

REPUBLIC OF SOUTH AFRICA



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

CASE NO: 1910/2017

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

DATE: 21/07/2025

SIGNATURE: TE MATUMBA, AJ

In the matter between:

T[...] I[...] 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 for damages arising from unlawful arrest and detention. The plaintiff is Mr. T[...] I[...] M[...]. The first defendant is the Minister of Police, and the second defendant is the National Director of Public Prosecutions.

[2] The first defendant has admitted full liability for the damages suffered by the plaintiff as a result of the unlawful arrest and detention. An order to that effect was granted on 30 April 2025. The claim against the second defendant has been dropped.

[3] The primary issue for determination is the quantum of damages.

Evidence

[4] The plaintiff testified that he is currently 28 years old and resides at house number 1[...], Rebone, Steilooop, Limpopo. He was arrested on 21 May 2014, at the age of 17. At the time of arrest, police found him at his home with his friend and neighbour, Victor, watching television.

[5] Without explanation, the police simply arrested him, took him to their vehicle, and drove around with him. It took approximately three hours to cover a distance of 21 kilometers to reach the police station. Upon arrival, he was detained in a small,

overcrowded cell with more than five other inmates, despite the cell's capacity being for only one or two. The toilet was dysfunctional and filled with human waste, causing a foul smell. He was not provided with bedding, and the cell had no heating, forcing him and his cellmates to hug each other to keep warm during the cold winter night. Upon release, he was labeled as a prisoner by other children, which caused him humiliation.

[6] The plaintiff closed his case without calling any further witness. The first defendant did not call any witnesses.

Assessment

[7] In ***Van der Nest NO v Minister of Police***¹, Mocumie, JA, held:

"[27] It is trite that in cases involving deprivation of liberty, the quantum of damages to be awarded is in the discretion of the trial court, to be exercised fairly, and generally calculated according to what is equitable and just, and on the merits of the case itself (ex aequo et bono)..."

[28] The law on assessment of damages for unlawful arrest and detention has been canvassed in comparable cases over the years. This Court stated the following in Minister of Safety and Security v Tyulu:

'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 some much needed solatium for 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

¹ (154/2024) [2025] ZASCA 42 (10 April 2025)

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.'
(Footnotes omitted)"

[8] The arrest was executed in front of the plaintiff's friend, and after his release, he was labeled a prisoner by other children, likely causing humiliation and embarrassment, contributing to his suffering.

[9] The first defendant did not call any witnesses, leaving unexplained why the police took approximately three hours to transport the plaintiff over 21 kilometers and why the plaintiff was detained for about 36 hours before being released without charge. A delay for such long for such a short distance, without a valid reason, is unreasonable and potentially harmful, especially in the context of an unexplained arrest and vulnerability of the plaintiff as a minor.

[10] In my view, the fact that the plaintiff was a minor at the time (17 years old) further increases his vulnerability. Minors are more susceptible to fear, confusion, and distress. The United Nations Convention on the Rights of the Child² (UNCRC) emphasises that children should be treated with dignity, and detention should be a measure of last resort, with protections specific to minors.

[11] The detention environment was inadequate, as the cell was overcrowded with more than five inmates, and conditions were noisy, inhumane, and unbearable. I accept that these conditions further compounded the plaintiff's suffering.

[12] Poor hygiene and a dysfunctional toilet filled with human waste probably exacerbated the plaintiff's suffering during detention.

² Article 40 of the United Nations Convention on the Rights of the Child, adopted by resolution 44/25 of the UN General Assembly on 20 November 1989 and came into force on 02 September 1990, in accordance with article 49, which means that Governments that ratify this convention are bound to it by international law. South Africa signed the Convention in 1993 and ratified it on 16 June 1995.

[13] The lack of bedding and heating in the cell, which forced the plaintiff and his cellmates to hug each other to keep warm during the cold winter night, puts a final nail in the coffin for the first defendant's case.

[14] Although detention for 36 hours might seem brief compared to prolonged detention, it is still excessive if unlawful, lacking lawful justification or due process.

[15] Taking all these factors into account, the conduct of the police, the plaintiff's age and vulnerability, detention conditions, and the absence of an explanation from the police, the court finds it probable that the plaintiff suffered pain and humiliation as he alleged.

[16] The plaintiff's counsel argued that damages in similar cases ranged from R60,000 to R70,000, while the defendant's counsel suggested awards between R20,000 and R40,000.

[17] Considering the circumstances of this case, the court deems an amount of R80,000 appropriate and just. This reflects a fair assessment of the suffering inflicted.

Interests

[18] Section 2 of the Prescribed Rate of Interests Act 55 of 1975 provides that interest on damages accrues from the date of judgment until payment. This is how this court should address the issue of such interests.

Costs

[19] Both parties agree that costs should follow the event on the High Court scale. The plaintiff seeks costs on Scale B, while the defendant argues for Scale A, citing the matter's simplicity and jurisdictional considerations.

[20] The court recognizes that the matter was straightforward and did not involve complex legal issues. Given that the claim amount falls within magistrate's court

jurisdiction, costs should be proportionate. In my view, Scale B and C would not be consistent with the nature of this case.

Order

[21] Accordingly, the following order is hereby made: -

- 21.1 The first defendant is ordered to pay the plaintiff the sum of R 80,000 as damages for unlawful arrest and detention.
- 21.2 Interests on the damages accrue at 11% per annum from the date of this judgment until payment.
- 21.3 The first defendant is ordered to pay costs of this action to the plaintiff on the High Court Scale A.

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

Appearances:

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