

REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE

CASE NO: HCAA17/2023

(1)	<u>REPORTABLE</u> ☒ YES ☐ NO
(2)	<u>OF INTEREST TO THE JUDGES</u> ☒ YES ☐ NO
(3)	<u>REVISED</u>
DATE <u>23/05/2025</u> SIGNATURE 	

In the matter between:

BENECT MKHIZE

APPELLANT

And

THE MINISTER OF POLICE

RESPONDENT

JUDGEMENT

KGANYAGO J

- [1] On 17th January 2017 members of the South African Police Services (SAPS) Mahwelereng received information that there was robbery at Gilead. In the process of the attempted robbery, the robbers shot at the members of the SAPS. The members of the SAPS Mahwelereng were given the description of the motor vehicle of the alleged robbers. The members of the SAPS Mahwelereng decided to patrol the N11 road from Lephalale. Whilst patrolling they saw a vehicle that fits the description of the vehicle of the alleged robbers and they stopped that vehicle with the intention of searching it. Inside the vehicle there were four occupants including the appellant who were later all arrested, detained and charged.
- [2] The appellant together with the other occupants were criminally charged in the regional court, and the appellant was with one count of unlawful possession of a firearm, and one count of unlawful possession of ammunition. During the criminal trial the State called four witnesses. All the accused including the appellant were found not guilty and discharged at the close of the State case in terms of section 174 of the Criminal Procedure Act.
- [3] That led to the appellant instituting an action against the respondent claiming damages of R450 000.00 for alleged unlawful arrest, R650 000.00 for alleged unlawful detention, R600 000.00 for alleged malicious prosecution, and R800 000.00 for alleged unlawful and/or wrongful assault. According to the

appellant's particulars of claim he was arrested without a warrant of arrest and detained on charges of robbery with aggravating circumstances by members of the SAPS whose further and better personal details were unknown to him, but were stationed at Mahwelereng Police Station. When he was arrested he was assaulted by the members of the SAPS who had effected arrest. He sustained visible injuries as a result of the assault. On his first appearance in court the appellant requested the presiding officer to order the police officers to take him to hospital for medical attention.

- [4] The prosecutors in the regional court preferred charges of illegal possession of unlicensed firearm and possession of ammunition. At the time of arrest, the police officers failed to explain the constitutional rights to the appellant. The police officers told the appellant that he was arrested for robbery with aggravating circumstances as he had refused to provide them with any particulars of the alleged robbery. The police officers unreasonably neglected, failed and/or refused to conduct diligent preliminary investigation prior to arresting the appellant. The police officers ignored the appellant's exculpatory version.
- [5] The respondent defended the appellant's action. The respondent in its plea denied that the appellant was arrested and detained on charges of robbery with aggravating circumstances, but for unlawful possession of an unlicensed firearm and ammunition. The appellant was duly informed of the reasons for his arrest, and his constitutional rights were explained to him. The respondent denied that the appellant had requested to be taken for medical attention, but that it was accused 2 who had requested. The respondent pleaded that the arrest was lawful in that the appellant was found in possession of a firearm and

ammunition without the required license to possess them. The respondent denied that the members of the SAPS had assaulted the appellant at the time of his arrest or at any time.

- [6] The parties during the pre-trial conference agreed that both merits and quantum will not be separated. However, the parties could not agree as to who had the duty to begin. When the trial started it was the appellant who led the evidence first and was the only witness to testify for his case. The respondent's counsel indicated that she will be calling three witnesses, the first witness to testify about the lawfulness of the arrest and detention. The second witness to testify about the appellant's warning statement and third witness to testify with regard to the appellant's prosecution.
- [7] The appellant testified that on 17th January 2017 he was driving from Lephalale where he had gone to do medical tests at Murray and Roberts after securing employment. He was in the company of three people in the car he was driving. He is staying in Johannesburg and was driving back home. When he left Johannesburg to Lephalale he was in the company of Norman Mokgotsi, and the other two occupants he found them hitchhiking on his way back from Lephalale. He was driving a VW Polo.
- [8] When he was about 15 to 20 kilometres to enter into Mokopane he was stopped by the police officers. After he was stopped, the appellant and the other occupants of his vehicle were instructed to alight from the vehicle and lie on the ground, whilst been pointed at with big firearms. The police officers searched the appellant's motor vehicle and found nothing. After the police finished searching it, the police called the appellant as the driver of the vehicle. After

that the police took the appellant and his company to Mahwelereng Police Station.

- [9] On arrival at the police station the police told the appellant and company that they seem to be the people who were shooting at the police in Gilead. The police officers at the police station phoned other police officers and told them that they have found the suspects who were shooting at the police officers. When other police officers arrived, they told the appellant and company that they are going to tell them the truth of whether they are the people who had shot at the police.
- [10] The appellant and Mokgotsi were separated from the other two and taken to different rooms. Whilst in that room, the police started assaulting the appellant and Mokgotsi telling them that they should make confession that they know about the shooting of the police officers. A plastic was put on the appellant's face telling him that if he was ready to tell the truth he will shout. The police assaulted the appellant on his ribs and body, but did not assault him on his face. The police stopped assaulting them when Mokgotsi passed on himself. The assault lasted for about 2 hours. After that the police officers who were assaulting them left the room.
- [11] After 15 minutes other police officers came to the room into which the appellant was, and uncuffed them from their feet. The police officers took the appellant and his three occupants to his Polo vehicle. On arrival at the Polo vehicle, the police officers pointed to the appellant a firearm that was on top of the seat of the Polo and told him that it was the firearm that was used at Gilead, and that it belongs to him. A white police officer started assaulting the appellant and told

him to admit that he knows about the incident in Gilead. He denied that the firearm was his.

[12] After that they were locked in the police cells. Before the appellant was charged, other police officers came to him and told him that Mr Mokgotsi had told them that the firearm belongs to the appellant. The appellant stated that he thinks the firearm was planted in his car. Initially the appellant was told that the firearm was used during the shooting in Gilead, but later at the police station things changed and the police officers told the appellant that he had confessed about the firearm, but he knew nothing about the alleged confession. For the second time the police put a plastic on his head, and the appellant told the police that he was not going to admit something that he knew nothing about. He never admitted that the firearm belonged to him, and thereafter he was taken back to the cells. The appellant conceded that when he was arrested, he was detained for possession of unlicensed firearm and possession of unlicensed ammunition. When he made his first appearance in court, he was in serious pains but was never taken for medical attention. The appellant was released on bail on 31st January 2017.

[13] The appellant was cross-examined and he stated that when the police were searching the vehicle he was driving at the scene where they were stopped, he and his company were lying on the ground about three metres from the car. Later the police called him as the driver, and he saw them searching his car. The appellant stated that inside the car the police found three bags which belonged to him, Mr Mokgotsi and the two hitchhikers. The applicant stated that the police had searched them first before they searched the car. The appellant

further stated the police officers told them that they were arrested as they think that they were at the robbery scene where police officers were shot at.

[14] It was put to the appellant by the respondent's counsel that the arresting officer who had conducted the search will testify that he had searched the appellant's car, and found a pistol and unlicensed ammunition under a mat by the driver's seat, and the appellant responded by stating that he knew nothing about that. The appellant further stated that the vehicle did not belong to him, but to his girlfriend, the mother of his child and she had borrowed her the vehicle on the 10th January 2017 when he went to Lephalale. The appellant stated that when he made his first appearance in court he had told the presiding magistrate that the police had assaulted him, and he needed medical attention. The appellant was referred to his warning statement in which it is stated that he did not deny the allegations put against him that he was found in possession of an unlicensed firearm and ammunition, and had also stated that he will explain further in court. The appellant responded by stating that he did not remember that part of the evidence as he was assaulted and confused.

[15] Under questions by the court when the appellant was asked about his warning statement, he stated that he did not remember the statement well. The appellant admitted that the names on the warning statement are his, but did not know the signature appended at the bottom of the warning statement. The appellant also stated that he did not remember warrant officer Melhu who had allegedly taken the warning statement from him, but that he remembers the investigating officer. The appellant also stated that he was interviewed by many police officers. The appellant admitted some signatures that appears at the bottom of the other pages of his warning statement, and stated that maybe he

was traumatised and he just put his signature. That concluded the evidence of the appellant and he closed his case.

[16] The respondent called Matsobane Justice Kekana as its only witness. He testified that he is a police officer, colonel by rank and stationed at Mahwelereng SAPS. On 17th January 2017 when he reported for duty, he found his colleagues in the office talking about the shooting that took place in Gilead near a shopping complex at Steilloop between the criminals and police officers. They said some criminals managed to flee the scene using a Polo vehicle with GP registration numbers, and grey in colour.

[17] They started looking for the vehicle fitting that description by stopping almost every vehicle that was coming from the direction of Gilead. At last a Polo vehicle that fit that description arrived and they stopped that vehicle at the vehicle check point. The Polo that they have stopped had four occupants inside it. The police officers introduced themselves to the occupants of the vehicle and asked for permission from the driver to search the vehicle. The driver of the vehicle was the appellant in this matter, and he gave them permission.

[18] They started searching the vehicle whilst the appellant was in their company and was next to the witness. As they were searching the vehicle, the witness saw that under the brakes of the vehicle, there was something swollen underneath the car carpet. When the witness removed that carpet, he found a firearm. The witness did not touch the firearm, they summoned the fingerprint officers to the scene. Warrant officer Thantsha found some ammunition in the pockets of one of the occupants of the Polo vehicle. He does not remember the person who was found in possession of the ammunition, but he is certain that he had seen him, and this person was a passenger in that vehicle.

- [19] When the fingerprints police officers arrived at the scene, they took the photos of where the firearm was found. The fingerprints officers checked the type of the firearm found, how many ammunitions it takes, and how many ammunitions was found in the magazine. The ammunitions found were live rounds. The witness asked the appellant as to whom the firearm belongs, and the appellant told him that he did not know, and that the motor vehicle belonged to his girlfriend. The appellant told the witness that he does not have a licence to possess a firearm, and that is when he told the appellant that he was under arrest for possession of a firearm and ammunition. He had also explained to the appellant his constitutional rights, and he chose to remain silent.
- [20] After that they took all the occupants of the Polo vehicle to the police station along with their Polo vehicle. At the police station, they registered the firearm as an exhibit in the SAP 13 book. From there the firearm was taken by the task team from the province in order to send it for ballistic testing. The appellant was detained for being found in possession of a firearm and ammunition without possessing a license. It was explained to the appellant the reasons for his detention. The appellant was also given a document containing his rights. The witness denied that they have assaulted the appellant at any stage.
- [21] The witness was cross-examined and he conceded that after the appellant gave him an explanation that he knew nothing about the firearm and that the Polo vehicle did not belong to him, the witness did not investigate that explanation, but had arrested him on the basis that he was possession of the firearm. The witness conceded that the firearm was not found on the appellant's personal possession. The witness stated that because the firearm did not have a serial number, there was no need to investigate. If the firearm had s serial number,

he would have contacted the appellant's wife in order to investigate why she left the firearm in the vehicle. According to the witness, the firearm did not belong to the appellant's wife. The witness conceded that in the fingerprints report for the fingerprints lifted from the firearm that was allegedly found in the Polo vehicle, the appellant's fingerprints were not found.

[22] It was put to the witness that according to the police statement of police officer Seanego, he (Seanego) is the one who had stopped the Polo vehicle. The witness responded by stating that he was together with Seanego. It was further put to the witness that according to the statement of Seanego, warrant officer Thantsha found three R5 rifle ammunition and eight 9mm pistol ammunition inside the suspect's right back pocket trouser, and warrant officer Thantsha arrested the suspect and read him his constitutional rights, and took him to Mahwelereng police station. When the witness was asked how possible was it that Thantsha who was at the scene was unable to see the firearm recovered, the court *a quo* intervened and told counsel for the appellant to reserve that question for Thantsha since the witness is not the author of the statement. The witness stated that he is the one who had arrested the appellant.

[23] Counsel for the appellant wanted to cross-examine the witness about his written police statement, and the court *a quo* reminded him to first lay the basis before he could cross-examine him on his written police statement. The witness conceded that in his written police statement, there is nowhere it has been recorded that he is the one who had arrested the appellant, but that one page of his statement was missing from the one been referred to by counsel for the appellant. The witness conceded that the appellant was arrested without a warrant of arrest.

- [24] After colonel Kekana had finished testifying, counsel for the respondent informed the court *a quo* that she was having the last witness who was going to testify about the appellant's warning statement. Counsel for the appellant emphasised that it was important for that witness to be called to testify as he was still having some questions he would like to put to that witness. After adjourning, when the court *a quo* resumes counsel for the respondent informed the court *a quo* that she was no longer calling her last in that the only issue was for the witness to confirm the appellant's warning statement which was not in dispute. The respondent closed its case.
- [25] The court *a quo* has dismissed the appellant's claims in respect of unlawful arrest and detention, and the claim for assault. With regard to the claim for malicious prosecution, the court *a quo* has granted absolution from the instance. The appellant is appealing against the judgment and order of the court *a quo* with the leave of the Supreme Court of Appeal (SCA). The leave which the SCA has granted is limited to orders (a) and (b) which are in respect of unlawful arrest and detention, and assault.
- [26] It is not in dispute that on 17th January 2017 the appellant was arrested by members of the SAPS without a warrant of arrest. According to the appellant he was arrested for alleged robbery with aggravating circumstances, whilst according to the respondent, the appellant was arrested for alleged unlawful possession of firearm and ammunition. The respondent disputes that the appellant was at any stage during or after the arrest assaulted by members of the SAPS. The respondent has pleaded that the arrest of the appellant was lawful in that the arresting officers acted in terms of section 40(1) (b) of the

*Criminal Procedure Act*¹ (Act). Generally, an arrest and detention is prima facie unlawful and wrongful, and it is for the respondent to prove the lawfulness of the arrest and detention once these are admitted. (See *Lombo v African National Congress*²).

[27] In terms of section 40(1) (b) of the Act, a peace officer may without a warrant arrest any person whom he suspects of having committed an offence referred to in Schedule 1, other than the offence of escaping from lawful custody. It is trite that the jurisdictional facts must exist before section 40(1)(b) can be invoked. Those jurisdiction factors are that the arrestor must be a peace officer, he must entertain a suspicion, it must be a suspicion that the arrestee had committed an offence referred to in Schedule 1 of the Act, and the suspicion must rest on reasonable grounds. If the jurisdictional requirements are satisfied, the peace officer may invoke the powers conferred by the section, i.e, he/she arrests the suspect. (See *Duncan v Minister of Law and Order*³).

[28] Once the defendant relies on section 40(1)(b) of the Act, the onus will be on the defendant to prove that the arrest and detention were lawful. Section 40(1)(b) permits an arrest by a police officer without a warrant where the arrestor reasonably suspects the arrestee of having committed an offence. The arresting officer is required to do an investigation into the circumstances relevant to the particular offence before he/she come to the conclusion that there is a reasonable suspicion that an offence has been committed.

¹ 51 of 1977

² 2002 (5) SA 668 (SCA) at para 32

³ 1986 (2) SA 805 (A) at 818G-I

- [29] How a reasonable man arrives at a reasonable suspicion, in *Ralekwa v Minister of Safety and Security*⁴ De Vos J said:

"To decide what is a reasonable suspicion there must be evidence that the arresting officer formed a suspicion which is objectively sustainable. It was described thus by Jones J in *Mabona and Another v Minister of Law and Order and Others*:

'Would a reasonable man in the second defendant's position and possessed of the same information have considered that there were good and sufficient grounds for suspecting that the plaintiffs were guilty of conspiracy to commit robbery or possession of stolen property knowing it to have been stolen? It seems to me that in evaluating this information a reasonable man would bear in mind that the section authorises drastic police action. It authorises an arrest on the strength of a suspicion and without the need to swear out a warrant, i.e something which otherwise would be an invasion of private rights and ... (t)he reasonable man will therefore analyse and assess the quality of the information at his disposal critically, and he will not accept it lightly or without checking it where it can be checked. It is only after an examination of this kind that he will allow himself to entertain a suspicion which will justify an arrest'.

- [30] It is the evidence of colonel Kekana that after he allegedly found the firearm under a carpet below the brakes of the vehicle that was been driven by the appellant, he asked the appellant as to who the firearm belongs to. The appellant responded by telling Kekana that he does not know as who the firearm belongs to as the motor vehicle belonged to his girlfriend. Kekana further asked the appellant whether he possesses a license or document that allows him to be in possession of the firearm. The appellant responded by telling Kekana that he did not possess one, and Kekana told the appellant that he was under arrest for possession of firearm and ammunition. Under cross-examination Kekana conceded that he did not investigate the explanation given to him because the appellant was in possession, he did not have a license, the

⁴ 2004 (2) SA 342 (T) at 347E-G

firearm's serial number was scrapped. Further that he would have contacted the appellant's wife if the firearm had a serial number. He would have contacted the appellant's wife if the firearm tells him that it belongs to his wife, and that case he will be able to investigate why the wife left the firearm in the car. According to Kekana, since the firearm did not have a serial number, it did not belong to the appellant's wife.

[31] The question is would a reasonable person in Kekana's position and possessed of the same information have considered that information as good and sufficient grounds for suspecting that the appellant was guilty of unlawful possession of a firearm. The mere fact that the appellant was found in possession of an unlicensed firearm with its serial number erased is not a good and sufficient grounds to immediately arrest without investigating the essential relevant circumstances surrounding the matter before coming to the reasonable suspicion that an offence has been committed.

[32] The appellant's explanation to Kekana was that he knew nothing about the firearm and that the motor vehicle which he was driving in which the firearm was allegedly found, belonged to his girlfriend. In my view, a reasonable person having that information at his/her disposal, would have gone a step further and asked the appellant about the details of his girlfriend, find out as to how long had the appellant been in possession of his girlfriend's car, and contact the girlfriend in order to verify the appellant's version. It is not clear as to what had informed Kekana that the firearm could only belong to the appellant's wife if its serial number had not been erased. By stating that he would have contacted the appellant's girlfriend if the firearm had a serial number, shows that Kekana was in a position to have verified that information with the appellant's girlfriend,

but chose not to do so based on his unfounded perception. It is clear that Kekana did not critically analyse and assess the information at his disposal as given to him by the appellant before forming his suspicion that the appellant had committed an offence justifying his arrest without a warrant.

[33] In *Biyela v Minister of Police*⁵ Musi AJA said:

[35] What is required is that the arresting officer must form a reasonable suspicion that a Schedule 1 offence has been committed based on credible and trustworthy information. Whether that information would later, in a court of law, be found to be inadmissible is neither here nor there for the determination of whether the arresting officer at the time of the arrest harboured a reasonable suspicion that the arrested person committed a Schedule 1 offence.

[36] The arresting officer is not obliged to arrest based on a reasonable suspicion because he or she has a discretion. The discretion to arrest must be exercised properly. Our legal system sets great store by the liberty of an individual and, therefore, the discretion must be exercised after taking all the prevailing circumstances into consideration".

[34] There was a dispute as to whether the alleged firearm was found inside the vehicle driven by the appellant or whether it has been planted by the police. There is a photo album depicting where the firearm was allegedly found inside the appellant's vehicle. However, if the parties were unable to agree on this issue, it remains in dispute and it was for the respondent to call the author of the photos and photo album so that his/her version could be tested. The photo album on its own without the corroborating evidence of its author does not advance the respondent's case. Kekana could not verify the photo album since he is not the author of it.

⁵ [2022] ZASCA 36 (01 April 2022) at paras 35 and 36

[35] There is a version by the appellant that the other police officers who first searched his vehicle did not find the firearm. The ammunition was not found by Kekana, but the police officers who found the alleged ammunition were not called to verify this, and let their version be tested. Counsel for the appellant was stopped cross-examining Kekana about why Thantsha when he searched the vehicle could not find the firearm, and was directed to reserve that question for Thantsha, but Thantsha was not called to testify and let the appellant's counsel put the version he wished to put on Thantsha. In my view, the failure by the respondent to call Thantsha was prejudicial to the appellant's case. The respondent was aware that counsel for the appellant was told to reserve his question to Thantsha, but still decided not to call him without giving any reasons for that. The only inference to be drawn is that the respondent was afraid that Thantsha might contradict Kekana. Without Thantsha been called to clear what might be still obscure, in my view, it will remain questionable as to whether the firearm was found or planted in the appellant's vehicle. Without it been established where the firearm was found with credible evidence, the respondent had failed to discharge its onus.

[36] Even if the firearm was found in the appellant's vehicle, Kekana did not exercise his discretion properly. His discretion was based only on the fact that the appellant was in possession of the firearm, he did not possess a firearm licence and the serial number of the firearm was erased. He failed to take all prevailing circumstances by investigating the appellant's version, and after investigating, analysing and assessing the quality of that information critically, decide whether there was a reasonable suspicion that an offence has been committed. Kekana's reasonable suspicion was not resting on reasonable grounds. Therefore, the arrest and detention of the appellant was unlawful.

- [37] Turning to the alleged assault claim, the onus is on the appellant to discharge. The appellant testified that he was assaulted upon his arrival at Mahwelereng police station whilst they were put into separate rooms. The police assaulted them forcing them to make a confession that they know about the shooting incident of the police in Gilead. The police were assaulting the appellants with their hands and booted feet. A plastic that contained water was also put on his face. The assault lasted for about 2 hours. The appellant was assaulted on his body and ribs, but not on his face. The police only stopped assaulting the appellant when Norman who was in the same room with the appellant passed on himself.
- [38] The appellant was taken to his motor vehicle where they showed him a firearm that was on the seat of his vehicle. There a white police officer arrived and started assaulting him, telling the appellant to admit that he knew about the incident. The white police officer did not assault the appellant that much, and after that the appellant was taken to the charge office. The appellant was taken to the cells, later was charged and thereafter he was never assaulted again. After 3 days he was taken to court where he made his first appearance, and was legally represented. Under cross-examination the appellant stated that on his first appearance in court, he had told the presiding magistrate that the police had assaulted him and was surprised why it was not recorded on the charge sheet, but the magistrate had only recorded the complaint of the second accused that he needed to be taken for medical attention as he was feeling pains. The appellant was also cross-examined about his warning statement where it has been recorded that the appellant had stated that he did not have any injuries.

- [39] The court *a quo* in dismissing the appellant's claim for alleged assault relied partly on the appellant's warning statement where the court *a quo* held that the appellant had conceded that he was not assaulted or threatened with assault. Counsel for the respondent had failed to lay the basis before the appellant was cross-examined on his warning statement. Despite failing to lay basis, the court *a quo* permitted counsel for respondent to cross-examine the appellant of his warning statement. The court *a quo* was alive to the issue of laying the basis as counsel for the appellant when he cross-examined Mr Kekana about his written police statement, he was reminded to first lay the basis. It was during questioning by the court *a quo* that the court *a quo* tried to lay the basis even though it was not its duty, but the appellant disputed knowing the signatures on one of the pages and not remembering whether he had made a written police statement. By disputing knowing the signature and the statement, that should have ended there, and the court *a quo* should not have taken that issue any further, as that seems to be assisting the respondent.
- [40] The police officer who allegedly took the appellant written police statement was not called to testify despite counsel for the appellant having indicated that he must be called as he wanted to put a version to him. The inference to be drawn is that the respondent's failure to call that witness was afraid that he might contradict their version, and the court *a quo* should not have considered the appellant's written police statement. The court *a quo* has therefore misdirected itself by considering and attaching weight to the appellant's warning statement in its judgment.
- [41] The appellant and the two accused were represented by the same counsel during their criminal trial in the magistrates' court. Their counsel only placed the

complaint of accused 2 on record before the presiding magistrate. Since it was one counsel who was representing the three of them, if there were issues with the appellant, he would have also placed on record before the presiding magistrate all the complaints, and that could have been recorded on the charge sheet like it happened with accused 2. The appellant has failed to call Norman to corroborate him on the issue of assault, despite testifying that at some stage the assault took place in Norman's presence. There was no explanation why Norman who is a vital witness in the alleged assault was not called to testify. The only inference to be drawn is that the appellant was afraid that Norman might contradict him. On the assault claim the appellant has failed to discharge his onus and on this claim, the appeal stands to be dismissed.

[42] Even though in the pretrial minutes the parties have agreed not to separate merits and quantum, from the record it does not seem that quantum has been properly dealt with. It will therefore be appropriate to remit the matter to the court *a quo* for finalisation of quantum on claim A and B before any available Judge.

[43] In the result I make the following order:

43.1 On claim A and B the appeal is upheld with costs.

43.2 The order of the court *a quo* is set aside and substituted with the following:

"The plaintiff's claim for unlawful arrest and detention against the defendant succeed with costs, and the plaintiff is entitled to such damages he may be able to prove he sustained due to the unlawful arrest and detention".

43.3 The appeal on claim D is dismissed.

43.4 The matter is remitted back to the court *a quo* for determination of damages on claim A and B before any other Judge.



KGANYAGO J

JUDGE OF THE HIGH COURT OF SOUTH
AFRICA, LIMPOPO DIVISION,
POLOKWANE

I AGREE



NGOBENI J

JUDGE OF THE HIGH COURT OF SOUTH
AFRICA, LIMPOPO DIVISION,
POLOKWANE

I AGREE



MAKOTI AJ

ACTING JUDGE OF THE HIGH COURT OF SOUTH
AFRICA, LIMPOPO DIVISION POLOKWANE

APPEARANCES:

Counsel for the appellant

: Adv H Mpe & Adv JT Makhene

Instructed by

: Ramaesele Mphahlele Attorneys

Counsel for the respondent

: Adv Madavha MB

Instructed by : State Attorney Polokwane

Date heard : 7th February 2025

Electronically circulated on : 23/05/2025

POLOKWANE HIGH COURT