a number of occasions.

40.9. It is also relevant that the defendants took no steps to set matters to rights with the plaintiff. The charges were only withdrawn after representations by the plaintiff to the DPP. In addition, the defendants insisted on contesting the plaintiff's claim all the way through the court, with the result that he has only finally been able to clear his name five years after the event

41. The plaintiff seeks damages in the amount of R150 000. 00. The defendants suggest that a figure of R 20 000. 00 is more appropriate.

42. I cannot accept the defendants' suggestion. In my view the facts of this case warrant a substantial award and I find the amended amount claimed by the plaintiff to be an appropriate measure of damages in this case.

43. Before making the order, I wish to record certain instructions to the State Attorney representing the defendants. The State Attorney is required to provide a copy of this judgment to the appropriate authorities within the Department of Safety and Security

and to request that it be drawn to the attention of the second to fourth defendants' superiors. It particular, it should be drawn to their attention that these officers were found by this court to have been singularly unimpressive and lacking in credibility, and to have maliciously caused the prosecution of the Chairperson of the Hartbeespoort CPF on false charges. I trust that this will have the desired effect and that appropriate action will be taken against these defendants. I would particularly recommend that the first defendant takes active steps to ensure that second to fourth defendants are held personally responsible for their financial obligations as joint and several debtors under the order. I see no reason why the taxpayer ultimately should be held liable to fund this kind of conduct by police officers.

ORDER

44. I make the following order:

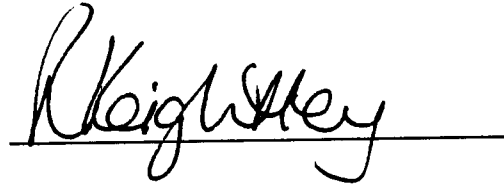
44.1. The defendants are directed, jointly and severally, to pay to plaintiff:

44.1.1. The amount of R29 884.80;

44.1.2. The amount of R150 000.00;

44.1.3. Interest on these amounts at the rate of 15.5% *a tempora mora*;

44.1.4. Costs of suit, including all costs incurred as a result of the various postponements and removals from the Roll that occurred during the course of the action.

A handwritten signature in black ink, appearing to read 'R. Keightley', is written over a horizontal line.

R.M. KEIGHTLEY AJ

Acting Judge of North Gauteng High Court

HEARD ON: 20 NOVEMBER 2013

FOR THE PLAINTIFF: ADV. STRAUSS

INSTRUCTED BY: OLIVIER CRONJE & STIGLINGH

FOR THE DEFENDANT: ADV. KGATLA

INSTRUCTED BY: THE STATE ATTORNEY