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

CASE NO: 63011/2018

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: YES

DATE: 8 November 2024

In the matter between:

NDOBENI: KHANGWELO VISION

PLAINTIFF

And

THE MINISTER OF POLICE

DEFENDANT

JUDGMENT

ALLY AJ

[1] This is a delictual claim for damages arising from the arrest of the Plaintiff on 19 July 2017 by members of the Defendant.

[2] At the outset, Counsel for the Plaintiff, Adv. C. Zietsman indicated that the Defendant had filed a special plea which plea had not been withdrawn yet. Defendant's Counsel, Adv. T. Modisenyane, then informed the Court that the special plea is formally abandoned.

[3] Counsel for the Plaintiff then indicated that because the parties had agreed as per the pre-trial conference, the Plaintiff would begin leading evidence.

[4] The arrest of the Plaintiff, it is common cause, arose from a member of the South African Police Services, hereinafter referred to as 'the SAPS', being notified that there was a motor vehicle parked at the Mall of Africa which is suspected of being stolen.

[5] It is furthermore common cause that after an engagement with a member of 'the SAPS', the Plaintiff was arrested for being in possession of a stolen vehicle and resisting arrest¹.

[6] Plaintiff alleges that his arrest on 19 July 2017 was unlawful.

EVIDENCE BY THE PLAINTIFF

[7] Counsel for the Plaintiff called Mr Ndobeni, who is a police officer, to testify in support of his case.

[8] Mr Ndobeni indicated that he is Constable and a member of the South African Police Service and was such a member for 8 years at the time of the trial. He resides in Mamelodi West.

[9] Constable Ndobeni, hereinafter referred to as the plaintiff for convenience, confirmed that he was arrested on 19 July 2017. The arrest took place at a place called the Mall of Africa in Midrand, Gauteng.

[10] The plaintiff was in the company of his sister, girlfriend, and his girlfriend's sibling. He parked his motor vehicle in the parking area. He testified that they went to the movies and thereafter they had something to eat and then went to buy some clothes.

[11] After buying clothes they to the motor vehicle in the parking area. The plaintiff placed a package in the boot and then entered the motor vehicle. He started the motor vehicle and was about to reverse when he saw blue lights from a police vehicle behind him.

¹ Caselines: Section 15-9

[12] The plaintiff alighted from the motor vehicle and enquired what was happening. He was informed by the police that his motor vehicle was involved in a robbery at Temba with a certain case number. At this time, he was in possession of a firearm and they requested him to hand over the firearm. He handed over his firearm and explained that he is a police officer at Boschkop Police Station.

[13] The plaintiff was then informed that he was under arrest for robbery and suspicion of being in possession of a stolen motor vehicle. He was requested to hand over his keys.

[14] The plaintiff then testified that if a motor vehicle was suspected of being stolen the procedure is that there would be fingerprints in a SAP13 book. He informed the police that there were children in the motor vehicle and therefore he will not hand over his motor vehicle and keys. The police, upon hearing his response told him that he was resisting arrest and they called for back-up. Approximately 3 to 4 police vehicles arrived and he was arrested, handcuffed, and placed in the back of the police van.

[15] One of the police officers drove his motor vehicle. At the police station, he was explained his rights and he signed that his rights were explained to him. As per procedure, his cellphone was taken from him as well as his belt and shoe laces.

[16] Before he was taken to the cells, he asked whether he could make arrangements for the children because they did not know the Mall of Africa and the police refused for me to make arrangements. However, after some time the police gave him his cellphone and when he switched it on a friend of his was busy calling him. The plaintiff explained to his friend that the police had arrested him. He then asked his friend to fetch the children from the Mall of Africa.

[17] The plaintiff then described the cells to the Court. He was first held in the holding cells. He explained that you are first asked about your details and particulars and thereafter you are detained in what he described as the other cells later described as a suspect cell. The holding cell was small.

[18] The plaintiff was also kept alone in the suspect cells. It was very cold. However, he was given 2 blankets. There was one toilet. He never used the toilet in the suspect cell and declined their food. He explained that his friend brought food when he collected the keys. The plaintiff testified that the police refused for him to see his father.

[19] The plaintiff then recounted what happened during his arrest. He testified that the police suspected that he was in possession of a stolen motor vehicle. He explained to them that he purchased the motor vehicle knowing that it was involved in a house robbery and that the motor vehicle had an AAPV number. He testified that he tried explaining this to the police but they emphasised that he was just a student constable.

[20] On questioning from Counsel whether the police had an issue with him being a student constable, the plaintiff explained that he had first told the police that he was a police officer and then when they looked at the back of the card, they saw that he was a student constable. The plaintiff was of the view, that this angered them because he had also explained the procedure to be followed, namely, the fingerprints and towing services.

[21] The plaintiff further testified that he was under the impression that they were angry with him. In this regard he explained that he greeted them as colleagues but they did not want to listen to him because he was a student.

[22] The plaintiff was adamant that he was arrested at the Mall of Africa and that he was co-operative in his demeanour. He further testified that he was worried about his passengers because one was 5 years old and the other 13 years old. His girlfriend was 19 years old at the time of the incident.

[23] The plaintiff testified that he showed the police the car keys of the motor vehicle. This is when he once again explained that he told them the history of the vehicle and that it had been stolen. However, according to his testimony, the motor vehicle in his possession was up to date.

[24] The plaintiff testified that he was approached by the police at the Mall of Africa between the times of 16H00 and 18H00 and he spent the night in the police and suspect cells.

[25] The plaintiff testified further that he was taken out of the cells at approximately 07H00 the next day. He was not taken to Court and was approached by the police that had arrested him at 12H00 and he was booked out for investigation. He was released after the police were satisfied that the motor vehicle was not stolen. The plaintiff indicated that he was released between 17H00 and 18H00 on 20 July 2017. He was released by the Commander of the Detectives. The officers who arrested him were not present at his release.

[26] During the cross-examination the plaintiff indicated that at the suspect cells at Boschkop police station, the suspects are given a sponge and a blanket. This response was to a question from Counsel for the defendant whether it was normal for a suspect to receive 2 blankets.

[27] Counsel for the defendant wanted to know whether it was only the following morning at approximately 07H00 that the motor vehicle was not stolen and the plaintiff was adamant that if the motor vehicle was stolen, a certain procedure should have been followed, which included that his fingerprints would have been taken and he would have been taken to Court.

[28] The plaintiff was pressed as to the fact that he, himself, knew that the motor vehicle was stolen and that the police at the Mall of Africa didn't want to listen to him because he was a student constable. He responded that the police did not give him an opportunity to explain about the motor vehicle. Counsel for the defendant then indicated to the plaintiff that on the one hand he indicates that he explained about the motor vehicle but on the other hand he was not given a chance to explain about the motor vehicle. These two statements, Counsel for the defendant put to the plaintiff, could not co-exist.

[29] During cross-examination, the plaintiff was not sure about the sequence of activities that were undertaken by him and his passengers, that is, going to movies, eating, and buying clothes.

[30] It was put to the plaintiff that he was only in the company of one adult person which he denied and confirmed his previous testimony that he was in the company of his girlfriend and two children.

[31] The plaintiff repeated that he was placed under arrest at the Mall of Africa when asked whether he agreed to go to the police station. He further stated that he was aware that he was under arrest when he was in the back of the police van.

[32] The plaintiff recounted that at the Mall of Africa he had known that the motor vehicle was previously stolen. He also indicated that the police told him that the reason for his arrest was that he was in possession of a stolen motor vehicle under a Temba case number but was not given the case number.

[33] When asked whether he produced any documentation explaining his possession of a stolen motor vehicle he responded by saying that there is no way that one drives around with registration papers. He then repeated that he tried to explain to the police but they were not listening to him. When pressed further on his engagement with the police and that there was agreement that the motor vehicle was stolen, he responded that at the time there was no case number.

[34] When put to the plaintiff that he had testified that he was the owner of the motor vehicle he responded by stating that transfer of ownership had not yet taken place. He further testified that there was an agreement of purchase. He further testified that he had been in possession of the motor vehicle 4 months before his arrest.

[35] The plaintiff was then shown documentation² indicating the status of the motor vehicle in terms of possession and ownership and it was put to him that a witness will come and testify about the said documents. The purpose of the showing the plaintiff the documents was to show that his name does not appear on any of the documents. The documents also show that enquiries were made after the arrest of the plaintiff.

[36] It was put to the plaintiff that the motor vehicle was not in his name and it had been reported stolen. The Temba case number which appeared on a document³ shown to the plaintiff indicated that the motor vehicle was possibly recovered and that it was robbed from the owner/complainant.

[37] When put to the plaintiff that he did not go to have the motor vehicle cleared at the South African Police Services [SAPS], he stated that he went to the traffic document.

[38] It was further put to the plaintiff that he was in possession of the motor vehicle 4 months prior to his arrest, he was aware of the stolen status of the motor vehicle, he did not have documentation for the vehicle and he could not provide an explanation to the police why he had the motor vehicle. The plaintiff responded that the motor vehicle was not stolen. He stated further that there was no law that required him to have registration documents on his person related to the motor vehicle. He repeated that he tried to explain to the police about the motor vehicle but they did not want to listen.

[39] During re-examination the plaintiff repeated that the motor vehicle was not stolen and that he was not aware that the motor vehicle was being sought and confirmed that at the end his version of events turned out to be correct.

[40] Counsel for the plaintiff then called Warrant Officer Ras to testify on behalf of the plaintiff. He testified that he became aware on the afternoon of 19 July 2017

² Caselines: Section 15-10 – 15-14

³ Caselines: Section 15-16

that a policeman from his police station, Boschkop, was arrested. Warrant Officer Ras indicated that this knowledge came via an email sent to Boschkop police station.

[41] Warrant Officer Ras was of the view that Midrand police station knew that the plaintiff was a police officer. He accompanied the plaintiff to retrieve his firearm a week after his arrest

[42] Warrant Officer Ras confirmed during cross-examination that Boschkop police station was not going to interfere with the investigation and he was not involved at all in the investigation except to the extent testified to during his evidence-in-chief.

[43] Plaintiff's Counsel then called Ms Mashudu Ndobeni to testify on behalf of the plaintiff. She indicated that the plaintiff is her brother.

[44] Ms Ndobeni testified that she was present on 19 July 2017 when the plaintiff was arrested and confirmed that she was with a 5-year-old baby and 19-year-old girl.

[45] Ms Ndobeni testified that she was in the plaintiff's motor vehicle when it was driven to the police station. She waited outside the police station until they were fetched by the plaintiff's friend and taken home. She further testified that the plaintiff was arrested approximately 16H00. They fetched approximately 24H00.

[46] Ms Ndobeni testified that she heard about the gun and that the police officer was shouting at the plaintiff; in her words, he was angry and shouting: "you are a criminal; you have a stolen car". She further testified that the plaintiff gave the firearm to the police and then he was arrested.

[47] During cross-examination, Counsel for the defendant disputed that Ms Ndobeni was 13 at the time of the incident. Ms Ndobeni insisted she was 13 at the time of the incident as testified to in her evidence-in-chief and stated that she was born on 19 April 2006. Defendant's Counsel pointed out to her that she would have

been 11 at the time of the incident if she born the year she indicated. She insisted that she was 13 years old. It is clear mathematically, that Ms Ndobeni could not have been 13 years old at the time of the incident.

[48] Ms Ndobeni also testified that when the plaintiff was handcuffed, he was in the middle at the back.

[49] Counsel for the plaintiff then called Makata Makgananisa, plaintiff's friend, to testify.

[50] Makata Makgananisa testified that he had received a call from the plaintiff to say that he had been arrested at the Mall of Africa. The plaintiff indicated that he should bring the car clearance certificate. From the time that they were friends, Mr Makgananisa stated that the plaintiff had the motor vehicle in question. He arranged transport to take the documents and to get the keys.

[51] Mr Makgananisa testified that the plaintiff had told him during the telephone call where to find the documents. He had to break down the door to get the documents. He arrived at the Midrand police station between 23H00 and 24H00.

[52] At the charge office, Mr Makgananisa was told that the shift that arrest the plaintiff had already knocked off. He told the police officials at the charge office about the documents relating to the motor vehicle but they did not assist him.

[53] Mr Makgananisa testified that he was a colleague of the plaintiff and was also a constable in the SAPS. He confirmed that the plaintiff had the motor vehicle several months before his arrest. He recounted that on the day that he went to the charge office, he never got to see the plaintiff. He then went home with the documents.

[54] Mr Makgananisa's recollection was that there were 3 children and he took them home from the Midrand police station.

[55] The next day, the plaintiff came with the investigating officer to collect plaintiff's documents for the motor vehicle. He had no further involvement in the case.

[56] Mr Makgananisa during cross-examination repeated that the police officials at the charge office did not help him nor did they contact the arresting officer. The police officials told him that they were not responsible for the plaintiff's arrest.

[57] When asked about the number of children he recounted that there were 3 children and 1 adult. He insisted that he picked up 4 people. He indicated that there were 2 females and 2 males. He did not, however, then state that he could be wrong about the number of people he picked up but did state that when he arrived, they were inside the charge office.

[58] Counsel for the plaintiff then closed the plaintiff's case.

EVIDENCE BY DEFENDANT

[59] Counsel for the defendant called the arresting officer, Sergeant Mbanyana to testify on behalf of the defendant. He had been a detective since 2017.

[60] He reported for duty on 19 July 2017 and was busy with sector policing when he received a call from the 10111 controller who told him about a suspicious vehicle at the Mall of Africa. He proceeded to the Mall of Africa and found a silver sedan VW polo motor vehicle parked in the parking area of the mall. The registration number of the motor vehicle was B[...] 7[...] R[...] G[...].

[61] There was nobody in the vehicle and he decided to initiate enquiries about the motor vehicle. He stated that the 10111 controller told him that the motor vehicle had a case number, namely, Temba 23/08/2014. He proceeded to check the motor vehicle's number plates and license details. He checked the VIN number and gave same to the 10111 controller and the result came up with two different names.

[62] In Sergeant Mbanyana's view, the results were suspicious and he decided to wait for the occupants of the motor vehicle.

[63] Sergeant Mbanyana testified that he waited approximately 25 to 30 minutes when he saw a male person, who it is common cause, was the plaintiff, with a lady who were very cosy with each other walking towards the VW polo motor vehicle. He parked his police vehicle behind the VW polo. He alighted and introduced himself and explained the discrepancies with the VW polo. He asked whether the male person was the owner of the motor vehicle to which the plaintiff answered in the affirmative.

[64] Sergeant Mbanyana then stated that the plaintiff gave him his name which did not correlate with the names he had as owners of the motor vehicle. He then stated that the plaintiff must accompany him to the police station to make a statement. The plaintiff was adamant that the motor vehicle was his.

[65] Sergeant Mbanyana testified that he could see that the plaintiff was getting upset so he indicated to the plaintiff that he was not arresting him but he just wanted to take his statement at the police station. Sergeant Mbanyana then noticed a firearm and then thought the plaintiff might shoot him and he needed to disarm him. He called for back-up and he took the firearm of the plaintiff by force. He noticed that the firearm was a police issue firearm.

[66] Sergeant Mbanyana then told the plaintiff that he was being difficult whilst being a police officer. He had called for back-up and the other police officials arrived and they handcuffed the plaintiff.

[67] Sergeant Mbanyana testified that he drove the VW polo back to the police station and the lady was next to him.

[68] At the police station he notified his shift commander and the station commander which is the protocol when arresting a police officer.

[69] Sergeant Mbanyana testified that he informed the plaintiff, at the Mall of Africa, that he was under arrest for being in possession of a suspicious stolen vehicle and that he could not provide him with ownership documentation for the vehicle. He detained the plaintiff at the Midrand Police station holding cells and explained his constitutional rights.

[70] Sergeant Mbanyana testified that the plaintiff refused to go to the police station and stated that if the plaintiff had co-operated matters would have gone differently.

[71] Cross-examination of Sergeant Mbanyana revealed that according to him, his arrest of the plaintiff was the by-the-book. When questioned about whether he was given the Temba case number, he initially answered in the negative and then shortly thereafter responded that he was given the Temba case number. However, he did maintain that he had no knowledge of the Temba docket.

[72] Sergeant Mbanyana insisted that the different VIN numbers cast suspicions on the motor vehicle. When asked whether a registration certificate proves ownership, he responded that the certificate will give you ownership details.

[73] Sergeant Mbanyana was adamant that the plaintiff was only accompanied by one female person. Counsel for the plaintiff put to him that there was never any dispute as to the number of people. It must be stated at this stage that the number of people present during the arrest of the plaintiff was placed in issue during the testimony of the plaintiff when it was put to the plaintiff that when he alighted, it was him and another adult person.

[74] Sergeant Mbanyana denied that he was aggressive during the arrest of the plaintiff.

[75] Regarding the handover of the firearm, it was put to Sergeant Mbanyana that it was never disputed during the plaintiff's testimony that the firearm was voluntarily handed over. His response was that he was just telling the Court what happened.

He added that if the plaintiff had co-operated, he would have allowed him to drive the motor vehicle to the police station.

[76] Sergeant Mbanyana insisted that the plaintiff did not give a full explanation for possession of the motor vehicle and he was puzzled by the attitude of the plaintiff. Sergeant Mbanyana did concede that he was unaware that the VW polo had been recovered. It was later pointed out to him that this was contrary to what he had stated in paragraph 3 of his statement⁴.

[77] Sergeant Mbanyana towards the end of his cross-examination indicated that the plaintiff was detained for further investigation.

[78] Sergeant Mbanyana was adamant that he could not ignore the different VIN numbers and that the original VIN number was the most important number.

[79] During re-examination, Sergeant Mbanyana repeated that the plaintiff knew better and that he should give a statement where there were suspicions regarding the ownership of the VW polo. If the plaintiff had given him a statement, he would have considered same.

[80] Detective Constable Madisha was then called to testify on behalf of the defendant. He explained that he deals with car hijackings, house robberies and business robberies. His involvement in this case started on 20 July 2017. He was told that the plaintiff was arrested for being in possession of a stolen motor vehicle.

[81] Detective Madisha went to interview the plaintiff at Midrand police station regarding the VW polo. The plaintiff indicated to him that he bought the vehicle from a lady in Mamelodi and that the vehicle was still in the lady's name. The plaintiff did not have documents in his possession and he booked the plaintiff out during the day. The plaintiff directed him to the lady's house. Her name was Ms Kgosana and she verified that she was the owner and he completed a SAPS 328.

⁴ Caselines: Section 15-6

[82] Detective Madisha recalled that after his investigation, the plaintiff was released and on 25 July 2017, he accompanied the plaintiff to Aeroton where the VW polo was kept and handed over the vehicle to the plaintiff.

[83] During cross-examination, Detective Madisha was shown a document containing a clearance certificate number relating to the VW polo. He did not know what this number meant.

[84] Counsel for the plaintiff put to Detective Madisha that the vehicle system was inaccurate to which he responded that he was unable to confirm whether the system was accurate or not. He further added that on the basis of the information provided to him regarding the VW polo, the plaintiff was released.

[85] During re-examination, Detective Madisha confirmed that he did not work at VIS [Vehicle Investigation Section].

ANALYSIS AND EVALUATION

[86] It is now trite that the onus to prove the lawfulness of a warrantless arrest rests on the police⁵. Although the plaintiff started with testimony in this case because of the agreement outlined in the pre-trial minute, it was common cause that the defendant bore the onus to prove the lawfulness of the arrest and detention.

[87] In answer to the plaintiff's claim, defendant invoked the provisions of Section 40 of the Criminal Procedure Act 51 of 1977, as amended. Specifically, defendant pleaded:

“4.2.1. Plaintiff was arrested on 19 July 2017 at the Mall of Africa shopping centre;

⁵ Minister of Law and Order v Hurley 1986 (3) SA 568 (A) at 589E-F

4.2.2. *Plaintiff's arrest was effected without a warrant of arrest by Sergeant Songezo Mbanyana, a Peace Officer as defined in the Criminal Procedure Act;*

4.2.3. *Plaintiff was arrested on suspicion of having committed a schedule 1 offence, to wit theft of a motor vehicle;*

4.2.4. *The suspicion that Plaintiff committed a schedule 1 offence was based on reasonable grounds;*

4.2.5. *Alternatively, Plaintiff was arrested by a peace officer without a warrant of arrest, pursuant to the provisions of section 40 (1)(e) of the Criminal Procedure Act;-*

4.2.5.1. *After being found in possession of a motor vehicle reasonably suspected of being stolen, and;*

4.2.5.2. *Following Sergeant Mbanya [sic] reasonable suspicion that Plaintiff to have committed theft in respect of the said motor vehicle*

4.2.6. *In terms of Section 40(1)(b) of the Criminal Procedure Act, a Peace Officer is authorised to arrest any person whom he reasonably suspects of having committed an offence referred to in schedule 1 other than the offence of escaping from lawful custody without a warrant of arrest;*

4.2.7. *In terms of section 40(1)(e) of the Criminal Procedure Act, 51 of 1977, a Peace Officer is authorised to arrest any person who is found in possession of anything which the peace officer [sic] reasonable suspects to be stolen property or property dishonestly obtained, and whom the peace officer reasonably [sic] suspect of having committed an offence with respect to such a thing.*

4.2.8. The arrest of Plaintiff was lawful under the circumstances, it being sanctioned by the provisions of Section 40(1)(b) of the Criminal Procedure Act 51 of 1977 [sic] alternatively, it being sanctioned by the provisions of section 40(1)(e) of the Criminal Procedure Act.”

[88] The test for justification of an arrest in circumstances under Section 40 (1) (b) has been clearly stated by our Courts⁶:

“As was held in Duncan v Minister of Law and Order (1986 (2) SA 805 (A) at 818G-H), the jurisdictional facts for a s 40(1)(b) defence are that (i) the arrestor must be a peace officer; (ii) the arrestor must entertain 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.”

[89] The jurisdictional facts as outlined above are present in this case, namely, the arrestor is a peace officer, the arrestor entertained a suspicion, the suspicion was that the plaintiff committed a schedule 1 offence, that is, theft of a motor vehicle, and the arrestor’s decision rested on reasonable grounds, namely, the VW polo’s details did not correlate with that ascertained from the system by the arrestor.

[90] However, this is not the end of the enquiry, in my view. The critical question in this case is whether it was necessary in the circumstances, to arrest the plaintiff? Could Sergeant Mpanyana have employed other means to bring the plaintiff to Court?

[99] These questions are important, in my view, because it cannot be that a person is arrested and detained for reasons other than to present the suspect before a Court of law. Our constitutional regime does not allow otherwise. The deprivation of one’s liberty goes against the Bill of rights and must be justified in terms of the laws of the Republic. Now I have already stated that Sergeant Mpanyana on the facts he was faced with, had a reasonable suspicion that the

⁶ Minister of Safety & Security v Sekhoto 2011 (5) SA 367 (SCA) at 373 para 6

plaintiff had committed a schedule 1 offence. However, having that suspicion, he had a discretion⁷ at the given time to determine whether it was absolutely necessary to arrest and detain the plaintiff.

[100] What other avenues were available to Sergeant Mbanyana in the circumstances? In my view, he could have taken possession of the motor vehicle and asked the plaintiff to present himself for further questioning within in a reasonable time.

[101] It must be pointed out at this stage that the plaintiff as well as Sergeant Mbanyana, as police officers did not give a good account themselves. I accept also as Sergeant Mbanyana testified, that the plaintiff's attitude in the circumstances caused his arrest. This approach, in my view, cannot be a reason for arresting someone. However, the plaintiff's attitude is also not one that assisted in this situation. More in respect of the plaintiff's attitude will be mentioned further in this judgment.

[102] Sergeant Mbanyana's discretion that vested in him to arrest the plaintiff, in my view was tainted by the attitude of the plaintiff and accordingly such conduct was unlawful.

[103] The detention of the plaintiff in these circumstances, in my view, was also unlawful. Counsel for the plaintiff submitted that the Court should find that the arrest was malicious. In my view, having regard to the evidence before the Court, malice on the part of Sergeant Mbanyana was not shown.

[104] With regard to the damages suffered by the plaintiff, in my view, an insightful guide has been laid down in **Motladile v Minister of Police**⁸:

“The assessment of the amount of damages to award a plaintiff who was unlawfully arrested and detained, is not a mechanical exercise that has

⁷ Minister of Safety and Security supra at para 28; Groves NO v Minister of Police 2023 CC 36

⁸ 2023 ZASCA 94 at para 17

regard only to the number of days that a plaintiff had spent in detention. Significantly, the duration of the detention is not the only factor that a court must consider in determining what would be fair and reasonable compensation to award. Other factors that a court must take into account would include (a) the circumstances under which the arrest and detention occurred; (b) the presence or absence of improper motive or malice on the part of the defendant; (c) the conduct of the defendant; (d) the nature of the deprivation; (e) the status and standing of the plaintiff; (f) the presence or absence of an apology or satisfactory explanation of the events by the defendant; (g) awards in comparable cases; (h) publicity given to the arrest; (i) the simultaneous invasion of other personality and constitutional rights; and (j) the contributory action or inaction of the plaintiff.”

[105] I mentioned hereinbefore, the attitude of the plaintiff which was not helpful. In determining the amount of damages, I have taken such attitude into consideration as well as the status of the plaintiff being a police officer.

CONCLUSION

[106] In all the circumstances, I am of the view that a fair and reasonable amount in respect of damages to be awarded to the plaintiff is the amount of R90 000-00 [ninety thousand rand].

COSTS

[107] It is trite that unless found otherwise, costs should follow the result. There is no reason nor has any been provided to deviate from the norm.

[108] However, the question that arises is whether such costs should be awarded on the High Court scale or the Magistrate's Court scale. I accept that the defendant warned the plaintiff of requesting the Court to apply the Magistrate's Court scale should the plaintiff be successful.

[109] However, I am guided by the Supreme Court of Appeal's⁹ guidance when dealing with costs in cases such as these. In the result, the plaintiff is entitled to costs on the High Court scale.

[110] Accordingly, the following order shall issue:

- a). the defendant shall pay damages to the plaintiff in the amount of R90 000-00 [ninety thousand rand];
- b). the defendant shall pay interest on the amount in paragraph (a) at the prescribed rate from the date judgment to the date of final payment;
- c). the defendant shall pay the costs of the plaintiff on the high court scale.

**ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION OF THE HIGH COURT, PRETORIA
*Electronically submitted therefore unsigned***

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 8 November 2024.

Date of hearing: 17 – 19 April 2023

Date of judgment: 8 November 2024

Appearances:

⁹ Motladile case supra at para 26

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