



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MAKHANDA)**

**Case No: CA 192/2023
NOT REPORTABLE**

In the matter between:

CARRISTON GRANT PIETERSE

Appellant

and

MINISTER OF POLICE

First Respondent

NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

Second Respondent

JUDGMENT

BODLANI AJ

[1] This is an appeal against the judgment of the Regional Court, Gqeberha ('the trial court'). The trial court dismissed with costs, the appellant's claim for damages arising

from his arrest on 13 August 2018 and his subsequent detention from 13 to 29 August 2018.

[2] In the main, the appeal is predicated on the contention that the trial court erred in finding that the first respondent discharged his onus and proved that the appellant's arrest was justified in terms of section 40(1)(b) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) as amended ("the Act"). It is also contended that the trial court erred in not finding that the respondents failed to justify the appellant's detention.

[3] To appreciate the bases for the appellant's cause of action against the first respondent, it is apposite to rehash some of the pertinent features of his particulars of claim. The appellant's case was pleaded as follows:

"18. Plaintiff's arrest was wrongful and unlawful, in that, *inter alia*:

18.1 there was no reasonable suspicion that he committed an Schedule 1 offence, nor did he commit an offence in the presence of a peace officer;

18.2 the arresting officer failed to exercise any discretion at all, alternatively, failed to exercise his discretion in a rational manner;

18.3 the arresting officer did not explain his constitutional rights to him;

18.4 the arresting officer failed to comply with Sections 4 and 8 of the police Standing Order G341, in that no entry was made in his pocket to confirm that the Plaintiff's rights were explained to him and the Plaintiff also did not sign next to the entry in the arresting officer's pocket book.

19. Plaintiff's initial detention and incarceration in police custody from the 13th of August 2018 to the 14th of August 2018 was wrongful, unlawful and without reasonable and probable cause, in that, *inter alia*:

19.1 the arresting officer, as well as other police officers at the Mount Road police station, failed to apply their minds, in respect his detention and the circumstances relating thereto;

- 19.2 there were no reasonable and objective grounds justifying his detention;
- 19.3 the arresting officer did not explain his constitutional rights to him;
- 19.4 he was not brought before a court of law, as soon as reasonably possible, as he could and should have been brought before a court on the 13th of August 2018.”

[4] The claim against the first respondent was met with a denial of unlawfulness and a justification for the appellant’s arrest, being that the arresting officer had information implicating the appellant in the commission of a criminal offence referred to in schedule 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977). For this, the first respondent attracted an onus to justify the arrest.¹ To discharge it, the first respondent called the arresting officer, Captain Wilfred Owen Rowann (Captain Rowann). After him, the investigating officer, Sergeant Rhagosingh testified. Their testimonies can be summarised as follows.

[5] At the time of the appellant’s arrest Captain Rowann was in charge of a property crimes task team. He worked on all linkage cases² on housebreaking, theft of motor vehicles, house and business robberies. He was attached to the Mount Road cluster which has 7 (seven) police stations. Each police station seconded a member to work with him.

[6] The methodology used by Captain Rowann and his team was simple. They received dockets from the various police stations that make up the Mount Road cluster after a crime falling within the ambit of their mandate had been reported. They then verified statements made by complainants in the various police stations that fell within their mandate.

[7] They also communicated with the Local Criminal Record Centre (LCRC) that examined fingerprint samples found on crime scenes or, on items concerned with

¹ *Zealand v minister of Justice and Constitutional Development and Another* 2008 (2) SA SACR 1 (CC).

² Linkage cases are not defined anywhere in the record, nor was Captain Rowann called upon to define the concept.

alleged criminal activity. If fingerprint samples found on a crime scene or, on an item concerned with alleged criminal activity matched those of an identifiable suspect, they would look for the suspect concerned.

[8] In this case, the LCRC reported that the appellant's fingerprints matched a fingerprint sample that was found on a refrigerator in premises where housebreaking had allegedly occurred ("the scene of crime"). On 13 August 2018, at about 00h30, Captain Rowann arrested the appellant. At the time of the arrest, the appellant was at his home with his mother. Thereafter, he was detained at Mount Road Police Station at about 04h40.

[9] When explaining the reason for the arrest, Captain Rowann was unequivocal. He arrived at the appellant's home, knocked on the door, asked for the appellant, and the appellant was identified. He then explained the reason for his visit and informed the appellant that he would arrest him on failure to explain the presence of his fingerprints on the scene. The appellant could not, according to Captain Rowann, provide an explanation. Thereafter, Captain Rowann informed the appellant of his rights and then arrested him.

[10] When asked to tell the trial court why he arrested the him, Captain Rowann said that he arrested him because he was linked by fingerprints to the crime of housebreaking and was unable to provide an explanation for the presence of his fingerprints on the scene. He went on to state that when a suspect is linked to crimes like burglaries, murder and business robberies, the suspect must be arrested and brought before a court.

[11] Captain Rowann presented no further evidence regarding the reasons for the appellant's detention on 13 August 2018. Though called to testify on behalf of the first respondent, Sergeant Rhagos Singh was not involved in the arrest and detention of the appellant. Thus, his evidence did not take the matter any further.

[12] The second respondent led the evidence of Ms. Ester Aletta Meiring (Ms. Meiring). At the time of the appellant's arrest, Ms. Meiring was a docket screener for regional court matters. When she received the docket, she considered it and concluded

that there was a *prima facie* case for the appellant to answer. Based on this, she enrolled the matter.

[13] During the appellant's first appearance in court on 14 August 2018, a different prosecutor, Ms. Njokweni, handled the matter. She opposed bail, ostensibly because she did not have the appellant's criminal record profile and SAP 69. For these reasons, she requested that the matter be remanded to 22 August 2018.

[14] On 22 August 2018, a different prosecutor, Mr. Mayela, handled the matter. Like Ms. Njokweni, he too, requested a remand to obtain the appellant's criminal record profile and SAP 69, and for formal bail application. The court remanded the matter to 29 August 2018. On 29 August 2018, the state was no longer opposed to bail. Consequently, the appellant was granted bail in the amount of R300.00 (three hundred rand) on an unopposed basis.

[15] Notwithstanding that both Ms. Njokweni and Mr. Mayela had on 14 and 22 August 2018, respectively, informed the court that the appellant's criminal record profile remained outstanding, Ms. Meiring conceded in cross examination that the appellant's criminal record profile was always in the docket when the remands were sought. She conceded further that her colleagues had misled the court. This misrepresentation of facts was the sole reason for delaying the decision in respect of bail.

[16] The trial court was impressed with the respondents' witnesses. It found the evidence of Captain Rowann without "any material contradictions or any inherent improbabilities". It described the evidence of Ms. Meiring as "reliable and truthful". In contrast, the trial court was not impressed with the evidence of the plaintiff. It found it "confusing, contradictory and not reliable". It also found it to be false insofar as it differed with the evidence of the defendant.

[17] What the trial court did not do, which it should have done, is to determine whether despite the adverse findings in respect of the evidence of the appellant, the first respondent had discharged the onus to establish the lawfulness of the appellant's arrest and detention on 13 August 2018. The trial court also did not consider or determine whether the second respondent had justified the conduct of the prosecutors who had

occasion to attend to the appellant's case since his first appearance in Court until he was granted bail.

[18] It was common cause that plaintiff's criminal record profile was necessary for the prosecutors to decide whether to oppose the appellant's admission to bail. However, the prosecutors always had the appellant's criminal record profile when the remands on 14 and 22 August 2018 were sought and obtained. Thus, they did not only obtain the appellant's criminal record profile on 29 August 2018 when they capitulated in the appellant's application for admission to bail.

[19] It is against the evidence and the findings of the trial court, rehashed above, that this appeal must be decided. This must be done with the observance of the long standing legal principle, which has survived our constitutional dispensation, that the trial court's factual findings are presumed to be correct in the absence of a demonstrable error. To overcome the presumption, an appellant must convince the appellate court on adequate grounds that the trial court's factual findings were plainly wrong. Bearing in mind the advantages enjoyed by the trial court of seeing, hearing and appraising the witnesses, it is only in exceptional circumstances that an appellate court will interfere with the trial court's evaluation of oral evidence.³

[20] In its judgment, the trial court comprehensively summarised the evidence. However, as I will demonstrate hereunder, in its failure to evaluate whether the parties who bore the onus had discharged it, it erred. This error materially influenced its conclusion. Thus, sitting as a court of appeal, we are entitled to interfere with its evaluation of oral evidence.

[21] The starting point is the extent of the burden that rests on the arresting officer. It does not only relate to the initial arrest but also the period of detention up until the arrestee's first appearance in court or his or her release. Where it appears clear that *prima facie* proof of the detainee's guilt is unlikely to be discovered, the police have a duty to release him or her from custody.⁴

³ *R v Dhlumayo & Another* 1948 (2) SA 677 (A) at 705-706; *Sanlam Bpk v Biddulph* 2004 (5) SA 586 (SCA) para 5; *Roux v Hattingh* 2012 (6) 428 (SCA) para 12.

⁴ *Minister of Police v Du Plessis* 2014 (1) SACR 217 (SCA) at para 17.

[22] Unless the first respondent had discharged the onus to dispel the suggestion that the arrest and initial detention was unlawful, the appellant was entitled to succeed. Insofar as it is relevant to this appeal, consistent with the finding in *Duncan*,⁵ the jurisdictional facts for an arrest predicated upon s 40(1)(b) of the Act are that (i) the arrestor must be a peace officer; (ii) the arrestor must entertain a suspicion; (iii) the suspicion must be that the suspect (the arrestee) committed an offence referred to in Schedule 1; and (iv) the suspicion must rest on reasonable grounds. The jurisdictional facts for the other paragraphs of s 40(1) of the Act differ in some respects but these are not relevant for present purposes.

[23] Commenting on these requirements, Jones J in *Mabona v Minister of Law and Order and Others* had the following to say:⁶

“It seems to me that in evaluating this information a reasonable man would bear in mind that the section authorises drastic police action. It authorises an arrest on the strength of a suspicion and without a need to swear out a warrant, ie something which otherwise would be an invasion of private right and person liberty. The reasonable man would 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 its disposal must be of sufficient high quality and cogency to engender in him a conviction that the 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.”

[24] At the time of the arrest, the appellant’s fingerprints had been found in the scene of crime. Not only that, Captain Rowann had investigated whether the appellant was known to the complainant, in the criminal case. She said that she had no knowledge of

⁵ *Duncan v Minister of Law and Order* 1986 (2) SA 805 (A) at 818G-H.

⁶ *Mabona v Minister of Law and Order and Others* 1998 (2) SA 654 (SECLD), at 658 E-H

the appellant. In the face hereof, the appellant offered no explanation for the presence of his fingerprints when requested to do so.

[25] It must be remembered that section 40(1)(b) of the Act requires suspicion, not certainty. However, the suspicion must be based upon solid grounds, otherwise, it will be arbitrary, and not a reasonable suspicion. In these circumstances, the information at Captain Rowann's disposal was of such quality and cogency as to allow himself to entertain a suspicion which justified the arrest. Thus, I am of the view that the respondent discharged the onus to prove that Captain Rowann had reasonable grounds for his suspicion that the appellant had committed an offence referred to in schedule 1 of the Act and that his decision to arrest him was rational in the circumstances. I accordingly find that the appellant's arrest on 13 August 2018 was lawful.

[26] Consistent with the appellant's particulars of claim, it was also argued that the appellant's initial detention was unlawful by reason of the fact that Captain Rowann failed properly to inform the appellant of his constitutional rights; to comply with sections 4 and 8 of the Police Standing Order G341 in that no entry was made in Captain Rowann's pocket book to confirm that the appellant's rights were explained to the appellant; and the fact that the appellant did not sign next to the entry in the arresting officer's pocket book rendered the arrest unlawful.

[27] Insofar as the issue concerning the explanation of the appellant's constitutional rights at the time of the arrest, an issue for which Captain Rowann was criticised, the following exchange appears from the record:

COURT: But that is what I thought, I asked him now to explain to me what did you say to the plaintiff.

MR MCKENZIE: The rights, no the rights when he now decided to arrest him.

COURT: Alright, you explain to him no, you are there, he is linked with fingerprints to the crime scene, if he cannot give you any explanation you are going to arrest him?

MR ROWAN: Then I explained to him, Your Honour, I am a police officer, anything you say will be written down. You have the right to attorney. You have a right for a state attorney. If you cannot afford an attorney and you will have the opportunity to explain your version in court if you cannot explain it at this stage to me, Your Honour.

MR MCKENZIE: Is that what you told him?

MR ROWAN: Yes.

[28] It is correct that the rights of arrested and accused persons to remain silent at pre-trial stage are significant to ensuring a fair trial. Section 35 of the Constitution Act, 1996 makes provision for these rights.⁷ The right to silence gives content and meaning to the right against self-incrimination and the right to be presumed innocent. It is a salutary rule of our common law, which accords with our constitutional value based system, that the state bears the duty to prove the guilt of the accused beyond reasonable doubt. However, the election to exercise the right to silence in the face of compelling evidence against a person accused of committing a crime has the inevitable consequence of fortifying the reasonableness of the suspicion held by an arresting officer.

[29] In essence, the right to remain silent serves to prohibit the state from engaging in any manner or form of coercing the accused person to assist the state in meeting its

⁷ **Arrested, detained and accused persons**

35. (1) Everyone who is arrested for allegedly committing an offence has the right—

- (a) to remain silent;
- (b) to be informed promptly—
 - (i) of the right to remain silent; and
 - (ii) of the consequences of not remaining silent;
- (c) not to be compelled to make any confession or admission that could be used in evidence against that person;

case.⁸ Given this purpose, it seems to me that the remedy for a violation of the appellant's rights in terms section 35(1) (a) – (c) of the Constitution, an issue I do not decide, would lie in challenging the admissibility of the evidence and/or statements made by him to the police in circumstances where he was not advised of his constitutional rights.⁹

[30] The failure to inform the appellant properly of his constitutional rights and to comply with sections 4 and 8 of the Police Standing Order G341 did not take away from the reasonableness of Captain Rowann's suspicion that the appellant had committed an offence referred to in schedule 1 of the Act. The most potent question in the enquiry remains whether the arrest is one that is justifiable under section 40(1)(b). This question is answered with reference to the jurisdictional factors that underpin the empowering provision.

[31] Looked at differently, had Captain Rowann informed the appellant of his constitutional rights, and had he complied with sections 4 and 8 of the Police Standing Order G341, but was without a reasonable suspicion that the appellant had committed an offence referred to in schedule 1 of the Act, would such have made the arrest one that is good in law? Not at all. This is because section 35 of the Constitution and Police Standing Order G341 do not empower peace officers to effect arrests. Thus, I would dismiss the appeal against a finding that upheld the lawfulness of the arrest.

[32] What of the lawfulness of the appellant's detention before his appearance in court on 14 August 2018? Insofar as may be relevant for present purposes, s 50 of the Act provides as follows:

"Procedure after arrest

50(1)(a) Any person who is arrested with or without warrant for allegedly committing an offence, or for any other reason, shall as soon as possible be brought to a police station or, in the case of an arrest by warrant, to any other place which is expressly mentioned in the warrant.

⁸ *Thebus v S* 2003 (6) SA 505 (CC), at para 55.

⁹ *S v Orie and Another* 2005 (1) SACR 63 (C).

(b) A person who is in detention as contemplated in paragraph (a) shall, as soon as reasonably possible, be informed of his or her right to institute bail proceedings.

(c) Subject to paragraph (d), if such an arrested person is not released by reason that –

- (i) no charge is to be brought against him or her; or
- (ii) bail is not granted to him or her in terms of section 59 or 59A

he or she shall be brought before a lower court as soon as reasonably possible, but not later than 48 hours after the arrest.

[33] The provisions of s 50(1)(a) and (b) of the Act contemplate that following upon an arrest, the arrested person shall be detained in a police station. This detention is linked to the arrest itself. Thus, I am not able to find fault with the appellant's detention immediately following upon his arrest. What remains to consider is whether the first respondent discharged the onus in regard to the complaint that the appellant was not brought before a court of law, as soon as reasonably possible, as he could and should have been brought before a court on 13 August 2018.

[34] The issue of the lawfulness of the appellant's continued detention and failure timeously, on 13 August 2018, to bring him before a court of law was properly and sufficiently raised on the pleadings.¹⁰ In the circumstances, the onus to prove that the continued detention was not unlawful arose, in the sense that evidence was required to justify the conclusion that it was not unlawful.¹¹

[35] The first defendant led no evidence to justify the failure to bring the appellant before a court on 13 August 2018 and no reason presents itself to conclude that it was

¹⁰ See Zealand fn 1 above para 24, where the Constitutional Court held that:

"The Constitution enshrines the right to freedom and security of the person, including the right not to be deprived of freedom arbitrarily or without just cause, as well as the founding value of freedom. Accordingly, it was sufficient in this case for the applicant simply to plead that he was unlawfully detained. This he did. The respondents then bore the burden to justify the deprivation of liberty, whatever form it may have taken."

¹¹ *Minister of Safety and Security v Slabbert* [2009] ZASCA 163; [2010] 2 All SA 474 (SCA) (Slabbert) para 21-22.

not possible. Simply on this basis, he did not discharge the onus. The appellant should have been taken to court as soon as reasonably possible. That would have been after processing him and having made the necessary logistical arrangements with the prosecutor. I do not think that it could reasonably have occurred before the start of proceedings on 13 August 2018, and even if it could it is improbable that the prosecutor would have brought him before court at 09h00. Thus, I find that he should have been brought before court, at least, by 13h00 on 13 August 2018. This was not done and, no justification was given for it. This renders the appellant's detention unlawful from that moment onwards. Accordingly, the first respondent is liable to compensate the appellant for his wrongful detention from 13h00 on 13 August 2018 until his appearance in court on 14 August 2018. Insofar as quantum is concerned, applicable the principles that I discuss later in this judgment, I am of the view that damages against the first respondent in the amount of R15 000 (fifteen thousand rand) would be fair and reasonable.

[36] Turning now to the claim against the second respondent. This claim implicates, once again, the rights of arrested and accused persons.¹² It was common cause during the trial that on 14 August 2018, the appellant was unrepresented; did not get an opportunity to apply for bail; and the prosecutor applied for postponement because they did not have the appellant's criminal record profile. It was also common cause that on 22 August 2018, the absence of the appellant's criminal record profile formed the basis of the prosecutor's application for postponement.

[37] It was not in dispute before the trial court that on 14 and 22 August 2018 the prosecutors who attended to the appellant's case were in possession of the appellant's criminal record profile. As I have said, this misrepresentation of facts was the only reason for refusing the appellant an opportunity of seeking bail on these occasions and, as a result he remained in custody. It cannot be contended that the appellant's detention from 14 to 29 August 2018 did not violate his right to dignity, freedom and liberty. The question that needs to be answered is whether there was a justification for these inroads to be made into the appellant's person. If not, the next question is

¹² See s 50(1)(b), and (6) of the Act.

whether the second respondent should be held liable. I answer both questions in the affirmative.

[38] In this regard, the applicable principles were set out in *Carmichele v Minister of Safety and Security*, where the Constitutional Court held that:

“[73] In considering the legal duty owed by a prosecutor either to the public generally or to a particular member thereof, a court should take into account the pressures under which prosecutors work, especially in the magistrates’ courts. Care should be taken not to use hindsight as a basis for unfair criticism. To err in this regard might well have a chilling effect on the exercise by prosecutors of their judgment in favour of the liberty of the individual. There are far too many persons awaiting trial in our prisons either because bail has been refused or because bail has been set in an amount which cannot be paid. We can do no better in this regard than refer to the following passage which appears in the *United Nations Guidelines on the Role of Prosecutors*:

Guidelines on the Role of Prosecutors

“In the performance of their duties, prosecutors shall:

(a) ...

(b) Protect the public interest, act with objectivity, take proper account of the position of the suspect and the victim and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect; . . .”

[74] That said, each case must ultimately depend on its own facts. There seems to be no reason in principle why a prosecutor who has reliable information, for example, that an accused person is violent, has a grudge against the complainant and has threatened to do violence to her if released on bail should not be held liable for the consequences of a negligent failure to bring such information to the attention of the Court. If such negligence results in the release of the accused on bail who then proceeds to implement the threat made, a strong

case could be made out for holding the prosecutor liable for the damages suffered by the complainant.”

[39] As is indicated above, the evidence of the prosecutors who handled the appellant’s case on 14 and 22 August 2018 was not led before the trial court. The result is that there was no explanation for why they misled the magistrate in respect of the appellant’s criminal record profile when same was always with them. Absent that explanation being placed before the trial court, I must accept that there was none available. This is because the second respondent bore the burden to justify the deprivation of liberty.¹³ No justification was rendered.

[40] The absence of evidence to justify the applications for postponement on 14 and 22 August 2018, means that there was no evidence upon which the onus could be discharged. Absent a justification, the inevitable conclusion is that the appellant was unjustifiably detained in a manner that violated his right not to be deprived of freedom arbitrarily and without just cause. It follows, therefore, that the appellant’s detention from 14 August 2018 until 29 August 2018 was unlawful. Thus, the trial court erred in dismissing the appellant’s claim in this regard. This brings me to the question of quantum on this claim.

[41] The assessment of damages is ordinarily the preserve of the trial court. The default position when the issue arises before an appeal court would be to remit the matter to the trial court. That is not always necessary or appropriate. In *EF v Minister of Safety & Security*¹⁴ the Supreme Court of Appeal said:

‘The general rule is that the determination of damages is a function peculiarly within the province of the trial court. It is competent, however, for this court itself to fix the damages to which the appellant is entitled. See *Neethling v Du Preez and Others*; *Neethling v Weekly Mail and Others* 1995 (1) SA 292 (A) at 301A-C.

¹³ *Zealand* fn 1 above, at para 24. Also see *Minister van Wet en Orde v Matshoba* 1990 (1) SA 280 at pp 284 – 286, 427 – 427.

¹⁴ *E F v Minister of Safety & Security* [2018] ZASCA 96; 2018 (2) SACR 123 (SCA) (EF).

This court has all the information necessary to consider this aspect. It is therefore in as good a position to do so as the trial court. For that reason, no purpose would be served by remitting the matter for that purpose.¹⁵

[42] The evidence on record in this matter is sufficient to allow this Court to make an award for general damages. The purpose of the award in a matter such as this is to compensate the claimant for loss of personal liberty and freedom and the attendant mental anguish and distress caused by the detention. In *Minister of Safety and Security v Tyulu*,¹⁶ the Supreme Court of Appeal emphasized that ‘the primary purpose is not to enrich the aggrieved party, but to offer him some needed *solatium* for injured feelings.’¹⁷

[43] Thus, in considering the question of *quantum*, I am mindful of the following dictum in *Zealand* (supra), at para. 24:

“The Constitution enshrines the right to freedom and security of the person, including the right not to be deprived of freedom arbitrarily or without just cause, as well as the founding value of freedom.”

[44] The determination of an appropriate sum for damages is a matter of discretion. Counsel referred us to similar cases to consider in the determination of damages. Previous awards made in comparable cases, can afford guidance. The comparative exercise is, however, not a meticulous examination of awards, and should not impinge upon the court's general discretion.¹⁸ Suffice it to say that a survey of the cases referred to by counsel, and other reported cases, reveal no discernible pattern other than that our courts are not extravagant in compensating the loss.

[46] There is no evidence that the appellant suffered any degree of humiliation beyond that inherent in being detained. I accept that, apart from the humiliation suffered

¹⁵ Ibid, para 32.

¹⁶ *Minister of Safety and Security v Tyulu* [2009] ZASCA 55; 2009 (5) SA 85 (SCA); 2009 (2) SACR 282 (SCA).

¹⁷ Ibid, para 26.

¹⁸ *Protea Assurance v Lamb* 1971 (1) SA 530 (A) at 535B-536A.

as result of his detention, the appellant was also deprived of his liberty for a period of fifteen days in police cells, and had been separated from family and friends for that period. And, having had regard to previous awards made in comparable cases, I am of the view that damages against the second respondent in the amount of R250 000 (two hundred and fifty thousand) would be fair and reasonable.

[45] In the result, the following order is made:

1. The appeal against the judgment of the Magistrate's Court, Gqeberha ("the Magistrate's Court") dismissing the appellant's claim for unlawful arrest against the first respondent is dismissed.
2. Save as aforesaid, the appeal against the judgment of the Magistrate's Court, is upheld and the order of the Magistrate's Court is set aside and replaced with the following:
 - "1. The plaintiff's initial detention from 13h00 on 13 August 2018 until his appearance in Court on 14 August 2018 is declared unlawful;
 2. The first defendant is directed to pay to the plaintiff the amount of R15 000.00 (fifteen thousand rand) as damages in respect of the initial detention referred to in paragraph 1;
 3. The plaintiff's detention from 14 to 29 August 2018, is declared unlawful;
 4. The second defendant is directed to pay to the plaintiff the amount of R250 000.00 (two hundred fifty thousand rand) as damages in respect of the detention referred to in paragraph 3; and
 5. The defendants are directed to pay the plaintiff's costs of action, jointly and severally, the one paying the other to be absolved"
3. The respondents, the one paying and the other to be absolved, are ordered to pay the costs of the appeal.

A M BODLANI
ACTING JUDGE OF THE HIGH COURT,
EASTERN CAPE DIVISION.

I agree

J EKSTEEN
JUDGE OF THE HIGH COURT,
EASTERN CAPE DIVISION.

APPEARANCES:

For the Appellant : MR. MCKENZIE

Intrusted by : MESSRS PETER MCKENZIE ATTORNEYS
Attorneys for the Appellant
No. 33 Beetlestone Road, Gelvandale
GQEBERHA
Tel : 073 590 5870 / 064 636 4666
Email : peter@mckenzieinc.co.za
Ref : P. MCKENZIE/tashP77

For the Respondent : MS. T. ZIETSMAN

Intrusted by : MESSRS STATE ATTORNEY
Attorneys for the Respondent

No. 29 Western Road

Tel: (041) 585 7921

Email : AMajezi@justice.gov.za

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