

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 16649/2020

(1)	REPORTABLE: YES / <u>NO</u>
(2)	OF INTEREST TO OTHER JUDGES: YES / <u>NO</u>
(3)	REVISED: YES / <u>NO</u>
<u>06/06/2025</u> DATE	

In the matter between:

JACOBS, DELON DANIEL

Plaintiff

and

THE MINISTER OF POLICE

1ST Defendant

**THE NATIONAL COMMISSIONER OF THE
SOUTH AFRICAN POLICE SERVICES**

2ND Defendant

THE PROVINCIAL COMMISSIONER OF POLICE

3RD Defendant

THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

4TH Defendant

THE MINISTER OF JUSTICE AND CORRECTIONAL

SERVICES

5TH Defendant

THE STATE ATTORNEY

Interested party

JUDGMENT

READ, AJ

INTRODUCTION

- [1] This is an application for default judgment for damages arising from the unlawful arrest and detention of the plaintiff by members of the South African Police Services (SAPS) on 4 March 2018
- [2] The summons was issued and served on the defendants in August 2020. The first, fourth and fifth defendants ("**the defendants**") entered and appearance to defend on 6 August 2020.
- [3] A Notice of Bar was filed on 9 September 2020 and the defendants have failed to plead to the summons and particulars of claim.
- [4] The plaintiff claims damages against the defendants as follows:
 - 4.1. R2,500,000.00 for unlawful arrest and detention;
 - 4.2. R150 000.00 for defamation;
 - 4.3. R500 000.00 for assault;
 - 4.4. Interest at a rate of 15.5% per annum *a tempore morae* from date of the S3(2) Notice in terms of Act 40 of 2002;
 - 4.5. Costs on the attorney and client scale.
- [5] The application for default judgment is dated 19 November 2021.
- [6] The notice of set down was served on the State Attorney by email, and there was no appearance by the defendants on 4 June 2025.

[7] This application first came before this Court on 6 November 2024 where the matter was removed with the defendants agreeing to pay the costs jointly and severally on the scale C. The relevant Order is at Caselines 016-2.

[8] In terms of the Consolidated Practice Directive 1 of 2024 at paragraph 22.2 of this Court, the plaintiff is entitled to enrol the matter on the unopposed roll for the purposes of adducing evidence.

[9] The plaintiff claims various heads of damages but ultimately, and this was conceded by the plaintiff's counsel on 4 June 2025, the claim is for unlawful arrest and detention. The action is based on:

- 9.1. The plaintiff's unlawful arrest and detention in the police cells at Eldorado Police Station from 04 March 2018 until 05 March 2018 when he was brought before the Lenasia Magistrate's Court where he spent one night in the police cells;
- 9.2. Thereafter his unlawful detention where, after three further appearances in the Magistrate's Court, he was able to apply for bail; and
- 9.3. The continued detention at the Johannesburg Correctional Services where the charges were withdrawn on 12 March 2019 and he was only released on 29 April 2019.

THE EVIDENCE

[10] The plaintiff filed a damages affidavit on 14 March 2022, as well as appeared personally to give evidence on 4 June 2025.

[11] The affidavit coupled with the *vive voce* evidence of the plaintiff indicated that: -

- 11.1. The plaintiff was, prior to his arrest, a member of the community trusted to do part time jobs in the area;
- 11.2. He was arrested at his family home on a Sunday around lunch time when four police vans arrived at the family home and he was arrested in front of his elderly Mother, family members and the community watched on;
- 11.3. He was insulted by the arresting officers in front of the community and his family and referred to as "*Boesman*";

- 11.4. He was arrested on suspicion of theft by Hi-jacking but he discovered that his son had also been arrested elsewhere on a similar charge and was released the next day;
- 11.5. Conditions in the Eldorado police station cells were filthy with no functioning facilities, ablutions, suitable bedding, poor food and no light;
- 11.6. He was taken to Lenasia Magistrate's court the next day and his bail application was remanded on the basis that the Investigating Officer ("IO") stated that the charge was serious and required further investigations;
- 11.7. The prosecutor appeared to agree with the IO that the matter was serious and bail ought to be refused;
- 11.8. This took place for a further two occasions until on the third occasion sometime toward the end of April/May he finally had a bail hearing, and his bail was refused;
- 11.9. The plaintiff stated that he was represented by an attorney in his bail hearing, but the attorney no longer represents him;
- 11.10. The plaintiff thereafter spent time until his release in the Johannesburg Correctional Facility where he was assaulted by the wardens;
- 11.11. After his release he could no longer work in the area as the community now distrusted him and believed him to be a criminal;
- 11.12. He had never been arrested and detained before 4 March 2018.

[12] The plaintiff's experience was traumatising, the conditions in Eldorado Police Station left him confused and unsure as to what was happening. The arrest was degrading and embarrassing to not only him but his family.

[13] Unfortunately, the plaintiff could not provide any substantive evidence as to what exactly transpired at the bail hearing and the Court must rely on the scant information at hand, that he was represented by an attorney and bail was refused.

THE LAW

[14] The Constitution is the supreme law of our country, and the arrest and unlawful detention of the plaintiffs should be seen through the lens of the Bill of Rights.

[15] The requirements for lawful arrest, the four jurisdictional facts set out in s 40(1)(b) of the Criminal Procedure Act 51 of 1977, must be pleaded and proved, the onus being on the defendant: -

- 15.1. that the arrestor was a peace officer;
- 15.2. that he or she entertained a suspicion;
- 15.3. that the suspicion was that the arrestee had committed a schedule 1 offence; and
- 15.4. that the suspicion rested on reasonable grounds.¹

[16] The Supreme Court of Appeal has endorsed and adopted Lord Devlin's formulation of the meaning of 'suspicion':

'Suspicion in its ordinary meaning is a state of conjecture or surmise where proof is lacking; "I suspect but I cannot prove". Suspicion arises at or near the starting point of an investigation of which the obtaining of prima facie proof is the end. When such proof has been obtained, the police case is complete; it is ready for trial and passes on to its next stage.'

'Prima facie proof consists of admissible evidence. Suspicion can take into account matters that could not be put in evidence at all. . . . Suspicion can take into account also matters which, although admissible, could not form part of a prima facie case.'

[17] Any law or conduct inconsistent with the Constitution is invalid, and all obligations imposed by it must be fulfilled. Section 7(2) commands the state to respect, protect, promote and fulfil the rights in the Bill of Rights subject to the limitations in section 36 of the Constitution. This includes the police who are required when executing their constitutional duties to be guided by respect for human rights and strict observance of the rights of human dignity, equality and freedom.

[18] The Constitutional Court has held that remand orders issued by successive Magistrates did not render lawful the unlawful detention of the appellant as a

¹ *Duncan v Minister of Law and Order* 1986 (2) SA 805 (A) at 818G-H, *Minister of Safety and Security v Sekhoto and Another* 2011 (5) SA 367 (SCA)

sentenced prisoner when his status should have been that of an awaiting trial prisoner.²

[19] Section 12 of the Constitution guarantees freedom of the person, it reads:-

“(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) to be free from all forms of violence from either public or private sources;

(d) not to be tortured in any way; and

(e) not to be treated or punished in a cruel, inhuman or degrading way.”

[20] 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 plaintiffs' rights not to be deprived of their freedom is established. This renders the plaintiffs' detention unlawful for the purposes of a delictual claim for damages.³

[21] A breach of s 12(1)(a) of the Constitution is sufficient to render the plaintiffs' detention unlawful for the purposes of a delictual claim for damages.

APPLICATION OF THE LAW TO THE FACTS

[22] While arrest on suspicion of theft by hi-jacking is a schedule 1 offence, it can only be inferred that the arresting officer/s failed to properly exercise their discretion in arresting the plaintiff simply because he was released at a much later stage with the charges withdrawn. The plaintiff's son who had been arrested on a similar charge on 4 March 2018 was released on 5 March 2018.

[23] The arrest was therefore unlawful. As the arrest was unlawful, the subsequent detention of the plaintiff was also unlawful.

² *Zealand v Minister of Justice and Constitutional Development* 2008 (4) SA 458 (CC)

³ *Woji v Minister of Police* (92/2012) [2014] ZASCA 108 Unreported

[24] The question then is where does the police liability for wrongful arrest and detention end?

[25] From the evidence provided, the further remands prior to the actual bail hearing were as a direct result of the IO requesting delays for further investigations.

[26] At the bail hearing, the plaintiff stated that he was represented by an attorney. However, no record of those proceedings was presented in evidence. One must infer that the Magistrate determined that it was in the interests of justice that bail be denied, and thereafter, the evidence is that the plaintiff was taken to Johannesburg Correctional Services where the charges were withdrawn on 12 March 2019.

[27] According to the evidence of the plaintiff, the bail hearing was held late April or beginning of May 2018. The plaintiff could not confirm an exact date and the pleadings are not clear on this issue.

[28] Until such time as the plaintiff was afforded a bail hearing, his continued detention was never properly considered and was unlawful.

[29] This period can reasonably be considered to be from 4 March 2018 until 3 May 2018, or 60 days.

[30] There is insufficient evidence to render the detention at the Johannesburg Correctional facility to be unlawful, without any evidence as to what transpired at the bail hearing.

RELIEF AND COSTS

[31] The plaintiff has succeeded in proving that his arrest and detention prior to his bail hearing was unlawful and he is therefore entitled to damages.

[32] Such damages arise from the *actio iniuriarum* specifically tailored to address wrongful and intentional infringements of personality rights.

[33] In ***Minister of Safety and Security v Tyulu***⁴ the Supreme Court of Appeal addressed the issue of damages for unlawful arrest and detention. The court stressed that the primary purpose of damages is to provide solace for the injured party's feelings rather than to enrich them. It highlighted the importance of personal liberty and the serious nature of arbitrary detention, indicating that damages should reflect the gravity of the rights infringements. The court ultimately awarded damages to the plaintiff, reinforcing the principle that unlawful detention causes significant emotional and psychological harm.

[34] In the matter of ***Minister of Safety and Security v Seymour***⁵ the court reiterated that the assessment of damages should consider the emotional distress and humiliation suffered by the plaintiff due to the unlawful actions of the police. The court also noted that while previous awards can serve as a guide, each case must be evaluated based on its unique circumstances. The decision underscored the need for courts to be cautious in determining damages to ensure they are appropriate and just.

[35] In his claim against the minister of Police in ***De Klerk v Minister of Police***⁶, the appellant argued that the police's actions were wrongful and that he suffered harm as a result of his unlawful arrest and subsequent detention. He contended that the police should be held liable for the entire period of his detention, including the time after his first court appearance, asserting that the unlawful arrest was the direct cause of his continued detention. The case raised significant legal questions regarding the liability of the police for unlawful detention following a court remand and the relationship between the initial unlawful arrest and the subsequent detention ordered by the magistrate.

[36] The Constitutional Court held that the harm suffered by de Klerk was primarily the deprivation of his liberty, which is a significant personality interest. The unlawful arrest and subsequent detention constituted a violation of his constitutional rights, particularly the right to freedom and security of the person as protected under section 12 of the Constitution.

⁴ 2009 (5) SA 85 (SCA)

⁵ 2006 (6) SA 320 (SCA)

⁶ 2021 (4) SA 585 (CC)

[37] The court applied the principles of the *actio iniuriarum*, which governs claims for non-patrimonial damages, focusing on the need for compensation that reflects the seriousness of the infringement of de Klerk's rights. Ultimately, these factors guided the court in determining that de Klerk was entitled to R300 000 in damages for the unlawful arrest and detention, reflecting both the severity of the harm suffered and the need for accountability.

[38] In more recent cases the following damages were awarded:-

- 38.1. In *Khanyi v Minister of Police* [2023] ZAGPJHC 434, the court awarded R250,000.00 for unlawful arrest and detention for approximately three days.
- 38.2. In *Motladile v Minister of Police* [2023] ZASCA 94, the Supreme Court of Appeal awarded R200,000.00 for four days of detention.
- 38.3. In *Diljan v Minister of Police* [2022] ZASCA 103, damages of R120,000.00 were awarded for arrest and detention for approximately three days.
- 38.4. In *Mkhonza v Minister of Police* [2025] ZAGPJHC 513, damages of R1,500,000.00 were awarded for arrest and detention for approximately 505 days.

[39] While most of these cases involved shorter periods of detention than the present case, they provide guidance on the daily rates of compensation that courts have considered appropriate. From these recent cases, the daily rate of compensation ranges from approximately R40,000.00 to R60,000.00 per day. However, it would be inappropriate to simply multiply such a daily rate by the 60 days of the plaintiff's detention, as this would result in an unreasonably high award. This is also the view taken by this Court in *Mkhonza* referred to above where the detention was for 505 days.

[40] Taking all these factors into account, I consider that a fair and appropriate award in this case is R500,000.00. This amount reflects both the long duration of the detention and the severe impact it had on the plaintiff's life, while remaining within reasonable bounds in comparison to other awards for unlawful arrest and detention.

ORDER

[41] In the result, I make the following order:

- 41.1. The arrest and detention of the plaintiff for a period of 60 (sixty) days was unlawful;
- 41.2. The first defendant is ordered to pay to the plaintiff the sum of R500,000.00 (five hundred thousand rand) in damages;
- 41.3. The first defendant is ordered to pay interest on the aforesaid amount at the prescribed rate from the date of judgment to the date of payment;
- 41.4. The first defendant is ordered to pay the plaintiff's costs on the party and party scale, scale B.

A handwritten signature in black ink is written over a solid black rectangular redaction box. The signature is cursive and appears to be 'C.A. Read'. A horizontal line is drawn across the page, passing through the signature and the redaction box.

C.A READ
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

DATE: 06 JUNE 2025

Heard on: 04 June 2025

Delivered on: 06 June 2025

Appearances:

For the Applicant: Adv. N. Raji

Instructed by: Spruyt, Lampercht and Du Preez Attorneys

For the 1st, 4th and 5th respondent: Unknown

Instructed by: State Attorney

For the Second respondent: No appearance

Instructed by: Unknown

For the Third respondent: No appearance

Instructed by: Unknown