



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED:

17/9/2024
DATE

SIGNATURE

CASE NO: A74/2023

In the matter between:

MINISTER OF POLICE

First Appellant

**MEMBER OF THE EXECUTIVE COMMITTEE OF THE
DEPARTMENT OF COMMUNITY SAFETY, SECURITY
AND LIAISON MPUMALANGA PROVINCE**

Second Appellant

and

TRIP KGAGUDI MANASWE

Respondent

JUDGMENT

MPSHE AJ (BASSON, J AND LENYAI, J CONCURRING)

INTRODUCTION

1. This is an appeal emanating from the judgement and order of the Honourable Justice LUKHAIMANE AJ delivered on 1 April 2022. The appeal is with leave of the court a quo.
2. The first appellant takes issue with the finding of the court a quo that the arrest and detention of the respondent was lawful. The second appellant takes issue with the finding that the respondent was assaulted by its members.

3. **BACKGROUND**

- 3.1 The respondent (Mr Trip Kgagudi Manaswe) was arrested without a warrant by Officer LP Ntuli ("Ntuli") acting within the course and scope of her duties with the second appellant. The arrest took place at approximately midnight on 24 December 2016 following a roadblock incident next to Vezukuhle 4-way stop. The plaintiff was released the next day without appearing in court. No charges were ever brought against him flowing from this incident that culminated in his arrest.
- 3.2 The respondent (the plaintiff in the court a quo) instituted a claim for damages in the amount of R6 000 000. (six million rand) allegedly suffered by him consequent upon his unlawful arrest and assault by the employees of the first and second appellants.
4. The court a quo made the following order:

- 4.1 The defendants are jointly and severally liable for the plaintiff's proven or agreed damages for the assault on and the unlawful detention of the plaintiff.
- 4.2 The the defendants are jointly severally liable for the plaintiff's cost of suit.
- 4.3 The issue of the quantum of damages is postponed *sine die*.
5. The event that gave rise to the respondent's arrest and subsequent detention
 - 5.1 It is common caused that on 24 December 2016, the respondent was stopped at the roadblock at the Vezubuhle intersection in Mpumalanga. The respondent, after having been stopped by Ntuli, presented his driver's license which was duly checked for any previous transgression. There was one outstanding traffic fine in the amount of R1 800.00 which the respondent immediately paid. Ntuli requested him to take a breathalyser test. She also requested him to hand over his car keys in order to move his vehicle off the road. The respondent refused to hand over the keys but offered to move his car himself. Respondent got into his car and sped off.
 - 5.2 Ntuli immediately sought help from other officers who were also present at the roadblock. Traffic officers R Mokoena, P A Masemola and other members of SAPS gave chase in their respective vehicles. The respondent was accosted at a distance of about 2km from the roadblock operation and was brought back to the roadblock and handed over to Ntuli who then subjected respondent to a breathalyser. The breathalyser showed the alcohol content to be 0.72 mg/1000ml of breath.
 - 5.3 Ntuli then arrested the respondent and took him to the Kwa Mhlanga Police Station to be charged. He was thereafter taken to the Kwa-Mhlanga Hospital for a blood alcohol test. The doctor was only able to administer the test after protestation by the respondent.

6. Ntuli conceded that by law, she is required to ensure that the blood test is done within two hours. She also conceded that this did not happen. After the blood sample were taken by the medical doctor, the respondent was handed over to the South African Police officer who, in turn detained the respondent and only released him the next day after he had posted bail. Because the blood tests were taken after the required period of two hours, Ntuli ought to have realised that she had no basis on which she could detain the respondent any further. Respondent was never prosecuted for the alleged crime of driving under the influence of alcohol.
7. In respect of the arrest and detention of respondent, the court *a quo* concluded as follows:

[55] *"As indicated earlier, the jurisdictional requirement for an arrest without a warrant in terms of section 40(1) of the CPA were present in the beginning, however, the continued arrest and detention of plaintiff after leaving the hospital knowing that here shall be no just cause as the blood sample to sustain a charge of drunken driving were not taken within the prescribed time, makes such further incarceration unlawful."*

[56] *"It is the finding of this court that continued arrest of the plaintiff after leaving the Kwa-Mhlanga Hospital at 03H15 on 25 December 2016 and his detention at Kwa-Mhlanga Police Station were unlawful and violation of his constitutional rights. The Defendants are therefore liable for Plaintiff's general damages for assault and unlawful arrest and detention."*

8. I find no misdirection in this finding of the court.
9. The court *a quo* also had to consider the involvement of first appellant in the arrest of the respondent. It is clear from the evidence that the arrest was effected by traffic officer Ntuli and not by members of the first respondent.
10. The evidence of the respondent is also clear on this point. He testified as follows:

"It was just before 23:00 or around 23:00 when I approached the roadblock and at the roadblock I was stopped, at the time I was the driver of a Mercedes-Benz, and I was alone in the vehicle. I was requested to stop at the roadblock, and I stopped. After stopping I was approached by one female traffic officer who was later known to me as Lindiwe Ntuli, she introduced herself and requested that I gave her my driver's license, which I did."

11. It is also common cause that Ntuli is a traffic officer and not a member of the SAPS. I therefore conclude that the second appellant is liable for the arrest and detention of the respondent in that the *arrest from 3H00 on 25.12.2016 to 11H00 on 26 December 2020 were unlawful.*

12. THE ASSAULT ALLEGATION

- 12.1 Ntuli testified that she had no knowledge of the assault as she was not present.

The court *a quo* therefore had to decide whether the assault was perpetrated by members of the first appellant. The clinical records confirmed that he had sustained injuries.

- 12.2 The evidence in chief of the respondent was clear in this regard. He testified that he was assaulted by members of the first appellant. He testified as follows:

"Then after I was slapped, then those police officers jumped from their own vehicle and then they came to me. I was forcefully removed from my car; I fell on the tarmac road and that is when they started kicking me while I was on the ground. So, the kicking lasted for, it was plus minus two minutes the immediately after that they threw me into their double cab."

13. He continued as follow:

"When raising my hands and by then, also my window was down and whilst focusing on that I was slapped, and the slap came from behind. Then when I turned to look where this slap, who was slapping me, it was an unknown male in traffic officer's uniform that looked like an overall, but it was a uniform and behind him it was a Golf 7 GTI which is marked so, it was a traffic officer's vehicle."

14. Under cross examination the respondent also did not testify that he was slapped by the traffic officer.

15. Lastly, the appellant failed to call members of the SAPS to testify on the assault to rebut the evidence regarding the assault. I am thus persuaded that the court *a quo* did not misdirect itself in finding that respondent was assaulted by members of the first appellant.

16. **ORDER**

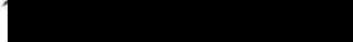
17. The appeal is dismissed with costs such costs to include the costs of two counsel where so employed.


M J MPSHE

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

I agree

A BASSON

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

I agree





M LENYAI

JUDGE OF THE HIGH COURT

GAUTENG DEVISION, PRETORIA

Appearances:

For appellant: Adv M Jozana instructed by The State Attorney, Pretoria

For respondent : Adv Maphutha & Adv S Seshoka instructed by Kgagudi

Manaswe Attorneys

Date of hearing: 25 July 2024

Date of judgment: 17 September 2024