

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

- | | |
|-----|--|
| (1) | NOT REPORTABLE |
| (2) | NOT OF INTEREST TO OTHER JUDGES |

CASE NO: 2023-091784

DATE: 26 MARCH 2025

In the matter between:

RAMATHAFENG ESAIEA MPHAMO

Plaintiff

and

THE MINISTER OF POLICE

First Defendant

**THE NATIONAL DIRECTOR OF
PUBLIC PROSECUTIONS**

Second Defendant

Neutral Citation: *Mphamo v Minister of Police and Another (2023-091784)*

[2025] ZAGPJHC ---- (26 March 2025)

Coram: Adams J

Heard: 12, 13, 14 and 28 November 2024.

Delivered: 26 March 2024 – This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to *CaseLines* and by release to SAFLII. The date and time for hand-down is deemed to be 11:30 on 26 March 2025.

Summary: Criminal law and procedure – Criminal Procedure Act 51 of 1977 – section 40(1)(b) – unlawful arrest and detention – whether the plaintiff's arrest and detention were lawful in terms of ss 40(1)(b) of the Criminal Procedure Act, read with schedule 1 thereto, which includes any offence, the punishment wherefor may be a period of imprisonment exceeding six months, without the option of a fine – the plaintiff was, at the time of his arrest, suspected of having contravened s 3 of the Criminal Matters Amendment Act 18 of 2015 – tampering with, damaging or destroying essential infrastructure – he was caught in the act of cutting an underground electricity cable – on conviction, offender is liable to be sentenced to period of imprisonment not exceeding 30 years – therefore, arrest and detention justified –

Factual disputes – mutually destructive versions – correct approach – to come to a conclusion on the disputed issues a court is required *inter alia* to make a finding on the probability or improbability of each party's version – it is only where a consideration of the probabilities fails to indicate where the truth probably lies, that recourse is had to an estimate of relative credibility apart from the probabilities –

Plaintiff's claim dismissed.

ORDER

- (1) The plaintiff's claim is dismissed with costs.
 - (2) The plaintiff shall pay the first and the second defendants' costs, including Counsel's charges on scale 'B' of the tariff applicable in terms of the Uniform Rules of Court.
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JUDGMENT

Adams J:

[1]. In the late afternoon / early evening of Saturday, 24 December 2022, a private security officer, Mr Ronald Mhlanga ('Mr Mhlanga'), received a call from his Control Centre, advising him that along Silver Avenue, near an Engen Garage, in Mayfield Park, two suspicious looking individuals were standing respectively next to and in a trench that had been dug along the side of the road. He was requested to go and investigate and, on his arrival at the 'scene', sure enough there he found the plaintiff and another person – the one standing next to the trench and the other in it. One was in possession of a hacksaw. They were clearly tampering with the underground cable, which had been partially exposed by the trench and it had been cut on the one side. On his enquiring from them as to what they were doing, the one in the trench replied that they were 'hustling for money'. He thereupon placed them under arrest and thereafter reported to his Control Centre, who summoned the police.

[2]. The members of the South African Police Service arrived after a few minutes, arrested the plaintiff and his friend and took them to the Mondeor Police Station, where they were 'processed' and detained. Fast forward to 4 July 2023, when the plaintiff was released from prison – after just over six months in detention since his initial arrest on 24 December 2022. They were released after facing charges of tampering with essential infrastructure and after standing trial

in the Johannesburg Magistrates Court. By then they had been prosecuted and the trial proceeded to the close of the State's case, at which point (on 4 July 2023) they were discharged in terms of s 174 of the Criminal Procedure Act 51 of 1977 ('CPA') and acquitted.

[3]. In this action, the plaintiff claims delictual damages for unlawful arrest and detention from the first defendant (the National Minister of Police ('Minister')). Initially, there was also a claim by the plaintiff against the second defendant (the National Prosecuting Authority ('NPA')) on the basis of malicious prosecution. However, at the commencement of the trial before me on the morning of Tuesday, 12 November 2024, Mr Makile, Counsel for the plaintiff, advised the court that the plaintiff was formally withdrawing the malicious prosecution action against the NPA. He was accordingly only pursuing the claim against the South African Police Service on the basis of unlawful arrest and detention.

[4]. Needless to say, in pursuing his claim in this matter, the plaintiff sets great store to the fact that the Johannesburg Magistrates Court had discharged him in terms of s 174 of the CPA, which confirms, so the plaintiff avers, that the State had no case against him and should never have arrested, detained or prosecuted him. For the reason mentioned *infra*, this argument is misdirected and ill-advised.

[5]. The first defendant denies liability for the claim of the plaintiff. His case is that the arrest and the detention were lawful in that the plaintiff was suspected – reasonably so – of having committed the crime of tampering with essential infrastructure.

[6]. The issue to be considered in this action is therefore whether, all things considered, the arrest of the plaintiff and his subsequent detention were lawful. Put another way, the issues to be decided in this matter is whether the arresting officers had reasonable grounds to arrest the plaintiff and whether they had reasonable grounds thereafter to detain him. Prior to adjudicating the foregoing issue, the court is required to try and assess the facts in the matter. In that regard, there are two mutually destructive versions – one on behalf of the plaintiff and the

other on behalf of the defendants, in relation to the circumstances surrounding and leading up to the arrest and detention of the plaintiff. In other words, there is a factual dispute between the parties relating to a material issue in the matter, which dispute is required to be considered and decided upon by the court.

[7]. Before dealing with the facts in the matter, it may be apposite to traverse and consider firstly the applicable legislative framework and the applicable legal principles.

[8]. An arrest or detention is *prima facie* wrongful. Once the arrest and detention are admitted, as is the case *in casu*, the onus shifts onto the State to prove the lawfulness thereof and it is for the defendant to allege and prove the lawfulness of the arrest and detention. So, for example, it was held by the Supreme Court of Appeal as follows in *Zealand v Minister of Justice & Constitutional Development & Another*¹:

'This is not something new in our law. It has long been firmly established in our common law that every interference with physical liberty is *prima facie* unlawful. Thus, once the claimant establishes that an interference has occurred, the burden falls upon the person causing that interference to establish a ground of justification.'

[9]. Section 40(1)(b) of the CPA confers the power on a police officer, without warrant, to arrest a person reasonably suspected of having committed a schedule 1 offence. Schedule 1 includes: -

'Any offence ... the punishment wherefor may be a period of imprisonment exceeding six months without the option of a fine.'

[10]. In this matter, the defendants plead that the plaintiff and his co-accused were reasonably suspected of having committed an offence contemplated in terms of s 3 of the Criminal Matters Amendment Act 18 of 2015, which reads as follows:

‘3 Offence relating to essential infrastructure

(1) Any person who unlawfully and intentionally-

¹ *Zealand v Minister of Justice & Constitutional Development & Another* 2008 (4) SA 458 (SCA) at para 25;

- (a) tampers with, damages or destroys essential infrastructure; or
 - (b) colludes with or assists another person in the commission, performance or carrying out of an activity referred to in paragraph (a),
- and who knows or ought reasonably to have known or suspected that it is essential infrastructure, *is guilty of an offence and liable on conviction to a period of imprisonment not exceeding 30 years or, in the case of a corporate body as contemplated in section 332 (2) of the Criminal Procedure Act, 1977, a fine not exceeding R100 million.*' (Emphasis added).

[11]. The offence of which the plaintiff was suspected of having committed therefore clearly falls within the ambit and the contemplation of s 40(1)(b) of the CPA. Provided the arresting officer's suspicion that the plaintiff had contravened the provisions of s 3 of the said Act, was reasonable, he would accordingly have been entitled and empowered to arrest the plaintiff without a warrant. Section 50(1)(a) requires that such arrested person be brought, as soon as possible, to a police station, and be there detained. And section 50(1)(b) provides that he or she, as soon as reasonably possible, be informed of his or her right to institute bail proceedings.

[12]. It is not required for a successful invocation by a peace officer of s 40(1)(b) of the CPA, that the offence was actually committed. The question is whether the arresting police officer had reasonable grounds for suspecting that such a crime had been committed. This requires only that the arresting officer should have formed a suspicion that must rest on reasonable grounds. It is not necessary to establish as a fact that the crime had been committed². 'Suspicion' implies an absence of certainty or adequate proof. Thus, a suspicion might be reasonable even if there is insufficient evidence for a *prima facie* case against the arrestee³.

² *R v Jones* 1952 (1) SA 327 (E) at 332;

³ *Duncan v Minister of Law and Order* 1986 (2) SA 805 (A) ([1996] ZASCA 24) at 819I – 820B;

[13]. In cases such as *Duncan v Minister of Law and Order*⁴, *Minister of Law and Order v Kader*⁵, *Powell NO and Others v Van der Merwe NO and Others*⁶, the Supreme Court of Appeal has endorsed and adopted the following formulation of the meaning of 'suspicion' by Lord Devlin:

'Suspicion in its ordinary meaning is a state of conjecture or surmise where proof is lacking; "I suspect, but I cannot prove". Suspicion arises at or near the starting point of an investigation of which the obtaining of *prima facie* proof is the end.'

[14]. The question, whether the suspicion by the police officer effecting the arrest is reasonable, as envisaged by s 40(1)(b), must be approached objectively. Accordingly, the circumstances giving rise to the suspicion must be such as would ordinarily move a reasonable person to form the suspicion that the arrestee had committed a first-schedule offence. The information before the arresting officers must be such as to demonstrate an actual suspicion, founded upon reasonable grounds, that a schedule 1 offence had been committed by the person or persons to be arrested.

[15]. That then brings me back to the facts in the matter, as elicited from the evidence led during the trial. In that regard, the plaintiff himself, as his only witness, gave evidence in support of his case. He testified that on Saturday, 24 December 2022, at about 16:00 in the afternoon, he was on his way home from work in Glenvista, where he had done some plumbing work. He was carrying a rucksack on his back, which contained a hacksaw, which, according to him, is one of his tools of the trade, which he had in fact used when he was attending to the plumbing duties at Glenvista.

[16]. Whilst on his way home, he met his co-accused at the shops near the scene of the incident in question – the trench with the exposed cable, and he asked from him a cigarette. He knows his co-accused, as they lived together at

⁴ *Duncan v Minister of Law and Order* 1986 (2) SA 805 (A) ([1996] ZASCA 24) at 819I;

⁵ *Minister of Law and Order v Kader* 1991 (1) SA 41 (A) ([1990] ZASCA 111) at 50H – I;

⁶ *Powell NO and Others v Van der Merwe NO and Others* 2005 (1) SACR 317 (SCA) (2005 (5) SA 62; 2005 (7) BCLR 675; [2005] 1 All SA 149) para 36;

the time in the same yard. His co-accused obliged and also offered him a cooldrink. He thereafter continued his walk home and, at some distance away, a private security officer in his security vehicle pulled up alongside him, whilst he was still walking home. The security officer, out of the blue, told him that there had been an incident in Silver Avenue and that the plaintiff should accompany him back to the scene. He got into the vehicle and they drove back to the scene. On their arrival at the scene, he was handcuffed by security officers and ordered to get into the trench. The security officers, apparently for no reason at all, accused him of being one of the persons, who had cut the copper cable, which he could see in the ditch and that it had been tampered with.

[17]. He denied that he had cut the cable and explained that he was coming from his workplace and was on his way home from work. The security officers were not interested in his explanation. They insisted that he was one of the persons who had tampered with the cable. The security officers, together with other members of the community, who had gathered in the meantime, also started assaulting him. At some point, his co-accused, so the plaintiff's evidence continued, was also brought to the scene and he too was accused of having tampered with the underground cable. He suffered the same fate as the plaintiff – he was handcuffed, assaulted and told to get into the trench.

[18]. After a short while, Johannesburg Metro Police Officers arrived on the scene and warned the security officers and the members of the local community not to assault the plaintiff and his friend as this would jeopardize the arrest and the prosecution. After about thirty to sixty minutes the South African Police Service arrived and replaced the handcuffs they (the plaintiff and his co-conspirator) had on with the official SAPS handcuffs. After a discussion between the police and the security officers, the police officers placed them in a police van and drove them to the Mondeor Police Station, where they were processed and detained.

[19]. After a few appearances in Court, and after bail was set at R10 000, which the plaintiff could not afford, his matter proceeded to trial on 4 July 2024, and

after the State closed its case, he was discharged in terms of s 174 of the CPA. In the interim period between 24 December 2022 and 4 July 2023, so the plaintiff testified, he was detained first at the Mondeor Police Cells and then at the Johannesburg Prison under harsh and inhumane conditions.

[20]. For the defendants, the arresting officers (F/Sergeant Thopola and Sergeant Mkansi), the police officer, who took down the plaintiff's statement at the Mondeor Police Station (Sergeant Khaliswayo), the investigating officer (Warrant Officer Ndaba) and finally the security office (Mr Mhlanga) gave evidence.

[21]. In sum, the version subscribed to on behalf of the defendants is as set out in the above introduction and the first two paragraphs of this judgment. The plaintiff and his co-accused were caught in the act of 'tampering with essential infrastructure' in that they were busy cutting an underground electric cable, when they were confronted first by the private security officer and thereafter by the members of the South African Police Service, who subsequently placed them under arrest.

[22]. Sergeant Mkansi, who was the second witness for the defendants, testified that he received a message on the Police *WhatsApp* group that there were suspects who were cutting a cable in Mayfield Park and that they had been apprehended. He and two of his crew members rushed to Silver Avenue in Mayfield Park, where they found two suspects who were handcuffed and inside the trench. He furthermore testified that after speaking to Mr Mhlanga, the private security officer, he then approached the suspects and asked them what they had been doing inside the trench. The plaintiff admitted that they were trying to make some money from the sale of the cable to feed themselves and asked for forgiveness from Sergeant Mkansi. Sergeant Mkansi confirmed that the plaintiff and his friend were in possession of a hacksaw, which they seemingly were using to cut the cable.

[23]. He proceeded to place them under arrest and drove them to the Mondeor Police Station, where he processed and subsequently detained them in the police cells. The version of Sergeant Mkansi was confirmed by his 'crew', F/Sergeant Thopola, who corroborated the version in all material respects.

[24]. Sergeant Khaliswayo's evidence was to the effect that he conducted the interview with the plaintiff and his co-accused and he obtained statements from them at the Mondeor Police Station. He confirmed an affidavit, signed by the plaintiff, to the effect that he (the plaintiff) opted to make a statement in court.

[25]. The Investigating Officer, Warrant Officer Ndaba, testified with regard to the docket which was given to him on or about 28 December 2022. He testified that he is the one who took the plaintiff to Court on 28 December 2022. He did not notice any visible injuries on the plaintiff. He testified that at some point during January 2023, bail was set at R10 000, which was never posted by the plaintiff, which meant that he remained in custody from 24 December 2022 until his release from prison on 4 July 2023, after being discharged by the Johannesburg Magistrates Court in terms of s 174 of the CPA.

[19] As I have already indicated, the dispute between the plaintiff and the defendants is a factual one. I have before me two mutually destructive versions relating to the events on Saturday, 24 December 2022.

[20] The plaintiff states that on the day in question he was peacefully walking home from work, when out of the blue he was confronted by the private security officers and accused of tampering with essential infrastructure. What is more is that, according to the plaintiff, he was apprehended not at the 'scene of the crime', but some distance away from there. He was then returned to the scene and 'planted' there so as to implicate him in the offence. The story by Mr Mhlanga that he was found at the trench and that they were caught in the act, so the plaintiff's version goes, is a fabrication, as is the claim by Mr Mhlanga and the police officers that he at the scene admitted to cutting the cable.

[21] On the other hand, it is the version of the SAPS that the plaintiff and his friend were found at the trench in circumstances suggesting that they were in the process of cutting the cable and that they were busy stealing it. They were found at and in the trench and, importantly, they were in possession of a hacksaw. The plaintiff does not dispute that he was in possession of the hacksaw. However, his explanation is that he had it because it is part of his tools of trade and he was coincidentally carrying the said tool on the day as he was on his way home from work. The defendants' version is also to the effect that the plaintiff admitted to tampering with the underground cable and in fact asked for forgiveness for their misdemeanour.

[22] If I accept the version of the police, the plaintiff's claim must fail. I revert to the reasons for such conclusion later on in the judgment.

[23] The question to be considered by the court is therefore whether, having regard to all of the evidence before me, the version of the defendants is more probable than that of the plaintiff. In that regard, it is trite that the defendants, having admitted the arrest and the detention, bear the onus of proving the lawfulness of such arrest and detention, which includes proving the facts in support of a conclusion that the arrest and detention were lawful. If the probabilities are equally balanced, then the plaintiff gets the benefit of the doubt.

[24] In *Stellenbosch Farmers' Winery Group Ltd and Another v Martell and Others*⁷, the Supreme Court of Appeal explained how a court should resolve factual disputes and ascertain, as far as possible, where the truth lies between conflicting factual assertions. The SCA held as follows:

'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 disputed issues.

In light of the assessment of (a), (b) and (c), the court will then, as a final step, determine whether the party burdened with the onus of proof has succeeded in discharging it. The hard case, which

⁷ *Stellenbosch Farmers' Winery Group Ltd and Another v Martell and Others* 2003 (1) SA 11 (SCA) at para 5.

will doubtless be a rare one, occurs when a court's credibility findings compel it in one direction and its 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'. (Emphasis added)

[25] Also in *National Employers' General Insurance Co Ltd v Jagers*⁸ the court remarked as follows:

'It seems to me, with respect, that in any civil case, as in any criminal case, the onus can ordinarily only be discharged by adducing credible evidence to support the case of the party on whom the onus rests. In a civil case the onus is obviously not as heavy as it is in a criminal case, but nevertheless where the onus rests on the plaintiff as in the present case, and 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 that the other version advanced by the defendant is therefore false or mistaken and falls to be rejected. In deciding whether that evidence is true or not the court will weigh up and test the plaintiff's allegations against the general probabilities. The estimate of the credibility of a witness will therefore be inextricably bound up with a consideration of the probabilities of the case and, if the balance of probabilities favours the plaintiff, then 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 any more than they do the defendant's, the plaintiff can only succeed if the court nevertheless believes him and is satisfied that his evidence is true and that the defendant's version is false.

This view seems to me to be in general accordance with the views expressed by Coetzee J in *Koster Ko-operatiewe Landboumaatskappy Bpk v Suid-Afrikaanse Spoorweë en Hawens* (supra) and *African Eagle Assurance Co Ltd v Cainer* (supra). I would merely stress however that when in such circumstances one talks about a plaintiff having discharged the onus which rested upon him on a balance of probabilities one really means that the court is satisfied on a balance of probabilities that he was telling the truth and that his version was therefore acceptable. It does not seem to me to be desirable for a court first to consider the question of credibility of the witnesses as the trial judge did in the present case, and then, having concluded that enquiry, to consider the probabilities of the case, as though the two aspects constitute separate fields of enquiry. In fact, as I have pointed out, it is only where a consideration of the probabilities fails to indicate where the truth probably lies, that recourse is had to an estimate of relative credibility apart from the probabilities'. (Emphasis added)

⁸ *National Employers' General Insurance Co Ltd v Jager* 1984 (4) SA 437 (ECD) at 440D-441A.

[26] Lastly, in *Govan v Skidmore*⁹, the following principle was enunciated:

'In finding facts or making inferences in a civil case, it seems to me that one may, as *Wigmore* conveys in his work on evidence ... by balancing probabilities select a conclusion which seems to be the more natural or plausible conclusion from amongst several conceivable ones, even though that conclusion may not be the only reasonable one.'

[27] I need to apply these authorities to the matter before because I am faced with two mutually destructive versions on the incident in question. The version of the plaintiff is irreconcilable with that of the defendants. Accepting the one means of necessity a rejection of the other.

[28] The starting point of the discussion and the analysis is the probabilities. As was held in *Stellenbosch Farmers' Winery* (supra), I am required to assess the probability or improbability of each party's version on each of the disputed issues. In that regard, I am of the view that the version of the plaintiff is an inherently improbable one. One needs only to relate the story to conclude that it is improbable. The important part of the version is that Mr Mhlanga and the SAPS Officers, for no apparent reason, accused him of tampering with the underground cable. This is the very definition of inherent improbability. What the plaintiff says is that the private security officers and the SAPS Officers, who had no axe to grind with him – in fact they did not even know him from a bar of soap, decided to implicate him for a crime in which he was not involved. Moreover, they then, between them, decided to fabricate the whole concocted story against him. That just cannot be. We know from our everyday experience that things happen for a reason.

[29] In the words of Mr Mhlanga (when he gave his evidence and when he was confronted with the version of the plaintiff that he was being picked on for no reason at all), why would he just make up a story to implicate the plaintiff when he doesn't even know him.

⁹ *Govan v Skidmore* 1952 (1) SA 732 (N).

[30] In my view and having regard to the above considerations and the probabilities in their totality, the version of the defendants is more probable than that of the plaintiff. Therefore, as per the dicta in the *National Employers' General Insurance Co Ltd* (supra), I am satisfied that the defendant's evidence is true and that the plaintiff's version is false.

[31] Mr Makile, Counsel for the plaintiff, urged me to reject the defendants' version on the basis that there were contradictions between the evidence given by the various witnesses. Much was made of the fact there were discrepancies between evidence given and statements previously made by the witnesses, as well as contradiction between the evidence of the witnesses.

[32] The difficulty with this contention is that the evidence on behalf of the plaintiff was equally contradictory. In that regard, the plaintiff testified that at the police station he made a statement, explaining that he was not involved in the tampering with the cable. This is in direct contradiction with his statement produced in court, in which he indicates that he would give a statement in court. The point is simply that the criticism levelled against the evidence on behalf of the defendants is equally applicable to the plaintiff's evidence.

[33] Moreover, the contradictions are, in my view, not of a material nature and are not of the kind that it can be said with any conviction that they show that the defendants' witnesses were dishonest. As was held by the Appellate Division in *S v Mkohle*¹⁰, citing with approval the dicta in *S v Oosthuizen* 1982 (3) SA 571 (T)¹¹, 'contradictions *per se* do not lead to the rejection of a witness' evidence; they may simply be indicative of an error. Not every error made by a witness affects his credibility; in each case the trier of fact has to make an evaluation, taking into account such matters as the nature of the contradictions, their number and importance, and their bearing on other parts of the witness' evidence'.

¹⁰ *S v Mkohle* 1990 (1) SACR 95 (A).

¹¹ *S v Oosthuizen* 1982 (3) SA 571 (T) at 576B-C and 576G-H.

[34] In any event, the contradictions alluded to by Mr Makile are relied upon by him presumably to impugn the credibility of the defendants' witnesses. However, in view of my above findings relating to the probabilities in the matter, a finding relating to credibility is unnecessary. As was held in *Jagers* (supra), it is only where a consideration of the probabilities fails to indicate where the truth probably lies, that recourse is had to an estimate of relative credibility apart from the probabilities. I have already found that the probabilities undoubtedly favour the defendants.

[35] The only question remaining is whether these facts, as found by me based on the evidence of the defendants' witnesses, ground a conclusion that the arrest and detention were lawful.

[36] There can be no doubt that the arresting officers manifestly harboured a suspicion that the plaintiff had committed the said offence. They, in my view, had sufficient evidence to support their suspicion, which was reasonable if regard is had to the statement by Mr Mhlanga and the fact that the plaintiff and his co-accused were caught in the act of tampering with the essential infrastructure. Sight should also not be lost of the fact that on the version of the defendants, the plaintiff admitted that he they had broken the law and asked for forgiveness from the SAPS members.

[37] The question, whether the suspicion by the arresting officer affecting the arrest is reasonable, must, as I have said, be approached objectively. Therefore, the circumstances giving rise to the suspicion must be such as would ordinarily move a reasonable person to form the suspicion that the arrestee had committed a first-schedule offence. In my view, the defendants had established that there were reasonable grounds to suspect that the plaintiff had committed the schedule 1 offence. The arrests and subsequent detention were therefore lawful.

[38] On the basis of the facts in this matter, there is no evidence to support a conclusion, either directly or inferentially, that the police, when arresting the plaintiff, acted unreasonably and without reasonably suspecting that he had

committed the offence of tampering with essential infrastructure. The arresting officers were, in my judgment, not subjectively motivated by any irrelevant personal considerations of sympathy or vengeance. They just had no reason to be so motivated. Their suspicion that the plaintiff had committed the said crime was based on reasonable grounds, notably information received from Mr Mhlanga and what they themselves observed at the scene.

[39] In conclusion, it bears emphasising, that, as was held by this court in *Senti v Minister of Police and Another*¹², the mere fact that in the end the plaintiff was discharged in terms of s 174 of the CPA does not detract from the reasonableness of the suspicion that the crime had in fact been committed by the plaintiff. If anything, there are a myriad of reasons why the criminal case took a turn for the worse as it did. Objectively viewed, it is difficult to see on what basis the arresting officers can be said not to have subjectively had a reasonable suspicion that the crime had been committed. Furthermore, the plaintiff was not unlawfully detained. He was granted bail of R10 000, but he was unable to post the bail.

[40] For all of these reasons, the plaintiff's claim falls to be dismissed.

Costs

[41] The general rule in matters of costs is that the successful party should be given his costs, and this rule should not be departed from except where there are good grounds for doing so. I can think of no reason why I should deviate from this general rule.

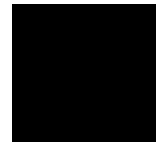
[42] The plaintiff should therefore be ordered to pay the defendants' costs of the action, including the second defendant's costs as the action against him / her was withdrawn at the eleventh hour.

¹² *Senti v Minister of Police and Another* 2023 JDR 3425 (GJ).

Order

[43] Accordingly, I make the following order: -

- (1) The plaintiff's claim is dismissed with costs.
- (2) The plaintiff shall pay the first and the second defendants' costs, including Counsel's charges on scale 'B' of the tariff applicable in terms of the Uniform Rules of Court.



L R ADAMS
Judge of the High Court of South Africa
Gauteng Division, Johannesburg

HEARD ON:	12, 13 and 14 November 2024
CLOSING ARGUMENTS ON:	28 November 2024
JUDGMENT DATE:	26 March 2025 – judgment handed down electronically
FOR THE PLAINTIFF:	A Makile
INSTRUCTED BY:	Njuze Attorneys, Johannesburg
FOR THE FIRST AND SECOND DEFENDANTS:	M Khanyeza
INSTRUCTED BY:	The State Attorney, Johannesburg