



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, EAST LONDON CIRCUIT COURT)**

Not Reportable
CASE NO. EL 37/2019

In the matter between:

MIHLALI MABELE

Plaintiff

and

MINISTER OF POLICE

Defendant

JUDGMENT

LAING J

[1] This is an action for damages arising from the alleged wrongful and unlawful arrest and detention of the plaintiff. He claimed payment in the amount of R 500,000.

Background

[2] The plaintiff alleges that members of the South African Police Services ('SAPS') arrested him without a warrant on 24 April 2018, at Nahoon, East London.

[3] He pleads that the arrest was wrongful and unlawful because, *inter alia*, he never committed a Schedule 1 offence, as envisaged under the Criminal Procedure Act 51 of 1977 ('CPA'), the arresting officer had no reasonable or justifiable suspicion that he had committed such an offence, never informed him of the reason for his arrest or his constitutional rights and failed to exercise his discretion in relation to the making of the arrest. The ensuing detention, alleges the plaintiff, was wrongful and unlawful in that there were no grounds for doing so. Consequently, he pleads that his constitutional rights were infringed.

[4] The plaintiff was detained from 24 until 26 April 2018, whereupon he was released without having to appear before a magistrate. He alleges that he suffered *contumelia* and the impairment of his personal integrity and *dignitas*.

[5] In his plea, the defendant admits the arrest and detention, as alleged. He pleads, however, that these were justified in terms of section 40(1)(b) of the CPA because the plaintiff was suspected of having committed fraud, alternatively theft. The defendant goes on to deny that the arresting officer failed to exercise his discretion, stating that the plaintiff was arrested for questioning and later brought before a court. The charges against the plaintiff were still pending.

Trial proceedings

[6] The evidence for the parties is summarized below. It was agreed that the duty to begin lay with the defendant.

Case for the defendant

[7] The defendant called a single witness, viz. the arresting officer, Sgt Siyabonga Tuswa. He testified that he attended to a complaint with a colleague on 24 April 2018, emanating from a Steers restaurant situated in Old Transkei Road, Nahoon, East London. He met the financial manager, Mr Morné Marshall, who alleged that employees were misappropriating cash that belonged to the business. This amounted to approximately R 190,000. In that regard, Mr Marshall referred to video footage of employees conducting sales with customers and later dividing the takings amongst themselves. The plaintiff was amongst the employees involved.

[8] Mr Marshall used the video footage to identify and place aside six suspects, whom Sgt Tuswa and his colleague encountered upon their arrival. Some of the suspects were crying and conceded that they were in the wrong. They explained, however, that they had agreed with Mr Marshall that the misappropriated cash could be deducted from their salaries; they were shocked when Mr Marshall subsequently involved the SAPS. The plaintiff was one of the suspects. Sgt Tuswa informed them that a case would be opened; he explained their rights and proceeded to arrest them before taking the suspects to the Cambridge police station, where he opened a case docket and handed the matter over to the investigating officer. He confirmed that the reason for his having arrested the suspects was to bring them before court.

[9] The defendant closed his case at the conclusion of Sgt Tuswa's testimony.

Case for the plaintiff

[10] The plaintiff testified on his own behalf. He said that he had been working at the Steers restaurant in Nahoon, East London, since 2015.

[11] On the day in question, the owner informed the employees that cash had been stolen. He said that he had evidence but invited them to say what happened. No-one spoke, whereupon the owner called out the names of several employees, including the

plaintiff. At this, the plaintiff challenged the owner and asked him how he could have been involved because he worked in the kitchen at the back of the restaurant, he was not a cashier; nothing linked him to the alleged theft.

[12] Mr Marshall issued suspension notices to eight suspects in total. The plaintiff refused to acknowledge receipt, saying that he did not understand why he was implicated. He again requested proof of the allegations, but the owner and Mr Marshall declined to do so. They said that the suspects were to be arrested.

[13] Shortly afterwards, police vans arrived; police officers handcuffed the suspects and placed them inside the vehicles. They never explained their constitutional rights. The suspects waited for some time before the officers took them to the Cambridge police station, where they received notices informing them of their rights. The officers indicated that a case docket would be opened.

[14] The plaintiff described the condition of the holding cell. It was cold, dirty, and smelt strongly of urine; there was an open toilet in the cell, without any privacy. The officers provided a single blanket to the plaintiff, which he placed on the cement floor. He testified that he suffered from asthma and had called for assistance. The officers ignored him. They removed his wallet, belt, and shoelaces. They gave him soup and four slices of bread for lunch, on 24 April 2018, and they gave him porridge on the following day, 25 April 2018.

[15] At some stage during the plaintiff's detention, the investigating officer asked him about his work responsibilities. The officers took his fingerprints and told him that he would be brought before court.

[16] On 26 April 2018, the officers took the suspects to the Magistrates' Court, where they placed them inside a room. Another officer later entered the room, called out the names of the suspects, and instructed them to wait outside. A legal practitioner approached them and explained that the charges against them had been withdrawn; they were free to leave.

[17] The plaintiff testified that the incident had troubled him emotionally; his dignity had been affected. The officers had led the suspects away from the Steers restaurant in handcuffs, in sight of the public, who now viewed him as a thug. He had not been able to sleep properly.

[18] On 2 May 2018, said the plaintiff, the owner had called him to the restaurant and asked him about the incident. The plaintiff informed him that he knew nothing about it. Subsequently, the owner invited the plaintiff to return, which he did. Of the eight suspects, only he and another employee went back to work; both had previously worked in the kitchen.

[19] The plaintiff closed his case.

Issues to be decided

[20] It is common cause that the defendant's personnel arrested and detained the plaintiff. Consequently, the two primary issues for determination are: (a) whether the arrest and detention were lawful; and (b) if not, then what damages should be awarded to the plaintiff.

[21] The principles in matters such as the present are well-established. A brief overview thereof appears in the paragraphs below.

Legal framework

[22] The provisions of section 40(1) of the Criminal Procedure Act 51 of 1977 ('CPA') are relevant. They indicate that a peace officer may arrest a person without a warrant in several circumstances, including a situation where the officer reasonably suspects that

the person in question has committed an offence in Schedule 1 of the CPA.¹ Both theft and fraud fall under the schedule in question.

[23] Before an officer can exercise such a power, however, the necessary jurisdictional facts must exist. In *Duncan v Minister of Law and Order*,² the erstwhile Appellate Division held, per Van Heerden JA, that there are four such jurisdictional facts: the arrestor must be a peace officer; he or she must entertain a suspicion; it must be a suspicion that the arrestee committed a Schedule 1 offence; and the suspicion must rest on reasonable grounds.³ The meaning of 'reasonable grounds' was considered in *R v Van Heerden*,⁴ where Galgut AJ held that the term must be interpreted objectively, and the grounds must be those that would induce a reasonable person to have a suspicion.⁵ This was explored further in *Mabona and another v Minister of Law and Order and others*,⁶ where Jones J confirmed that the test for whether a suspicion is reasonably entertained is objective. He stated as follows:

'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 authorizes drastic police action. It authorizes an arrest on the strength of a suspicion and without the need to swear out a warrant, i.e. 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

¹ Section 40(1)(b).

² [1986] 2 All SA 241 (A).

³ At 248.

⁴ [1958] 3 All SA 125 (T).

⁵ At 128.

⁶ [1988] 3 All SA 408 (SE).

suspect is in fact guilty. The section requires suspicion but not certainty. However, the suspicion must be based upon solid grounds. Otherwise, it will be flighty or arbitrary, and not a reasonable suspicion.’⁷

[24] The principles enunciated in *Mabona* have survived. A court must apply an objective test to ascertain whether the suspicion held by the officer was reasonable. More recently, in *Biyela v Minister of Police*,⁸ the Supreme Court of Appeal, per Musi AJA, held as follows:

[33] The question whether a peace officer reasonably suspects a person of having committed an offence within the ambit of s 40(1)(b) is objectively justiciable. It must, at the outset, be emphasized that the suspicion need not be based on information that would subsequently be admissible in a court of law.

[34] The standard of a reasonable suspicion is very low. The reasonable suspicion must be more than a hunch; it should not be an unparticularized suspicion. It must be based on specific and articulable facts or information. Whether the suspicion was reasonable, under the prevailing circumstances, is determined objectively.

[35] What is required is that the arresting officer must form a reasonable suspicion that a Schedule 1 offence has been committed based on credible and trustworthy information. Whether that information would later, in a court of law, be found to be inadmissible is neither here nor there for the determination of whether the arresting officer at the time of arrest harboured a reasonable suspicion that the arrested person committed a Schedule 1 offence.

[36] The arresting officer is not obliged to arrest based on a reasonable suspicion because he or she has a discretion. The discretion to arrest must be exercised properly. Our legal system sets great store by the liberty of an individual and, therefore, the discretion must be exercised after taking all the prevailing circumstances into consideration.’

⁷ At 410-1. The court also referred to *S v Nel* and another 1980 (4) SA 28 (E).

⁸ 2023 (1) SACR 235 (SCA).

[25] If the jurisdictional facts necessary for an arrest without a warrant exist, then the officer must still exercise his or her discretion in whether to proceed with the arrest. In *Minister of Safety and Security v Sekhoto and another*,⁹ the Supreme Court of Appeal, per Harms DP, observed that the officer is entitled to exercise such a discretion as he or she deems fit, provided that he or she stays within the bounds of rationality.¹⁰ The court went on to remark as follows:

‘While the purpose of arrest is to bring the suspect to trial the arrestor has a limited role in that process. He or she is not called upon to determine whether the suspect ought to be detained pending a trial. That is the role of the court... The purpose of the arrest is no more than to bring the suspect before the court... so as to enable that role to be performed. It seems to me to follow that the enquiry to be made by the peace officer is not how best to bring the suspect to trial: the enquiry is only whether the case is one in which that decision ought properly to be made by a court... Whether his decision on that question is rational naturally depends upon the particular facts but it is clear that in cases of serious crime- and those listed in Schedule 1 are serious, not only because the Legislature thought so- a peace officer could seldom be criticized for arresting a suspect for that purpose. On the other hand there will be cases, particularly where the suspected offence is relatively trivial, where the circumstances are such that it would clearly be irrational to arrest...’¹¹

[26] The above principles are the basic legal framework relevant to the present matter. A concise evaluation of the witnesses follows.

Evaluation of witnesses

[27] The state’s witness, Sgt Tuswa, was reliable because he had participated directly in the incident that forms the subject of these proceedings. The quality, integrity, and independence of his recollection of the incident do not attract serious criticism.

⁹ [2011] 2 All SA 157 (SCA).

¹⁰ At paragraph [39].

¹¹ At paragraph [44].

[28] He was, however, evasive at times. Sgt Tuswa refused to make obvious concessions, for example the improbability that he had been able to accomplish all that he said he had done within the limited time from when he and his colleague first responded to the complaint until when he arrived with the suspects at the Cambridge police station. His testimony was also not free of contradictions. He initially testified that he used the video footage as the basis upon which to arrest the plaintiff but later admitted that he did not specifically identify him therein. It subsequently emerged that he relied on Mr Marshall's say-so. He could also not explain why he did not mention in his statement that he had relied upon the video footage. As an officer in the defendant's employment, it would have been difficult for Sgt Tuswa to have remained free from any inherent bias in his testimony. He was, overall, not a credible witness.

[29] Turning to the plaintiff, he would clearly have been biased to his own advantage. He could not offer a compelling explanation for why he did not protest more vigorously at the time of his arrest. There were, however, few if any material contradictions in his testimony. He persisted in his assertion that he requested access to the video footage on several occasions but neither the owner nor Mr Marshall acceded. The calibre and cogency of the plaintiff's testimony was good. He was, overall, a credible witness.

[30] Similarly, the plaintiff was a reliable witness. He experienced the incident first-hand and there was little to detract from the quality, integrity, and independence of his recollection of events.

[31] What remains is for the court to make findings on the probabilities of each of the witnesses' respective versions. This aspect will be addressed in the discussion below.

Lawfulness of the arrest and detention

[32] It is trite, as De Vos J pointed out in *Ralekwa v Minister of Safety and Security*,¹² that an arrest is *prima facie* wrongful and unlawful. The defendant bears the onus of proving that the arrest was lawful.¹³

[33] In his plea, the defendant avers that the arrest and detention of the plaintiff were justified in terms of section 40(1)(b) of the CPA. The court in *Duncan* identified four jurisdictional facts that must exist before an officer may exercise the power conferred under section 40(1)(b). The nub of the case, here, seems to be whether the fourth jurisdictional fact, described in *Duncan*, existed at the time of the plaintiff's arrest. In other words, the primary question that arises is whether the officer's suspicion rested on reasonable grounds. If so, then the secondary question, canvassed in *Sekhoto*, is whether the officer properly exercised his discretion in making the arrest.

[34] It is apparent from Sgt Tuswa's testimony that his suspicion that the plaintiff had committed a Schedule 1 offence rested predominantly on the information that the financial manager conveyed to him, as well as the video footage to which he was granted access. Mr Marshall informed Sgt Tuswa that he spent two weeks monitoring the employees and had identified six suspects, including the plaintiff, whom he placed to one side upon the arrival of the police. Sgt Tuswa's suspicion, at this stage, was based on Mr Marshall's word alone. He correctly requested evidence, upon which Mr Marshall referred him to the video footage.

[35] At this point, improbabilities emerge from Sgt Tuswa's testimony. He said that the control room at Cambridge police station requested him, at about 09h45 on the day in question, to investigate a complaint emanating from the Steers restaurant in Nahoon. He had been patrolling in Vincent at the time with a colleague and arrived at the scene just before 10h00. He stated that he had commissioned Mr Marshall's statement at 10h30 and did not dispute that the personnel at Cambridge police station recorded the detention of the suspects at 10h55. It is highly improbable that Sgt Tuswa had sufficient time to assess

¹² 2004 (1) SACR 131 (TPD).

¹³ At paragraph [9]. See the decision of the erstwhile Appellate Division in *Minister of Law and Order and others v Hurley and another* 1986 (3) SA 568 (A), at 589E- F.

the situation on his arrival, consult with Mr Marshall, view the 40 minutes of relevant video footage described in testimony, obtain a statement from Mr Marshall, listen to the suspects' account of what happened, inform them of their constitutional rights, arrest at least six suspects,¹⁴ request a second police van to assist with transportation, travel to the Cambridge police station, and hand the suspects over for detention- all within approximately 55 minutes.

[36] To the extent that Sgt Tuswa indeed viewed the video footage, it is improbable that he was able to watch, intelligibly, a full two weeks' worth of monitoring within the short amount of time available. There is no evidence that he knew any of the employees, including the plaintiff. There is no evidence that he knew anything about their respective duties, shifts, or workstations. Under cross-examination, Sgt Tuswa could not refute the assertion that the plaintiff worked in the kitchen, nowhere near the cash registers. It was, overall, impossible for him to have formed a reasonable suspicion regarding the plaintiff based on the video footage. That he spent 40 minutes doing so is utterly implausible. Sgt Tuswa seemed to concede as much at the end of cross-examination, as apparent from the following exchange:

'ADV METU:	You had never met the employees before you watched the footage. Why not verify whether the plaintiff was in such material?
SGT TUSWA:	<i>I did not verify, Mr Marshall said that he had already watched the footage.</i> There was an agreement, too.
ADV METU:	So the arrest was made on the basis of what Mr Marshall told you?
SGT TUSWA:	<i>Yes. Mr Marshall was the complainant.</i> I took into consideration what he said to me, as well as the footage.' ¹⁵

[37] Interestingly, Sgt Tuswa never mentioned the video footage in his statement, notwithstanding its importance as a ground for his suspicion. It was never provided to the

¹⁴ The exact number appears to have been more; it was common cause that the trial bundle indicated that at least eight suspects were detained on the day in question.

¹⁵ Emphasis added. Own transcription.

plaintiff, it was never discovered for trial purposes to corroborate Sgt Tuswa's testimony; similarly, the defendant never called Mr Marshall as a witness. There was undisputed evidence that the prosecutor involved in the case requested the investigating officer to clarify how the video footage implicated the suspects and that the owner invited the plaintiff, subsequently, to return to work. Considering all the above, it is simply improbable that there was anything in the video footage that could have given rise to a reasonable suspicion on the part of the officer that the plaintiff committed the offence with which he was charged.

[38] Counsel for the defendant referred to *Buso v Minister of Police*¹⁶ to contend that corroboration is not a requirement for a suspicion to be reasonable. The argument is understood to mean that it was unnecessary for Sgt Tuswa to have viewed the video footage for purposes of corroborating Mr Marshall's allegations. The decision in *Buso*, however, never detracted from the requirement that the officer's suspicion, when considered objectively, must be reasonable. The financial manager's allegations on their own were just that: allegations unsupported by independent facts. They may well have given rise to a suspicion on Sgt Tuswa's part, but short of anything to support such allegations, it could not be said that the officer's suspicion rested on reasonable grounds. The officer had a duty, before invoking the drastic powers conferred by section 40(1)(b) of the CPA, to have at least verified or simply tested Mr Marshall's allegations with reference to independent facts, especially where 'hard' evidence in the form of the video footage was immediately available. He was obligated to have considered this properly and not merely relied on the financial manager's word before depriving the plaintiff of his liberty.

[39] The defendant relied, too, on the common cause fact that some of the suspects were crying and admitted that they were in the wrong. In argument, counsel emphasised the importance of the interaction between Sgt Tuswa and the suspects, pointing out that the plaintiff never stepped forward to protest his innocence; he kept quiet. There was no evidence at all, however, that the plaintiff associated himself with any admissions made

¹⁶ 2020 JDR 1610 (ECG), at paragraph [51].

by the remaining suspects. To the contrary, the plaintiff's testimony was that he challenged the owner, asserting that there was nothing to link him to the theft, he worked in the kitchen at the back of the restaurant. This was never disputed. Looking at the circumstances of the matter objectively, it cannot be said that there were any reasonable grounds for the arrest.

[40] In argument, counsel mentioned *Mabona*, but the decision serves to emphasise the imperative to analyse and assess, critically, the quality of the information at the officer's disposal. It should not be accepted lightly or without checking it, as happened in the present matter.¹⁷ Furthermore, counsel referred to *Biyela* to point out that the standard of a reasonable suspicion is very low. That may be so but the court in that matter went on to hold that a reasonable suspicion must be based on specific and articulable facts or information.¹⁸ The same cannot be said of Sgt Tuswa's suspicion in this case.

[41] In *De Klerk v Minister of Police*,¹⁹ to which counsel for the plaintiff referred, the Constitutional Court, per Theron J, observed that:

‘The principles emerging from our jurisprudence can then be summarised as follows. The deprivation of liberty, through arrest and detention, is *per se* prima facie unlawful. Every deprivation of liberty must not only be effected in a procedurally fair manner but must also be substantively by acceptable reasons.’²⁰

[42] The officer in the present matter based his suspicion, on a balance of probabilities, merely on Mr Marshall's say-so. It is entirely improbable that there was anything in the video footage to have constituted a reasonable ground, even if Sgt Tuswa had the time within which to have watched it properly, which seems most unlikely; there was, objectively, no acceptable reason for the arrest of the plaintiff. Consequently, the defendant's reliance on section 40(1)(b) of the CPA fails. The fourth jurisdictional fact,

¹⁷ See n 7, *supra*.

¹⁸ See n 8, *supra*.

¹⁹ 2020 (1) SACR (CC).

²⁰ At paragraph [62]. See, too, *S v Coetzee and others* 1997 (1) SACR 379 (CC), at paragraph 159.

enunciated in *Duncan*, was absent; there were no reasonable grounds upon which the officer's suspicion could be said to have rested.

[43] Even if there had been reasonable grounds for Sgt Tuswa's suspicion, the question arises whether he correctly exercised his discretion in arresting the plaintiff. *Sekhoto* is authority for the principle that a decision in that regard must be rational. The officer's explanation for the arrest of the plaintiff and others in the present matter was that he distrusted them after two foreign nationals, identified with the remaining suspects, succeeded in escaping through a toilet window. There was simply no suggestion, however, that the plaintiff would have attempted to do the same. Sgt Tuswa failed to investigate the plaintiff's circumstances, including his address and the nature of his employment, which was permanent. It is probable that, faced with Mr Marshall's allegations and his identification and isolation of the suspects as a *fait accompli*, the concessions made by some of them that they had been in the wrong, and the escape as already described, the officer succumbed to pressure and indiscriminately placed them all under arrest. As counsel for the plaintiff vividly argued, Sgt Tuswa scooped everyone into the same net.

[44] There was no indication that the plaintiff would not cooperate with the authorities and stand trial. It cannot be said, in the circumstances, that Sgt Tuswa's decision to arrest was rational and that the consequent detention of the plaintiff was lawful. Consequently, the court finds that the defendant's reliance on section 40(1)(b) of the CPA is unsuccessful. It is necessary, at this stage to consider the quantum to be awarded.

Quantum of damages

[45] From the case law, no clear methodology emerges regarding the determination of quantum. In *Madze v Minister of Police*,²¹ Plasket J remarked:

²¹ 2015 JDR 2680 (ECG).

‘...I have given consideration to comparable cases but they are very much dependant on their own facts and usually are influenced by the conditions that the detainee experienced and their effects on him or her. Even so, the cases vary from awards that appear on the generous side to those that appear to be parsimonious.’²²

[46] Generally, a court’s determination of the award is made *ex aequo et bono*. In that regard, Dendy observes:

‘The court must avoid, on the one hand, sending out a message that there are large sums of money to be made out of the mistakes which may be made by state officials, but on the other hand, the amount should not be derisory, showing contempt or indifference to the loss of freedom. Factors that can play a role are the circumstances under which the deprivation of liberty took place; the presence or absence of improper motive or “malice” on the part of the defendant; the harsh conduct of the defendants; the duration and nature (for example, solitary confinement) of the deprivation of liberty; the status or standing of the plaintiff; the extent of the publicity given to the deprivation of liberty; the presence or absence of an apology or satisfactory explanation of the events by the defendant; awards in previous comparable cases; the fact that, in addition to physical freedom, other personality interests such as honour and good name have been infringed; the high value of the right to physical liberty; and (it has been held, though subject to academic criticism) the fact that the *actio iniuriarum* also has a punitive function.’²³

[47] In the present matter, there was no evidence that the plaintiff was a particularly well-known or influential member of his community. He was an ordinary worker at a Steers restaurant, responsible for food preparation in the kitchen. There was no evidence that the conduct of either Sgt Tuswa or his colleague was particularly harsh or aggressive at the time of the plaintiff’s arrest. The same could also be said of the personnel at the Cambridge police station, who appeared to have acted indifferently more than anything else.

²² At paragraph [16].

²³ M Dendy, ‘Damages’, in LAWSA (LexisNexis vol 14(1) 3ed 2018), at 115. Footnotes omitted.

[48] It was, however, undisputed that, on the day in question, the plaintiff was placed to one side of the restaurant with the remaining suspects, after which he was arrested and led to an awaiting police van. This was done in sight of members of the public. The plaintiff said that he was, consequently, perceived as a ‘thug’. The conditions of his detention were, as could have been expected from so many similar cases, entirely unpleasant. The holding cell was cold and unsanitary; open ablution facilities merely served to undermine the privacy and dignity of a detainee. The personnel at the Cambridge police station ignored the plaintiff’s difficulties with asthma, provided him with inadequate bedding, and paid no attention to his requests for assistance. Meals were infrequent and far from nutritious.

[49] The plaintiff was in detention for slightly more than 48 hours, from approximately 11h00 on 24 April 2018 until midday on 26 April 2018. The experience affected him emotionally, it left him deeply troubled.

[50] The Supreme Court of Appeal recently dealt with the subject in *Brits v Minister of Police and another*.²⁴ The appellant was the owner of a dealership in second-hand goods and scrap metal; he was arrested and detained for approximately one day on a charge of being complicit in the offence of possession of stolen property. The court awarded damages of R 70,000 for unlawful arrest and detention. In *Diljan v Minister of Police*,²⁵ heard several months later, the Supreme Court of Appeal considered a claim for damages for unlawful arrest and detention brought by a grandmother and community caregiver. She had been in custody for almost three days and kept in appalling conditions. The court awarded damages of R 120,000 and remarked as follows:

‘...A word has to be said about the progressively exorbitant amounts that are claimed by litigants lately in comparable cases and sometimes awarded lavishly by our courts. Legal practitioners should exercise caution not to lend credence to the incredible practice of claiming unsubstantiated and excessive amounts in the particulars of claim. Amounts in monetary claims in the particulars of claim should not be “thumb-sucked” without due regard to the facts

²⁴ (759/2020) [2021] ZASCA 161 (23 November 2021).

²⁵ (746/2021) [2022] ZASCA 103 (24 June 2022)

and circumstances of each case. Practitioners ought to know the reasonable measure of previous awards, which serve as a barometer in quantifying their clients' claims even at the stage of the issue of summons. They are aware, or ought to be, of what can reasonably be claimed based on the principles enunciated above.²⁶

[51] The plaintiff in the present matter has claimed general damages in the amount of R 500,000 for having been in detention for slightly more than 48 hours. The claim, considering the decisions mentioned above, is exorbitant.

[52] Counsel for both parties referred to several decisions emanating from this division. In *Nel v Minister of Police*,²⁷ the court awarded R35,000 to a mother of three children who was detained, with her two-year-old infant, for a period of less than 20 hours on a charge of possession of *dagga*. The court in *Madyibi v Minister of Police*²⁸ awarded R40,000 to a businessperson who spent approximately 24 hours in custody after his arrest for the alleged unlawful demarcation of land with his tractor. In *Minister of Police v Page*,²⁹ a full bench awarded damages of R 30,000 to a claimant who had been arrested on a charge of arson and detained for one day.

[53] More recent decisions are of assistance, too. In *Shode v Minister of Police*,³⁰ a full bench awarded damages of R 40,000 to a claimant who had been detained for 22 hours on a charge of domestic violence. Shortly after that, in the unreported decision of *Antonie v Minister of Police*,³¹ a full bench awarded damages of R 50,000 to a claimant who had been arrested on a charge of domestic violence and detained for a period of 38 hours. The court in *Madingana v Minister of Police*³² awarded R80,000 to a former political office bearer and leader in the African National Congress, his church, and his community, for

²⁶ At paragraph [20].

²⁷ 2018 JDR 0016 (ECG).

²⁸ 2020 (2) SACR 243 (ECM).

²⁹ 2021 JDR 0757 (ECGEL).

³⁰ 2022 JDR 1226 (ECM).

³¹ Unreported, Case no. CA 105/2021, Eastern Cape Division, Makhanda.

³² 2023 JDR 1063 (ECMA).

having been incarcerated for 24 hours on a charge of contravening a domestic violence interdict.

[54] The above decisions are helpful when considering the quantum to be awarded in the present matter.

Relief and order

[55] Mindful of the circumstances, the court is satisfied that the plaintiff's claim must be reduced to a considerably more realistic figure. There is no basis, however, for the adjusted amount sought during argument. An award of R 90,000 would seem to be appropriate and in alignment with the case law.

[56] The only remaining issue is that of costs. The general rule applies, and the plaintiff is entitled to his costs, subject to the principles that were applied in *Madingana*.³³ Considering the award made, the costs must be reduced accordingly.

[57] In the circumstances, the following order is made:

- (a) the defendant shall pay the plaintiff the amount of R90,000 for damages;
- (b) interest thereon shall be incurred at the legal rate, calculated from the date of service of summons until the date of final payment; and
- (c) the defendant shall pay 80% of the plaintiff's costs, on a High Court scale.

³³ Madingana, n 32, supra, at paragraph [49].

JGA LAING

JUDGE OF THE HIGH COURT

APPEARANCES

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For the defendant:	Adv Nabela
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Dates of hearing:	15 – 16 November 2023 and 21 February 2024.
Date of delivery of judgment:	21 May 2024.