



**IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG LOCAL DIVISION, JOHANNESBURG)**

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

SIGNATURE

DATE: 17 September 2024

Case No. 25027/2020

In the matter between:

**VIGO MANUEL MACAMO**

Plaintiff

and

**MINISTER OF POLICE**

Defendant

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**JUDGMENT**

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**WILSON J:**

- 1 Just before midnight on 18 October 2019, the plaintiff, Mr. Macamo, was driving on Mdlalose Street in Protea North, Soweto. Ahead of him was a marked public order police vehicle, which it turned out was driven by a Sergeant Risonga Maluleke. Sergeant Maluleke was returning with a detachment of around seven other officers from a local operation in which they had all been involved. Mr. Macamo overtook Sergeant Maluleke's vehicle,

which then pursued him to a Johannesburg Metropolitan Police Department (JMPD) roadblock.

- 2 Sergeant Maluleke stopped Mr. Macamo, and detained him. Sergeant Maluleke was assisted in doing so by a Sergeant Davidson Mutavhatisindi, who was one of the officers travelling with him. While he was in the process of detaining Mr. Macamo, Sergeant Maluleke was approached by another police officer, a Sergeant Nzimande, who asked him to release Mr. Macamo.
- 3 Sergeant Maluleke declined to release Mr. Macamo, and instead took him to the Protea Glen police station, and had him charged with driving under the influence of alcohol, reckless and negligent driving, and driving an unroadworthy vehicle. Mr. Macamo was released on police bail shortly before 09h00 the next morning. The charges against him were later withdrawn.
- 4 On his release from detention, Mr. Macamo went to see a doctor. The doctor, whose evidence was admitted as Exhibit "A" before me and accepted as true by agreement between the parties, observed that Mr. Macamo had a bruise on the left side of his nose, a bruise on his left shin, and marks and bruises on both wrists. The doctor also observed that Mr. Macamo was tender to the touch on his left lower ribcage and on the left side of the front of his lower abdomen.
- 5 Mr. Macamo now sues the defendant, the Minister, for what he says was his unlawful arrest and assault, carried out by Sergeant Maluleke and Sergeant Mutavhatisindi, together with other members of the team of police officers travelling with them.

- 6 The facts I have so far set out are common cause. The parties' stories are otherwise mutually incompatible. Mr. Macamo says that he overtook Sergeant Maluleke's vehicle shortly before he reached the JMPD roadblock. He stopped at the roadblock. His car licence and his driver's licence were checked. He was breathalysed, and then allowed to continue. Around 30 metres after the roadblock, Mr. Macamo says that he was stopped again by Sergeant Maluleke's team, hauled out of his vehicle, handcuffed, kicked, slapped and punched. He says that some of the officers taunted him because he is from Mozambique. He was told that he "was not in Maputo now", the implication presumably being that he could not expect the kind of treatment he may have been used to there.
- 7 Mr. Macamo denied that he had been drinking. He also denied that he was driving at an excessive speed or in any way erratically. He pointed out that if there had been anything wrong with his driving, his licences or his vehicle, he would never have been able to get past the JMPD roadblock. Mr. Macamo asserted that there was no basis for his arrest, and no reason for Sergeant Maluleke, Sergeant Mutavhatisindi or the other officers to assault him.
- 8 Mr. Macamo's evidence was somewhat terse, but there was nothing inherently improbable or unreliable about it. He was, overall, an impressive witness. It seemed to me that his taciturn demeanour in the witness box was designed to hold in genuine feelings of anger and humiliation at what, on his version, was plainly a harrowing episode. Mr. Macamo clearly found it difficult to recount the events of which he gave evidence.

9 Sergeant Maluleke and Sergeant Mutavhatisindi both deny assaulting Mr. Macamo. They also say that they were perfectly entitled to arrest and detain him. In resolving this dispute, I turn first to the question of the assault.

### **The assault**

10 Mr. Macamo's account of the assault was corroborated by the evidence of Sergeant Nzimande. Sergeant Nzimande testified that he was driving past the scene of Mr. Macamo's arrest on the night in question. Sergeant Nzimande recognised Mr. Macamo, because Mr. Macamo, who is a mechanic, had recently done some work on his car. Both men lived and worked in the Soweto area. Mr. Macamo worked at a car workshop in Protea Glen. Sergeant Nzimande was posted to the South African Police Service's Soweto dog unit. He had lived in Soweto for about a year before Mr. Macamo's arrest. He had seen Mr. Macamo around town, but did not know him well.

11 Sergeant Nzimande said that he stopped at the scene to see if he could help. He said that he saw Mr. Macamo sitting on the ground with his hands cuffed behind his back. He saw Sergeant Maluleke slap Mr. Macamo. He saw another police officer kick Mr. Macamo in the back of the head. Sergeant Nzimande asked Sergeant Maluleke why he was beating Mr. Macamo. Sergeant Maluleke responded merely that Mr. Macamo was a criminal. Sergeant Nzimande asked Sergeant Maluleke to let Mr. Macamo go, but Sergeant Maluleke refused. Seeing that there was very little more he could do, Sergeant Nzimande got back into his car and drove away.

12 None of these features of Sergeant Nzimande's evidence was challenged in cross-examination. Ms. Tshifhango, who appeared for the Minister and who

cross-examined Sergeant Nzimande, was not really able to explain why so much of Sergeant Nzimande's evidence was left uncontradicted if it was not true. Ms. Tshifhango did say that she was not expecting Sergeant Nzimande to give the evidence he did and that she had no instructions on it. Be that as it may, Ms. Tshifhango did not object to Sergeant Nzimande's evidence being led. Nor did she seek a postponement or a short adjournment to consult on it. In their evidence, both Sergeant Maluleke and Sergeant Mutavhatisindi denied that Mr. Macamo was assaulted but neither of them dealt specifically with Sergeant Nzimande's account of what he saw. They both accepted that Sergeant Nzimande was present at the time of Mr. Macamo's arrest.

- 13 Sergeant Nzimande's evidence was clear and satisfactory in every respect. He of course knew Mr. Macamo, but not that well. It was not suggested that he had any bias adverse to Sergeant Maluleke or Sergeant Mutavhatisindi. Sergeant Maluleke and Sergeant Mutavhatisindi both said that Sergeant Nzimande did not happen on the scene of the arrest by chance, but was called there by Mr. Macamo. Again, however, that version was not put to Sergeant Nzimande. It is, in any event, fanciful. I find it impossible to accept on the evidence that Mr. Macamo's relationship with Sergeant Nzimande was such that he could call Sergeant Nzimande out at midnight to prevent his arrest. Sergeant Nzimande's unchallenged evidence was in any event that he was on his way back from a duty shift at the dog unit when he passed the scene of Mr. Macamo's arrest. It was not disputed that Sergeant Nzimande arrived at the scene in a marked police car wearing his police uniform.

14       Accordingly, I accept Sergeant Nzimande's evidence that Mr. Macamo was placed on the ground with his hands cuffed behind his back, while being kicked and slapped by Sergeant Maluleke and one other police officer. The injuries later recorded in Exhibit "A" are consistent with such an assault. Although the doctor did not notice any injuries to the back of Mr. Macamo's head, the weight of evidence is plainly that Mr. Macamo was assaulted in the manner Sergeant Nzimande alleged.

### **The arrest**

15       The facts surrounding the decision to arrest Mr. Macamo are more complex. Sergeant Maluleke and Sergeant Mutavhatisindi both testified that Mr. Macamo overtook them at some speed before running a red light. They pursued Mr. Macamo and stopped him just before the JMPD roadblock. They say that they found three bottles of beer in Mr. Macamo's car, two of which were empty. They said that Mr. Macamo was plainly drunk and unco-operative, and that he was detained for his own safety. They alleged that Mr. Macamo refused to provide his driver's licence and that he was driving without a valid car licence.

16       I do not think that I can accept either Sergeant Maluleke's or Sergeant Mutavhatisindi's evidence. In the first place, neither officer mentioned the detail of the bottles of beer in Mr. Macamo's car in their contemporaneous statements. Nor did Ms. Tshifhango put that detail to Mr. Macamo in cross-examination. In my assessment, Sergeant Maluleke's and Sergeant Mutavhatisindi's version that Mr. Macamo had bottles of beer in his car was a falsehood, made up after the fact.

- 17 Secondly, Sergeant Maluleke and Sergeant Mutavhatisindi were, overall, wholly unimpressive witnesses. Their demeanour in the stand was dogmatic and belligerent. Neither man's evidence is consistent with what was said on their behalf in the Minister's plea. In the first place, paragraph 8 of the Minister's plea states that Mr. Macamo was stopped "by" the JMPD at the roadblock where he refused to submit to a breathalyser test. Sergeant Mutavhatisindi's contemporaneous statement also alleges that it was in fact the JMPD who stopped Mr. Macamo and not the team of public order police officers.
- 18 Sergeant Mutavhatisindi accepted that neither the Minister's plea nor his contemporaneous statement was consistent with his version given in evidence. Sergeant Maluleke tried to make out that he was assisted by the JMPD in some way, but his evidence on that point was wholly incredible. Ms. Tshifhango called no-one from the JMPD to corroborate it. Neither officer suggested that any attempt was made to breathalyse Mr. Macamo at the scene of his arrest – whether by them or by the JMPD officers at the roadblock. Neither officer sought to explain why the Minister's plea differed so markedly from their evidence.
- 19 In addition, the defence in the Minister's plea was that Mr. Macamo had been arrested under section 40 (1) (b) of the Criminal Procedure Act 51 of 1977, which authorises arrests on the reasonable suspicion that the arrestee has committed an offence specified in Schedule 1 of the Act. However, neither Sergeant Maluleke nor Sergeant Mutavhatisindi suggested that this was the basis for Mr. Macamo's arrest. They said that he was arrested for his own

safety because he was driving an unroadworthy vehicle recklessly while under the influence of alcohol. None of these offences appears in schedule 1 of the Criminal Procedure Act.

20 Moreover, I do not think I can accept Sergeant Nzimande's evidence without concluding that Sergeant Maluleke and Sergeant Mutavhatisindi were clearly lying when they denied assaulting Mr. Macamo, and that they made up the story about Sergeant Nzimande being summoned to the scene by Mr. Macamo. The fact that they lied about Mr. Macamo's assault clearly taints their justification of his arrest.

21 For all these reasons, I reject Sergeant Maluleke's and Sergeant Mutavhatisindi's evidence. On a balance of probabilities, I find that Mr. Macamo was unlawfully detained despite having done nothing to provoke it. I cannot say exactly what led to the arrest. It may have been because Mr. Macamo had the temerity to overtake a police vehicle, or perhaps it was simply because Mr. Macamo is from Mozambique. I accept Mr. Macamo's version on the facts in dispute, but I need not do so in order to find that his arrest was unlawful. Because Mr. Macamo's arrest is common cause, and the Minister bears the onus to justify it, judgment for Mr. Macamo must follow directly upon my rejection of Sergeant Maluleke's and Sergeant Mutavhatisindi's evidence.

### **The damage**

22 For the reasons I have given, Mr. Macamo must be compensated for his unlawful arrest, for his assault and for the hours of detention that followed. Mr. Macamo originally claimed judgment in the sum of R800 000, but Mr. Dlali, who appeared for Mr. Macamo, accepted in argument that this figure is more

than the proven facts justify. Mr. Macamo was detained for around 9 hours. Mr. Macamo led no evidence to suggest that the conditions of his detention were undignified or inhumane, save that his prison cell was very dirty. The assault on Mr. Macamo was clearly humiliating. He was taunted about his national origin, and he was cuffed helpless on the ground while he was kicked and punched. His injuries did not, however, result in anything more than temporary incapacity. Mr. Macamo said that he did not go to work for three weeks after his assault, but no need for ongoing medical treatment was proven.

23 On the unlawful arrest and detention claim, I take as my starting point the decision of the Constitutional Court in *De Klerk v Minister of Police* 2021 (4) SA 585 (CC), in which the plaintiff was awarded R300 000 in general damages in respect of 7 nights' detention. This works out at just over R40 000 per day. Adjusted for inflation, that yields an amount of R50 000 for one night's detention in today's money. Although Mr. Macamo was detained late in the evening, he is in my view entitled to no less than this amount. I will add R10 000 for the dirty conditions in which he was detained.

24 In relation to the assault, I must balance the humiliation Mr. Macamo experienced during the assault against the fact that no serious injury was inflicted. Still, to cuff a man and make him sit on the ground while he is kicked and punched is a serious assault. I am also satisfied on the evidence that the assault was at least partly xenophobic in character. To kick and punch someone under restraint while taunting them about their national origin is

despicable. It also adds a dimension of humiliation that cannot but force the value of my award upwards.

- 25 In *Minister of Police v Heleni* [2023] ZAECGHC 43 (11 May 2023), the sum of R200 000 was awarded to the plaintiff, who had sustained minor injuries and post-traumatic stress as a result of a humiliating and gratuitous assault carried out during a wrongful arrest. While I accept that no two cases are alike, the facts in *Heleni* provide an acceptable, if rough, analogue on which to base my award in this case. An inflation-adjusted award of R210 000 seems to me to be just and fair compensation for the assault on Mr. Macamo in this case.

### **The amendment**

- 26 During argument, Ms. Tshifhango moved for an amendment to the Minister's plea. The plea on which the trial proceeded alleged that Mr. Macamo was arrested on suspicion of committing a Schedule 1 offence. When the parties closed their cases there was, everyone agreed, no evidence that the Schedule 1 offence had been committed, much less that Mr. Macamo was arrested on suspicion of one. For that reason, Ms. Tshifhango applied from the bar for leave to amend the plea to justify the arrest on the basis that Mr. Macamo had committed a crime in the presence of a peace officer, which would have been justification enough for his arrest under section 40 (1) (a) of the Criminal Procedure Act. The theory was that Mr. Macamo's arrest was justified because the crimes for which Sergeant Maluleke and Sergeant Mutavhatisindi say Mr. Macamo was arrested – drunk driving, reckless and negligent driving and driving an unroadworthy vehicle – were committed in their presence.

- 27 Because I have rejected Sergeant Maluleke's and Sergeant Mutavhatisindi's evidence on the facts in dispute in its entirety, my disposition of the application for leave to amend makes no difference to the outcome of the case. Even on the Minister's amended case, Mr. Macamo must succeed.
- 28 Had the amendment made a difference, I would have had to confront the difficult issue of prejudice to Mr. Macamo. Had Mr. Macamo been alerted to the fact that the Minister intended to rely on section 40 (1) (a) of the Act, there is no doubt in my mind that Mr. Dlali's approach to cross-examination would have been very different. Facing only a case under section 40 (1) (b) of the Act, and the total absence of any facts on which a reasonable suspicion that Mr. Macamo had committed a Schedule 1 offence could be formed, Mr. Dlali very wisely cross-examined with a light touch. Given this, it seems to me that permitting the amendment, had it made a difference, would probably have caused incurable prejudice to Mr. Macamo.
- 29 In any event, for the reasons I have given, there is no need to deal with the application for leave to amend.

### **The order**

- 30 Accordingly, –

- 30.1 The plaintiff's claims for general damages in respect of his unlawful arrest, his unlawful assault and his unlawful detention succeed.

30.2 The defendant is directed to pay to the plaintiff the sum of R270 000, plus interest at the prescribed rate, which will run from 11 September 2020 to the date of payment.

30.3 The defendant is directed to pay the plaintiff's costs, including the costs of counsel on the "B" scale.



**S D J WILSON**  
Judge of the High Court

This judgment is handed down electronically by circulation to the parties or their legal representatives by email, by uploading it to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 17 September 2024.

HEARD ON: 3, 4 and 6 September 2024

DECIDED ON: 17 September 2024

For the Plaintiff: S Dlali  
Instructed by Smith Rand Attorneys Inc

For the Defendant TI Tshifhango  
Instructed by the State Attorney