

REPUBLIC OF SOUTH AFRICA



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

Case Number: 2021- 8902

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES /NO
(3)	REVISED: NO
25 June 2025	
DATE	SIGNATURE

In the matter between:

MFANAFUTHI PETER NDIRANE

Plaintiff

and

THE MINISTER OF POLICE

First Defendant

THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

Second Defendant

JUDGMENT

Introduction

[1] The plaintiff instituted a civil action against the defendant for the sum of R 6000 000.00 for unlawful arrest, detention and malicious prosecution. The matter is proceeding in an unopposed court after the defence of the defendant was struck out subsequent to the defendant's failure to comply with an order of court directing the defendants to discovery affidavit as ordered by the court.

Background

[2] The plaintiff was arrested on 29 April 2018 and appeared in court on 2 May 2018. He was kept at Johannesburg Central Police station prior to his first appearance and then taken to Johannesburg Correctional Services after the first appearance. He was kept in custody and the charges were withdrawn on 23 October 2018.

[3] The plaintiff commenced civil proceedings against the defendants and issued a letter of demand in terms of section 3 of the Institution of Civil of Proceedings against an Organ of State Act¹. The defendants did not react positively to the letter of demand and plaintiff issued the summons on 23 February 2021. The summons was accordingly served on the defendants who in turn entered appearance to defence on 19 May 2021. The defendants then served a special plea and also pleaded over on 22 July 2021.

[4] Plaintiff's attorneys subsequently served a notice in terms of rule 35 of the Uniform Rules of Court requiring the defendants to serve a discovery affidavit. The defendants failed to serve a discovery affidavits and plaintiff launched an application to compel which was granted. The defendant failed to heed the order compelling discovery and this was followed by an application to struck off the defendants. The order to struck out the defence was granted on 3 October 2024.

[5] The plaintiff enrolled the application for default judgment which served before me on 27 February 2025.

¹ 40 of 2002.

Plaintiff's evidence

Merits

[6] The plaintiff testified under oath that he was previously in the employ of ADT. His work was to wash buses. He was dismissed for unauthorised leave which he took to take care of his sick aunt. On the day of his arrest, he went back to the ADT's offices to collect items he left before the termination of employment. Those items were his boots, work suit and hand gloves. He met up and started conversing with the security official at the gate who was known to him and considers him as his former colleague.

[7] Whilst seated at the gate, the said former colleague activated the alarm and the members of ADT came and detained him. The members of SAPS were called and he was then arrested. He was not informed of the charge/s or complaint against him. He was given a form by members of SAPS which he signed despite that it was not explained to him. He later learned from some documents shown to him that the accusation against him was of business burglary, theft of a laptop and theft of the amount of R2500.00.

[8] He was in the process of detention assaulted by members of SAPS and was taken to hospital where he was stitched. He was then taken into the police cells which did not have water supply and as such he could not even bath. The cell was small and had a toilet inside. The experience was unpalatable. He was also given a sponge to sleep on - with one blanket and both were dirty and had a bad smell. His stay in the cell was unpalatable. He had to take his tablets and swallow them without water.

[9] He was taken to court the following day and the matter was postponed to the following day since the docket was delivered late. The matter was then postponed on the next day for seven days to enable the investigating officer to verify his residential address. Strangely, to him, the investigating officer came back and indicated that the premises at the address given was vandalised and no one was no one staying there. As such bail application was refused.

[10] The charges were ultimately withdrawn as there was no sufficient evidence for a successful prosecution. The arrest made him feel humiliated and undignified. His own children were also distraught by his incarceration.

[11] Counsel for the plaintiff submitted that there are several infractions committed by the members of SAPS. They were required in terms of section 39 (2) of the Criminal Procedure Act (“CPA”)² to inform the plaintiff of the reasons for his arrest immediately after effecting arrest and further provide him with a copy of the warrant. The counsel referred further to the provisions of sections 12(1) and 35 of the Constitution which also enjoins the defendants to conduct themselves fairly and to respect the rights accorded to a detained person.

[12] It is trite, counsel further argued, that an arrest without a warrant is *prima facie* unlawful and once the plaintiff proved arrest the first defendant bears the onus to prove that the arrest and detention was lawful. In this instance the defence has been struck out and it follows that the court should return a finding that the arrest and detention were unlawful.

[13] In respect of the second defendant the counsel contended that the plaintiff has alleged and proved that law was set in motion without a reasonable and probable cause. That the defendant acted with malice and the prosecution ultimately failed. *In casu*, the rationale for decision to prosecute is unknown to the plaintiff and defence should have established a probable cause after perusing the docket. In view of the fact that the defence was struck out the only material availed to the Court is the version of the plaintiff in terms of which it is submitted that there is no evidence which linked the plaintiff to the commission of the alleged crime to justify the prosecution. Therefore, the only conclusion, it is argued, is that the second defendant perpetrated malicious prosecution against the plaintiff.

[14] The counsel for the plaintiff submitted that a proper case has been mounted and in view of the fact that there is no other version before the court the Court should return an order in favour of the plaintiff in respect of the merits.

² Act 51 of 1977.

Quantum

[15] With regard to the quantum the plaintiff has claimed damages for the invasion of privacy, infringement of his dignity and bodily integrity in the sum of R6 000 000.00. The counsel referred to the following comparable cases; *Phayi*³ where the court awarded damages in the amount of R100 000.00 for two days' detention; R800 000.00 for the continued detention for 30 days after the first appearance in court and the amount of R300 000.00 for the malicious prosecution. *Shabalala*⁴ where the court awarded R900 000.00 for unlawful arrest and detention and R2 100 000.00 for wrongful and unlawful prosecution in respect of the plaintiff who was detained for a period of 4 days before bail was granted and further period of two years imprisonment before being released on parole. The court in *Maphosa*⁵ awarded of R500 000.00 for the wrongful arrest and detention of the plaintiff who spent almost a month in detention.

Legal principles

[16] The plaintiff correctly referred to the legal principle that arrest without a warrant is *prima facie* unlawful and in the absence of any evidence from the defence to justify the arrest I am in constrained to return the verdict against the defendants. The Constitutional Court held in *Mahlangu*⁶ that in a claim based on the interference with the constitutional right not to be deprived of one's physical liberty, all that the plaintiff has to establish is that interference has occurred. Once that has been established, the deprivation is *prima facie* unlawful and the defendant bears an onus to prove that there was justification for the interference.

[17] The award for damage are ordinarily meant to deter and prevent future infringements of the fundamental by organ of state (see *Mahlangu* at paragraph 50). In addition, the Court in *Mahlangu* quoted with approval sentiments echoed by the SCA stated *Seymour* that "Money can never be more than a crude *solatium* for the deprivation of what in truth can

³ *Phayi v Minister of Police and Another* (2063/2019)[2024] ZAECPEHC 15 (22 February 2024).

⁴ *Mxolisi M Shabalala v Minister of Police and Director of Public Prosecutions* (323/2021) ZAMPHC (02 March 2023).

⁵ *Maphosa v Minister of Police* (10505/18)[2022]ZAGPJHC 486 (26 July 2022).

⁶ *Mahlangu and Another v Minister of Police* (CCT 88/20) [2021] ZACC 10; 2021 (7) BCLR (CC); 2021 (2) SACR 595 (CC).

never be restored and there is no empirical measure for the loss.”⁷ It was stated in *Diljan*⁸, “...A word has to be said about the progressively exorbitant amounts that are claimed by litigants lately in comparable cases and sometimes awarded lavishly by our courts. Legal practitioners should exercise caution not to lend credence to the incredible practice of claiming unsubstantiated and excessive amounts in the particulars of claim. Amounts in monetary claims in the particulars of claim should not be “thumb-sucked” without due regard to the facts and circumstances of each case. Practitioners ought to know the reasonable measure of previous awards, which serve as a barometer in quantifying their clients’ claims even at the stage of the issue of summons. They are aware, or ought to be, of what can reasonably be claimed based on the principles enunciated above.”

[18] Though previous award only serve as guide and are not authorities to be blindly followed, it was held in *Rasmeni*⁹ an award in the sum of R125 000.00 is reasonable where the plaintiff was arrested and detained for 1 month. The court in *Lifa*¹⁰ awarded the sum of R600 000.00 where the plaintiff was detained for a period of three months. The Constitutional Court in *Mahlangu* where police officers tortured the first plaintiff to make a confession, he and his supposed co-perpetrator were placed in ‘solitary confinement for two months to protect them from attack and taunting by fellow detainees who believed they had killed their relatives.’ They were detained for eight months and ten days and were awarded R550 000 and R500 000. In *Maghoti*¹¹ the Court awarded an amount of R1 000 000.00 to the plaintiff for arrest and detention of eighteen months.

Analysis

[19] In *casu* the plaintiff stated that the sleeping conditions were abhorable, the environment was unhealthy as there was no running water and he could not as a result even take a bath. The defendant failed to come forth and demonstrate the basis for the conclusion that the plaintiff has committed the allegations levelled against him alternatively just to demonstrate that the arrest and the decision to prosecute were based on proper legal

⁷ Id at para [50].

⁸ *Diljan v Minister of Police* (746/2021) [2022] ZASCA 103 (24 June 2022).

⁹ *Rasmeni v Minister of Safety and Security* (1883/2010) ZAECMHC 60 (30 OCTOBER 2018).

¹⁰ *Lifa v Minister of Police and Others* [2022] JOL 55956 (GJ).

¹¹ *Maghoti and Another v Minister of Police* Case No. (KP407/2018)[2022] NWHC (07 July 2022).

foundations. This is aggravated by the fact that the plaintiff was kept in custody for a period of 6 months. I find that the plaintiff has proved his case against the defendants.

Conclusion

[20] In the present case I conclude that the fair compensation to the plaintiff should be the amount of R1 500 000.00.

Costs

[21] It is trite that the costs follow the results and I find no reason to upset this established principle.

Order

[22] I make the following order:

1. The defendants are ordered to pay the Plaintiff amount of R1 500.00.00 jointly and severally, the one paying the other to be absolved.
2. The defendants are ordered to pay the Plaintiff's legal costs on a scale B including costs for counsel.



M V NOKO
Judge of the High Court

DISCLAMER: This judgment is handed down electronically by circulation to the Parties /their legal representatives by email and by uploading it to the electronic file of this matter on Case Lines. The date for hand-down is deemed to be 25 June 2025 at 14:00.

Date of

Hearing: 27 February 2025

Judgment: 25 June 2025.

Appearances:

Plaintiff:

FJ Mametja, instructed by NJ Belcher Attorneys.

Defendants:

No appearance.