



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable / Not reportable

Appeal Case no: A180/2023

Court *a quo* case no: 3953/2019

In the matter between

THE MINISTER OF POLICE

FIRST APPELLANT

**NATIONAL DIRECTOR OF PUBLIC
PROSECUTIONS**

SECOND APPELLANT

And

**THIEHO WILLIAM MOFOKENG
(Deceased)**

FIRST RESPONDENT

JACOB SAONA LETUKA ("LETUKA")

SECOND RESPONDENT

MAQAESA OSIAH SEHLAKO ("SEHLAKO")

THIRD RESPONDENT

TLADINYANE DAVID TLALE ("TLALE")

FOURTH RESPONDENT

Neutral citation: *Minister of Police and Others v Thieho William Mofokeng and 3 others*

Coram: Loubser, J Chesuwe J et Nemavhidi AJ

Heard: 18 October 2024

Delivered: 14 November 2024

Summary: Appellants appeal against order of the court *a quo* having granted damages to the respondents against unlawful detention and malicious prosecution-
No prima facie case against three respondents-no link between the respondents and the offences charged with.

ORDER

1. The appeal is dismissed with costs.
2. The appellants shall pay the taxed costs of the respondents on scale B in accordance with the tariff of fees determined in Uniform Rules 67A and 69 inclusive of counsel's fee.

JUDGMENT

Nemavhidi AJ (Loubser J *et* Chesiwe J concurring)

[1] This is an appeal by the Minister of Police (Minister) and the National Director of Prosecutions (NDPP) against the decision of the Court *a quo* to award damages for the unlawful detention and malicious prosecution of the second, third and fourth respondents. The first respondent was deceased before the trial.

[2] The three respondents were arrested and charged with attempted murder, house robbery and possession of stolen items. The second respondent (Letuka) was arrested on 12 May 2013. The third respondent (Sehlako) was arrested on 12 May 2013 while the fourth respondent (Tlale) was arrested on 23 May 2013. Each of the respondents appeared in court within 48 hours after arrest. The lawfulness of their arrest was not yet challenged.

[3] Firstly, the appellants aver that the respondents in the court *a quo* failed to prove the unlawfulness of the detention and secondly, if so, whether the amount of damages is consistent with what is reasonable having regard to the relevant circumstances. Thirdly, the appellants further allege that because bail was refused by the court in circumstances where the accused effectively acquiesced thereto, the continued detention was accordingly lawful.

[4] Relating to damages, the appellants state that in the event that the court finds that the detention was unlawful, the quantum of damages is markedly unjust and this Court should interfere.

[5] The Court has to consider the following in awarding damages:

- a) The circumstances under which the deprivation of liberty took place;
- b) The conduct of the respondents and
- c) The nature and duration of the deprivation.

[6] Letuka was granted bail by the High Court in January 2017 after spending three years and seven months in prison while Sehlako was granted bail by the High Court in February 2017 after spending three years and nine months in prison. Tlale was not granted bail and remained in prison for a period of four years and one month when he was acquitted.

[7] Letuka was awarded R1,3 million and Sehlako and Tlale were awarded an amount of R1,4 million each. However, the appellants are of the view that the respondents should rather have been awarded R250 000.00 for their unlawful detentions and that the court *a quo* should have *mero motu* raised the issue of prescription.

[8] In response, the respondents raised the following issues:

Section 17 of the Prescription Act 68 of 1969 provides:

‘(1) A Court shall not of its own take notice of the prescription;

(2) A party to litigation who invokes prescription, shall do so in the relevant document filed of record in the proceeding, provided that a Court may allow prescription to be raised at any stage of the proceedings.’

As such, the appellants should have specifically pleaded prescription in either their plea or special plea.¹

[9] The only witness to testify on behalf of the second appellant is the prosecutor of the court *a quo*, one Rathaba. He informed the court *a quo* that the respondents are a flight risk as they are Lesotho citizens. This issue of citizenship of Lesotho contributed to the wrongful information presented to the court, whereas only the fourth respondent was a Lesotho citizen. Rathabas evidence was of no assistance to the second appellant as he did not make a good impression to the court.

[10] The first appellant did not call any witnesses in answer to the claim of unlawful detention, despite having attracted the onus to prove the lawfulness thereof.

¹ *Mbhiiyozo v Eskom Holdings SOC Ltd* [2024] ZAECHC 55 paras 40-46.

[11] All three respondents testified about their arrest and detention and this evidence was not controverted by the appellants. The court *a quo* found that there was at no point in time a *prima facie* case against the respondents. They should never have been prosecuted. The prosecutor also conceded that he did not have regard to all or other statements in the docket.²

[12] The Court *a quo* correctly found that causality between the conduct of the police officers and the prosecution and further detention of the respondents had been proven. From the onset, there was no link between the respondents and the alleged offences for which they were arrested. Had the prosecutor applied his mind to the dockets' contents he would not have commenced with prosecution let alone continue with it for years whilst the respondents remained in custody.

[13] The Court *a quo*'s reasoning, and exercise of its discretion on how and for what amount of damages cannot be faulted. The respondents testified about the condition of their detentions and what they were subjected to, and the trauma they had to endure whereas the appellants did not provide any cogent reasons for this court to disturb the findings of the Court *a quo*.

Order:

In the result, the following order is made:

1. The appeal is dismissed with costs.
2. The appellants shall pay the taxed costs of the respondent on scale B in accordance with the tariff of fees determined in Uniform Rules 67A and 69 inclusive of counsel's fee.



M.B. Nemavhidi AJ



P.J. Loubser J



S.Chesiwe J

² *Minister of Police and Another v Du Plessis* [2013] ZASCA 119; 2014 (1) SACR 217 SCA para 32.

Appearances

For the Appellants:	The State Attorney
Instructed by:	Adv N.A Cassim SC et Adv L.R Bomela
For the Respondents:	Adv S Grobler SC et Adv C Zietsman.
Instructed by:	Jacobs Fourie