

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE**

CASE NO: 1907/2017

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

DATE: 21/07/2025

SIGNATURE: TE MATUMBA, AJ

In the matter between:

D[...] M[...] M[...]

PLAINTIFF

and

MINISTER OF POLICE

FIRST DEFENDANT

**NATIONAL DIRECTOR OF
PUBLIC PROSECUTION**

SECOND DEFENDANT

Heard on: 30 April 2025

Delivered on: This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail, and release to SAFLII. The date for hand down is deemed to be 21 July 2025 at 16h00.

JUDGMENT

MATUMBA, AJ

Introduction

[1] This matter concerns a claim by the plaintiff, Ms. D[...] M[...] M[...], for damages arising from her unlawful arrest and detention by members of the South African Police Service. The merits of the claim having been settled, and liability admitted, a court order was made to this effect on 30 April 2025.

[2] The court's task is to determine the quantum of damages to be awarded to the plaintiff.

Evidence

[3] The plaintiff is the only witness who testified in this matter. She stated that she was arrested on 21 May 2014 at approximately 21h00 at her residence, house number 1[...], Rebone, Steilooop, Limpopo. Her arrest was precipitated by her being shot with a rubber bullet during a neighborhood protest.

[4] The police did not explain the reason for her arrest. At the time, she was not participating in the protest but was at her home. She was not involved in any unlawful activity.

[5] The police entered her yard, found her and her children, and proceeded to arrest her. She was arrested along with her school-going children, including her son

T[...], who suffers from a mental illness. The other children were undergoing school exams at the time.

[6] Following her arrest, she was transported to Gilead Police Station, which is situated approximately 10 kilometers from Rebone village, spending approximately 5 hours in a police van from around 21h00 until roughly 02h00 the next morning.

[7] The plaintiff stated that she was detained in an overcrowded cell with other female detainees, with no access to proper sanitation. Conditions in the cell were deplorable, as there was no running water in the toilet or shower, and the food served was distasteful. She was detained until her release at approximately 11h00 on 23 May 2014, amounting to roughly 38 hours in custody, including the 5 hours spent transporting her in the police van as part of the detention period.

[8] The plaintiff testified that the charges against her were eventually withdrawn after two court appearances.

Assessment

[9] Damages for unlawful detention are compensatory, aimed at redressing emotional distress, loss of dignity, and physical discomfort. In **Masiteng**¹, the Supreme Court of Appeal held that damages in deprivation of liberty cases are at the discretion of the trial court, to be exercised fairly and equitably, considering the case merits (*ex aequo et bono*).

[10] The court recognises that the plaintiff suffered emotional distress, loss of dignity, humiliation, and physical discomfort due to her unlawful arrest and detention.

[11] The plaintiff testified that she was hit by a rubber bullet shot by police without justification. The police did not provide evidence explaining or justifying the shooting, leaving the court with no option but to accept the plaintiff's account. Based on this, I

¹ Masiteng v Minister of Police [2024] ZASCA 165.

infer that the plaintiff was assaulted by the police with a rubber bullet prior to her arrest, which compounded her suffering.

[12] In my view, the arrest of the plaintiff with her children, especially her mentally ill son, was humiliating and damaging to her well-being, likely affecting family relationships and stability.

[13] The plaintiff spent approximately 5 hours in the police van (a very small confined space), which, considering the distance, constitutes an injury that supports her claim for suffering.

[14] The conditions in the cell further worsened her suffering, with no sanitation or proper amenities, overcrowding, and distasteful food.

[15] I agree with the plaintiff's version that her detention period includes the period from arrest until release. This includes the 5-hour period of her transportation to the police station, making the whole detention period approximately 38 hours.

[16] In *Dijan*², the Supreme Court of Appeal awarded R120,000 for 72 hours of detention. This case, decided in 2022, serves as a relevant precedent for quantifying damages in the present matter.

[17] When considering the duration of detention, conditions endured, and suffering experienced, as well as accounting for the inflationary effects since the *Dijan* case was decided and the subsequent changes in the value of currency, a fair and just award in the current context would be R70,000.

Costs

[18] There is no reason why costs should not follow the result on the High Court scale. Due to the fact that the claim was straightforward and within magistrate's court jurisdiction; scales B and C would be disproportionate.

² *Dijan v Minister of Police* [2022] ZASCA 103.

Order

[19] In light of the above, the court makes the following order:

- 19.1 The defendant is ordered to pay damages to the plaintiff in the amount of R 70,000 (Seventy Thousand Rand).
- 19.2 Interests on the damages shall accrue at 11% per *annum* from the date of this judgment until final payment.
- 19.3 The defendant must pay the costs of suit, at scale A.

**TE. MATUMBA
ACTING JUDGE
THE HIGH COURT OF SOUTH AFRICA,
LIMPOPO DIVISION
POLOKWANE**

Appearances:

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