



**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE DIVISION, MTHATHA**

Reportable:	YES / NO
Circulate to Judges:	YES / NO
Circulate to Magistrates:	YES / NO
Circulate to Regional Magistrates:	YES / NO

Case no: 5405/2022

In the matter between:

APHELELE MPIYONKE

PLAINTIFF

and

MINISTER OF POLICE

DEFENDANT

JUDGMENT

Brauns AJ

[1] This is an application for default judgment brought by the plaintiff¹ against the defendant for unlawful arrest and detention. The application is not opposed, despite the defendant having filed a notice of intention to defend and a Plea.

¹ Even though this is an application, purely for the sake of convenience I will refer to the parties in the manner that they have been cited in the Action.

The Court is required to determine whether the plaintiff has established a cause of action on the facts and in law.

- [2] According to the particulars of claim, the plaintiff was arrested without a warrant on 12 November 2021 by members of the South African Police Service and detained until 15 November 2021. The plaintiff was taken to court, but never appeared before a magistrate and was released on the 15 November 2021 without being prosecuted on any charge. The plaintiff now seeks damages for unlawful arrest and detention, in the amount of R 500 000.00.
- [3] Summons was issued on 03 November 2022 and served on the defendant on 21 December 2022. Such service followed the issue of the statutory notice been given to the National Commissioner of Police in terms of the Section 3 of the Institution of Legal Proceedings Against Certain Organs of State Act 40 of 2002.
- [4] The notice of intention to defend dated April 2023 was delivered, whereafter, the defendant filed a Plea dated 07 June 2023. The plea was served on the plaintiff's attorneys of record on 14 June 2023 and filed with the Registrar of this Court on 06 December 2024.
- [5] On 16 April 2024, an application to compel the defendant was set down on the unopposed motion court roll and my brother, Jolwana J, granted an order directing the defendant to file a discovery affidavit.
- [6] The defendant did not comply with the order of 16 April 2024. This prompted the launch of an application to strike out the defendant's defence.
- [7] On 16 July 2024, my brother, **Brooks J**, granted an order in the following terms:

"IT IS ORDERED THAT:

1. *The respondents [defendant's] defence in the main action be and is hereby struck out.*
2. *The respondents [defendant's] pay costs of this application."*

[8] Notice of set down of the default judgement application was served on the State Attorney on 25 June 2025. The application was enrolled for hearing 25 July 2025.

[9] The Court is required to determine liability and quantum.

THE EVIDENCE

[10] The plaintiff, Mr. Aphelele Mpiyonke, testified and his evidence can be summarized as follows. He is currently 24 years of age and is employed as a mechanic by his uncle and brother. He is resident in Cape Town and can recall the events that occurred on 12 November 2021, being the date of his arrest.

[11] On the date in question (12 November 2021) at about 12 noon, he and two friends departed from the district of Mthatha *en route* to the district of Mount Ayliff where they intended to visit his cousin. It was a Friday and they expected to stay with the cousin for the weekend. All three were travelling in a navy-blue, Volkswagen golf "velocity" which had the front windows tinted. The plaintiff's friend, Vuyani, was the designated driver.

[12] From Mthatha towards their destination of Mount Ayliff and at the Umzimvumbu bridge, they encountered a large truck (one that had a cabin and two trailers) that was not driving well. Vuyani attempted to overtake the truck, at which point the truck started driving in a manner that blocked their ability to overtake. It was obstructing them. Thereafter, a double cab Ford Ranger bakkie came from behind them to overtake the truck and Vuyani used that opportunity to also overtake the truck. This was approximately 20km away from Mount Ayliff.

- [13] Upon entry into Mount Ayliff, there was a roadblock set up. This road block consisted of three traffic official vehicles, two bakkies and a one small corolla with an estimated four traffic officials manning the roadblock. The vehicle wherein the plaintiff was a passenger was pulled aside. The driver, Vuyani, was asked to produce his driver's license and while the vehicle was stationery on the side of the road, the same truck they eventually managed to overtake came speeding past the roadblock and in the process damaged their vehicle to such an extent that the front tyre burst and the fender broke.
- [14] The traffic official that had stopped them, then ran to his vehicle, a clearly marked bakkie and gave chase as the truck had not stopped. While the traffic officer had left them and gave chase, the three of them decided to change the tyre and proceed to follow in the same direction that the traffic official had given chase. The reason they followed the traffic official and the truck driver is because they needed the truck drivers details for the damage he had caused to their vehicle. They reached the truck which had been pulled over to the side by the traffic official and the traffic officials bakkie and they parked behind the truck as the traffic officials bakkie was at the front of the truck. A second bakkie (driven by another traffic official) had also given chase and was parked next to the truck.
- [15] Plaintiff and his friends, alighted their vehicle and approached the traffic officer who was speaking to the truck driver who was standing on the door of the passenger side of the truck. One traffic official was speaking to the truck driver. As the trio approached the truck driver, they were stopped by the traffic official who advised them that the driver of the truck alleged that their vehicle and the manner in which it was driven, had made him feel uncomfortable and that he (the truck driver) felt unsafe, as though they would hijack him.
- [16] The traffic official then advised the trio that they would need to have their motor vehicle searched as the story of the truck driver seemed credible. At this point, the trio were asked to stand next to the truck while the search was conducted, nothing was found in the vehicle and the traffic official who had taken a picture of the license disc of their vehicle, then approached them to

stand with the plaintiff and his two friends while the other traffic official was on a telephone call. Plaintiff and his friends then advised the traffic official who was standing with them that the story of the truck driver cannot make sense as they had been attempting to overtake the truck on the Umzimvubu River Bridge and it was the truck that was obstructing their attempt. Thereafter, it was the truck who intentionally collided with their vehicle at the roadblock and fled the scene. The gave their version of events and argued that their version was more probable.

[17] While the trio stood next to the truck with the traffic official, a police vehicle arrived with two police officials as occupants. The police officials did not introduce themselves, they merely proceeded to speak to the traffic official, who narrated the story that the truck driver told him. He further told the police official that he did not understand the statement of the trio. The police official then approached the truck driver who then added to his statement, in that a colleague of his (the truck driver) had been previously hijacked in the proximity of Idutywa, hence he then proceeded to bump into their car at the roadblock. When questioned regarding this addition (and the entire statement of the truck driver) by the police official, the plaintiff advised the police official that him and his friends had already arrived at their destination, being Mount Ayliff and it doesn't make sense as to why they would hijack the truck and that by the time they had reached Mount Ayliff there was already a considerable distance between them and the truck.

[18] After the discussion between the trio and the police officials, the police officials said to the plaintiff and his friends "you all deserve arrest", the police officials proceeded to handcuff them all and placed them into two clearly marked police bakkies which had the inscription, Mount Ayliff on them. It was at this stage that the plaintiff adduced that he was being arrested. The police officials where in full police uniform. The reason proffered by the police officials for the handcuffs was the story of the truck driver made more sense than theirs (the plaintiff and his two friends). There were no rights read to them. Their vehicle was then driven to the police station at Mount Ayliff, no accident report was filed.

- [19] At the police station, the plaintiff and his friends were instructed to remove their shoelaces and belts and where all handed a piece of paper. This paper was handed into the court, the Notice of Rights in terms of the constitution, SAPD 14 with serial number S0606051 and marked as Exhibit A.
- [20] There was nothing that was explained to the plaintiff, he was instructed to sign at the place he was pointed to on Exhibit A. He was then just told, that “this is a paper that contains your rights”.
- [21] The plaintiff confirmed that the signature apparent on Exhibit A, was his signature, he appended it without reading the document. The plaintiff was told not to crease the paper.
- [22] At the police station, the plaintiff was walked through a large gate which had big doors, once the doors were opened, the first thing that hit him was the stench that exited and the darkness. There were different cells, him and his friends were separated. Plaintiff was placed in a cell which some older males and some his age. Plaintiff was not aware as to the reason for the separation, and within his cell there was a large net as a roof, he could see the sky when looking up. There were some blankets on the floor, there was an open toilet with no water (unable to flush) and no showers. He was given a 2lt bottle of water to wash in and could not eat mostly because in the cell there was a man who was not of sound mind and kept of bothering him for food. Plaintiff was further unable to sleep at night as the only place was a floor so he had to remain seated. There was a mattress that was covered with a sale and the blanket material was uncomfortable.
- [23] Plaintiff remained in the cell from Friday to Monday and didn't feel right (emotional state) he felt bad.
- [24] On Sunday, 14 November 2021, he was formally charged and told by someone to call a family member to provide bail for him at court on the

following day. He then called the cousin that he intended on visiting and requested him to provide bail for him at court.

[25] On Monday 15 November, 2021 the plaintiff and others were taken to court, where him and his two friends then sat on a bench inside the court, their names were never called to appear before a Magistrate and at around 14h30 – 15h30 a police official came to them to advise that they would be released. They were then taken to the police station, handed their belongings and released.

[26] In ***Minister of Police v Du Plessis***² Navsa ADP held:

“The right of liberty is inextricably linked to human dignity... we as a society place a premium on the right of liberty.”

Legal Frame Work

Unlawful Arrest and Detention

[27] An arrest and consequent detention is *prima facie* wrongful and unlawful. It is an infringement of a person’s right to liberty, which is constitutionally entrenched, unless there is jurisdiction based on statutory authority.

[28] In ***Zealand v Minister of Justice & Constitutional Development***³, the Constitutional Court reaffirmed that an arrest or detention is *prima facie* unlawful:

“[25] This is not something new in our law. It has long been firmly established in our common law that every interference with physical liberty is prima facie unlawful. Thus, once the claimant establishes that an interference has

² 2014 (1) SACR 217 (SCA).

³ 2008 (4) SA 458 (CC).

occurred, the burden falls upon the person causing that interference to establish a ground of justification.”

[29] Once an arrest and subsequent detention is proven, the onus to prove the lawfulness thereof rests on the defendant. This is trite. In the absence of proof of the lawfulness of the arrest and subsequent detention such as in this case, the arrest and detention are therefore unlawful.

[30] Theron J in ***De Klerk v Minister of Police***⁴, dealt with specific requirements when one is dealing with a claim under the *actio iniuriarum* for unlawful arrest and detention. They are:

- a) *the plaintiff must establish that his liberty has been interfered with,*
- b) *the plaintiff must establish that this interference occurred intentionally. In claims for unlawful arrest, a plaintiff need only to show that the defendant acted intentionally in depriving his liberty and not that the defendant knew that it was wrong to do so,*
- c) *the deprivation of liberty must be wrongful, with the onus on the defendant to show why it is not, and*
- d) *the plaintiff must establish that the conduct of the defendant must have caused, both legally and factually, the harm for which compensation is sought.”*

[31] The South African Constitutional Court in ***Mahlangu and Another v Minister of Police***⁵ held that the rights to freedom and security are sacrosanct and are safeguarded by the Constitution.

⁴ (CCT 95 /18) [2019] ZACC 32, 2019 (12) BCLR 1425 (CC), 2020 (1) SACR 1 (CC): 2021 (4) SA 585 (CC) (22 August 2019).

⁵ (CCT 88/20) [2021] ZACC 10; 2021 (7) BCLR 698 (CC); 2021 (2) SACR 595 (CC) (14 May 2021)

[32] In ***Thandani v Minister of Law and Order***⁶, the Court held that unlawful arrest and detention constitutes an inroad into the freedom and rights of an individual.

[33] I am satisfied with the evidence presented by the plaintiff; he was genuine in his narration and truthful in his responses to the court. I am confident that he established that his liberty was intentionally interfered with and that he suffered harm.

[34] Having considered all the evidence in its totality, the court is satisfied that the plaintiff has established that the arrest and detention were unlawful.

Assessment of Quantum

[35] In ***Minister of Safety and Security v Tyulu***⁷, Bosielo AJA said:

“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 iniuria 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 (SCA) 325 para

⁶ [1991] 4 All SA 905 (A)
⁷ 2009 (5) SA 85 (SCA) at para [26].

[17]; *Rudolph & others v Minister of Safety and Security & Others* (38012008) [2009] ZASCA 39 (31 March 2009) (paras {26}-[29])”.

[36] In ***Diljan v Minister of Police (Diljan)***⁸, the Supreme Court of Appeal stated:

‘The acceptable method of assessing damages includes the evaluation of the plaintiff’s personal circumstances; the manner the of arrest; the duration of detention; the duration of the detention; the degree of humiliation which encompasses the aggrieved party’s reputation and standing in the community; deprivation of liberty; and other relevant factors peculiar to the case under consideration.

[37] Insofar as quantum is concerned, this Court has an unfettered discretion to award an amount as *solatium* that is just, fair, equitable and reasonable, having regard to all the relevant circumstances of this case.

[38] The aim is not to enrich the plaintiff, but to compensate him for the unlawful deprivation of his liberty. Previous cases in which certain amounts of compensation were awarded are but a guide and nothing more.

[39] This is a prudently harmonizing act to be exercised by this Court.

[40] The Supreme Court of Appeal in ***Minister of Police and Another v Erasmus***⁹ awarded damages on appeal in the amount of R 25 000-00 for a period of approximately 20 hours and the following was stated:

“[17] It remains only to consider the award of R 50 000 in respect of the arrest and detention of the first period. Mr Erasmus was detained for approximately 20 hours in unpleasant conditions. Nevertheless, there is a striking disparity in the amount of damages that I would award (R 25 000) and that of the high court. This justifies this Court’s interference with the exercise

⁸ *Diljan v Minister of Police* [2022] ZASCA 103; 2022 JDR 1759 (SCA) paras 18-19.
⁹ (366/2021) [2022] ZASCA 57 (22 April 2022)

of the discretion of the high court in this regard. The appeal against the quantum of damages in respect of the arrest and detention for the first period must also succeed and the award must be replaced with one in the amount of R 25 000.”

[41] In ***Khubalo v Minister of Police***¹⁰ Norman J held, having considered the facts and circumstances of this case including the recent awards made in this Division in comparable cases, found an award in the amount of R 80 000.00 would be appropriate for unlawful arrest and detention for 30 hours and R 20 000.00 for *contumelia*. Which value in 2025 amounts to R 110 080,00.

[42] In ***Payi v Minister of Police and Another***¹¹, Pakati J held that - As far as *quantum* is concerned, *I have considered the relevant facts, as well as the age of the appellant, his personal and social circumstances, the circumstances of the arrest, the nature and duration, the fact that when he was arrested there was no evidence linking him to the commission of any crime, yet he remained in custody for 30 days. I have also made a comparison of the previous awards in similar cases like this one, which serves as a useful guide. However, each case must be treated according to its own merits. I am of the view that a fair and appropriate award of damages for the appellant’s unlawful arrest and initial detention is an amount of R 100 000-00 (one hundred thousand rand).* Which value in 2025 amounts to R 103 000,00.

[43] In ***van Rooyen v Minister of Police***¹², the Full Court held, the fact that the appellant was detained at night and released on the following morning, does not detract from the fact that deprivation of personal liberty is a serious injury and an infraction of the constitutional right to freedom. This court has previously provided guidance on the exercise of discretion when quantum, within the context of a detention, is being considered. Having regard to awards previously made and the fact that each case must be considered on its own merits and not on a flat rate basis per day, a fair and reasonable

¹⁰ (1923/2018) [2024] ZAECMKHC 39; 2024 (2) SACR 238 (ECMk) (26 March 2024) at para 37

¹¹ (2063/2019) [2024] ZAECQBHC 14 (22 February 2024)

¹² (CA 332/2018) [2020] ZAECGHC 44 (26 March 2020) at para 11 and 12

award in the circumstances of this case is R 35 000. Which value in 2025 amounts to R 44 170,00.

Analysis

- [44] A court may grant default judgment only where the plaintiff has made out a *prima facie* case. The absence of opposition does not dispense with the need to prove all elements of the claim.

- [45] No evidence was presented for and on behalf of the defendant. The only evidence presented was that of the plaintiff, who testified *viva voce* as well as documentary evidence, which is uncontested. This evidence must be accepted by this Court, as there is no evidence to gainsay it.

- [46] The plaintiff was arrested on the side of the road by police officials who were called to listen to a story by a truck driver on the allegations of hijacking, not alleged or attempted in relation to him as the truck driver, but on his “uncomfortable feeling” and based on an unknown colleague’s experience. The plaintiff was handcuffed along with his friends and put into clearly marked police vehicles; one can only imagine the number of people driving by in their vehicles and peering out at these three young boys handcuffed and thrown into a police van.

- [47] The plaintiff was not proffered a reason for the arrest; his constitutional rights were not given to him and/ or explained to him and the police officials were not armed with a warrant of arrest.

- [48] At the time of this arrest, the plaintiff was a mere school boy of nineteen years old and was assisting his uncle in a part time job of scholar transport.

- [49] He was taken to a cell of appalling conditions, treated as a common criminal, deprived of proper sleeping and toileting facilities and was in the presence of a male who, to the plaintiff was clearly of unsound mind.

[50] The smell of the entire cell block permeated from the time that the large double doors were opened and this was a bad situation for a young man to have found himself in.

[51] The plaintiff was denied his freedom unnecessarily for a period of approximately three days and was not caused to appear in court. He suffered emotional trauma as a result of the incident and should be awarded damages for that.

[52] Therefore, the Court has had regard to all the facts of this case and made a determination on quantum on those facts as analysed above. The Court is grateful for the written submissions of the counsel for the plaintiff.

[53] In light of prevailing jurisprudence and the comparative cases, I am of the view that an amount of R 125 0000,00 is fair and reasonable compensation for the plaintiff, taking into account the particularly dehumanising circumstances of his detention.

Costs

[54] The issue of costs falls evenly within the decision of this Court, to be exercised judicially having regard to the facts of the case. As a general principle, the successful party is entitled to his/her costs unless there are compelling reasons to depart from that rule.

Resultantly, the following order is made:

- 1. The defendant is held liable for the unlawful arrest and detention of the plaintiff from 12 November 2021 to 15 November 2021.**
- 2. The defendant pay the plaintiff damages in the sum of R 125 000,00 (one hundred and twenty-five thousand rand).**

3. *The defendant pay interest on the amount referred to in paragraph 2 above, from today until date of final payment at the applicable prescribed legal rate.*
4. *The defendant pay the plaintiff's costs of suit on scale A referred to in Uniform Rule 67A.*

L R BRAUNS
ACTING JUDGE OF THE HIGH COURT

Heard : Friday, 25 July 2025
Delivered : Tuesday, 12 August 2025

Appearances:

Counsel For Plaintiff	:	L J Mngunyana
Attorneys for Plaintiff		Sphumze Kwaza Attorneys Incorporated
Counsel For Defendant	:	No Appearance
Attorney for Defendant		The State Attorney – Mthatha