

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 22/2747

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
6 June 2024	
DATE	SIGNATURE

In the matter between:

SIBUSISO MASENTE

PLAINTIFF

and

MINISTER OF POLICE

DEFENDANT

This judgment was handed down electronically by circulation to the parties and/or parties' representatives by email and by upload to CaseLines. The date and time for hand down is deemed to be 10h00 on 6 June 2025

JUDGMENT

S.VAN NIEUWENHUIZEN, AJ

Introduction

- [1] The trial in this matter was originally set down for 4 days. After an attempt to postpone same the trial eventually took off on 10 October 2024 and ran till 18 October 2024 whereafter it had to be postponed to be heard at the end of term from 9 December 2024 onwards. The reason for the postponement to 9 December 2024 was the fact that the court infrastructure could not cope with the immediate continuation of the matter. On 10 December 2024, all evidence was completed and judgment reserved whilst the parties undertook to file heads of argument by 09h00 on 11 December 2024 but the defendants counsel could only file their heads of argument late on 11 December 2024 seeking condonation for filing same late, on the basis that they underestimated the task. I can see no prejudice to the plaintiff in condoning same and such order will follow.
- [2] The plaintiff will for the sake of convenience be referred to as “Masente” and the defendant as the “Minister” or “SAPS” as may be convenient. Masente testified on his own behalf and only called one witness W/Officer Hlongwane. The Minister called 3 witnesses Cst Rampaeri, Cst Thabethe and Warrant Officer Lapane an expert in explosives. I will deal with their evidence below.

The Defendant’s Pleadings and attempts to postpone the matter

- [3] Masente sued the Minister for wrongful arrest and detention without lawful reason and without a warrant having allegedly sold and distributed liquor in contravention of the Disaster Management Regulations on 1 January 2021 and allegedly having been found in possession of explosives. SAPS is alleged to have arrested him as aforesaid acting in the course and scope of their duties. He was allegedly detained for approximately 52 hours. The prosecution declined to prosecute him under the Disaster Management Regulations (on the basis that there was no proof that he was selling liquor) and he was ultimately charged with the contravention of certain sections of the Prevention and Combating of Corruption Act 12 of 2004. After several appearances in the Benoni Magistrate’s Court the matter was withdrawn. With regard to the latter he claimed that he suffered damages in the amount

of R180 000 including loss of dignity, shock and discomfort. This claim was settled by the Minister's representatives for an amount of R130 000 despite the plea in denial and a Court order was made in accordance with the settlement on 10 October 2024.

- [4] In addition Masente claim damages in the amount of R450,000. He allegedly for security purposes kept monies and expensive stock of liquor (in respect of his father's business conducted at 1849 Sataba Street in Daveyton and two other premises) at his residence. At the time of his arrest members SAPS allegedly removed R450 000 from his house during a raid of which only R45 000 was booked into the SAPS 13 exhibit register and later returned to him. He laid charges of theft and corruption at the Daveyton police station against the SAPS officers who were involved in his arrest and the appropriation of the money. It would appear that these charges came to nought. An amount of liquor was also found at his residential address which SAPS allegedly destroyed but it later transpired that same was not returned to him. He lodged no claim in respect of the liquor.
- [5] When the matter came before me on 8 October 2024 the Minister's legal representative had already filed a notice of motion supported by an affidavit deposed to by Mr MA Lekala for an application for a postponement *sine die*. I should point out that the heading incorrectly refers to Masente as the applicant whilst the Minister was actually the applicant and Masente the respondent. In the body of the affidavit there is a general reference to annexures which were never annexed.
- [6] Mr Lekala describes himself as a Legal Admin Officer with his principal office at Benoni SAPS. Although he is housed at the SAPS Regional office (Johannesburg) he is responsible for all local police stations within Johannesburg including the Daveyton police station. He deals with volumes of dockets on a manual basis. He also explains that SAPS is inundated with a "plethora of summons" issued on a daily basis.
- [7] The police officers In these matters are housed at different police stations and are often assigned to various crime prevention projects which require

them to be on the ground outside police stations. As a result it becomes a mammoth task to have them available for consultations and/or court attendances due to high pressure work demands which is target driven.

[8] He states that it is almost practically impossible to get hold of relevant police officers swiftly in litigious matters for consultations and that when a request for a consultation is made on short notice as was the case in the present matter this task is even more difficult.

[9] Prior to him dealing with the aforesaid request the State Attorney was dealing with the matter and after 3 quotations were obtained from counsel in order to determine who should be briefed, the procurement process was only finalised on 30 September 2024. After SAPS' counsel was appointed and perused the brief the State Attorney received a memorandum on 3 October 2024 requesting an urgent consultation with the arresting officers Rampaeri and Thabethe. The consultation was necessary to assess and to get a sense of the Minister's defence to the claim and to amend his plea so as to have a version before the court. According to this affidavit the plea was at that stage a bare denial with no version.

[10] Adv Mashabela acting for the Minister at this stage tried to reach the Daveyton police station on 3 October 2024 and despite trying two different numbers only thereafter succeeded in contacting W/Officer Hlongwane on his mobile number and enquired if he knew the arresting officers. He also sent him screenshots of the arresting officers' statements. Warrant Officer Hlongwane undertook to revert to counsel on 4 October 2024. In the event he only reverted on Saturday 5 October 2024 with a voice note that the Cst. Thabethe he had in mind was not the correct person.

[11] As a consequence counsel called Mr Lekala on the same day to discuss the state of the matter and the best possible approach under the circumstances. At this juncture counsel requested instructions to prepare a substantive application for postponement to which Mr Lekala agreed.

- [12] He also tried to contact the said police officers on their mobile phone and at the Daveyton police station with no success and states that he needed more time to locate them.
- [13] All the aforesaid took place against the backdrop of the State Attorney having been served with a notice of set-down on 23 August 2024 for the trial to commence on 8 October 2024. This witness also explained that the State Attorney does not brief counsel from the outset and that the state attorneys' office is expected to handle all files allocated and manage litigation until the hearing stage. This left the impression that the State Attorney alone is to blame for the application for postponement.
- [14] On 8 October 2024, the above was relied upon as a basis for a postponement of the matter by Adv Morare who at this stage appeared for the Minister. I was informed that she had to step in when for medical reasons Adv Mashabela had to fall out of the matter on Sunday 6 October 2024.
- [15] At the heart of the application is the difficulty that the state attorney's office never consulted any of the witnesses before filing the Minister's plea, which amounted to a bare denial. The failure to consult witnesses was not only limited to the period immediately prior to trial but included the period before filing the plea. In the circumstances it became necessary to explore why no consultations took place for purposes of filing a plea. In addition Mr Mthombeni appearing for Masente also required an opportunity to prepare an answering affidavit whereafter the legal representative of the Minister would require an opportunity to reply thereto. Mr Nthombeni only received the application for he postponement during the afternoon on 7 October 2025 and when he was informed that there is a reference to annexures thereto he immediately caused his office to call for such annexures given the fact that no annexures were actually annexed.
- [16] He received no response to the aforesaid request. This was later clarified in Mr Lekala's replying affidavit. When the matter was called before me on 8 October 2025 he had no opportunity as yet to file an answering affidavit to the application. He was given such opportunity whereafter the applicant

had to reply thereto. Such affidavits were exchanged and by 10 October 2025 the application papers were ripe.

[17] In my view the real and underlying cause of the State Attorneys' failure to consult the relevant SAPS witnesses before or after the filing of the plea seems to have been in part the lack of an ability to communicate effectively per email coupled with a failure of SAPS to track down such witnesses. I made it clear that no proper case for a postponement was made out on paper and that I was inclined to refuse same. This led to two officials from the state attorneys office being called to give oral evidence so as to explain the aforesaid difficulties and also the interaction with Mr Lekala in more detail.

[18] These officials explained that the State Attorney's office is hampered in its task by the fact that it has no stable email system and this often caused delays in communicating with SAPS so as to request that witnesses be tracked down timeously before a plea becoming due and that as a consequence and to avoid the Minister being placed under bar the practice developed to file a "holding plea" with the intention to amend the plea as soon as the SAPS witnesses are tracked down and consulted. In the present case this could not be done timeously.

[19] Mr Lekala was also called by Adv Morare to explain and elaborate why he could not find the said witnesses. He testified on 9 October 2024 (before filing the replying affidavit referred to above). His evidence demonstrated that he keeps no proper filing system and also fails to diarise dockets in a systematic way so as to pursue enquiries into the whereabouts of witnesses. It is clear that his office is run in a chaotic fashion. When I expressed my disapproval as to the way his office is being run and that any postponement may have to be at the risk of him paying the wasted costs personally he indicated that he might be able to find the relevant witnesses who then suddenly became traceable and by 10 December 2025 Adv Mashabela appeared with Adv Morare for the Minister and informed me that they have been able to consult with Cst. Rampieri and Cst Thabethe. I was also provided with an amended plea on 10 October 2025 and informed that

to the extent that Masente claimed damages for unlawful arrest same was settled for R130 000 and the only remaining issue was whether an amount of R450 000 was stolen by the police.

[20] Given that the Minister's legal representatives tendered the plaintiff's wasted costs in respect of the delay in their heads of argument I will exercise my discretion as to costs in such a way as to only order that the Minister is liable for Masente's wasted costs on Scale "B" to the extent that time was spent on the application for a postponement and the amendment of the plea which include the whole of 8 and 9 October 2024 and the morning of 10 October 2024. Mr Lekala and the officials from the State Attorney should know that they are being let off lightly.

[21] From a perusal of the pre-trial minute it is clear that same was conducted on the basis that all witnesses for the Minister are available and it was even contended that the arrest was lawful. Given that the police witnesses was not even consulted by that time it is clear that on the part of the Minister, the particular official from the State Attorney conducted the pre-trial on a false and deceptive basis. To state in a pre-trial minute that witnesses are available when you have not been able to obtain them to formulate your plea or to amend your plea and then to contend on the basis of the docket alone that the arrest was lawful is in my view unacceptable.

The Trial

[22] Ultimately the trial only started on 10 October 2024 at 15h00. After a short opening address by Mr Mthombeni, Masente took the witness box and testified that he is 31 years old and resides at 3086 Ndlaka Street Chris Hani Daveyton. He is qualified as a teacher but only worked for one month as one whereafter he started working in his father's business. He initially testified that he conducts a liquor business at 1849 Chris Hani Extension 4 Daveyton and is a co-owner of the business with his father Mr M Masente but it later transpired that the liquor license of the said premises and 2 other outlets that he manages on behalf of his father were in the name of his father and that he conducts and manages three taverns on behalf of his

father. Given that Masente's original claim was for loss of money of which he was the owner Mr Mthombeni caused an amendment to the Masente's pleadings to be made in terms whereof Masente amended his particulars of claim and maintained a claim against the Minister for a similar amount but now based on his position as a *bona fide* possessor of the monies allegedly stolen by SAPS. The Minister's legal representatives did not object to this amendment and the matter proceeded on this basis. The amended pleadings were filed on 14 October 2024 whilst Masente was still testifying in chief.

- [23] In essence his evidence was that from the time that he was allowed to trade after lockdown from beginning December 2020 to the end of December 2020 he did not do any banking. He stored the cash proceeds of the trading period at home in a cupboard. He had no safe at home. The cash was stored in a green Heineken cooler bag and in a red cooler bag. The green cooler bag contained R200 and R100 notes amounting to R400 0000 and the red cooler bag contained coins, R20 and R50 notes amounting on his initial evidence to R49000 and later in evidence in chief said to contain R52 000.
- [24] On 1 January 2022 he was at his residential address and after removing stock from the trading sites early the morning covering his light delivery van with a sail he arrived home and was unloading same to store liquor from the taverns in a store room at home because he feared that same would be stolen from the business premises given the fact that a state of lockdown prevailed.
- [25] Whilst he was unloading 3 police vans arrived. His wife called him whilst she was washing dishes and said 2 of the policemen wanted to speak to him.
- [26] He spoke to one of them in the house who told him he was suspected of selling liquor from home. This police man was an Indian man (who later became known as Cst Rampieri). With him was another black constable (who later became known as Cst Thabethe). Masente was not told who he

- allegedly sold liquor to and was informed that they wanted to search the premises. Masente told them he was packing stock in the storeroom.
- [27] According to Masente all the policemen's badges were turned upside down and he could not read their names. They also did not introduce themselves. They searched his vehicle and lifted the sail on the back of the van and displayed no interest in the remaining amount of beer on the van. They searched the inside of the van and found some whiskey.
- [28] They searched the store room where he was packing the stock and the house. They found no liquor in the house. Cst Rampieri eventually searched the main bedroom and found the cooler bags with the money in the cupboard. Cst Thabethe was present at this point as well as Masente's wife.
- [29] There was no warrant for purposes of conducting the above search. Masente was asked where the money came from and he explained that it came from the liquor business. He was then arrested for selling liquor during the Covid-19 period and also for money laundering. The money was counted in the house in his presence and he was told that he was not allowed to keep such an amount of money at his house.
- [30] After his arrest he was placed in a double cab police van (one of the three that arrived at his house). He did not refer to it in chief but all the liquor on the premises was confiscated. Thereafter the three police vans left from his house. It is common cause that Cst Rampieri and Cst Thabethe ultimately took him to the Daveyton police station.
- [31] He was seated in the back of the police van with four other policemen. Cst Rampieri was driving with one other officer sitting in front and whilst he was seated behind Cst Rampieri and his hands were cuffed when he was arrested. Two other police officers were sitting with him in the back of the double cab.
- [32] After approximately 10-15 minutes the vehicle he was in came to a standstill in an open area known as Alliance and all the police officers alighted and

he was left alone in the police van. The officers walked towards the back of the van he was in. He did not see the other police vehicles there.

[33] After about 45 minutes the officers returned and they proceeded to Daveyton police station. Upon his arrival there he was charged with unlawfully trading in liquor during Covid -19, Money -laundering, Bribery and possession of explosives.

[34] He was eventually read his rights after approximately 5 hours. His mobile phone and the money that was in the red cooler bag was booked in as exhibits into the SAP 13 register. He enquired as to what happened to the money in the green cooler bag and was merely told by Cst Rampieri that all monies were booked in at the charge office.

[35] After he came out on bail he made further enquiries and reported the fact that the money in the green cooler bag was never booked in as an exhibit. This report was made to a Detective Mashebele. This detective could not find the statement of the arresting officer. Masente never received the R400 000 back. The detective also never told Masente what steps he took to find same.

[36] He later established that W/Officer Hlongwane saw a green cooler bag in a refuse bin outside the police station.

[37] He testified that neither he or his father are Vat Vendors. He could not produce any proof of a proper book-keeping system. He normally did the banking. If statements were required he obtained same with his father. He produced a few documents demonstrating business activity in earlier years but nothing pertinent to the period under discussion. The documents he had were referred to in his amended particulars of claim as SM 3.3-3.4 showing deposits made in favour of SA Breweries at Absa Bank ranging between R60 000- R90 000 with a short period of time in between.

[38] He was cross-examined in-depth on the above and could not improve on his evidence in chief. It is clear that no proper books were kept other than a hand record which he stated was missing after he was released. He was

asked to produce a stock sheet of the stock in the business at the time of the loss and was unable to do so. He stated however that he knows the prices of the various items in stock. Given that he lodged no claim in this regard this is of no consequence other than demonstrating that there was no proper bookkeeping. He did not produce any documentary proof of purchases of liquor from his liquor suppliers who included SA Breweries, Liquor Legends and Makro. He made arrangements with his suppliers after the loss of the money and paid the amounts he owed, off. No attempt was made to subpoena the records of any of these companies to prove that such quantities of liquor was purchased prior to the event in question that could be sold to produce the amount of R400 000 and a further R50 0000.

[39] Under cross-examination he conceded that the confiscated liquor was returned except for the whiskey. The amount that was in the red cooler bag was repaid to him by EFT. To the extent that there were references to an amount of R49 000 to R50 000 in the cooler bag he accepted the correctness of the amount repaid by SAPS by EFT being R49 880.00.

[40] He laid a charge against the police officers involved. He was cross-examined about the fact that the statement he made in this regard was after he was released on bail and on 4 January 2022 when the events of his arrest were still fresh in his mind. In this statement he made no reference to the fact that W/Officer Hlongwane allegedly saw the empty green cooler bag outside the police station in a refuse bin. He could not explain why he did not refer to this in his statement. It was also put to him that W/Officer Hlongwane would in any event state that he found an empty red cooler bag in the refuse bin and not an empty green cooler bag should he be called as a witness. Masente's answer hereto was that he had no comment hereon.

[41] It was put to him that the fact the police took him to Alliance was on his own insistence. It was put to him that on the way to Daveyton police station Masente spoke to an unknown officer on his mobile phone and arranged to meet him there with the police men who arrested him. Masente denied this and said that his mobile phone was taken from him upon his arrest.

[42] He was also referred to the fact that in paragraph 5 of his statement laying charges against the police (which statement he allegedly wrote himself) he said that he was called into the bedroom by his wife Constance and asked by a police officer to take out the money in the wardrobe and did so and counted out R50 000 which he gave to the police officer. This version contradicted his evidence in chief. He answered this by saying he knew the amount was R50 000. He denied counting out the money and giving it to the police officer. He was also referred to paragraph 6 of this statement. This paragraph asserts that a police officer instructed that the house be searched thoroughly and then a police officer found the cooler bag with R450 000. These two paragraphs are non-sensical when compared with his evidence in chief.

[43] In re-examination he contended that he did not write the statement of complaint on which he was cross-examined himself. It was taken down at Daveyton by a police officer. I asked a question to clarify how many police officers were in the three police vans that arrived at his house. Masente stated that there were about 12 officers. He also in response to my attempt to clarify his evidence regarding the issue as to whether only one officer wrote down his statement stated that when he arrived at Daveyton to lay charges he found different officers there. He also stated that he did not check the statement before he signed same and was still in shock.

[44] I allowed further cross-examination on this point and it was put to him that each time an issue is raised with him his statement changes. He was pertinently asked why he did not tell the court that 2 or 3 officers took down his statement. His response was that he asked them to take his statement. When he was pressed to answer the question he said that he did not know how to answer it.

[45] There after W/Officer Hlongwane was called to testify. In brief he was on duty from 18h00 to 06h00 the night of 1 January 2021 and was charge office commander. An elderly man and younger woman arrived and complained about police corruption to the effect that the police arrested Masente and took two cooler bags with money. He had no personal interest in matter

except in as much as corruption was alleged. He noticed a red cooler bag in a dustbin. He later made a supporting affidavit to the complaint laid by Masente which referred to the fact that he found the red cooler bag. He also took charge of the SAP 13 register on the night of the first. He caused the red cooler bag to be checked into the register and caused statements to be taken from Masente's family. He does not recall any conversation with Masente that evening. In any event he was not on duty in cells. He does not know Masente personally. But for the fact that some relatives of Masente came to complain about police corruption and that he found a red cooler bag in a dustbin his evidence did not take the matter any further.

[46] Thereafter the matter stood down for Mr Mthombeni to obtain instructions as to Mrs Masente's availability. He was informed that she cannot go out and was deployed as a stocktaker at Pick 'n Pay. After the matter stood down further he closed the plaintiff's case. Subsequent thereto he applied for the reopening thereof which was granted. After the matter stood down further Mr Mthombeni advised me that Masente's father is on his way to the Eastern Cape and is not prepared to assist as a witness. I warned Mr Mthombeni that the failure to call witnesses that are available might lead to adverse inferences but he then finally closed the plaintiff's case.

[47] Mr Mashabela thereafter applied for absolution from the instance and addressed me at length in this regard. At the heart of his argument was the fact that there was insufficient evidence before me to place the Minister on his defence. Mr Mthombeni opposed this application vigorously. I reserved judgment in this regard overnight and on the morning of 17 October 2024 dismissed this application with costs on scale "B".

[48] Thereafter Mr Mashabela opened his case with a short address and called Cst Rampieri as his first witness. He testified that he was on duty at Chloorkop Taxi Violence Patrol when he received information from an informant that a person was selling liquor illegally during lockdown at an address in Daveyton and shared this information with his partner Cst Thabethe and 4 other police officers. They proceeded to the address in

Daveyton without any search warrant and arrived at Masente's premises being the address given to him by the informant.

[49] On his arrival he saw a Nissan bakkie being loaded. He thought that if he first tried to obtain a search warrant the evidence might be removed. He stepped onto the premises and walked along a passage to the back where he knocked on the kitchen door. He requested that a gentleman who turned out to be Masente step out and asked him whether he was selling liquor. To his surprise Masente said "yes" whereafter Cst Thabethe joined them and when Cst Rampieri asked him where the alcohol was Masente said it is in the storage room and in the house. At this stage, the other police officers were also in the yard. Cst Rampieri asked him to take him to the storage room and Masente took him and Cst Thabethe to the storage room at the back of the house.

[50] The door of the storage room was closed but not locked and Masente opened same for them whereafter Cst Rampieri observed a large amount of different brands of alcohol. He does not drink himself and cannot identify the brands. He called for assistance from the other officers to have the liquor moved to the police vans.

[51] As the liquor was being removed he noticed a packet on the floor and peeped into it. He recognised its content as 4 blasting cartridges. He is not an explosives expert but based his observation on his 8 years of experience during which he had exposure thereto. He followed standard procedure and contacted the Germiston Standby Explosives Unit and spoke to Sergeant Lapane. Based on the instructions he received from this officer he removed the packet and locked same in his police vehicle. His other colleagues were still removing liquor from the storeroom. He told Masente to keep record of the liquor that was removed so as to avoid later allegations that some of it was stolen by the police.

[52] While still removing liquor he noticed that the bakkie had stickers on the door and observed what looked like liquor inside. He thereafter approached Masente and asked him who the bakkie belonged to. Masente said that he

is the owner. He waited till they were finished with the liquor removal from the storage room and while the other officers were walking around he asked Masente regarding the bakkie. He could see no liquor inside the bakkie but it had a sail over the back and when he lifted it up he saw a lot of liquor. He asked Masente who the liquor belonged to and Masente said it was his. The liquor on the bakkie was also confiscated.

[53] Thereafter he and the other officers went to the house. He was asked who else was on the premises when he arrived on the premises and he testified that Masente's wife was in the kitchen when he arrived there.

[54] Masente had identified himself as Sibusiso when he initially arrived at the kitchen door. When they now went to the kitchen he asked Masente's wife where the rest of the liquor is and she pointed him to the fridge where he found a sealed bottle of liquor which was confiscated. He asked Masente about any other liquor and was directed to the adjoining sitting room/lounge where more liquor was found stacked at least a half meter high against the wall. This was also confiscated. Cst Thabethe was with Cst Rampieri at this point.

[55] Cst Rampieri testified that the quantity of alcohol was too much for one vehicle and they tried to split it equally between the three vehicles. He then asked Masente whether there was any more alcohol but Masente said that was all. Thereafter Cst Rampieri wanted Masente to step outside where he was going to explain what was now going to happen to him. Cst Rampieri felt safer outside. They barely started moving outside when Masente stopped. While he was trying to explain to Masente that he was going to arrest him Masente interjected and asked Cst Rampieri to follow him back into the kitchen without telling him why. Cst Rampieri followed him into the kitchen and then Masente placed a weighty black plastic bag in his hand and stated that he wanted to be released. He did not see where Masente got the black plastic bag from. Cst Thabethe was just outside the kitchen at this stage.

[56] He opened the bag in his right hand and found that that it contained notes. He then said to Masente that he is arresting him for bribery and corruption. Masente said he should take the bag and release him when he placed the bag in his hand. Cst Rampieri also informed him that he is under arrest for possessing explosives and selling liquor during the revised lockdown period. He then handcuffed Masente with his cuffed hands in front of his body. As they moved to the police vehicle with the black bag in his hand, Masente's wife suddenly appeared and wanted to know where I was taking Sibusiso. He told her that Masente was under arrest and they were going to the Daveyton police station. They got into his police vehicle. They were just three in the vehicle. He passed the message that they are going to the Daveyton Police station to the other police vehicles.

[57] In the event they did not go straight to the Daveyton police station. Whilst in transit Masente phoned another police officer who allegedly wanted to meet them near a bridge underneath the N12. Presumably, this was the spot that Masente described as Alliance. Cst Rampieri wanted to see who this person was. When Masente spoke to this person Cst Rampieri could not follow the conversation because they spoke in another language. When they got to the spot Cst Rampieri and Cst Thabethe remained in the police vehicle with Masente whilst some of the crew of the other two vehicles got out and came to speak to Cst Thabethe. After they stopped Masente still pleaded to be released. They waited at this spot for approximately 20 – 30 minutes whereafter Cst Rampieri concluded they are wasting their time and they then proceeded to the Daveyton police station. The unknown police officer they were waiting for never arrived.

[58] At the police station Cst Rampieri took Masente and together with Cst Thabethe they went inside. He found the W/officer in command of the Client Service Centre, an elderly gentleman whose name he does not remember and told him what Masente was arrested for. They made arrangements for the exhibits to be checked in and he and Cst Thabethe sat down with Masente and he then counted the money in the black plastic bag. The money was placed into an exhibit money bag. The black plastic bag he

threw into a dustbin. He did not think much of the plastic bag. The money bag was checked into the SAP 13 exhibit register.

[59] Cst Rampieri opened a docket. At some point the explosive expert Sergeant Lapane arrived. Cst Rampieri fetched the packet with the explosive material from his police vehicle and handed it to Sergeant Lopane. Thereafter he continued with the docket with Cst Thabethe with him. Masente was placed in the holding cells and he did not see him again that day.

[60] Cst Rampieri was also asked if he was aware of the charges laid by Masente. He testified that he became aware thereof through detective Ramauro who informed him about it and was the investigating officer. He never went to court with regard to this case. Mr Mashabela had no further questions at this stage and I sought to clarify certain aspects of Cst Rampieri's evidence.

[61] I enquired about Masente's mobile phone to which he responded it was booked in for downloading in the SAP 13 register – he regarded it as an exhibit. He testified in answer to one of my questions that he did not dial the number of the police man Masente dialled. He also did not confiscate the mobile phone earlier. I also asked him why he did not request Masente to dial the number and then spoke to this police officer himself. His answer hereto was that he did not see himself doing that. He also confirmed that nobody came to the police station to look for them. He regarded it as the task of the investigating officer to track down this unknown officer. He did not see the need to confiscate the bakkie. He confiscated the liquor and believed Masente's when he said there was no more liquor.

[62] The matter was later postponed to 9 December 2024. Mr Mashabela wanted to lead further evidence in chief as a consequence of one of my questions. He enquired whether the cell phone was ever down loaded and Cst Rampieri testified that he enquired from the investigating officer at some stage who responded that the information was still being downloaded.

[63] Thereafter Mr Mthombeni commenced an extensive and thorough cross-examination covering various themes. He asked Cst Rampieri whether he would sum it up as a good job done by him and his colleagues which Cst Rampieri confirmed. This while he ended up driving from the scene of the arrest to a suspicious secluded place at the request of Masente. Cst Rampieri did not regard it as suspicious to go and stop at a secluded space. The procedures followed by Cst Rampieri with regard to the explosives were also interrogated on several occasions. Cst Rampieri stuck to his statement that he followed the instructions he received from Sergeant Lapane and that he himself was not an explosive expert. Cst Rampieri was also asked whether he is familiar with the LCRC- The Local Criminal Record Centre in Springs. He did not think of phoning the LCRC to obtain a photograph of the scene with the explosives. Cst Rampieri stated that he failed to do this given that the instructions from Sergeant Lapane required no photographs. He was also cross-examined on the SAPS Vehicle Location report which indicated that he was a mere 22 minutes on the premises of Masente.

[64] Cst Masente regarded this as a long period. It was put to him that in this period he confiscated a lot of liquor, phoned Sergeant Lapane to get instructions regarding the explosives and read Masente his rights after the arrest. The implication was that he tramples on peoples rights and the Constitution. This was denied by Cst Rampieri. He was also asked what he should do first when he arrives at a crime scene. When asked whether he showed Masente's his appointment card he said no. According to Cst Rampieri he nevertheless introduced himself properly. He denied that their names tags were illegible.

[65] He was also cross-examined about his informer and why this person was not called. Cst Rampieri testified that the informer was a registered informer identified by a number and could not be called as a witness. The informer told Cst Rampieri that he purchased alcohol from Masente earlier the same day. He was also asked whether he checked the lockdown regulations. According to Cst Rampieri he did check Regulation 44(1) of the Revised

Lockdown Regulations and his removal of the liquor correlated with same. He admitted that he himself did not find anybody selling or consuming alcohol on the day in question. The informer did not give him Masente's name but the address.

[66] The aim that day was to verify that Masente was selling liquor which he admitted. He did not arrest Masente immediately because Masente still had to point out the liquor. It was his personal decision to first search the storage room although Masente admitted that there was liquor in the house. Cst Rampieri was cross examined about the size of the house and what he could see in the house when standing inside. It was suggested that it was a RDP house. He said that he could not remember the size of the house. His evidence in chief was that it was a small house. He was asked if he could see the bedrooms when he was in the house. His answer was that he could only see walls when in the house. When he stood where the pile of liquor was against the sitting room wall he could not see the rest of the house. He was also asked whether he did not consider searching other properties when he found the explosives and to this his response was that he found liquor and explosives and for him this was enough.

[67] It was pointed out to him that his aim was to search the house and yet he never searched the bedrooms according to his evidence. He was pertinently asked if he and Cst Thabethe was denying that they searched the bedrooms. He maintained that he did not search further and also denied finding any cooler bags. He was also asked why he did not search inside the bakkie. His response was that he did not think he would find anything inside. He was also asked why he never searched inside the car for explosives. His response hereto was that he was not interested in the vehicle. The explosives in the storage room was in the left corner and not hidden.

[68] It was put to him that he was in charge (an assertion that is borne out by his conduct on the premises the day). He denied this and said that W/officer Napo was in charge. When it was pointed out that there is no statement by

W/officer in the docket and I asked him why there was no statement he said we should ask W/officer Napo the question.

[69] He demonstrated to the court how he handcuffed Masente with his hands in front of him and how Masente could still use his mobile phone while handcuffed. It became clear that the ability to pull the mobile phone from Masente's trousers would depend on whether the trousers had pockets in front as opposed to the side. He could not remember what trousers Masente wore on the day in question. When pressed on whether the mobile phone was part of the criminal case he initially said it was not and then later testified he thought it was part of the criminal activity because someone wanted to interfere in the case.

[70] He was cross-examined as to whether he told anybody about the reason for the phone being booked in as an exhibit. He insisted that he told a member at the crime office. This arose because there was no mention thereof in his statement. He ultimately admitted that he did not tell the investigation officer that the purpose was to listen to the conversation Masente had with the unknown police officer.

[71] He was also cross-examined as to whether they all went into the house of Masente at Masente's behest. He stated they all just followed and that Masente said there was alcohol in the house. He was also cross-examined as to how many visits there was into the house and he identified two occasions i.e. when they went into the house following Masente and when he went into the house and Masente placed the black plastic bag into his hand. He was asked about the size of the kitchen and the fridge. It was not a bar fridge and was a fridge with two sections. He was also asked why he threw the black plastic bag in the dustbin. To this he responded that he was satisfied that the money was entered into the SAP 13 register. On the topic of the explosives he did not know what the expert did with it. He was unaware of the cooler bag W/officer Hlongwane found in the dustbin.

[72] It was then put to him that he and his colleagues took the one red cooler bag containing the R50, R20 and coins and the other green cooler bag

containing R400 000. His response was that he knew only about an amount of approximately R49 000 and denied that any other monies were taken. He denied any knowledge of a red cooler bag from the bedroom. It was put to him that there were 2 other officers with Masente in the back of the police van. He said that this statement was wrong.

[73] Thereafter he was re-examined on *inter alia* the advice he received from the explosive expert. He testified that the explosive expert wanted to know whether anything was plugged in. When he advised the expert that everything was unplugged he was informed not to step on it or put it in a hot place. The purpose of the call was to notify the expert about the explosives found and not to get him to the scene. He could keep it in the police vehicle with the window open. The expert arranged to meet him at the Daveyton police station. No specific time was agreed. He was also re-examined on the mobile phone and the fact that there is nothing in his statement on this. He was also referred to the SAP 13 register which reflects an entry to the effect that the mobile phone is booked in for downloading. See Section 2 on page 70 at the bottom extreme left column as displayed on Caselines. He could not take the matter any further.

[74] Thereafter Cst Thabethe testified on behalf of the Minister. It is not necessary to analyse his evidence in great detail. He broadly supports the evidence of Cst Rampieri but contradicts him in critical aspects. The most critical aspect is whether the bedrooms were searched by the police. He places Cst Rampieri squarely in the search of the bedrooms and states that he observed the search by Cst Rampieri of the two bedrooms, one bigger and one smaller. No liquor was found there. He also denies that the drawers of the cupboard were searched and that any money was found in any cooler bags as claimed by Masente. He also observed that Masente's wife was in and out of the bedrooms while the search thereof was taking place. He also observed Masente when the latter went to fetch the black plastic bag with money that ended up in Cst Rampieri's hands. According to him Masente fetched it from one of the bedrooms.

[75] He also testified that Masente consented to the search of the premises. He makes no reference to the confiscation of liquor from the vehicle or from the sitting room/lounge but mentions that liquor was found in the house. He specifically mentions the liquor in the fridge in the kitchen. He also testified that only after the house was also searched were the other police officers called to come and assist with the loading of the liquor and this context he mentions the liquor from the vehicle. He did not look into the black plastic bag himself but testified that Cst Rampieri looked into the bag and said that Masente was trying to bribe us. He adds that he called W/officer Napo who told “us” to arrest Masente and to take him to the police station. He testified that the latter reopened the black plastic bag and that the notes and coins were shown to him (Cst Thabethe). When the stop took place on the way to the police station he asked Masente who the policeman was and how far away he was. Masente did not answer the question as to who this policeman was and said the man was on his way.

[76] According to Cst Thabethe they arrived at the Daveyton police station about 11h30 – 12h00. He read Masente his rights at the police station. He wrote his own statement A2 in the docket. He does not know what happened with the black plastic packet at the police station. Under cross-examination he stated that he showed his appointment card to Masente on their arrival. He also stated that he could see Cst Rampieri when the bedrooms were searched. He stated that the latter searched the wardrobe and around the bed. When asked what the point was of searching the wardrobe and drawers he simply said “nothing”. He was asked whether Cst Rampieri was searching not only for liquor but other things as well. He agreed with this statement. He denied that 2 cooler bags (red and green) were retrieved from a wardrobe. He made it clear that he himself could not search because he was the rifleman.

[77] He stated that he had the rifle at all times. He never saw the cooler bags referred to. When he read Masente his constitutional rights at the police station he placed the rifle on a table. He explained that only after the unknown policeman wanted to speak to them did he considered the mobile

phone an exhibit. He was asked why they did not wait for the unknown policeman and answered the question with his own question to the effect whether the unknown policeman's conduct was not interference. He did not count the money. When he wrote his statement he did not state the amount of money in the black plastic bag. He did not know why the other officers made no statement.

[78] He could not say where in the storage room the explosives were found. He testified that Cst Rampieri gave the black plastic bag with money to W/officer Napo. He could not remember the exact location where this happened. In re-examination he testified that he received no training how to deal with a suspect's mobile phone. He had dealt with mobile phones personally twice before. When asked whether he is allowed to open a suspect's mobile phone he stated that would not want to invade a suspect's privacy. He did not follow up the charges laid against them. He never saw a red or green cooler bag.

[79] Thereafter Sergeant Lapane's evidence was presented by Ms Morare. He confirmed that he is an explosive expert and received a call from a person whose name he could not remember to the effect that explosives were recovered. On his version the caller told him that he was at Daveyton police station. He went there and met this person. The explosives were pointed out to him and booked out to his Germiston office. He typed up an expert statement for the docket. He confirmed that the statement in the docket was his and then detailed the kind of explosives. According to him only registered blasters are supposed to have same in their possession. He does not know whether it was destroyed or is in the safe at the Germiston office. He was cross -examined by Mr Mthombeni who *inter alia* pointed out that Cst Rampieri contacted him. It was pointed out to him that in his statement in the docket he did not establish a chain of evidence. He denied that he ever gave Cst Rampieri advice as to how to deal with the explosives and stuck to his version that the caller phoned him from Daveyton police station. He asked the caller why he did not wait for him at the scene of the crime. He agreed that everything should have been photographed to

preserve the evidence. I understood this to mean at the place where same was found. In re-examination he was referred to the entries he made at Daveyton when he booked the explosives in and out.

- [80] Thereafter arrangements were made for the filing of heads of argument as already set out above and the matter was postponed *sine die* and judgment reserved.

Evaluation of the evidence

- [81] Masente presented with a poor demeanour and his evidence came across as disjointed. He tried to present himself as co-owner of the business and only later disclosed that it is his father's business that lost money and that he merely managed the taverns on behalf of his father.

- [82] His real difficulty is the fact that he did not call any witness such as his wife to substantiate his version of the events or even his father to substantiate the level of turnover or profit at the time. On the latter the excuse was that his father did not want to testify given his historic interaction with the courts of the country. His wife who is a vital eye witness did not want to testify due to her employer refusing to give her off. I warned Mr Mthombeni that the failure to call witnesses such as Masente's wife might lead to adverse inferences and that the use of a subpoena could easily solve her problem with her employer. This notwithstanding neither Masente senior nor Masente's wife was called. She is a vital eye witness on his version. The fact that his father left for the Eastern Cape when he could have made a substantial contribution as to the income generating capacity of the business did not assist his case either.

- [83] The fact that there was no bookkeeping system or a stock sheet available places a massive question mark over the ability of the taverns to have generated the income of R400 000. The failure to call one of his suppliers to establish the supply of goods during the period under discussion also counts against him. He claimed that the normal representative of SA Breweries passed away but this does not mean that somebody else from

SA Breweries could not have been subpoenaed duces tecum with the necessary records of such supply. The same notion applies to his other suppliers of liquor.

[84] W/officer Hlongwane was a witness who answered questions directly and displayed a good demeanour. Unfortunately, his evidence does not take the case much further.

[85] Cst. Rampieri was also an unsatisfactory witness. He presented with an over confident demeanour and conducted himself as if he was in charge. He conceded that W/officer Napo was actually in charge of the scene of the crime but hardly ever deferred to the latter on his version. His evidence that the bedrooms were not searched is not borne out by Cst. Thabethe his buddy who places him squarely in the search of the bedrooms. He is contradicted by the explosives expert as to the issue whether he sought advice. It is clear that he never followed proper protocol with regard to the recovered explosives.

[86] Cst. Thabethe was probably the closest to an honest witness among the two police witnesses on the scene who were called. He nevertheless denied the presence of the R400 000 in the green cooler bag and the R49 000 – R50 000 in the red cooler bag. I am despite all the evidence from these two witnesses left with my suspicions as to what really transpired on the day in question. This is not a basis on which I can find for Masente given the weaknesses in his case.

[87] I have no reason to doubt Sergeant Lapane 's evidence except for the fact that no proper chain of evidence was disclosed in the statement in the docket or even in court. This does not mean that he lied as to the established protocol regarding the recovery of explosives.

[88] I considered the heads of argument filed by Mr Mthombeni on behalf of Masente. Despite his contentions about informal businesses his arguments do not persuade me. In the circumstances Masente's claim must fail given that he had the onus of proving his case.

[89] I have considered the heads of argument filed by the Minister's legal representatives. I do not find same persuasive given the observations made with regard to the police witnesses save for Sergeant Lapane.

[90] In the circumstances I make the following orders:

1. The Plaintiffs case is dismissed with costs of one counsel on scale "B";
2. The Defendant is ordered to pay the Plaintiff's wasted costs for 2.5 days pertaining to the failed application for a postponement;
3. The Defendant's late filing of its heads of argument is condoned.
4. The Defendants application for absolution at the end of Plaintiff's case was dismissed with costs of one counsel on scale "B".



S. VAN NIEUWENHUIZEN, AJ
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

Date Judgement Reserved: 10 December 2024

Date Judgement Delivered : 6 June 2025

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