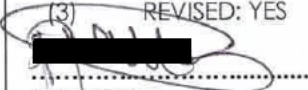


REPUBLIC OF SOUTH AFRICA



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

CASE NO:6109/2021

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
	<u>26 August 2025</u>
SIGNATURE	DATE

In the matter between:

GEORGE LAMBRAKIS

Plaintiff

and

MINISTER OF POLICE

First Defendant

**NATIONAL COMMISSIONER OF SOUTH AFRICAN
POLICE SERVICES**

Second Defendant

**COMMANDING OFFICER OF THE SOUTH AFRICAN
POLICE STATION SERVICE**

Third Defendant

**MEMBERS OF THE SOUTH AFRICAN POLICE SERVICES
UNKNOWN TO THE PLAINTIFF**

Fourth Defendant

JUDGMENT

Delivered: This judgment 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 e-mail and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 14h00 on 25 August 2025.

MALUNGANA AJ

- [1] This is an action for damages arising out of the unlawful arrest and detention of the plaintiff by members of the South African Police Services (SAPS). It is part heard. After a trial on the issue of negligence, I made an order that the plaintiff, George, is entitled to compensation for unlawful arrest and detention. I have re-read my judgment that culminated in the order in question, and I must say, am embarrassed by certain inadvertent grammatical and typographical errors contained therein. All that remains is to determine the quantum of his damages. I shall refer to the plaintiff as George, interchangeably.
- [2] The plaintiff has called two expert witnesses: Mr Christian Strydom, a consulting actuary and Mr Pierre Brits, an industrial psychologist. Their medico-legal reports have also been filed on record in terms of Rule 36(9)(a) and (b). The defendants, whom I shall collectively refer to as “the defendant”, did not call any expert. Its attitude is to rely on cross-examination of the witnesses called by George.
- [3] I must, however, express my disquiet about the manner in which the defendant has chosen to litigate in this matter. Sometimes in March 2025, I granted the defendant its request for an opportunity to obtain its own medico-legal experts in order to properly answer to the plaintiff’s claim on quantum. Despite its financial muscles it failed to refer the plaintiff to its own medico-legal expert/s. Other judges have previously echoed a similar sentiment about this trend of supinus on the part of the Office of

State Attorney, especially on RAF matters, which often results in the loss of huge sum of tax payers' money. This supineness has now reached a higher level imperilling the proper adjudication of these cases.

- [4] That said, the plaintiff has filed two additional medico-reports by the psychiatrist and clinical psychologist. None of these witnesses were called to testify, and no affidavits as required by Rule 38 were filed on their behalf.¹ In these circumstances there is no reason for me to consider any of their opinions presented in those reports.
- [5] Having come to the above conclusion, I now proceed to examine the plaintiff's claim in more detail as set out in the particulars of claim.
- [6] The plaintiff's claim is for the amount of R300 000 divided into two categories: future psychological and medical expenses, R200 000; and general damages, R100 000.
- [7] At the outset, I must record certain matters which are material to the plaintiff's claim for damages: the manner in which George was apprehended; the duration of his incarceration and the conditions of the cells in which he was detained.
- [8] According to the plaintiff's testimony the arrest took place at Whitfield Spar, where is employed as operation manager. It happened in the presence of customers. He was handcuffed and led to the store's entrance. Subsequently, he was escorted to the police van, where he was forcefully pushed into the back of the police vehicle.
- [9] It was his testimony that whilst at the police station he was handcuffed together with his colleague with whom they were apprehended. They were led to the police cell, which housed approximately 5 to 6 detainees. He described the prison conditions as filthy and sticky. The cell was about 6 x 4 metres in size and he was anxious that he would contract the COVID-19 due to the lack of social distancing. When their legal representatives attempted to apply for their release on bail, they were informed that

¹ Rule 38(2) "The witnesses at the trial of any action shall be examined *viva voce*, but a court may at any time, for sufficient reason, order that all or any of the evidence to be adduced at any trial be given on affidavit or that the affidavit of any witness be read at the hearing, on such terms and conditions as to it may seem meet: Provided that where it appears to the court that any other party reasonably requires the attendance of such witness for cross-examination, and such witness can be produced, the evidence of such witness shall not be given on affidavit."

there were no forms to process their request. Consequently, they were returned to the cells.

- [10] In evidence Mr Brits, the industrial psychologist, testified that he had reviewed the reports of other experts filed of record. He emphasised that as a psychologist he relied on his own diagnostic tools to evaluate the plaintiff's post- traumatic stress disorder (PTSD). During his examination of the George, he observed that the plaintiff exhibited symptoms of PTSD which he attributed to his previous arrest. George experienced a complete meltdown, and consistently avoided police and their vehicles due to anxiety when he saw them. The plaintiff struggles to concentrate at work and his colleagues no longer respect him. He has developed low self-esteem and will face significant challenges in finding another job if he loses the position.
- [11] During the cross-examination by the defendant's counsel, Mr Brits maintained that he is well-qualified to make the diagnoses he made on the plaintiff, as he holds a masters' qualification in Psychology. He emphasised that both industrial and other psychologists such as clinical psychologists utilise psychometric tests to assess the patients for PTSD.
- [12] The plaintiff's counsel submitted that the testimony of Mr Strydom, the actuary, to the effect that the plaintiff would retire at the age of 75 years is uncontroverted, and as per his calculations.
- [13] In this regard, Mr Strydom testified that he revised his initial report in terms of which he had applied a general retirement age of 65 years, after he received a revised report from the industrial psychologist. It was necessary to do so in order to align with the new report.
- [14] According to Mr Strydom, the medical expenses required for the treatment of the plaintiff amount to R 92 945.00. Mr Strydom calculated the plaintiff's loss of income for illustrative purposes as follows:

PRE-MORBID INCOME

POST-MORBID INCOME

LOSS

Past Income	R2 782 665	R 2 762 665	R 0
Less contingencies	R135 133(5%)	R 276 266 (10%)	R138 133
Nett value of income	R2 624 532	R 2 486 398	<u>R138 133</u>
Future income	R10 278 848	R10 278 848	R 0
Less contingencies	R1 027 885(10%)	R2 569 712 (25%)	R1 541 827
Nett value of income	R9 250 963	R7 709 136	R1 541 827
TOTALS	R11 875 494	R10 195 534	<u>R1 679 960</u>

- [15] At this juncture, I must express my surprise that if this is the plaintiff's claim for the purported loss of income, why was his particulars of claim was not amended to align with the aforementioned figures. The plaintiff did not call the two relevant witnesses whose reports were supposedly relied upon to diagnose the plaintiff of post-traumatic stress disorder. Had they come to court to give their oral testimony I would have had an opportunity to inquire as to why would an individual who did not even spend a night in prison presents with such symptoms after a brief period in the police holding cells.
- [16] It is my view that Mr Brits misconceived his role in this matter. I am not prepared to draw any definitive conclusions based solely on the evidence of an industrial psychologist whose primary area of expertise is primarily to assess an individual's capacity and well-being to function in the workplace.
- [17] Regarding his reliance on the psychometric tests, Mr Brits was compelled to concede that the plaintiff exhibited with symptoms of depression as stated in his report. He testified that the PTSD diagnoses were mentioned in Dr Kalpana's report which he incorporated into his own report. He also conceded that his testimony to the effect that the plaintiff sobbed and cried during the assessment was not included in his report. He just remembered it.

[18] That said, it is trite that the court is duty bound to assess expert evidence, together with all the other evidence adduced by the parties to the litigation.² However, the court is not bound by expert evidence. Ultimately, it is the presiding officer's function to make up his own mind. He has to evaluate the expertise of the witness. He has to weigh the cogency of the witness's evidence in the contextual matrix of the case with which he is seized. He has to gauge the quality of the expert qua witness.³

[19] In *NSS obo AS v MEC for Health, Eastern Cape Province* [2023] JOL 58428 (SCA) at para [25] the Court held as follows:

“It is settled principle that in order to evaluate expert evidence, the court must be apprised of and analyse the process of reasoning which led to the expert's conclusion, including the premises from which the reasoning proceeds. The court must be satisfied that the opinion is based on facts and that the expert has reached a defensible conclusion on the matter. The purported admission by the defendant cannot, and does not, absolve the court from this duty. Even if the experts agree on a matter within their joint expertise, that is merely part of the total body of evidence. The court must still assess the joint opinion and decide whether to accept it.”

[20] The court further held in para [26] that “Despite being the arbiter of dispute, the court may then not reject the expert's opinion, even if it wholly indefensible. Such an approach is untenable, and at odds with the rule that experts have a principal and overriding duty to the court, not to the party by whom they are retained, to contribute to the determination of dispute.”

[21] I turn finally to the question of general damages. The summons issued by the plaintiff sets out a claim for general damages at R100 000.00. While the plaintiff's claim as per the actuary is in excess of R1000 000.00, I need not set my sights as high as that figure because the final margin for me can only be R100 000.00 indicated in the particulars of claim, which the plaintiff did not seek to amend. I hold that view because of the clearly established principle that summons is the label that tells the defendant what he is to expect in the declaration (particulars of claim). In the result

² *HAL obo MML v MEC for Health, Free State* [2021] ZASCA 149 para [226] [also reported at [2022] 1 All SA 28 (SCA)].

³ *S v M* 1991 (2) SACR 91(T)

any subsequent pleading filed can only be taken as an expansion or elucidation of the summons.

[22] Ms Liphoto for the defendant urged that a figure of R40 000.00 as general damages was fair and reasonable, taking into account that the plaintiff was only arrested for 3 hours. She referred me to various authorities, notably the case of *Jacobs v Minister of Police and others*⁴ in which Read AJ dealt with the daily rate involving shorter duration of detention. She argued that the daily rate ranges from the sum of R40 000,00 to R60 000.00. Defendant's counsel submitted, relying on *Jacobs* that I had to be guided by the awards mentioned in that authority.

[23] Turning now to the salient facts, plaintiff was arrested in full view of the customers at the grocery supermarket known as Whitfield Spar. He was pushed into back of the police van whilst he was handcuffed. According to the case docket he was released on the same say day after spending three hours in the police holding cells.

[24] Having regard to the foregoing, to the facts of the cases cited which bear resemblance to the instant matter, I asses the plaintiff's damages under this sub head in the sum of R60 000.00.

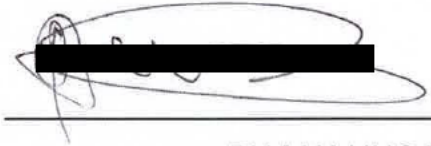
[25] There is therefore judgment for the plaintiff as follows:

Order

1. The defendant is to pay the plaintiff the capital sum of R60 000.00 for unlawful arrest and detention;
2. The defendant is to pay interest on the aforesaid capital at the *mora* rate of interest calculated from the date of this order to date of payment.

⁴ *Jacobs v Minister of Police and others* (15549/2020) [2025] ZAGPIHC 579 (6 June 2025).

3. The defendant is to pay the costs of action, such costs to include the costs of trial on merits which were reserved on the previous trial.



PH MALUNGANA

ACTING JUDGE

**GAUTENG DIVISION OF THE HIGH COURT,
JOHANNESBURG**

APPEARANCES:

For the Plaintiff: Adv. Van Niekerk
Instructed by: ML SCHOEMAN Attorneys

For the Defendant: Adv Liphoto
Instructed by: State Attorney

Date of hearing: 26 June 2025

Date of judgment: 26 August 2025