



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

Not Reportable

Case No: 4732/2019

4733/2019

4734/2019

4735/2019

4736/2019

4737/2019

4858/2019

4859/2019

In the matter between

SHIRLEY ELIZE BOY

Plaintiff in case no: 4732/2019

MANTHABELENG AGNESIA MPELE

Plaintiff in case no: 4733/2019

ABRAM SEKALELI

Plaintiff in case no: 4734/2019

PHUMELA PEROS LEBONA

Plaintiff in case no: 4735/2019

KHOTSO JULIUS NYANTI

Plaintiff in case no: 4736/2019

TSHOKOLO JOHN MOTHEBE

Plaintiff in case no: 4737/2019

MALUSI AARONE BUYAPHI

Plaintiff in case no: 4858/2019

LINEO AGNES MOFANA

Plaintiff in case no: 4859/2019

and

MINISTER OF POLICE

DEFENDANT

Neutral citation: *Boy and Others v Minister of Police* (4732/2019; 4733/2019; 4734/2019; 4735/2019/ 4736/2019; 4737/2019; 4858/2019; 4859/2019) [2015] ZAFSHC 176 (12 June 2025)

Coram: Molitsoane J

Heard: 23 September 2025

Delivered: 12 June 2025

Summary: Delict - whether the police were negligent in arresting and detaining the plaintiffs.

ORDER

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1. The claims of all the plaintiffs, except the one of Malusi Aaron Buyaphi, are dismissed with costs, such costs shall include the costs of Counsel on Scale A.
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JUDGMENT

Molitsoane, J

[1] The eight plaintiffs instituted actions for damages against the defendant for unlawful arrest and detention. As I explain later in the judgment, the plaintiffs' cases arise out of the alleged negligence of the employees of the defendant. The actions of the plaintiffs were consolidated except for the claim of Malusi Aaron Buyaphi, who has since passed on before the trial commenced. The trial proceeded on issues pertaining to the merits and quantum.

The pleaded cases of the plaintiffs

[2] At the beginning of the trial, this court made the following ruling after address by the legal representatives of all parties:

- (a) The duty to begin was on the plaintiffs
- (b) The plaintiffs bear the burden of proving negligence as pleaded;
- (c) The plaintiffs bear the onus to prove malice as pleaded;
- (d) That whereas the defendants bear the onus of proving the lawfulness of the arrest [in view of the admission of the arrest in the pleas], the plaintiffs carry the burden to prove that the arresting officers failed to exercise their discretion to arrest reasonably.

[3] The particulars of claim of all the plaintiffs mirror each other and are in essence the same, especially with regard to the fact that all of them allege that the employees of the defendant acted negligently by relying on the third parties' suspicion that plaintiffs were involved in the commission of human trafficking, kidnapping, money laundering and other charges.¹ Paragraph 9 of the particulars of claim of all the plaintiffs is pleaded as follows: 'In and as a result of the said negligence, plaintiff was unlawfully arrested and unlawfully detained.' (Emphasis added)

[4] The particulars of claim thereafter proceed to set out the number of days each of the claimant spent in detention. In my ruling at the beginning of the trial, and also in the ruling I made in an application for absolution from the instance of all claims of the plaintiffs, I indicated that the plaintiff's claims were grounded on the negligence of the employees of the defendant in effecting the arrest and detention.

[5] The manner in which the allegations in the particulars of claim are framed, indicate that the negligence of the employees of the defendant, led to the unlawful arrest and detention of the plaintiffs. For this reason, I hold the view that seeing that the plaintiffs allege that the negligence of the employees of the defendant led to the unlawful arrest and detention, such negligence had to be established first. The plaintiffs bear the onus to prove negligence. Had the plaintiffs pleaded simply that their arrest and subsequent

¹ Para 4.4 of the particulars of claim of all the plaintiffs.

detention was unlawful, then where the defendant admitted the arrest like in this case, the burden would have shifted to the defendant to justify the lawfulness of the arrest. The duty to begin would also have been on the defendant. This is not the case in these claims.

[6] As a starting point, it needs to be mentioned that a trial bundle was prepared by attorneys of the defendant. In their pre-trial minutes during the pre-trial stage, the parties agreed that 'documents in the trial bundle shall be what they purport to be.' During the trial, both Counsel at some stages of cross examination referred the witnesses to the statements in the trial bundle. For this reason, I hold the view that this court is entitled to consider the said statements and documents referred to. This should explain reference to hearsay evidence which was not objected to but at times pertinently raised referred to by both counsel.

[7] It is, in my view unnecessary to set out in detail the testimony of all the plaintiffs in the adjudication of this dispute. The plaintiffs were employees of a businessman, Mr Ronnie Rune. He owned various businesses around Matjhabeng district, namely, Palmietkuil Farm, Kune Village, Madiba Lodge and Club Phakisa. The plaintiffs were all arrested at the said business premises of their employer except Mr Khotso Julius Nyanti who was arrested at the Welkom Magistrate's Court. The essence of the testimony of the plaintiffs is that they were arrested without any probable and reasonable cause. All of them testified that they were not involved in human trafficking, kidnapping, money laundering or any other charges as alleged by the state. According to them, the only reason for their arrest is because they worked for Mr. Rune. They all testified about the circumstances surrounding their arrest, their quest to be released on bail and the payment of their bail, their detention and conditions of the places where they were held captive and the impact such detention had on them.

[8] It is however prudent to deal with the evidence of the claimant, Mr. Tshokolo Petrus Mothebe as it also touches on the background which triggered the arrest of the plaintiffs. He was employed as a security guard on the farm Palmietkuil owned by Mr.

Rune. He started working on the farm on 2 January 2018. According to him the farm was fenced and as he was stationed at the gate, some of his duties included controlling movement of people in and out of the farm. He testified that apart from him, there were other people working on the farm but of the said people, he only knew Alice and Lerato. When he started working on the farm on 2 January 2018, he found one Teboho, Mancane and Mafutha already on the farm. He further testified that these three men left the farm on 8 January 2018. The next day, 9 January 2018, two other people arrived on the farm. He did not know their names but they were given places in which to sleep.

[9] On 10 January 2018, while in the company of Lerato and Alice, a contingent of police arrived on the farm in vehicles. He had a discussion with Captain Herbert (the Captain) who questioned him about Teboho and his whereabouts. This Teboho, which the Captain was looking for had allegedly been held captive at the guest house on the farm. He informed the Captain that Teboho left on 8 January 2018. He further informed the Captain that there were other two people who were in the field herding cattle. The police requested him to accompany them to the fields where the cattle were being herded. They found the two people. One of those people was also Teboho by name. He, however, did not at that stage know that the said person was Teboho. That information he only came to learn about after Teboho and his companion had locked the cattle in the kraal. He was present when the Captain interviewed Teboho. He also heard the voice note played by the Captain on a cell phone for Teboho to identify. He heard when Teboho confirmed that the voice note was sent by him. He was the arrested with the late Mr. Buyaphi.

[10] Captain Karin Herbert is one of the police officers who testified on behalf of the defendant. At the time of this incident, she was a Captain in the South African Police Service. She testified that she received information from Lesotho regarding Teboho. The contents of the message were to the effect that Teboho was locked up on a farm Palmietkuil against his will. She assembled a back-up team in order to respond to this information. She indicated that she was duty bound to respond immediately in circumstances where victims had to be rescued. They proceeded to the farm Palmietkuil where they met Mr. Mothebe. At first, she was informed that Teboho had left the farm.

Her search of the premises on the farm did not yield any fruit. Her interactions with the person who sent her a message about the distress call made her to continue looking for Teboho. Later Mr. Mothebe told her that there were two other persons in the fields herding cattle. Her colleagues went to the fields with Mr. Mothebe and returned with Teboho and someone else.

[11] She interviewed Teboho and he confirmed that he was the one who sent a message of distress to Lesotho. The Captain played the voice note and he identified the voice note as the one he sent to Lesotho seeking assistance. He confirmed that he had been recruited by a certain lady, who he could point out, who worked at Khune Village. One Moshe Matema, who was also present during the interactions with Teboho also said she had been recruited on the farm by a certain lady to be found at Khune Village. She also confirmed that she met Alice Mpholo and one Makhoa on the farm. These two ladies told her that they did not want to be on the farm. The two ladies also relayed the information concerning young girls held at Khune Village. She instructed one Captain Macheu, with whom she was, and who also acted as her interpreter, to arrest Messrs Mothebe and Buyaphi.

[12] They then followed the information to Khune Village. At Khune Village, Teboho and one Mofoka Masiea pointed out two ladies whom they alleged were the recruiters. One such lady was Agnes Mpela. She interviewed one lady known as Nkhoane who indicated that she wanted to leave Khune Village but could not leave without her sisters who were at Madiba Lodge. Agnes Mpela was then arrested. They then followed the information to Madiba Lodge. A search of Madiba Lodge led to the arrest of Dineo Mofana and Sekaledi. At Madiba Lodge they found Margaret Nkhoane who told her that before her arrival, Shirley Boy had told other young women that she had come to fetch them. Three women who were found on the premises were taken away as the police took them to be victims of human trafficking. The three were later assessed by the Department of Social Development after being taken to a place of safety. The Social Department concluded that they were victims of human trafficking them to be victims of human trafficking. Various Letters of Recognition as a Victim of Trafficking were completed in

terms of s19(10) of the Prevention and Combating of Trafficking in Persons Act 7 of 2013. Shirley Boy was also arrested days later.

[13] The test for negligence as set out in the *locus classicus Kruger v Coetzee*² is as follows:

'For the purposes of liability *culpa* arises if –

(a) a *diligens paterfamilias* in the position of the defendant –

(i) would foresee the reasonable possibility of his conduct injuring another in his person or property and causing him patrimonial loss; and

(ii) would take reasonable steps to guard against such occurrence; and

(b) the defendant failed to take such steps.'

[14] On the issue of wrongfulness I wish to refer to *Le Roux and Others v Dey (Freedom of Expression Institute and Restorative Justice Centre as amici curiae)*³ in which the court said the following:

'In the more recent past our courts have come to recognise, however, that in the context of the law of delict:

(a) the criterion of wrongfulness ultimately depends on a judicial determination of whether – assuming all the other elements of delictual liability to be present - it would be reasonable to impose liability on a defendant for the damages flowing from specific conduct; and (b) that the judicial determination of that reasonableness would in turn depend on considerations of public and legal policy in accordance with constitutional norms. Incidentally, to avoid confusion it should be borne in mind that, what is meant by reasonableness in the context of wrongfulness has nothing to do with the reasonableness of the defendant's conduct, but it concerns the reasonableness of imposing liability on the defendant for the harm resulting from that conduct.'

[15] In my view, the plaintiffs' cases are based on negligence. It is the alleged negligence of the employees of the defendant which must be proved in order to find the causal link between their conduct and the damage suffered. The police had received information. They followed the information as it raised serious allegations of human trafficking. There

² 1966(2) SA 428(A) p 430E-F.

³ 2011(3) SA 274(CC) para122.

were people who gave further information which gave rise to reasonable suspicion that offences had been committed. The plaintiffs led no evidence whatsoever relating to the negligence of the police. None of the witnesses of the defendant were engaged regarding the alleged negligence. In the heads of argument, no reference whatsoever was made to the alleged negligence of the police. It seems to me that the attitude of the plaintiffs was that the issue of negligence was not an issue to be proven though it was pertinently pleaded by them and put in dispute by the defendant. I cannot find that the police were negligent in arresting and detaining the plaintiffs in this case. It is unnecessary to consider the lawfulness or otherwise of the arrest and the subsequent detention. The claims of the plaintiffs stand to be dismissed with costs.

[16] In the circumstances, I make the following order:

1. The claims of all the plaintiffs, except the one of Malusi Aaron Buyaphi, are dismissed with costs, such costs shall include the costs of Counsel on Scale A.



MOLITSOANE J

Appearances

For the Appellant:

Adv J. Nkhahle

Instructed by:

Kambi Attorneys

BLOEMFONTEIN

For the Respondent:

Adv G Wright

Instructed by:

Office of the State Attorney

BLOEMFONTEIN