

REPUBLIC OF SOUTH AFRICA



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

Case Number: 2021/6576

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
12/06/2025 DATE  SIGNATURE	

In the matter between:

SHAUN JACOBS

PLAINTIFF

And

MINISTER OF POLICE

FIRST DEFENDANT

**EKURHULENI METROPOLITAN
MUNICIPALITY**

SECONDD DEFENDANT

KOAHELA P GEORGE

THIRD DEFENDANT

MAASHEGO LERATO

FOURTH DEFENDANT

JUDGMENT

TWALA J

Introduction

[1] The plaintiff has instituted three distinct claims for damages against the defendants in the following terms:

- 1.1 unlawful detention against the first defendant;
- 1.2 unlawful arrest against the second to the fourth defendants; and
- 1.3 defamation against the second to fourth defendants.

[2] All the three claims are defended by the respective defendants. The plaintiff testified and called one witness to substantiate his claim whilst the second to fourth defendants called only one witness, the third defendant who was the arresting officer at the time of the occurrence. The first defendant did not call any witnesses.

Background

Plaintiff's Case

[3] The plaintiff testified that he came home from work at about 20H00 as he was working late on 1 March 2019 and found that the second to fourth defendants have set up a roadblock on a public road but just in front of the driveway to his gate. However, he was allowed to drive into his yard. He got into his house and spoke to his wife about the unreasonableness and disturbance caused by roadblock and decided to approach the officers to find out if they would be keen to relocate it to oppose the vacant land not far from his house. The officers just ignored him. When he asked for their details, the third respondent became aggressive, pushed

him with both his hands on his chest and told him to get into his house otherwise he will arrest him.

- [4] Realising that the officers were continuing with the roadblock and ignoring his attempt to speak to them, he went back to his house and fetched his cellphone which he had placed in a charger as its battery was low. His primary intention was to photograph or take a video of the roadblock so that he would lay a complaint with the authorities about how it was set up in front of his house. He was not rude or aggressive towards the officers, but when they saw that he was recording a video of the scene and especially the vehicle, the third defendant pounced on him and arrested him without explaining his rights and what he was arrested for.
- [5] He was aggressively cuffed as a result at some point he felt numbness in his fingers and when he requested the officer, the third defendant to loosen the cuffs, he just ignored him. He was then driven to the Edenvale police station with his hands cuffed to his back. On the way to the police station, he heard the third and fourth defendants talking about *crimen injuria* and he asked them as to when exactly did he insult them. He informed them that he knows what *crimen injuria* means because he is an attorney. They still did not answer him but warned him that they will teach him a lesson.
- [6] He sat on the wooden bench at the police station with his hands still cuffed. Both the third and fourth defendants wrote their statements, and the third defendant finished first and gave his statement to the fourth defendant. After the fourth defendant finished writing her statement, the officers approached the front desk and completed some forms whereafter the handcuffs were taken off and he was led to the cells. He was locked up in a sticking cell with no running water from the tap but could only get drinking water from the shower. The toilet was not flushing and the shower also ended up flooding. There were no lights in the cell he was kept in and he could not sleep the whole night since there were not enough blankets and or mattresses for all the arrestees.

- [7] People who were arrested and brought to the police station after him were released on bail, but he was not released. When his wife enquired about his release on bail she was told that he has to sit. He was only released on 2 March 2019 at 10H00 on a R1000 bail and warned to appear in court on 4 March 2019. He appeared in court on Monday 4 March 2019 before a magistrate who knew him and colleagues who were in court for other matters. The prosecutor called his matter in front of everyone and stated the charges of *crimen injuria* and that of interfering with the police in the execution of their duties.
- [8] The magistrate suggested that the case be referred to mediation because of the charge of *crimen injuria* as it was alleged that he said to the officers ‘ek praat nie met kaffirs nie’. On 29 March 2019 he attended mediation with his attorney, Mr Malatjie where the prosecutor said that if he pays R20 000 the matter will go away since it is a serious matter which is similar to the Momberg case where Ms Momberg was sentenced to three years imprisonment. He refused to pay the R20 000 and decided to make representations to the senior public prosecutor and attached the video that he took with his cellphone to the representations. In the end, the charges were withdrawn by the prosecutor.
- [9] The next witness was Mrs Maritjie Jacobs, who is wife of the plaintiff. The nub of her testimony was confirmation that her husband came home at about 20H00 on the 1 March 2019 and asked what time the officers set up the roadblock. She told him that it was about an hour ago which meant it was around 19H00. He said he was going to request the officers to move the roadblock to opposite the open veld down the road for it was unreasonable and disturbing when it is so close to their home. She watched through the window of their bedroom as he approached the officer who was immediately outside the gate, but the officer ignored him. He approached the second officer, and she also ignored him.
- [10] He then came back to the house and said he wanted his phone for he wanted to take a video of the roadblock so that he can make enquiries from the Metro Police

Department if it was lawful for the officers to set up a roadblock in front of his house. Immediately he came out of the gate and started to take the video, he was arrested, handcuffed and placed in the police vehicle. She asked the police where they were taking him, and they said Edenvale police station. She then changed her clothes and followed them to the police station.

[11] At the police station she kept asking when the plaintiff was going to be admitted to bail and the officers kept saying she must come back after an hour. It was only around 02H00 on 2 March 2019 that she was told that 'this one has to sit'. She came back at about 05H45 and waited for the plaintiff to be released on bail. She had witnessed some people who were arrested after the plaintiff being released since 22H00 on 1 March 2019 but not the plaintiff. She heard the plaintiff calling her from the bugler-frame of his cell whilst she was at the parking lot, and she advised him that she was being told to come back after an hour and nothing was happening.

[12] It was only around 19H00 that she was called and informed to pay a bail of R1 000 for the release of the plaintiff, but the plaintiff was only released around 22H00. The plaintiff would not speak to her about the incident and when they got home, he took a bath and went straight into bed.

[13] Both the plaintiff and his witness were cross examined at length but they steadfastly stood their ground. The plaintiff persisted that he was not drunk and rude to the police officers. He never directed any unsavoury words to the police officers. However, Mrs Jacobs conceded that she could not hear the conversation between the plaintiff and the officers since she was witnessing this incident from her bedroom window. She denied that she was driving the vehicle in which the plaintiff was a passenger as alleged by the officers.

Video Evidence

[14] A video was shown in court which showed the plaintiff moving almost along and next to the palisade fence of his house with the cellphone camera facing or directed at the metro police vehicles. There is an officer standing between the police vehicles with his back to the plaintiff, but he did not show any concern about the presence of the plaintiff. The third respondent, as he also acknowledged that it was his voice that was heard on the video speaking in IsiZulu, saying that he is now going to arrest him, arrested the plaintiff. The plaintiff's response in the video was that he is not fighting and the video was then switch off.

Defence Case

[15] It was the turn for Mr Koahela, the third respondent, to testify on behalf of the second to fourth respondents. His testimony was that they were directed by their superiors to set up a roadblock along Homestead Road in Kempton Park. As they were manning the roadblock, a white sedan vehicle approached being driven by a white lady with a man as her passenger. They stopped the vehicle and administered the breathalyser on the driver. The vehicle was smelling alcohol and the plaintiff who was a passenger indicated that this was his house. The plaintiff addressed them in a calm tone, and they allowed the vehicle to enter the yard.

[16] A few minutes later, the plaintiff came out of the house and shouted at the officers who were manning the roadblock and said, 'hey you, go fucking away from here, this is my house, you are disrupting my peace'. There were about seven to eight officers manning the roadblock with three to four marked motor vehicles of the second defendant. The plaintiff smelled of alcohol and was under the influence. He did not respond to the plaintiff's utterances and the plaintiff went on to the fourth defendant and repeated his former statements. However, the fourth defendant did not respond to the plaintiff.

- [17] The plaintiff was swearing at the officers and approached the motorists which were stopped at the roadblock, telling them that he was a lawyer and that these officers are corrupt and are not arresting anyone but just want money. He then reprimanded him and told him what he was doing was wrong, he must go back to his house otherwise he would arrest him for crimen injuria and interference with the work of the police officers on duty. He then removed him by guiding him with his hands into his gate where the plaintiff said 'ek praat nie met die kaffirs nie'. He felt bad by what was said by the plaintiff but was prevented from arresting him at the time because the plaintiff's dog came out and approached the plaintiff.
- [18] The plaintiff was intoxicated as he smelled of alcohol and his speech was blurred. After a few minutes the plaintiff came out of the house again and went to the motorists and gave them his business cards saying that he will represent them in court as these officers are corrupt. He did not believe that the plaintiff was a lawyer due to his conduct. He again warned him that he will arrest him for obstructing officers from doing their work. The plaintiff then took out his cellphone and recorded a video. He then said to the officers that he is taking the plaintiff in and arrested him at that time and the video switched off.
- [19] The plaintiff responded by saying that he was not fighting and he handcuffed him and placed him in the vehicle. He read him his rights and informed him of the charges against him. His wife came and he gave her the keys which were on the plaintiff and informed her that the plaintiff will be taken to Edenvale police station. They drove the plaintiff to the police station with his colleague Ms Mashigo who was driving the vehicle. He completed making his statement at the police station and handed the plaintiff and the docket to the police. He only uncuffed the plaintiff at about 22H00 when he completed opening the docket and the hand over to the police was done.
- [20] He further testified that he attended a mediation with regard to this case where the plaintiff, his attorney and the public prosecutor were in attendance. The attorney

for the plaintiff offered a sum of R3000 for the case against the plaintiff to be dropped and he refused to accept the offer as he wanted the matter to go to court. He does not know and was never advised why the matter was withdrawn by the senior public prosecutor.

[21] Under cross examination he refused to answer questions about the discrepancies in his statement and that of the fourth defendant saying that it does not want to incriminate himself. He could not explain why he did not arrest the plaintiff immediately he came out of his house for the second time since he had formed the intention to arrest him when he got into the house but was prevented by the presence of the plaintiff's dog. He conceded that at the time when he arrested the plaintiff, the plaintiff was not on the road where they were manning the roadblock but, on the pavement, next to the fence of his house.

Legal Framework

[22] It is apposite that the relevant provisions of the Criminal Procedure Act¹ are restated which provide the following:

“40 Arrest by peace officer without warrant

(1) A peace officer may without warrant arrest any person-

- (a) who commits or attempts to commit any offence in his presence;
- (b) ...
- (j) who wilfully obstructs him in the execution of his duty;
- (i) ...

Discussion

[23] There is no debate that the plaintiff was arrested by a peace officer, the metro police officer of Ekurhuleni Metropolitan Municipality and without a warrant.

¹ 51 of 1977

The issue to be determined is whether the arrest was lawful or not, having regard to the circumstances of the case. Put differently, whether the plaintiff's presence in that space at the time when the officers were conducting the roadblock was causing an obstruction on the officers in performing their duties and whether the plaintiff committed an offence of *crimen injuria* in the presence of the third defendant.

- [24] It is now a well-established principle of our law that a person's freedom and security are sacrosanct and protected by our Constitution. In *Mahlangu and Another v Minister of Police*,² the Constitutional Court dealing with this principle stated the following:

“it is trite now that public policy is informed by the Constitution. Our Constitution values freedom, understandably so when regard is had to how, before the dawn of democracy, the freedom of the majority of our people was close to non-existence. The primacy of “human dignity, the achievement of equality and the advancement of human rights and freedoms” is recognised in the founding values contained in section 1 of the Constitution. Section (7) (1) of the Constitution provides that the Bill of Rights enshrines the rights of all people in our country and affirms democratic values of human dignity, equality and freedom. These constitutional provisions and the protection of section 12 of the right of freedom and security of the person are at the heart of public consideration³”.

- [25] In *De Klerk v Minister of Police*,⁴ the Constitutional Court stated the following:

“The principles emerging from our jurisprudence can then be summarised as follows. The deprivation of liberty, through arrest and detention, is *per se prima facie* unlawful. Every deprivation of liberty must only be effected in a procedurally fair manner but must also be substantively justified by acceptable reasons⁵”.

² 2021 (2) SACR 595 (CC)

³ Id para 43

⁴ 2020 (1) SACR 1(CC)

⁵ Id para 62

- [26] It is trite that the plaintiff always has the onus of proving its case on a balance of probabilities. In a case where there are two mutually destructive versions, as in this case, the plaintiff can only succeed if he satisfies the Court on a preponderance of probabilities that his version is true and accurate and therefore acceptable and that the version of the defendant is false and should be rejected. It means therefore the onus is on the plaintiff to prove its case and when it is said that the plaintiff has discharged the onus which rested upon him on a balance of probabilities, it means that the Court is satisfied on a balance probability that he was telling the truth, and this version should therefore be believed and accepted.
- [27] In *Stellenboch Farmers' Winery Group Ltd and Another v Martell Et CIE and Others*⁶, where the Supreme Court of Appeal gave guidance as to the technique of dealing with mutually destructive versions as follows:

“The technique generally employed by courts in resolving factual disputes of this nature may conveniently be summarised as follows. To come to a conclusion on the disputed issues a court must make findings on (a) the credibility of the various factual witnesses; (b) their reliability; and (c) the probabilities. As to (a) [credibility], the court's finding on the credibility of a particular witness will depend on its impression about the veracity of the witness. That in turn will depend on a variety of subsidiary factors, not necessarily in order of importance, such as (i) the witness [s] candour and demeanour in the witness-box; (ii) his bias, latent and blatant; (iii) internal contradictions in his evidence; (iv) external contradictions with what was pleaded or put on his behalf, or with established fact or with his own extra curial statements or actions; (vi) the calibre and cogency of his performance compared to that of other witnesses testifying about the same incident or events. As to (b), a witness' [reliability] will depend, apart from the factors mentioned under (a)(ii), (iv) and (vi) above, on (i) the opportunities he had to experience or observe the event in question and (ii) the quality and integrity and independence of his recall thereof. As to (c) [probabilities], this necessitates an analysis and evaluation of the probability or improbability of each party's version on each of the disputed issues. In the light of its assessment of (a), (b) and (c) the court will then, as the final step, determine whether the party burdened with the onus of proof has succeeded in discharging it. The hard case, which will doubtless

⁶ [2003] (1) SA 11 (SCA)

be the rare one, occurs when a court's credibility findings compel it in one direction and its evaluation of the general probabilities in another. The more convincing the former, the less convincing will be the latter. But when all factors are equipoised probabilities prevail."⁷ [Words in square brackets and emphasis added.]

- [28] There is no explanation why the plaintiff, who is said to have been calm when he arrived at his house for the first time and said in calm voice to the police officers 'this is my house', would come out of the house in an aggressive manner and shout at the police officers to relocate the roadblock. However, the plaintiff says that as he persisted with his enquiry with the officers who were not interested in him, the third defendant's demeanour suddenly changed to aggressive and threatened to arrest the plaintiff when the plaintiff asked for their names and identities. He ordered the plaintiff to go back to his house and in fact pushed the plaintiff on his chest into his yard.
- [29] The third defendant said he had already formed the intention to arrest the plaintiff for interfering with the police officers' duties and *crimen injuria* when the plaintiff left the scene for the first time but was prevented from effecting the arrest by the plaintiff's dog. However, he could not explain why he did not arrest the plaintiff immediately the plaintiff came out of the yard the second time. According to the video recording, which was not disputed by the defendants, the plaintiff was taking a video of the scene which covered the roadblock and the metro police vehicles which were parked along the fence of the plaintiff's house at the time when he was arrested.
- [30] The plaintiff's witness also confirmed that the plaintiff was never aggressive towards the police officers but accepted that, as she was witnessing the whole incident from her bedroom window, she was unable to hear what was said by both parties. She also testified that the plaintiff was from work at the time and was not drunk as purported by the third defendant. It is my respectful view therefore that the conduct of the plaintiff in approaching the police officers and

⁷ Id at 141 – 15 G

enquiring if they could relocate the roadblock does not amount to interference and obstruction with the police officer in the execution of his lawful duties.

- [31] On the video, one of the officers exclaimed that the plaintiff was taking photographs of their vehicles and the third defendant responded by saying that he was now going to arrest the plaintiff for interference. There was no mention at that stage of any other charge except for interference with the police in the execution of their duties. That explains why the third defendant did not arrest the plaintiff when he pushed him into his yard or house in the first instance nor immediately when he came out of the house in the second instance. It is apparent from the video that all the plaintiff did which actuated the arrest was recording a video of the scene and the metro police vehicles.
- [32] I am of the considered view therefore that the arrest of the plaintiff without a warrant was unjustified and unlawful since there was no offence committed by the plaintiff in the presence of the arresting officer nor did the plaintiff interfere with the police officers in the execution of their duties. I hold the view that citizens are entitled to ask questions and are entitled to explanations from the law enforcement officers in respect of their conduct and that cannot be regarded as interference with the execution of their lawful duties.
- [33] The plaintiff is heard in the video at the time of the arrest saying, in calm voice, that he will not fight the officers. This is contrary to the testimony of the third defendant that the plaintiff was aggressive towards the officers. Again, I accept the contentions of the plaintiff that he was never aggressive towards the officers. Had he been, the officer who appears on the video would have paid attention to the plaintiff, but he did not even turn around to look at the plaintiff who was approaching him from behind. The plaintiff would have been a very brave man to confront seven or eight officers in an aggressive manner.
- [34] It is telling that the defendants chose not to call any witnesses other than the third defendant when the roadblock was mended by about eight officers. The fourth

defendant was present in court for the first two days of the hearing but chose not to testify and the second to fourth defendants chose to close their case after the testimony of the third defendant. There was no explanation proffered as to why the fourth defendant did not testify nor the other officers who were manning the roadblock.

- [35] In *Tshishonga v Minister of Justice and Constitutional Development and Another*⁸ the Court dealing with the issue of not calling potential witnesses stated the following:

“The failure of a party to call a witness is excusable in certain circumstances, such as when the opposition fails to make out a prima facie case. But an adverse inference must be drawn if a party fails to testify or produce evidence of a witness who is available and able to elucidate the facts, as this failure leads naturally to the inference that he fears that such evidence will expose facts unfavourable to him or even damage his case. That inference is strengthened if the witnesses have a public duty to testify.”⁹

- [36] There is no dispute that the first defendant received the plaintiff from the metro police and detained him in order to investigate the charges levelled against him by the metro police officers. The first defendant did not call any witnesses nor tendered any evidence regarding the detention of the plaintiff. The detention of the plaintiff flowed from an unlawful arrest and can therefore not be lawful in the circumstances. I hold the view therefore that the detention of the plaintiff from the time of his arrest to the time of his release the next day, which is a period of twenty-six hours, is unjustified and unlawful.
- [37] It is trite that defamation as regulated by the *actio iniuriarum*, occurs when a statement has a negative impact on someone’s reputation to the point that it alters the community’s perception of them. For the plaintiff to successfully claim defamation, he must demonstrate that there was publication of a defamatory statement which was intentional and was intended to harm the reputation of the

⁸ [2007] (4) SA 135 (LC)

⁹ *Id* para 112

plaintiff. Further, that the publication violated the plaintiff's right to good name, reputation and dignity.

[38] In *Khumalo and Others v Holomisa*¹⁰ the Constitutional Court stated the following when dealing with defamation and its requirements:

“At common law, the elements of the delict of defamation are –

- (a) the wrongful and
- (b) intentional
- (c) publication of
- (d) a defamatory statement
- (e) concerning the plaintiff.

It is not an element of the delict in common law that the statement be false.¹⁴ Once a plaintiff establishes that a defendant has published a defamatory statement concerning the plaintiff, it is presumed that the publication was both unlawful and intentional. A defendant wishing to avoid liability for defamation must then raise a defence which rebuts unlawfulness or intention.¹⁵ Although not a closed list,¹⁶ the most commonly raised defences to rebut unlawfulness are that the publication was true and in the public benefit;¹⁷ that the publication constituted fair comment¹⁸ and that the publication was made on a privileged occasion.¹⁹ Most recently, a fourth defence rebutting unlawfulness was adopted by the Supreme Court of Appeal in *National Media Ltd and Others v Bogoshi*.²⁰ In that case, Hefer JA, after a careful analysis of the development of a similar defence in Australia, England and the Netherlands, held that:

‘... the publication in the press of false defamatory allegations of fact will not be regarded as unlawful if, upon a consideration of all the circumstances of the case, it is found to have been reasonable to publish the particular facts in the particular way and at the particular time.

¹⁰ (CCT53/01) [2002] ZACC 12; 2002 (5) SA 401; 2002 (8) BCLR 771 (14 June 2002)

In considering the reasonableness of the publication account must obviously be taken of the nature, extent and tone of the allegations. We know, for instance, that greater latitude is usually allowed in respect of political discussion (*Pienaar and Another v Argus Printing and Publishing Co Ltd* 1956 (4) SA 310 (W) at 318 C-E), and that the tone in which a newspaper article is written, or the way in which it is presented, sometimes provides additional, and perhaps unnecessary, sting. What will also figure prominently is the nature of the information on which the allegations were based and the reliability of their source, as well as the steps taken to verify the information. Ultimately there can be no justification for the publication of untruths, and members of the press should not be left with the impression that they have a licence to lower the standards of care which must be observed before defamatory matter is published in a newspaper.” (at 1212G - 1213A).¹¹”

- [39] The evidence before this Court is that the third and fourth defendants made statements to the South African Police Service in order to report a crime of *crimen injuria* and interfering or obstructing the police in the execution of their lawful duties intending to open a criminal investigation against the plaintiff. The third defendant testified that he does not know why the charges were withdrawn against the plaintiff as he has been waiting to testify at the plaintiff’s criminal trial.
- [40] The issue that needs to be determined by this Court is whether the making of a statement or deposing to an affidavit to the police with a view of opening a criminal case amount to defamation or not in the event that no prosecution follows. Put another way, does the making of a statement to the police with the intention to open a criminal investigation against the

¹¹ Id para 18

plaintiff amount to publication of the statement which meets the requirements of defamation.

[41] In his heads of argument, counsel for the plaintiff referred this Court to the case of *Louw v Moretsele*¹² wherein, the Court dealing with the issue of a statement which is made to the police with the intention to open a criminal investigation stated the following:

“The legal excuse the respondent espoused in his plea is that he was simply reporting an offence to the police and did not intend to injure the good name of the appellant. The upshot of what had been stated by the respondent in his plea, taken into context, is that there was justification in law to report what he considered to be an offence against him. *Crimen inuria* is a common law crime and pointing a firearm is a statutory one. There is a generally accepted recognition in our law that for these crimes to be prosecuted, they need to be reported to the police first for investigation purposes. Historical background has shown that a large part of our community is not *au fait* with the law. As a result, they report to the police as the first port of call to the justice system, any conduct which in their view offends them. The National Prosecuting Authority is entrusted with the authority to sift through and determine whether a crime has been committed or not, and where it has, to prosecute. In addition, people are generally encouraged to report crimes instead of taking the law into their own hands.¹³

Our law is settled that one of the defences normally raised by litigants who are accused of making defamatory statements is that the statement was ‘privileged’. This means that it was made in a context that is generally deserving of protection either for policy, legal, moral, or societal duty or interest reasons. Even though the defence of privilege was not explicitly stated in the plea, the averments in the plea are in my view, sufficient to support this defence, but most importantly, the respondent demonstrated during the trial that he had a legal excuse to report an offence. To conclude that his defence should not succeed because it was not explicitly spelled out in his plea, is to

¹² (A44/2022) [2023] ZAMPMBHC 30 (18 May 2023)

¹³ Id para 25

elevate form over substance, which is normally discouraged in our law. After all, the respondent was not required to state the law, but the facts from which such a conclusion of the law can be deduced. The trial Court was therefore entitled, objectively so, to reach the finding that the defence of privilege was properly raised and canvassed during the trial¹⁴.”

[42] I am of the view that the above case does not support the case of the plaintiff in that the making of a statement to the police with the intention to open a criminal investigation does not amount to publication of a statement as envisaged in defamation cases. A false statement made to the police with the intention to institute a criminal investigation is not itself defamatory unless it is published or disseminated to a wider audience. Furthermore, the plaintiff has failed to demonstrate that the third and fourth defendants had the intention to injure his good name.

[43] It is not sufficient for the plaintiff to say that he appeared in open Court before a magistrate who knew him and some of his colleagues who were present. I hold the view therefore that, although it was not pleaded by the third and fourth defendants, it is clear in the evidence of the third defendant that he and his colleague made the statements to the police with the intention that a criminal investigation be opened. He does not know why the case was then withdrawn but the intention was clear that he made a statement to open a case for investigation against the plaintiff. It is my respectful view that the claim for defamation falls to be dismissed.

[44] There is uncontroverted evidence before this Court that the plaintiff was handcuffed from the time of his arrest at 20H00 until the time he was handed over to the police at 22H00. It appears from the photographs that

¹⁴ Id para 26

the handcuffs were very tight to the extent that they left some red marks on the plaintiff's wrists when they were removed. It is on record that officers who arrested the plaintiff did not entertain his request that they loosen the handcuffs as his fingers felt numb at some point.

[45] In assessing damages for the unlawful arrest and detention, it is necessary to consider that the primary purpose is not to enrich the aggrieved party but to offer him some much-needed solatium for his injured feelings. It is therefore important that serious attempts be made to ensure that the damages awarded are commensurate with the injury inflicted.

[46] In *Minister of Safety and Security v Tyulu*¹⁵ the Supreme Court of Appeal dealt with the issue of awarding damages arising from the *actio iniuriarum* and stated the following:

“In the assessment of damages for unlawful arrest and detention, it is important to bear in mind that the primary purpose is not to enrich the aggrieved party but to offer him or her some much-needed solatium for his or her injured feelings. It is therefore crucial that serious attempts be made to ensure that the damages awarded are commensurate with the injury inflicted. However, our courts should be astute to ensure that the awards they make for such infractions reflect the importance of the right to personal liberty and the seriousness with which any arbitrary deprivation of personal liberty is viewed in our law. I readily concede that it is impossible to determine an award of damages for this kind of *injuria* with any kind of mathematical accuracy. Although it is always helpful to have regard to awards made in previous cases to serve as a guide, such an approach if slavishly followed can prove to be treacherous. The correct approach is to have regard to all the facts of the particular case and to determine the quantum of damages on such facts (*Minister of Safety and Security v Seymour* 2006 (6) SA 320

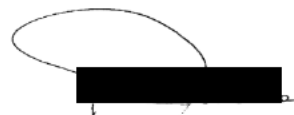
¹⁵ (327/2008) [2009] ZASCA 55; 2009 (5) SA 85 (SCA); 2009 (2) SACR 282 (SCA); [2009] 4 All SA 38 (SCA) (27 May 2009)

(SCA) 325 para 17; *Rudolph & others v Minister of Safety and Security & others* (380/2008) [2009] ZASCA 39 (31 March 2009) (paras 26-29)¹⁶.”

[47] Considering that the third and fourth defendants knew that the plaintiff was an attorney even before effecting the arrest, though the third defendant testified that he even doubted that he was an attorney due to his behaviour, it was uncalled for in the first place to handcuff him so tight that the handcuffs made marks on his wrists. It was unnecessary to detain the plaintiff for twenty-six hours before admitting him to bail when his home address was known. I am of the respectful view that the horrible treatment the plaintiff suffered at the hands of the metro officers and the South African Police at Edenvale police station was unnecessary and he deserve to be compensated fairly and adequately.

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

1. The first defendant is liable to pay the plaintiff damages in the sum of R100 000.
2. The second defendant is liable to pay the plaintiff damages in the sum of R150 000.
3. The first and second defendants are liable to pay the costs of this case, jointly and severally the one paying the other to be absolved, including costs of counsel on scale C.
4. The plaintiff's claim against the third and fourth defendants is dismissed with costs.



TWALA ML
Judge of the High Court of South Africa
Gauteng Division, Johannesburg

¹⁶ Id para 26

DATE OF HEARING: 12 - 15 May 2025

DATE JUDGMENT DELIVERED: 12 June 2025

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Delivered: This judgment and order was prepared and authored by the Judge whose name is reflected and 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 of the order is deemed to be the 12 June 2025.

