



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

CASE NO: 14551/2019

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
<u>15/07/2025</u> DATE	 SIGNATURE

In the matter between:-

J N MABASA

Plaintiff

and

THE MINISTER OF POLICE

Defendant

JUDGMENT

Mfenyana J

INTRODUCTION

[1] The plaintiff instituted proceedings against the defendant for damages arising from his arrest by members of the South African Police Service (SAPS) on 2 April 2018 and his subsequent detention until 23 April 2018, when he was released on bail. At the time of the arrest, the police officers were acting within the scope of their duties as members of the SAPS. The defendant is thus vicariously liable for the actions and omissions of his employees.

[2] The plaintiff contends that his arrest and detention were unlawful. He claims damages in the amount of R1 000 000.00 (One million rand), which he avers has led to his being diagnosed with major depression. The amount is a global amount for the invasion of his right to privacy and freedom of movement, mental anguish and fear, insult and humiliation, the plaintiff contends.

[3] The summons was served on the defendant at the office of the state attorney on 13 March 2019. Prior thereto, on 10 September 2018, the plaintiff served a demand in terms of section 3 of the Institution of Legal Proceedings Against Certain Organs of State Act (the Act)¹.

[4] On 16 April 2019, the office of the state attorney, acting on behalf of the defendant, entered an appearance to defend the action.

[5] In the amended particulars of claim, the plaintiff contends that on 2 April 2018, at approximately 18h00, while at home with his family, he was arrested by Constable Motaung (Motaung) and Detective Mabasa (Mabasa) at gunpoint, on allegations of hijacking a motor vehicle. He further avers that he was detained at the Hebron Police Station until 4 April 2018, when he appeared in the Ga-Rankuwa magistrates' court. He was later transferred to the New Lock prison, where he was held in custody until the charges against him were withdrawn on 23 April 2018, when he was released on bail.

[6] The plaintiff avers that there were no grounds to suspect him of having committed any offence, as he was in Boksburg at the time of the commission of the offence, which explanation he provided to the arresting officers.

[7] In defending the action, the defendant pleads that the arresting officers had a reasonable suspicion that the plaintiff had committed an offence and were led to the plaintiff's residence by the complainant, who positively identified the plaintiff as the person who had hijacking him and hit him on the head with the back of a firearm.

¹ Act 40 of 2002.

[8] The defendant denies that the plaintiff was arrested at gunpoint and further states that there was no reason to do so, as the plaintiff did not resist arrest. The defendant contends that the plaintiff was informed of the reason for his arrest and advised of his constitutional rights, first when he was being arrested, and secondly, when he was placed in the cells and asked to sign the notice of constitutional rights.

[9] Regarding the plaintiff's appearance in court and his further detention, the defendant avers that after his first appearance on 4 April 2018, the matter was postponed to 11 April 2018 to allow the plaintiff to obtain legal representation, as he was charged with a Schedule 6 offence, which required a formal bail application. On 11 April 2018, the matter was further postponed to 23 April 2018 for a formal bail application. On the same day, the plaintiff was granted bail in the amount of R500.00. The defendant thus, denies that the plaintiff was detained until 31 July 2018, or that the case against him was withdrawn. It is common cause that after his release on bail, the plaintiff attended court until 31 July 2018, when the case against him was struck off the roll as the docket was not at court.

[10] The arrest and detention of the plaintiff are also common cause. It is further common cause that the police officers effected the arrest without a warrant.

ISSUE FOR DETERMINATION

[11] What remains for determination is the lawfulness or otherwise of the plaintiff's arrest and detention, and the quantum of damages, should the arrest and detention be found to be unlawful.

DEFENDANT'S CASE

[12] The defendant adduced evidence from two witnesses, Constable Masingitha Mabasa (Mabasa) and Sergeant Khoza (Khoza). Mabasa testified that he is the arresting officer who arrested the plaintiff on 2 April 2018. He stated that despite having the same surname as the plaintiff, they are not related. He further testified that

on 31 March 2018, he was doing his duties as a Constable when he was assigned to a matter by his supervisor, Thlapi.

[13] He testified that he read the docket and established that the complainant in the matter had been hijacked on that same day. He concluded that he needed to meet with the complainant. They met at the Hebron Police Station. He was with his colleague, Constable Motaung (Motaung). The complainant informed them that he had been hijacked. He further told them that although he knew what his assailant looked like, he did not know his name. He and Motaung requested the complainant to first establish the suspect's name and place of residence and thereafter inform them.

[14] On 2 April 2018, the complainant phoned him and told him that he had managed to establish the name and residential address of his assailant. He told him that his name was "Nono". Later that day, Mabasa, Motaung, and the complainant made their way to the suspect's home. On their arrival, they found the plaintiff in the company of many other people. He testified that many of these people were sitting outside the plaintiff's house, in his yard.

[15] While still in their unmarked vehicle, the complainant pointed out the suspect. At that point, he and Motaung entered the yard, leaving the complainant in the car. He testified that he had his firearm on him, which he was holding with both hands. Once inside the house, they introduced themselves and presented their identification, informing the occupants that they were looking for Nono. The plaintiff responded and identified himself as John Mabasa, also known as Nono. They explained that they were placing him under arrest for hijacking.

[16] Mabasa further testified that the complainant entered the yard and attempted to confront the plaintiff, but they instructed him to return to the vehicle, which he did. Mabasa then informed the plaintiff of his constitutional rights, handcuffed him, and took him to the Hebron police station. At the station, Motaung reiterated the plaintiff's constitutional rights and booked him. He was subsequently handed over for detention and signed the notice of rights.

[17] Sergeant Khoza (Khoza) testified as the second witness for the defendant. He stated that he was assigned to investigate the case in October 2018, making him the third investigator. By that time, the plaintiff had already been released, and Khoza could not provide information about the plaintiff's arrest and detention, as his involvement began after the release.

PLAINTIFF'S CASE

[18] Four witnesses testified on behalf of the plaintiff. Plaintiff: Nandhi Du Plooy, plaintiff's wife, plaintiff's attorney, and the plaintiff himself.

[19] The plaintiff testified that on the evening of 30 March 2018 at about 23:00, he went to Montecasino together with his wife, his brother, and his brother's wife. They arrived at Montecasino at approximately 23:52 and had a parking receipt to prove this. They stayed at Montecasino through the night and left in the morning after sunrise. He testified that he was at Olivenhoutbosch when he received a call from his neighbour that the police were looking for him. He further testified that two police officers arrived later that day. They were both armed with guns, which they pointed at him, his wife, and children. The plaintiff further testified that the complainant, who was visibly intoxicated, came into his house. He testified that the complainant threatened him.

[20] During cross-examination, the plaintiff was questioned about whether the parking slip he produced was his, as he did not provide proof of when he exited Montecasino. The plaintiff responded that he did not think that the parking slips would be required at the trial. He further testified that he was invited to Montecasino by his brother to play games at the casino. The plaintiff was further questioned about his evidence under cross-examination, that he left his children with his mother-in-law before going to Montecasino, a detail he did not mention during his examination in chief.

[21] He testified that on 2 April 2018, he and his family drove back to Itsoseng and waited for the police to arrive. On his way, he phoned his younger brother, Charlie, and requested that he meet him at his house, as he wanted him to witness what was

going to happen with the police. When questioned about why he did not mention such crucial information during his examination in chief, he apologised for his oversight.

[22] The plaintiff was asked why he informed his attorneys that he was in Boksburg on the day the offence was committed, as reflected in his amended particulars of claim, whereas in his evidence he testified that he was in Montecasino, which is in Fourways. The plaintiff responded that this may have been an error.

[23] The plaintiff denied that the police parked outside his house, stating that they drove into the yard. He further denied that the police introduced themselves or informed him of his constitutional rights. When asked how he knew their names, he could not explain but reiterated his denial. He was further questioned about the fact that the complainant mentioned in his statement that his assailants were driving a white BMW, and the plaintiff has a white BMW.

[24] The plaintiff denied having informed the police officers that his name was Nono. However, he conceded that he provided his name as Nono John Mabasa. He was subsequently challenged regarding his assertion that the police officers were carrying firearms, while his particulars of claim alleged that the police officers pointed their weapons at him and his family. The plaintiff testified that the police were aiming their firearms at him and the children from a distance of approximately five metres. He persistently denied being informed of the reason for his arrest, asserting that the police merely instructed him to remove his shoelaces. When questioned about how he had acquired knowledge of the hijacking, he responded that his neighbour had informed him that the police had communicated to her that they were searching for him due to the hijacking incident.

[25] Upon his return from Olivenhoutbosch, he visited his neighbour's residence, where she provided him with a contact number that she had been given by the police to use. The defendant's counsel put to the plaintiff that Mabasa had conveyed the reason for the plaintiff's arrest to him, contending that it would be implausible for the plaintiff to communicate this information to a third party who was not involved in the matter. The plaintiff maintained his original response.

[26] Mr Daniel Ludick (Ludick) also testified on behalf of the plaintiff. His evidence was limited to the issue of the plaintiff's whereabouts as pleaded in the particulars of claim. Ludick, who drafted the particulars of claim, including the amended particulars of claim, testified that the plaintiff had informed him that he was at Montecasino. However, he confused Montecasino with the Emperor's Palace casino, which is in Boksburg. He concluded that this was a mistake.

[27] During cross-examination, Ludick was asked why he did not include in the particulars of claim that the plaintiff had also informed him that he was in Olivenhoutbosch. He responded that he considered the offence to have allegedly taken place while the plaintiff was at Montecasino. He further explained that he believed Boksburg to be the area in which Montecasino was located, and that this was simply a mistake. Ludick concluded by stating that he had no other explanation for his mistake.

[28] The next witness to testify on behalf of the plaintiff, Ms Khanyisile Amanda Mthethwa (Mthethwa), testified that she is the spouse of the plaintiff. She stated that on 29 March 2018, she, the plaintiff, and their children visited the plaintiff's brother, Philemon, in Olievenhoutbosch. Between the hours of 22:00 and 01:00, they proceeded to Montecasino. They were travelling in her husband's vehicle. Mthethwa testified that upon their arrival at Montecasino, they received a parking slip, which she retained in the vehicle. Furthermore, she testified that they arrived at Montecasino at 01:52 and departed after sunrise the following day. Subsequently, they returned to Olievenhoutbosch, where they first dropped off the plaintiff's brother before proceeding to her mother's residence. Mthethwa further testified that she distinctly recalls the plaintiff dropping her off at her mother's residence.

[29] She further stated that she received a call from their neighbour in Soshanguve, Itsoseng. She went to the plaintiff's brother to tell him about the call. He told her that he had also received the call. They decided to go back to Itsoseng. Upon their arrival, the plaintiff went to the neighbour, but Mthethwa did not go with him. When he returned, they sat down with the plaintiff's brother. Approximately 30 minutes

thereafter, two police officers arrived. They told them that they were looking for John Mabasa. They were holding their guns, pointing at them. They told the plaintiff that they were arresting him for hijacking and possession of an unlicensed firearm.

[30] Mthethwa further testified that the police did not search the house for a firearm. She stated that she went to the car to take out the parking slip they got from Montecasino, explaining to the police officers that they were at Montecasino. According to her, the police officers told her that they were not interested, as anyone could claim that they were at Montecasino. At that stage, a drunk person entered the yard. The police told the plaintiff to take off his shoelaces and belt, after which they left with him. She testified that she and the children were negatively affected by the plaintiff's arrest, as she was employed at the time, and had to phone him to ensure that he was fine. At this point, Mthethwa broke down, stating that she had to quit her job. Regarding her testimony that the children were also affected by the plaintiff's arrest, she testified that the children were playing in the yard when the plaintiff was arrested. She testified that she was not sure of the exact time the plaintiff spent in detention, estimating 21 days.

[31] Under cross-examination, Mthethwa testified that they arrived at Montecasino at 11:52 and left at approximately 06:00 the next morning. When it was put to her that the plaintiff testified that they left at approximately 09:00, Mthethwa stated that the sun was already up. It was further put to Mthethwa that the plaintiff testified that they first dropped her off at her mother's place and thereafter, the plaintiff's brother. She maintained that she was the first to be dropped off.

[32] Mthethwa further testified that when their neighbour phoned her, she simply told her that the police were looking for the plaintiff. She did not tell her why, as she does not have a close relationship with the neighbour, Mthethwa stated. She, however, stated that she and the neighbour had each other's contact numbers, despite not being close. She further testified that she walked to the plaintiff's brother's house. The plaintiff phoned the neighbour, contradicting her earlier testimony that the neighbour had called the plaintiff. When questioned further on this issue, Mthethwa testified that she could not remember. She further testified that the plaintiff phoned his other

brother, Charlie, who lives in Erasmus. They arrived at their house after lunchtime. She testified that she could not recall what time Charlie arrived and whether they fetched him from the 'changing spot' or took him with them, stating that she was mixed up.

[33] In response to a question posed during cross-examination regarding the plaintiff's testimony that the plaintiff testified that the police arrived approximately thirty minutes after the plaintiff's arrival from Olivenhoutbosch, Mthethwa testified that the police arrested the plaintiff at approximately 17:00. She vehemently denied Mabasa's assertion that they did not point their firearms at the plaintiff and his family. She added that they did not introduce themselves and did not inform the plaintiff of his constitutional rights. They simply stated that they were there to arrest the plaintiff because he hijacked a car at gunpoint. They did not tell him where or when the hijacking occurred, even though she asked, as the plaintiff was always with her.

[34] Ms Nandhi Du Plooy (Du Plooy), a clinical psychologist who testified on behalf of the plaintiff, indicated that the plaintiff was referred to her by Ludick Attorneys, who requested her to assess the impact of the plaintiff's arrest and detention. Furthermore, she testified that according to the plaintiff's attorney, the plaintiff experienced emotional damage due to his (wrongful) arrest. In her report, Du Plooy documented that the plaintiff suffers from insomnia, nightmares, diminished appetite, and an apprehension towards leaving his residence. She noted that family members reported significant changes in the plaintiff's behaviour following his arrest and detention, which include isolation and irritability.

[35] Her observations indicate that the plaintiff exhibited anxiety and dysphoria symptoms, with slight suicidal ideations also noted. She concludes that the plaintiff suffers from severe psychological distress, Post-Traumatic Stress Disorder (PTSD), and major depression, all of which adversely affect his daily functioning. Du Plooy opines that the plaintiff's self-esteem and interactions with his environment are adversely impacted.

[36] She recommends psychotherapy for the plaintiff to address the trauma

experienced by the plaintiff, alongside a referral for physical examination to manage any physical symptoms that may be present. She further suggests that family therapy would be beneficial for the plaintiff's partner and children, acknowledging the familial dynamics that may also be impacted by the plaintiff's psychological condition.

LEGAL FRAMEWORK

[37] Section 12 of the Constitution guarantees freedom and security of the person. It reads as follows in the relevant part:

- “(1) Everyone has the right to freedom and security of the person, which includes the right-
- (a) not to be deprived of freedom arbitrarily or without just cause;
 - (b) not to be detained without trial;
 - (c) ...
 - (d) ...
 - (e) ...

[38] In a constitutional democracy such as ours, the arbitrary deprivation of freedom is unequivocally prohibited. The rule of law mandates that any deprivation of freedom must not only be lawful, but also justifiable. Such deprivation must occur within the confines and safeguards provided by law.

[39] In *W [...] v Minister of Police*², the Supreme Court of Appeal (SCA) held at as follows at paragraph 27:

“[27] Once it is clear that the detention is not justified by acceptable reasons and is without just cause in terms of s 12(1)(a) of the Constitution, the individual's right not to be deprived of his or her freedom is established. This would render the individual's detention unlawful for the purposes of a delictual claim for damages.”

[40] More specifically, section 40(1)(b) confers upon a peace officer the power to arrest without a warrant, any person whom the peace officer reasonably suspects of having committed an offence referred to in Schedule 1, other than the offence of

² (92/2012) [2014] ZASCA 108 (20 August 2014).

escaping from lawful custody.

[41] The jurisdictional requirements for a defence in respect of section 40(1)(b) are that (i) the person arresting, must be a peace officer (ii) who must entertain a (iii) suspicion that the arrestee has committed an offence (iv) referred to in Schedule 1 and (iv) such suspicion must be founded on reasonable grounds.

[42] In *Minister of Safety and Security v Sekhotho*³, the SCA held that once the jurisdictional facts are satisfied, the peace officers are entitled to exercise a discretion as they see fit, provided they stay within the bounds of rationality. The court noted in this regard that:

“A number of choices may be open to him, all of which may fall within the range of rationality. The standard is not perfection or even the optimum, judged from the vantage point of hindsight – so long as the choice falls within the range of rationality.”

[43] The defendant’s case is that the arresting officers entertained a reasonable suspicion that the plaintiff had committed an offence and had been positively identified by the complainant. The complainant reported to the police that the plaintiff had hijacked him and struck him with the back of a firearm. Subsequently, he accompanied the police to the plaintiff’s residence, where the plaintiff was arrested.

[44] It is important to note that section 40 (1)(b) does not grant peace officers *carte blanche* to arrest citizens at will, unhindered. To the contrary, the provision requires an arresting officer to exercise circumspection when utilising the powers conferred by this section.

ANALYSIS AND EVALUATION

[45] The defendant bears the onus to prove that the arresting officers exercised their discretion appropriately in arresting the plaintiff. The evidence provided by Mabasa indicates that the complainant informed the officers that the plaintiff had hijacked him.

³ 2011 (1) SACR 315 (SCA).

On that basis, the officers proceeded to the plaintiff's residence. Once there, the complainant positively identified the plaintiff as the individual who had hijacked him and struck him with the back of a firearm. Armed with this information, Mabasa and Motaung approached the plaintiff and informed him of his arrest for hijacking.

[46] There is no evidence or suggestion before this Court that Mabasa conducted further inquiries or verified the information received from the complainant in any way. Moreover, the complainant's statement indicates that when he approached the white BMW, he scratched it on the side before it drove off. No attempt was made by the police officers to confirm the allegations made by the complainant. Consequently, there can be no allegation that he exercised his discretion, either properly or at all, in arresting the plaintiff.

[47] If Mabasa's evidence is anything to go by, it becomes evident that he arrested the plaintiff solely based on the mere say-so of the complainant. Such action does not constitute the exercise of any discretion. He did not apply his mind to the issue; rather, his opinion was predetermined by the complainant.

[48] The law is established that the arresting officer must form a suspicion based on evidence that can be objectively sustained.⁴ It remains unclear what evidence Mabasa and his colleague relied upon as a basis for their suspicion. To gather evidence, the arresting officer must conduct a preliminary investigation of the facts at their disposal. He/she should take appropriate steps to confirm their suspicion and validate if there is any merit to the suspicion, before effecting an arrest. If the suspect provides an explanation for their whereabouts at the time the offence was committed, that potential *alibi* should be pursued, and any possible witnesses who could either corroborate or refute the suspect's account should be interviewed.

[49] In *Pharmaceutical Manufacturers Association of SA: In Re Ex Parte Application of President of the RSA*⁵, the Constitutional Court (CC) noted:

"The question whether a decision is rationally related to the purpose for

⁴ *Ralekwa v Minister of Safety and Security* 2004 (1) SACR 131 (T).

⁵ [2000] ZACC 1; 2000 (2) SA 674; 2000 (3) BCLR 241 (CC).

which the power was given calls for an objective enquiry. Otherwise a decision that, viewed objectively, is in fact irrational, might pass muster simply because the person who took it mistakenly and in good faith believed it to be rational. Such a conclusion would place form above substance, and undermine an important constitutional principle.”

[50] I am mindful of the improbabilities inherent in the plaintiff’s evidence. He testified that the police officers did not inform him of the reasons for his arrest. This assertion was corroborated by his partner, Mthethwa. Furthermore, it is rather improbable that Mthethwa could adequately explain to the police that she and the plaintiff were at Montecasino without having any knowledge of the location and timing of the alleged hijacking. Nevertheless, no onus rests on the plaintiff to prove the unlawfulness of the arrest.

[51] I must also point out that the plaintiff attempted to embellish his evidence, presumably to create an exaggerated impression of the events which transpired during his arrest, and to heighten the impact of the said arrest. His demeanour was aggressive and overzealous. However, this has no bearing on the facts of this case.

[52] In *S v Kelly*⁶, the erstwhile Appellate Division made the following observations regarding the demeanour of a witness:

“(t)here can be little profit in comparing the demeanour only of one witness with that of another in seeking the truth... In any event, ... demeanour is, at best, a tricky horse to ride.... The hallmark of a truthful witness is not always a confident and courteous manner or an appearance of frankness and candour”. On the other hand, “(a) crafty witness may simulate an honest demeanour and the Judge has often but little before him to enable him to penetrate the armour of a witness who tells a plausible story; On the other hand an honest witness may be shy or nervous by nature, and in the witness-box show such hesitation and discomfort as to lead the Court into concluding, wrongly, that he is not a truthful person” (Wessels JA in *Estate Kaluza v Braeuer* 1926 AD)

[53] Equally irrelevant, is the assertion in the plaintiff’s particulars of claim that he was in Boksburg as opposed to Fourways (Montecasino). His whereabouts at the time the hijacking allegedly took place do not detract from the fact that the suspicion

⁶ 1980 (3) SA 301 (A).

entertained by the arresting officers was not 'based on solid grounds'⁷.

[54] The defendant failed to prove that the plaintiff's arrest was lawful. It follows axiomatically that the arrest and subsequent detention of the plaintiff from 2 April to 23 April 2018 were unlawful.

QUANTUM

[55] It remains for me to deal with the issue of quantum. It is trite that the determination of the monetary value for an infringement of a person's rights is not dependent on simple mathematical calculations. The available case law only serves as a guide in arriving at what could be considered a fair amount of compensation. In *Minister of Safety and Security v Seymour*⁸, Nugent JA put it aptly when he noted that para 17:

"The assessment of awards of general damages with reference to awards made in previous cases is fraught with difficulty. The facts of a particular case need to be looked at as a whole and few cases are directly comparable. They are a useful guide to what other courts have considered to be appropriate, but they have no higher value than that".

[56] The specific circumstances of the present case are that the plaintiff was arrested at his home in the presence of other people. He was subsequently detained in prison for approximately twenty-one days, at which point the case against him was struck off the roll due to the unavailability of the docket. The plaintiff presented a grim picture of his detention. He testified that the condition of the cell was repulsive, with non-functioning toilets that emitted an unpleasant odour, and the cell itself was overcrowded.

[57] Furthermore, the evidence provided by the clinical psychologist who assessed the plaintiff indicates that the plaintiff has experienced post-traumatic stress as a consequence of his arrest and detention, the effects of which are evident to this day.

⁷ *Mabona and Another v Minister of Law and Order and Others* 1988 (2) SA 654 (SE).

⁸ 2007 (1) All SA 558 (SCA).

[58] It was submitted on behalf of the plaintiff that an amount of R1000 000.00 (one million rand) would be fair in the circumstances. In this regard, it is necessary to bear in mind that the purpose of an award for damages is not to enrich the plaintiff, but to provide a *solatium* for his injured feelings⁹. What would be a fair amount of damages is case-specific. Even so, the award should, in my view, be of such a nature that it not only compensates the plaintiff but discourages wanton disregard of the constitution and the laws of the land. However, in the present case, I must point out that I did not find that the arresting officers wantonly disregarded the law. Rather, their actions were borne out of the mistaken belief that the law required the police officers to arrest at the mere pointing out of the plaintiff by the complainant.

[59] Innes CJ, in *Pitt v Economic Insurance Co. Ltd*¹⁰, noted:

"I have only to add that the court must take care to see that its award is fair to both sides- it must give just compensation to the plaintiff, but must not pour out largesse from the horn of plenty at the defendant's expense."¹¹

[60] In *Ndimane v Minister of Police*¹², the court awarded damages of R1,500,000.00 for arrest and detention spanning approximately 6 months.

[61] In *Diljan v Minister of Police*¹³, in awarding R120 000.00 arrest and detention of three days the SCA noted as follows:

"...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."

⁹ *Minister of Safety and Security v Tyulu* 2009 (5) SA 85 (SCA).

¹⁰ 1957 (3) SA 284 (D)

¹¹ At 287E- F

¹² (2021/8902) [2025] ZAGPJHC 639 (25 June 2025).

¹³ (746/2021) [2022] ZASCA 103 (24 June 2022).

[62] What is evident from previous awards made by the courts is that there is no 'one-size-fits-all' approach to the awarding of damages, nor is there a daily rate to be applied. Moreover, no two cases are the same. In this regard, I do not agree with the plaintiff's counsel that the present case is comparable to *Motladile*¹⁴. The material facts of the two cases are strikingly different. Notably, in *Motladile*, the SCA dispelled the notion of a daily rate, pointing out that each case should be determined on its own facts.

[63] I consider an amount of R735,000.00 (seven hundred and thirty-five thousand rand) to be fair and reasonable in the circumstances of the present case.

Costs

[64] The general rule is that costs follow the result. I cannot find any reason to deviate from this established rule.

Order

[65] In the result, the following order issues:

- a. The arrest of the plaintiff on 2 April 2018 and his detention until 23 April 2018 was unlawful.
- b. The defendant is liable for payment of the plaintiff's damages arising from his unlawful arrest and detention in the amount of R735,000.00 (seven hundred and thirty-five thousand rand).
- c. The defendant shall pay interest on the aforesaid amount of R735,000.00 (seven hundred and thirty-five thousand rand) at the prescribed interest rate, calculated from the date of service of summons to the date of payment.
- d. The defendant shall pay the costs of suit on a party and party scale, Scale B.

¹⁴ *Motladile v Minister of Police* (414/2022) [2023] ZASCA 94.



S MFENYANA
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

APPEARANCES

For the plaintiff : JJ Greeff instructed by Ludick Attorneys
reception@ludickattorneys.co.za

For the defendant: T Mzizi instructed by The State Attorney,
Pretoria
NatNell@justice.gov.za

Date heard: 22 November & 3 December 2024

Date of judgment: 15 July 2025