



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, BHISHO)**

Not reportable
CASE NO. 725/2021

In the matter between:

L[....] M[....]

Plaintiff

and

MINISTER OF POLICE

First defendant

NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

Second defendant

JUDGMENT

LAING J

[1] This is an action for damages arising from the plaintiff's alleged unlawful arrest and detention. A claim in relation to alleged malicious prosecution was abandoned at the commencement of trial.

[2] The plaintiff pleaded that officers of the South African Police Services (SAPS) arrested him on 7 February 2021 at his home, without a warrant. This was done in

front of his family and members of the public. He was taken to the Qonce police station where he was charged with rape, after which he was detained overnight in the police cells. On 8 February 2021, the plaintiff appeared in the Zwelitsha Magistrates' Court, where he pleaded not guilty to the rape of a minor. The public prosecutor successfully opposed the granting of bail, and the plaintiff was detained at the Qonce prison until 24 February 2021, when he was finally released on bail. He made several further appearances in court before the charge was withdrawn on 24 April 2021. Consequently, the plaintiff claimed damages of R 150 000 for his initial overnight detention, as well as R 350 000 for the further detention of 16 days.

[3] The defendant pleaded that the arresting officers had obtained statements from the various parties involved, including the minor ('Q') and her mother, Ms E[....] M[....]. In that regard, it was alleged that the plaintiff had raped Q on two separate occasions. A J 88 medico-legal report supported the allegation. Consequently, pleaded the defendant, the officers acted in terms of the provisions of section 40 of the Criminal Procedure Act 51 of 1977 ('CPA'), which permitted an arrest without a warrant when there was a reasonable suspicion that the suspect had committed an offence referred to in Schedule 1 thereof. It was further pleaded that the officers informed the plaintiff of his constitutional rights and dealt with the arrest in accordance with the procedures set out in section 50 of the CPA. He was brought before court within 48 hours. The plaintiff's further period of detention was because of orders made by the court.

Issues to be decided

[4] The matter proceeded to trial for the determination of merits and quantum. Both parties led witnesses, whose evidence will be considered more closely in the paragraphs that follow.

[5] The primary issues for determination are: (a) whether the officers had reasonable grounds for carrying out the arrest; (b) whether they properly exercised their discretion in doing so, rather than consider other means to secure the plaintiff's attendance at court; (c) whether the officers' unlawful conduct, if any, resulted in the

unlawful detention of the plaintiff and the harm that he suffered; and (d) what quantum of damages, if any, ought to be awarded to the plaintiff.

[6] An overview of the relevant principles is set out in the paragraphs below.

Legal framework

[7] In terms of section 40(1) of the Criminal Procedure Act 51 of 1977 ('CPA'), a peace officer may arrest a person without a warrant in several circumstances. These include a situation where the officer reasonably suspects that the person in question has committed an offence in Schedule 1 of the CPA,¹ such as rape.

[8] For an officer to exercise his or her powers, the requisite jurisdictional facts must exist. In *Duncan v Minister of Law and Order*,² the erstwhile Appellate Division held, per Van Heerden JA, that these comprised the following: the arrestor must be a peace officer; he or she must entertain a suspicion; it must be a suspicion that the arrestee committed a Schedule 1 offence; and the suspicion must rest on reasonable grounds.³ The meaning of 'reasonable grounds' was considered in *R v Van Heerden*.⁴ To that effect, Galgut AJ stated that the term must be interpreted objectively, and the grounds must be those that would induce a reasonable person to have a suspicion.⁵ In *Mabona and Another v Minister of Law and Order and Others*,⁶ Jones J confirmed that the test was objective. He stated as follows:

'Would a reasonable man in the second defendant's position and possessed of the same information have considered that there were good and sufficient grounds for suspecting that the plaintiffs were guilty of conspiracy to commit robbery or possession of stolen property knowing it to have been stolen? It seems to me that in evaluating his information a reasonable man would bear in mind that the section authorizes drastic police action. It authorizes an arrest

¹ Section 40(1)(b).

² [1986] 2 All SA 241 (A).

³ At 248.

⁴ [1958] 3 All SA 125 (T).

⁵ At 128.

⁶ 1988 (2) SA 654 (SE).

on the strength of a suspicion and without the need to swear out a warrant, i.e. something which otherwise would be an invasion of private rights and personal liberty. The reasonable man will therefore analyse and assess the quality of the information at his disposal critically, and he will not accept it lightly or without checking it where it can be checked. It is only after an examination of this kind that he will allow himself to entertain a suspicion which will justify an arrest. This is not to say that the information at his disposal must be of sufficiently high quality and cogency to engender in him a conviction that the suspect is in fact guilty. The section requires suspicion but not certainty. However, the suspicion must be based upon solid grounds. Otherwise, it will be flighty or arbitrary, and not a reasonable suspicion.’⁷

[9] The principle remains the same. A court must apply an objective test to decide whether the suspicion held by an officer was reasonable. In the recent decision of *Biyela v Minister of Police*,⁸ the Supreme Court of Appeal, per Musi AJA, held as follows:

‘ . . . The standard of a reasonable suspicion is very low. The reasonable suspicion must be more than a hunch; it should not be an unparticularized suspicion. It must be based on specific and articulable facts or information. Whether the suspicion was reasonable, under the prevailing circumstances, is determined objectively.

. . . What is required is that the arresting officer must form a reasonable suspicion that a Schedule 1 offence has been committed based on credible and trustworthy information. Whether that information would later, in a court of law, be found to be inadmissible is neither here nor there for the determination of whether the arresting officer at the time of arrest harboured a reasonable suspicion that the arrested person committed a Schedule 1 offence.

. . . The arresting officer is not obliged to arrest based on a reasonable suspicion because he or she has a discretion. The discretion to arrest must be exercised properly. Our legal system sets great store by the liberty of an

⁷ At 658E–H. The court also referred to *S v Nel and another* 1980 (4) SA 28 (E).

⁸ 2023 (1) SACR 235 (SCA).

individual and, therefore, the discretion must be exercised after taking all the prevailing circumstances into consideration.’⁹

[10] The requisite jurisdictional facts must exist before an arrest without a warrant can be carried out. In doing so, however, the officer must still exercise a discretion in deciding whether to proceed with the arrest. In *Minister of Safety and Security v Sekhoto and another*,¹⁰ the Supreme Court of Appeal, per Harms DP, observed that an officer is entitled to exercise such a discretion as he or she deems fit, provided that he or she stays within the bounds of rationality.¹¹

[11] The above principles constitute the basic legal framework for the present matter. A summary of the evidence follows.

Sgt Ntsikelelo Mbokodo

[12] The witness testified that he received the docket from the charge office for investigation. It contained a statement that was taken from Q’s mother, Ms M[....], who was the complainant in the matter. This was done on 4 February 2021. The docket also contained a J 88, indicating that Q’s hymen was absent. Sgt Mbokodo obtained a further statement from the complainant on 6 February 2021. To that effect, she indicated that she had been at home on 23 August 2020 with her children, Q and L. The plaintiff had also been present. At some point, Q left the house to use the outside toilet; she was followed shortly afterwards by L and the plaintiff. Q did not return for a while, prompting the complainant to enquire her whereabouts from L, who indicated that both Q and the plaintiff were in the toilet. The complainant asked L to call Q, which he did. Later, the complainant served supper. Q refused to eat and threw her plate on the table. The complainant followed Q to the kitchen and asked her what was wrong. Q was crying, saying that there was no butter for the bread, and that things were not ‘OK.’ The complainant promised that she would find work, Q was not to worry. That night, the complainant noticed that Q could not sleep. In the morning, the complainant found Q in the kitchen, crying. She asked her again what

⁹ At paragraphs [34] to [36].

¹⁰ [2011] 2 All SA 157 (SCA).

¹¹ At paragraph [39].

was wrong and to explain if anything had happened in the toilet. To this, Q responded that the plaintiff had raped her. She said that the plaintiff had raped her previously, too, when she had visited her uncle in Stutterheim. The complainant inspected Q's underwear and noticed that it was stained with semen. She summoned her sisters, including the mother of the plaintiff, and informed them what Q had said. The plaintiff protested, saying that Q had called him into the toilet. The situation remained unresolved. A few months later, the complainant left Q with her younger sister so that she could receive medical treatment. During this time, Q alleged that the sister's boyfriend, a Mr Siphiwo Mata, raped her while she had been sleeping with her cousins.

[13] Sgt Mbokodo went on to testify that he and a colleague, Sgt Sipho Jack, also obtained a statement from Q. The girl alleged that the plaintiff had raped her on two occasions.

[14] The officers went to the plaintiff's home in Stutterheim, where they confronted him with the allegations. The plaintiff was shocked and did not respond. The officers explained his rights and arrested him. Sgt Mbokodo stated that the arrest had been carried out on the strength of the complainant's statements, the J 88, and Q's statement. He had been in a hurry to make the arrest because the plaintiff had allegedly threatened to kill Q after having raped her. The officers placed the plaintiff inside an unmarked police vehicle and took him to the Qonce police station, where they again explained his rights before charging him with two counts of rape. The plaintiff denied the first incident, which allegedly took place in 2018, but was unable to account for the more recent incident in 2020. The officers placed him in custody because they were of the view that they had sufficient evidence against him.

[15] Sgt Mbokodo testified that he had attempted to obtain a statement on 6 February 2021 from Q's cousin, L, who had been six years old at the time. L could only make a general allegation that the plaintiff had raped Q. Sgt Mbokodo recorded this in his own statement. He admitted during cross-examination that this had been an additional factor in persuading him to carry out the arrest. The information that he obtained from L corroborated the statements that he obtained from the complainant and Q.

[16] While under cross-examination, Sgt Mbokodo confirmed that he had obtained a second statement from the complainant to address aspects that had not been covered in her first statement. An example of this was why the incidents were not reported sooner. He accepted that this had given rise to contradictions between the two statements. As to why he had not attempted to obtain a warrant, Sgt Mbokodo explained that the arrest was carried out over a weekend, based on what he regarded to be a strong case against the plaintiff. Threats had also been made against Q. He admitted that Q had implicated Mr Mata in a separate incident, which led to his arrest. Charges were subsequently withdrawn at the complainant's insistence.

Sgt Sipho Jack

[17] The next witness for the defendant was Sgt Jack, who confirmed that he had had access to the docket. He had read the complainant's statement in which she implicated the plaintiff in the rape of Q. He had also seen the J 88 in which it was suggested that Q had been raped.

[18] Sgt Jack's testimony mostly corroborated that of Sgt Mbokodo. The officers visited the complainant on 6 February 2021, and Sgt Mbokodo obtained a further statement. Sgt Jack obtained a statement from Q, who had been nine years old at the time. The girl said that the plaintiff had raped her over the Easter weekend in 2018 in Stutterheim. This had taken place inside a toilet. A similar incident occurred in August 2020. Q told Sgt Jack that she had not reported the incidents earlier because the plaintiff had threatened to kill her; she only revealed what had happened after persistent questioning from the complainant.

[19] Sgt Jack testified that he obtained a statement from the complainant's younger sister on 7 February 2021. Once the officers had considered the available information, they proceeded to Stutterheim to arrest both the plaintiff and Mr Mata. They took the men to the Qonce police station, where they charged them with rape. Sgt Jack completed the necessary warning statements. He confirmed that the plaintiff had denied the allegations.

[20] Under cross-examination, Sgt Jack said that they had not sought a warrant because the arrest was carried out over a weekend. Furthermore, Q was a minor; she had been threatened. He confirmed that they had arrested the plaintiff based on the complainant's statements, the J 88, and the statements obtained from Q and the complainant's younger sister. He said that he had been responsible for the completion of the bail information form. In that regard, he had confirmed that the plaintiff's address was verified, that the plaintiff had cooperated with the police, that the plaintiff would not interfere with the investigation, and that he would not commit a further offence. Sgt Jack admitted that he had indicated that the plaintiff could easily evade arrest if released but could not recall what had informed his opinion at the time. He also admitted that he had been opposed to the granting of bail; this was mainly because the plaintiff had no alternative address.

W/O Thokozile Mfakadolo

[21] The defendant called W/O Mfakadolo, who was the investigating officer for the matter. She confirmed that the plaintiff had been arrested on 7 February 2021 and that he had appeared in court on 8 February 2021. She indicated that she had initially been opposed to the granting of bail because of the seriousness of the offence. The plaintiff had been charged with the rape of a nine-year-old. The case was postponed until 16 February 2021, but the unavailability of the investigating officer, as well as the docket, meant that the case was postponed, again, until 24 February 2021 for a formal bail application. In preparation, W/O Mfakadolo consulted with the complainant, who indicated that she was not opposed to the granting of bail because the plaintiff resided in Stutterheim; the complainant and her family, including Q, resided at Noncampa, in the Qonce district. She requested, however, that the plaintiff be ordered not to have contact with her family. Consequently, W/O Mfakadolo did not oppose the plaintiff's bail application. On 24 February 2021, the court granted bail in the amount of R 800.

[22] The witness testified, under cross-examination, that a record of any previous convictions, i.e. the SAP 69, would not have been available on the date of the plaintiff's first court appearance. This was because his fingerprints were only

obtained on 7 February 2021. The fingerprints would have been sent to the Local Criminal Records Centre (LCRC), which would have taken at least a week to prepare the relevant SAP 69. The record in question was essential for purposes of deciding whether to oppose the granting of bail. W/O Mfakodolo stated that her involvement in the matter only began on or after 16 February 2021. She confirmed that, on 14 April 2021, the matter was struck from the roll. She obtained a withdrawal statement from the complainant on 20 May 2021. W/O Mfakadolo was satisfied that the case had been handled correctly.

Mr L[....] M[....]

[23] The plaintiff testified on his own behalf. He stated that he had received schooling to the level of grade 10 before finding employment as a herder on a farm. He resided in Stutterheim with his mother and stepfather, was unmarried, and had a child who stayed with him. He was an assistant minister at the local Zionist church. At the time of his arrest, he had been 19 years old. In that regard, the plaintiff explained that a plainclothes police officer, Sgt Mbokodo, had questioned him at his home before handcuffing him in front of other members of the community and taking him to the Qonce police station where he was charged. He was accompanied by Mr Mata, who had also been apprehended. The plaintiff said that he had told the police that he did not rape Q; the officers retorted that they knew the truth and that he was lying. They locked him inside a police cell, which was dirty and had an open toilet that lacked privacy. He slept on the cement floor, using dirty blankets; there was no mattress. On the following day, the plaintiff appeared in the Zwelitsha Magistrates' Court. The matter was postponed, and he was transferred to the Qonce prison. He was kept in a dirty cell that he shared with 17 other prisoners. Their meals were inadequate. During that time, a fellow inmate attempted to rape him. The incident prevented the plaintiff from sleeping. The plaintiff returned to court on 16 February 2021, but the matter was postponed again until 24 February 2021, when the court set bail at R 800 and released the plaintiff. Subsequently, the matter resumed on 14 April 2021 but was struck from the roll.

[24] Upon his return to the community, the plaintiff experienced hostility and suspicion. While some of the community believed in his innocence, others perceived

him to be a rapist and did not want him near their children. His health was affected, too. The plaintiff had since been successful in making efforts to demonstrate that he was not the person that some people believed him to be.

[25] While under cross-examination, the plaintiff made no comment on the evidence of the police officers. He said, however, that he was unaware of the results of any analysis of the semen found on Q's underwear. He also said that the J 88 never identified him as the person who allegedly raped the child. The plaintiff asserted that he had been detained without proper evidence and pointed out that Mr Mata had been implicated, too.

Assessment of the evidence

[26] The first of the plaintiff's witnesses, Sgt Mbokodo, made a satisfactory impression. Despite an inherent bias by reason of the witness's employment by the defendant, this did not undermine the overall objectivity of his testimony. The plaintiff's legal representative was critical of his testimony, but to the extent that Sgt Mbokodo was argumentative, this could be attributed to how cross-examination was conducted as well as to the difficulties caused by occasional deficiencies in translation. The witness acknowledged several contradictions between the statements obtained from the complainant but these cannot, in any way, be described as material. His explanation for not having obtained a statement from L was plausible; the child was six years old and could not say when or where Q was allegedly raped. Similarly, his explanation for why the incidents had not been reported sooner was apparent from the complainant's statement; the family had attempted to resolve the matter amongst themselves. There was little reason to doubt Sgt Mbokodo's credibility. He was, moreover, a reliable witness because of his direct involvement in the investigation and subsequent arrest of the plaintiff.

[27] Turning to Sgt Jack, he, too, made a satisfactory impression, notwithstanding an inherent bias as an employee of the defendant. There were shortcomings in his evidence, but he readily conceded these, such as the failure to have questioned Q about the contents of the J 88, the failure to have ensured that proper entries were made in the investigation diary, and the failure to have provided a clear explanation

for the details given in the bail information form. Nevertheless, he explained clearly why the officers had not obtained a statement from L and why they had proceeded with the arrest. More importantly, his testimony corroborated that of Sgt Mbokodo regarding the statements obtained from the complainant and Q. The plaintiff was irrefutably implicated in the rape of Q on two separate occasions. Overall, Sgt Jack's credibility could not seriously be challenged. His reliability, too, remained intact.

[28] Regarding W/O Mfakadolo, her involvement was limited to the events from 16 February 2021 onwards. She played no role in the arrest of the plaintiff. For reasons that will become apparent, it is unnecessary to consider her testimony much further.

[29] The plaintiff, puzzlingly, did not make a favourable impression. He provided details about his personal circumstances and his incarceration, as well as the impact that this had had on his dignity and reputation. He was, nevertheless, surprisingly reticent in advancing any comment, at all, on the statements made by the complainant and Q. He never attempted to refute the contents thereof or to explain how or why the complainant and her child would have made such damning allegations against him. If anything, then his testimony simply amounted to the contention that there had been no evidence against him, nothing more. An example of this is the following exchange that took place between the plaintiff and counsel for the defendant:

'MR M[....]:	I would like to ask [about] the accusations that are being put.
MS VAN VUUREN:	We will cover the grounds.
INTERPRETER:	Pardon?
MS VAN VUUREN:	I will cover the grounds for you. Sergeant Mbokodo said that the initial statement made by E[....] M[....] as I did show to you suggested that you were the person responsible for the rape. They then did a further investigation and the complainant and the so-called victim pointed to you as the person responsible for the rape. The J 88 also suggested that [Q's] hymen was absent. Those are the

reasonable grounds for your arrest. Do you have a comment to that?

MR M[....]: What I would like to know since she was medically checked by the doctor, I would like to know what the sperms— results of the sperms— came back saying they were from whom.

MS VAN VUUREN: . . . I am asking for your comment on that. You can say you either have a comment or you do not have a comment. But you are not here to ask me questions.

MR M[....]: So the problem is that as I am listening . . . I cannot answer some questions because I do not know what the sperm came— results of the sperm— came back saying it is whom from the hospital.'

[30] A similar exchange took place later in relation to what Q had told the officers, to which the plaintiff merely stated that he had heard no-one implicate him by name. He added, too, that the J 88 never implicated him directly.

[31] It would have been expected of the plaintiff to have roundly and unequivocally protested his innocence. It is odd that he failed to do so. At the least, his testimony served to enhance the officers' credibility as witnesses and to support, rather than undermine, their evidence to the effect that there had been a basis for their suspicions. Having assessed the witnesses, the probabilities are that the circumstances of and reasons for the plaintiff's arrest were as presented by Sgt Mbokodo and Sgt Jack. There is no reason why their evidence in this regard should be rejected.

Discussion

[32] An arrest is prima facie wrongful and unlawful. This is trite, as De Vos J pointed out in *Ralekwa v Minister of Safety and Security*.¹² It is well-established that the defendant bears the onus of proving that the arrest was lawful.¹³

[33] The defendant pleaded that section 40(1) of the CPA permitted the arrest of the plaintiff without a warrant. In the present matter, the key issue for determination is whether the fourth jurisdictional fact, as described in *Duncan*, existed at the time of the arrest. The court must decide whether the officers' suspicion rested on reasonable grounds. An objective test must be applied, as held in *Van Heerden* and confirmed in *Mabona*.

[34] The uncontested evidence is that, when the officers initially obtained the docket, it comprised the complainant's first statement as well as the J 88. Not satisfied with that, the officers visited the complainant to obtain a further statement that was more comprehensive, and which satisfied their requirements as trained officers attached to the Family Violence, Child Protection, and Sexual Offences (FCS) Unit. They also obtained a statement from Q. They could not accept a statement from L because he was too young and could not say where and when the rapes had occurred. Nevertheless, the statement of the complainant, to whom the first report was provided, corroborated that of Q. The J 88 corroborated the allegation that Q had been raped. This was not a situation where the officers reacted impulsively to what they initially encountered when they received the docket. In the language of Jones J,¹⁴ they critically analysed and assessed the available information before taking further steps. The supplemented docket formed the basis for their suspicions. The standard is, as the court held in *Biyela*, very low. Certainty is not required. Their suspicions were, in the circumstances, entirely reasonable.

[35] The issue that follows is whether the officers properly exercised their discretion in making the arrest. This must be exercised rationally, as the court observed in *Sekhoto*.

¹² 2004 (1) SACR 131 (TPD).

¹³ At paragraph [9]. See the decision of the erstwhile Appellate Division in *Minister of Law and Order and others v Hurley and another* 1986 (3) SA 568 (A), at 589E- F.

¹⁴ See *Mabona*, n 6, above.

[36] The obvious question is what to make of the fact that the plaintiff had a fixed address, employment, and was (on his uncontested version) a respected member of the local community. If the offence had been of a minor nature, then it could well be said that it would have been irrational for the officers to have arrested him. A written notice would surely have sufficed. But that was not the case here. The offence was rape; the victim was a nine-year-old girl.¹⁵ It was, moreover, the uncontested evidence of Q, as apparent from her statement, that the plaintiff had threatened to kill her if she reported the incidents. These were the factors that persuaded the officers to proceed with the arrest. It was clear from Sgt Jack's evidence that the police were required to take very seriously any situation in which a minor or an elderly person was involved, especially where threats had been made.

[37] Considering the circumstances, it cannot be said that the officers exceeded the bounds of rationality. The court is satisfied that they exercised their discretion properly.

[38] During argument, reference was made to the decision of Stretch J in *Tekile v Minister of Police*.¹⁶ In that regard, the court found that the arrest of the plaintiff had been unlawful because of the failure on the part of the police to have exercised their discretion properly. There had been a delay of six months between the date when a case was opened, when the plaintiff was identified as a suspect, and the date of his arrest. There had been no evidence to suggest that he was dangerous or a flight risk. That is not, however, the situation in the present matter. The case was opened on 4 February 2021 after the family failed to resolve the matter; the police arrested the plaintiff three days later. Crucially, there is uncontested evidence that the plaintiff threatened to kill Q. The case is distinguishable.

[39] Regarding the alleged unlawful detention, it was common cause that the magistrate postponed the case from 8 February 2021 until 16 February 2021. This was done so that the record of previous convictions could be produced. There is no evidence to suggest that the delay in obtaining the outstanding SAP 69 could be

¹⁵ From her statement, Q was born on 26 January 2011; she would have been seven years old when the first rape was alleged to have occurred. She was nine years old at the time of the second rape.

¹⁶ *Unathi Tekile v Minister of Police and Another* (unreported, case no. 724/2021, Eastern Cape Division, Bhisho).

attributed to any negligence or unlawful conduct on the part of the police. W/O Mfakadolo's testimony was that the plaintiff's fingerprints were obtained on the day of his arrest and that the LCRC required at least a week to prepare the necessary SAP 69. This was never disputed. When the plaintiff next appeared, on 16 February 2021, neither the docket nor the investigating officer was available. Quite why was never entirely explained. W/O Mfakadolo stated that she had been unaware of the court date in question. It was, however, the magistrate's decision to postpone the matter again, this time for a formal bail application. The plaintiff was legally represented at this stage.

[40] There is nothing to suggest that the further delay, resulting in the continued detention of the plaintiff, can be attributed to negligent or unlawful conduct on the part of the police.

[41] The plaintiff's legal representative pointed out that W/O Mfakodolo never opposed bail. This contrasted with Sgt Mfakodolo's position on the matter. The latter was unable to justify his position under cross-examination. It is important to recognize, however, that the former initially opposed the granting of bail. Considering the seriousness of the offence and the threat that had been made against Q, it is understandable why this had been so. It was only after W/O Mfakadolo had spoken to the complainant, in preparation for the bail application, that her opposition fell away. The complainant had not indicated her change in stance prior to such contact.

Relief and order

[42] At the conclusion of the matter, the court is satisfied that the defendant has discharged the onus. The officers had, at the time, a reasonable suspicion that the plaintiff had committed the offence in question. Considering the seriousness of the offence and the threat made against Q, the officers properly exercised their discretion in carrying out the arrest. Regarding the remainder of the plaintiff's claim, there was simply no evidence to the effect that the conduct of the police was either negligent or unlawful, and that it had given rise to the plaintiff's unlawful detention.

[43] All that remains is the question of costs. The general rule applies; the defendant is entitled to the recovery of its expenses.

[44] Consequently, the following order is made:

- (a) the claims are dismissed; and
- (b) the plaintiff is ordered to pay the defendant's costs.

JGA LAING
JUDGE OF THE HIGH COURT

Appearance

For the plaintiff:	Mr Magqabi
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Dates heard: 22 – 23 February 2024, 30 September – 2 October 2024,
and 17 March 2025.

Date delivered: 12 August 2025.