

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

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

18 November 2024
DATE


SIGNATURE

CASE NO: 36031/2019

In the matter between:

BHEKIFA THABANG MOGALE

Plaintiff

and

MINISTER OF POLICE

1st Defendant

MINISTER OF JUSTICE AND CORRECTIONAL SERVICES

2nd Defendant

NATIONAL DIRECTOR OF PROSECUTIONS

3rd Defendant

MR MALOKA

4th Defendant

WARRANT OFFICER SEFERE

5th Defendant

MCC SECURITY AND PROJECTS CC

6th Defendant

LINDICANI MHLANGA

7th Defendant

RAMBELANI NEFANE

8th Defendant

JUDGMENT

(The matter was heard in open court on the days noted at the end of the judgment, and after hearing counsels for the parties, judgment was reserved. The reserved judgment was uploaded onto the electronic file of the matter on CaseLines and the date of uploading onto CaseLines is deemed to be the date of the judgment).

BEFORE: **HOLLAND-MUTER J:**

[1] The plaintiff issued summons against the defendants after he was arrested on 16 May 2017 at the Pretoria Magistrate's Court for wrongful and unlawful arrest and detention.

[2] The Plaintiff amended his particulars of claim later to include a further claim that the 4th; 7th and 8th Defendants and members of the 1st and 6th defendants **wrongfully and maliciously set the law in motion by laying a false charge of theft** against the Plaintiff. The amendment was effected and this resulted in a spilt of the onus to prove. The Plaintiff also included a further claim for assault

[3] The claim of wrongful arrest without a warrant places the onus of the arrestors (Defendants) while a claim of malicious prosecution places the onus on the Plaintiff. The claim for assault as a separate claim burdens the Plaintiff with the onus to prove. The court ruled that it would be more convenient that the Plaintiff starts with producing evidence on all the issues.

[4] The Plaintiff applied for a separation of issues for this court to adjudicate the merits aspect and that the quantum portion to be postponed sine die. The Defendants objected to a separation with regard to merits and quantum. After hearing all parties, the court ruled a separation to take place.

[5] The Plaintiff included several claims in the particulars of claim ranging from wrongful and unlawful arrest, detention and further detention for seven (7) hours; assault; future medical expenses; past medical expenses; legal costs and an estimated general damages claim. Although mention was made of so-called "*constitutional damages*", a claim that the Defendants denied the Plaintiff with medical and life saving medical support was inserted as claim four in the amended particulars of claim in this regard. This aspect will be addressed below. The total of the amount claimed is capitalised on R 1 320 000-00. This court was not saddled with the quantum issue.

EVIDENCE:

[6] The Plaintiff was the only witness who testified on his behalf. The Defendants called six (6) witnesses to testify.

PLAINTIFF: BHEFIKA THABANG MOGALE:

[7]The Plaintiff, a thirty years old male, was arrested on 16 May 2017 at the Pretoria Magistrate's Court on a charge of theft of two window panes from inside the Court building. The two window panes were described to be double proof and had an estimated value of R 1 500-00. The panes belong to the Department of Justice.

[8] The Plaintiff started his evidence by stating his qualifications (Grade 12 during 2013 and a Diploma in Graphic Design from the Rosebank College in Pretoria), his related work experience and that he was unemployed for two years during 2019 to 2021.

[9] He testified that he was suffering from epilepsy and that he has to take prescribed medicine daily. This was confirmed by a letter by Doctor D B Musungaie which was handed in by his counsel. The letter is found on CaseLines 18-121. The doctor mentioned that the Plaintiff was suffering from generalised Tonic-Clonic Epilepsy and that he had to take two tablets daily. Although the letter was dated 16 May 2017, the doctor was not called to testify because he has passed on. The 16th of May 2017 was the day of the alleged arrest and on the Plaintiff's own version he did not visit a doctor or the hospital on the day of the arrest after his release past dusk or on the following day.

[10] To place the issue of the Plaintiff's epilepsy in perspective, and to understand the evidence by the Plaintiff, it is prudent to deal with the general aspects of epilepsy as explained by the Plaintiff when cross-questioned by Adv Maite, counsel for the 1st to 5th Defendants. She established from the Plaintiff that he takes the two tablets daily, one in the morning and one later after dusk. He confirmed that he took the one tablet that morning. He replied, when asked how often he experiences an epileptic seizure, that it happens about once a year. He stated that although he was born with the epilepsy, it can be controlled by medicine. He explained that the prominent symptoms are the shaking of hands, a loss of balance and the inability to correctly communicate with other people.

[11] On the day of the incident, he went to the Magistrate's Office during the morning. This was at the request of his mother to collect certain maintenance forms for her. This was not his first time going there and he knew he had to go to one Rosemary Skosana's office at the Small Claims Office. He had an empty

laptop bag with him to put the forms into. On his version he was in Rosemary's office at around 11:00.

[12] Arriving at Rosemary's office, after requesting the forms, he could feel that he was about to go into an epileptic seizure. He remembers that when she asked him his identity document, he could not pronounce his ID number to her and gave her his cell phone's number. When Rosemary asked him for his wallet to see if his ID card was in the wallet, he gave her his cell phone. He then informed her he needed to go to a bathroom and he left his empty bag with her as he stood up to leave.

[13] As he was leaving the office, he shuffled out and demonstrating how he held onto the wall to support himself and to keep his balance and when continuing to leave, he past where the windows were. He leant against the window when two of the window panes fell from the window. He took hold of the two panes and then heard a security officer approaching him screaming why he was stealing the windows. He could not answer the security officer due to his epileptic condition. He acknowledged that he had the two panes in his hands.

[14] The security officer called for back-up and he was handcuffed, and after the other officer arrived, he was taken to the Pretoria Central South African Police Station next door to court. On his recollection this was almost at 14:00.

[15] On arrival at the police station, he was taken to a small room where the Head of Security from the Magistrate's Office, Mr Maloka, and other police officers, five in total, came and interrogated him. In his state he could not answer them. He was afraid to answer and remained silent. This annoyed the onlookers and the police started to hit him with open hands on both sides of his face and with punched him with fists on his stomach.

[16] This assault ordeal continued for 15 to 20 minutes and he clearly remembers that the head of security from the court was one of those who assaulted him. He tried to stand up from the chair but they pushed him down onto the chair. He could not answer any of the questions put to him.

[17] He sustained the following injuries as a result of the assault, namely a swollen left eye, swollen face and aching body. He also sustained scratches on his elbows and forehead. Both hands were swollen because of the tight handcuffs on his hands. All this occurred on the ground floor at the police station.

[18] He then requested the police to phone his mother and an ambulance as he was still in the epileptic seizure. He could not understand why he was arrested and why they did not phone his mother or the ambulance.

[19] He was then taken to the holding cells where he requested the female officer at reception to phone his mother. The answer was that they will phone her after his fingerprints were taken. His rights were never explained or read to him and he was requested to sign a blank form. The blank form later transpired to be an uncompleted SAPS 14 A Notice of Rights in terms of the Constitution.

[20] When taken to what he perceives to be an interrogation room, he asked for water and medication and that his mother be phoned. After the lapsing of a long period of time, while he was held in the small room, he heard the voice of his mother outside in the foyer entrance of the police station.

[21] He again said he had to be taken to hospital because of his illness and needed medication. The reason to be taken to hospital is to be scanned and medicated for his condition.

[22] Some time later, at almost 21:00, two paramedics arrived and they examined him. The paramedics noted that his condition was not "*so serious*". Lt Col Modise and W/O Matola visited the cells at 19:30 on 16 May 2017 and noted that an ambulance was summonsed and that the ambulance personal who attended to the plaintiff noted that the issue was not so serious. No sign of injuries were noted in the occurrence book. The differences in the noted times is his recollection.

[23] He was released on R 500-00 bail on condition to appear in court the following morning. The release on bail was past 21:00. He did not go for any medical attention after his release that evening or the following day. This leaves a question mark as to the date on the letter by his medical doctor referred to supra. He did not mention anything further regarding his medical condition or any medical treatment after his "*ordeal*".

[24] He returned to court the following morning but his matter was never called and at about 15:00 he established that his matter was not enrolled for that day.

[25] He explained that while enduring an epileptic seizure his hands will shake, he will be dizzy and when questioned, he will give the wrong answer because, as he described '*his brain is not functioning well*'.

[26] He could not explain why nothing was noted in the occurrence book at the police station of injuries and did not respond to the noted finding by the paramedics. This was after he was shown extracts from the register.

[27] The Plaintiff made certain important concessions during his evidence casting a shadow over his evidence. He tried to vindicate his refusal to answer questions posed to him by the security officer at the court and later when

questioned by the police officers at the police station that he could not answer them because he was still experiencing the epileptic seizure and he would then give the wrong answers. This is difficult to understand in view of no medical evidence about his condition at all.

[28] During cross-examination he gave the following explanations that he could not control himself during a seizure, he recalls holding the two glass window panes in his hands – despite earlier suggestions that his hands would shake during a seizure; and somewhat surprising, that he could not blame the security officers when seeing him walking away with the two window panes that they thought he was stealing the window panes.

[29] He did not deny being apprehended at the exit of the court building with the two window panes in his possession and that he was only protecting himself afraid to give wrong answers by keeping quiet. He could not explain how he went down two floors by using the stairs at the court with the two window panes in his hands.

[30] It is interesting that he remembers detail of the alleged assault he had to endure and who of the police or security officers were assaulting him. He was certain who assaulted him although some, like the head of security, Mr R Sefani, who denied being at the police station.

[31] When asked to explain what happened at the police station other than being assaulted, he responded saying he cannot recall other things like in the holding cells; asking for water, food and to phone all that clear. He blames his medical condition for not recalling everything well. It seems that he suffers from selective memory when questions turn out to be difficult.

[32] The cross-examination on behalf of the other Defendants on the alleged assault yielded the same answers by the Plaintiff. When cornered by questions, the Plaintiff tried to play down his answers by playing the epileptic seizure card. This concluded the evidence on behalf of the Plaintiff. He reiterated that he was assaulted by the police and security officers although they denied it during cross-examination put to him.

[33] The Plaintiff closed his case without calling any witnesses on his behalf.

APPLICATION FOR ABSOLUTION FROM THE INSTANCE:

[34] There was an application for absolution from the instance by counsel for the Defendants regarding the malicious prosecution claim and the so-called *constitutional damages claim* on the evidence before the court.

[35] The leading test to consider absolution from the instance at the end of the plaintiff's case was formulated in *Gascoyne v Paul & Hunter 1917 TPD 170* where it was held that '*At the close of the case for the plaintiff, therefore, the question which arises for the consideration of the Court is, is there evidence upon which a reasonable man might find for the plaintiff? The question therefore is, at the close of the case for the plaintiff was there a prima facie case against the defendant, was there such evidence before the court upon which a reasonable man might, not should, give judgment against the defendant*'?

[36] An application for absolution from the instance is similar to that of in a criminal case where at the end of the case for the state has the plaintiff made out some sort of case upon which the defendant should answer. If applied to the claim for malicious prosecution, is there *prima facie* evidence establishing all the essential elements for such claim? If not, the application should

succeed. In this matter the Plaintiff conceded during cross-examination that the security officers cannot be blamed for their conduct based on what the first officer saw.

[37] The Plaintiff tried to justify his action by stating that he did not have the intention to steal the window panes but admitted that he had the window panes in his hands when confronted. When asked whether the security officers can be faulted when they saw him with the window panes, the Plaintiff clearly answered that he cannot blame them but that he was in an epileptic fit. This erodes any attempt for success on the claim for malicious prosecution and the application for absolution from the instance must succeed.

[38] Adv Jacobs and Adv Maite requested absolution from the instance regarding claims 3 and 4 of the particulars of claim. The third claim refers to the malicious prosecution while the fourth claim refers to the failure by the Defendants to have saving medical support given to the Plaintiff. This was agreed to constitute ***Constitutional damages as envisaged in section 35(2) (e) of the Constitution***. The evidence is clear that the Plaintiff was attended to by the paramedics at the police station before 19:30. This was the note entered into the occurrence book by Lt Col Modise during his visit to the cells that evening. The Plaintiff admitted that he was seen by the paramedics and his evidence contradicts his own particulars of claim. The Plaintiff tendered no medical evidence at all to support his reliance on epilepsy and that he was denied lifesaving treatment and medicine. Absolution of the instance is granted with regard to the fourth claim as well.

[39] When considering the claim of alleged assault, the court is of the view that there is prima facie evidence calling for an answer from the Defendants. The Defendants counsel did not request absolution from the instance with regard to the claim of wrongful and unlawful arrest and detention for seven hours and the Defendants should answer to the first (unlawful arrest) and second (assault) claims.

DEFENDANTS WITNESSES' EVIDENCE:**DEFENDANT'S 1 TO 5:****FAITH REZONA SEFERI:**

[40] The witness is a Warrant Officer ("W/O") in the South African Police Services stationed at the Pretoria Central Police Station (*the Police Station*) at the time of the incident on 16 May 2017. She was performing her duties at the Community Service Centre at the police station inter alia opening dockets and taking statements before it is handed over to the investigating personal. She opens almost 200 dockets daily.

[41] She was on duty when the Plaintiff was brought in by the security officers from the Magistrate's Court. It was about 15:30 when the Plaintiff was brought to the police station. She observed the Plaintiff and although he was quiet, he did not appear to be ill or that he had visible injuries.

[42] She inquired from the security officers what happened and they made a report to her that the Plaintiff tried to steal two window panes and when apprehended, he tried to escape. She attended to the matter and opened a docket. The personal information about the Plaintiff she obtained from him and from the complainants. She continued to explain the Plaintiff his rights and he thereafter signed the prescribed form (SAP 14A). She took him to the holding cells in the company of a colleague and detained the suspect. She made the inscriptions into the occurrence book and took a warning statement from the Plaintiff.

[43] She was adamant that the Plaintiff was not assaulted by anyone in her presence and that the security officers who brought the Plaintiff to the police station were not allowed into the room where the Plaintiff was held and questioned. The plaintiff did not request her to phone his mother or an ambulance for treatment. The Plaintiff's hands were not shaking nor was he showing any signs of illness. The Plaintiff did not mention that he had any injuries or suffered from an illness.

[44] The Plaintiff's mother did arrive later but she did not know who contacted the mother. She is also sure that Maloka (head of security at court) was not present at the police station. She was cross-examined extensively but this did not detract from her evidence. She confirmed that the security officers made the arrest at the Court.

LESEFETJA SIMON MALOKA:

[45] Mr Maloka is employed as Chief Security Staff Officer at the Pretoria Magistrate's Office by the Department of Corporate Government. His daily task is to oversee the other security officers deployed at the court. He was on duty on 16 May 2017 when one of the officers, Nefane, contacted him and reported that a suspect tried to steal window panes at the court.

[46] He went to the reception area at the entrance to the court from Frances Baard Street (previously Schoeman Street). He met Rambelani Nefane and the other officer, Lindisane Mhlanga, together with an unknown person at the entrance. Nefani explained that he saw the suspect removing the window panes from the windows on the second floor and when confronted, the suspect fled downstairs where he apprehended the suspect.

[47] He saw the two window panes next to where they stood and when he questioned the suspect, the suspect remained silent. He could not see anything wrong or any visible illness signs about the suspect. He instructed Nefane and the other officer to take the suspect to the police station next door to court.

[48] He did not accompany them to the police station nor did he or any of the security officers assault the suspect there at court. The suspect, the now plaintiff, was unknown to him. He gave the instruction that the suspect be arrested and taken to the police. He did not see the suspect again and he made a statement some three weeks later when requested to do.

[49] Cross-examination did not detract from his evidence at all.

PETER MALEKALEKA:

[50] Mr Malekaleka is a sergeant in the Police Service for 23 years and stationed at the Pretoria Police Station as a detective then but he is now in the uniform branch. One of his daily tasks is to conduct a preliminary investigation at the crime office when a suspect is brought to book. He takes a warning statement in the holding cells and obtains information from the suspect.

[51] On the particular day he met the suspect, now Plaintiff and questioned him. They communicated in English and the suspect informed him that he wants to consult with a legal advisor. He noted this request. He did not see any injuries visible on the Plaintiff although they were close to another in the room. The Plaintiff did not mention that he was dizzy nor were his hands shaking. The Plaintiff did mention that his mother was around but has no knowledge how the mother came to know about the Plaintiff's arrest. This was about 18:10.

[52] The Plaintiff made no mention of his need for medicine or that an ambulance be called to attend to the Plaintiff. He did the fingerprinting of the Plaintiff but do not recall that the Plaintiff requested to make a phone call.

[53] He was cross-examined in detail about the procedure in the station, the completing of statements and the location of the holding rooms. This did not detract from his evidence. He knows that food is served daily (three meals a day) and that supper is served between 16:00 and 18:00. He does not know whether the Plaintiff received any food but the Plaintiff did not complain.

[54] He replied to questions during cross-examination that he did the preliminary investigation, had the Plaintiff's DNA taken as standard procedure, took the fingerprints and obtained the Plaintiff's particulars from his mother. He denied any incompleteness in compiling the docket and denies that the Plaintiff was assaulted by anyone at the police station.

[55] He is aware that the Plaintiff was released on bail later that evening and he suspects bail was fixed by a prosecutor.

NICOLAAS JAILA MASEMBUKA:

[56] He is employed as a detective at the Pretoria Police Station. He is a sergeant with 19 years of experience in the police. He investigated the matter and received the docket on 18 May 20217. He tried to obtain a statement from Dr Musungaie without success. On his third attempt to visit the doctor, the doctor informed him that he did not want to make a statement. He noted this in the investigating diary. He did not arrest the Plaintiff.

[57] During cross-examination he was asked whether he went to the court to investigate and he confirmed that he did attend to court where he was shown where the window panes were removed. He again stated that the doctor declined to make a statement but was informed that the Plaintiff did suffer from epilepsy and that it could affect a person's mental capacity.

[58] The evidence of Masembuka was not detracted at all during cross-examination and Adv Maite closed the case for Defendants 1 to 5.

[59] He is aware that the Plaintiff was examined by paramedics around 19:00 when the ambulance arrived and that Lt Col Modise completed the register. Modise has left the service.

DEFENDANT'S 6 TO 8:

[60] The evidence of the two security officers employed by the sixth Defendant was tendered.

LINDISANI MHLANGA;

[61] He is employed by the sixth Defendant as a security officer and deployed at the Pretoria Magistrate's Office. He is graded as a security officer grade "C". He reports to Mr Maloka (the third defendant). His duties include performing roaming patrolling inside the court building.

[62] He was on duty on 16 May 2017 and while performing patrol services. He was patrolling from the fourth floor downwards when he heard an unfamiliar sound from below. He went in the direction from where he heard the sound

and found the Plaintiff removing window panes on the second floor. When the Plaintiff saw him, the Plaintiff fled from the eastern side to the western side and towards the ground floor.

[63] The Plaintiff went down the stairs towards the entrance of the court towards the direction of room 36. The Plaintiff had the two window panes in his hands when fleeing downstairs. The Plaintiff went towards the smoking area downstairs at the side of the building and Mhlanga contacted his supervisor, one Nefani via his radio. The smoking area is also the enclosed emergency exit next to the main exit from the court building. It seems that the Plaintiff in his hurry to flee took the wrong exit from the building and entrapped himself in the enclosed emergency exit court yard. The witness apprehended the Plaintiff at this emergency exit with the two window panes still in his possession.

[64] At the smoking area he and Nefani approached the Plaintiff who was still in possession of the window panes. They handcuffed the Plaintiff and the Plaintiff did not answer any of the questions they asked him. They took the Plaintiff to the reception area and the entrance and again tried to question the Plaintiff with no response. Nefani contacted Maloka (head of security at court).

[65] Maloka arrived but also could not get any response from the Plaintiff. Maloka then instructed them to take the Plaintiff to the police station next door. They took the Plaintiff to the police together with the two window panes and handed the Plaintiff over to the police. Maloka did not accompany them to the police station. After arriving at the police station, a female officer at reception took over after they explained to her what happened at court.

[66] He denied that he or any of the other security officers assaulted the Plaintiff at any stage. He denied that he or his colleague followed the police when they took the Plaintiff to another room nearby. The Plaintiff was not

assaulted by any of the police officers in his presence. He and his colleague waited quite a while for a case number to take the number to their supervisor at the court. He admitted arresting the Plaintiff at the court.

[67] While waiting for the case number, he saw paramedics arriving by ambulance carrying some bottles with them. It was past dusk when the paramedics arrived. He was extensively cross-examined without any damage caused to his version.

RAMBELANI NEFANE:

[68] He is employed as a security officer at the Pretoria Magistrate's Court and a co-employee with the previous witness, Mhlanga. He was on duty at the court on 16 May 2017 when Mhlanga contacted him via the radio reporting the incident with the Plaintiff.

[69] He went to the exit foyer at the exit/entrance from Frances Baard Street and met Mhlanga and the Plaintiff next to the emergency exit he saw the two window panes next to them and Mhlanga explained what happened and why he followed the Plaintiff.

[70] His version corroborates that of Mhlanga what transpired further at the court and at the police station. He confirmed that Maloka did not accompany them to the police station and denied that any of the security officers or the police officers assaulted the Plaintiff.

[71] He was subjected to cross-examination but it did not detract from his version. The cross-examination concentrated on the statement he made at the police but the line of questions was more on the formalities than the version

he gave. He explained that the alleged “contradictions’ between his statement and his version in court can be ascribed to his lack of knowledge to express himself in English.

EVALUATION:

[72] It is trite that there are two conflicting versions as what happened whether the Plaintiff was assaulted or not.

[73] From the foregoing, it is clear that the court is faced with two mutually destructive versions of the incident. The question is which one of the versions should be accepted. It is trite that courts, when faced with two mutually destructive versions, resolve the factual disputes as was held in ***Stellenbosch Farmers’ Winery Group Ltd and Another v Martell and Others 2003 (1)SA (SCA) 1 at [5]*** *“To come to a conclusion on the disputed issues a court must make findings on: (a) the credibility of the various factual witnesses; (b) their reliability; and (c) the probability or improbability of each party’s version on each of the disputes issues. In light of the assessment of (a), (b) & (c) the court will, as a final step, determine whether the party burdened with the onus of proof has succeeded in discharging it. The hard case, which will doubtless be a rare one, occurs when a court’s credibility findings compel it in one direction and its observations and evaluation of the general probabilities in another. The more convincing the former, the less convincing will be the latter. But when all factors equipoised probabilities prevail”*.

[74] In ***National Employers’ General Insurance Co Ltd v Jager 1984 (4) SA 437 (ECD) at 440D-441A*** a similar approach was echoed *“in that the onus can ordinarily only be discharged by adducing credible evidence to support the case of the party on whom the onus rests. Where there are two mutually destructive stories, he can only succeed if he satisfies the court on a preponderance of probabilities that his version is true and accurate and therefore acceptable and*

the other version is therefore false or mistaken and falls to be rejected. In deciding whether the evidence is true or not, the court will weigh up and test the plaintiff's allegations against the probabilities. When considering the probabilities of both versions and if the balance of probabilities favours the plaintiff the court will accept his version as being probably true. If, however, the probabilities are evenly balanced in the sense that they do not favour the plaintiff's case anymore that they favour the defendant's, the plaintiff can only succeed if the court nevertheless believes him and is satisfied his version is true and that of the defendant is false".

[75] A similar approach was followed in **Komako v PRASA, Case No 43704/2012 (unreported)** in the Johannesburg High Court on 21 October 2022.

[76] In **Dreyer v AXZS Industries 2006 (5) SA 548 SCA** the court reiterated the approaches in the **Stellenbosch** and **Jagers** cases. The court referred to the probabilities inherent in the respective conflicting versions and that the maxim that the party who bears the onus must satisfy the court on a balance of probabilities that his version, taken into account the probabilities of the two destructive versions, is true and should be accepted.

[77] I have indicated that there are two mutually destructive versions of the incident in question. Accepting the one means the rejection of the other. In deciding where the truth lies, there are some improbabilities in evidence of the plaintiff to consider. Compared with the version by all the defence witnesses' the court is satisfied that there was no assault of the Plaintiff, his version stands alone in this aspect.

[78] The Plaintiff did not deny that the first security officer found him in possession of the two window panes at the emergency exit of the Magistrate's Court and he did not give any explanation why he had the window panes in his

possession downstairs at the court. His only explanation was that he was suffering from an epileptic seizure and that he was afraid to answer any questions for fear of giving the incorrect answer. This explanation falls short of any reasonable excuse for his possession.

[79] His failure to call his mother to testify what she found on her arrival at the police station, to confer his allegations that his face was swollen and bruised, the failure to go to a doctor or clinic/hospital after his release at the police station to receive what he says necessary scans and medication because of the seizure, casts doubt that he was enduring a seizure when this happened.

[80] The entry by Lt Col Modise in the occurrence book negates the Plaintiff's version that he was in a seizure, with involuntary trembling hands and visible signs of a seizure. The paramedics' attendance and subsequent noting of his condition into the occurrence register further detracts from the value of his version.

[81] The evidence by the investigating officer Masembuka that Dr Musungae refused to make a statement does not aid the Plaintiff's version. Although the court allowed the letter by the doctor in terms of section 3(1)(c) of the Law of Evidence Amendment Act, 45 of 1988, the probative value thereof cannot be tested in the normal way and in this matter it has little value. It only confirms that the Plaintiff suffers from epilepsy but it has no bearing on his version of the day of the incident. See **Mdani v Allianz Insurance 1991 (1) SA 184 (A)**.

[82] Having considered all the evidence and the onus on the Defendant regarding the arrest, I am satisfied that the arrest was not unlawful and that the further detention of maximum seven (7) hours was justified. The Plaintiff on his own version admitted that he cannot fault the conduct of the security officers when apprehending and arresting him at the court. The Defendants succeeded to discharge the onus resting upon them regarding the arrest and

detention and the claim cannot succeed. Although the quantum issue was separated and to be postponed sine die, in view of the finding by the court, there is no need to postpone the quantum issue.

[83] If the court may remark on the quantum aspect, the court is of the view that the amounts claimed are totally out of touch with the present awards in cases similar to this.

ORDER:

The claim is dismissed with costs, costs to be on a party and party scale.



JUDGE OF THE PRETORIA HIGH COURT

Matter heard in open court on: 22/7/2024; 23/7/2024; 24/7/2024; 25/7/2024; 26/7/2024; 29/7/2024; 30/7/2024 and 1/8/2024. (9 day trial)

Judgment handed down and uploaded onto CaseLines on 18/11/2024

Appearances:

Plaintiff: Adv T C Kwindu

Defendants 1-5: Adv L Maite

Defendants 6-8: Adv G Jacobs