



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable

Appeal case no: A94/2023

Court a quo case no: 327/2021

In the matter between:

ZIMU, MOJALEFA GLEN

APPELLANT

and

THE MINISTER OF POLICE

RESPONDENT

Neutral citation: *Mojalefa Glen Zimu v The Minister of Police* (A94/2023) [2025] ZAFSHC 175 (13 June 2025)

Coram: Mbhele AJP *et* Van Zyl J *et* Greyling-Coetzer AJ

Heard: 24 March 2025

Delivered: 13 June 2025

Judgment by: Greyling-Coetzer AJ

Summary: Civil procedure – admissions – unlawful arrest and detention – whether respondent was liable for entire period of detention.

ORDER

- 1 The late service and filing of the appeal record is condoned.
- 2 The late application for the allocation of a date for hearing of the appeal and notice of set down are condoned.
- 3 The appellant's appeal is reinstated.
- 4 The late filing of the respondent's heads of argument is condoned.
- 5 The appeal is dismissed with costs, which costs shall include counsel fees to be taxed on Scale B.

JUDGMENT

Greyling-Coetzer AJ

[1] On 27 January 2021, Mr Mojalefa Glen Zimu (the appellant) instituted an action against the Minister of Police (the respondent) for damages in the amount of R480 000. The damages arose from the appellant's alleged unlawful arrest and unlawful detention for the period 20 June 2020 to 29 June 2020 by members of the South African Police Service (the SAPS). The respondent defended the action.

[2] On 13 March 2023, Reinders J found for the appellant and awarded damages in an amount of R30 000. In doing so the court *a quo* limited the period for which the respondent was held liable to compensate the appellant from date of arrest up to the date of the appellant's first appearance in court. Displeased with the outcome, the appellant applied for leave to appeal against the whole judgment and order of Reinders J.

[3] On 26 May 2023, Reinders J granted leave to appeal only in respect of para 7 of the appellant's application for leave to appeal. Paragraph 7 reads as follows: 'The learned

judge erred in not finding that the defendant, having regard to the pleadings, the body of evidence, the probabilities and applicable case law is liable for the entire period of detention.'

[4] The effect of such limitation being that this court is not empowered to entertain grounds of appeal in respect of which leave to appeal was refused.¹

[5] The issue to be adjudicated on appeal is thus whether the respondent is liable to compensate the appellant for the entire period of detention following the unlawful arrest.

[6] The respondent has not filed a cross-appeal. It thus stands that the appellant was unlawfully arrested without a warrant on 20 June 2020, and detained subsequent to his arrest from 20 June 2020 to 22 June 2020 when he was brought before the Phuthaditjaba Magistrate's Court. On 22 June 2020 the case was postponed to 29 June 2020. He was detained at Harrismith Correctional Facility until 29 June 2020, when he was released on bail in the amount of R500. The charges were later withdrawn against him.

In the court a quo

[7] In the court *a quo* the appellant contended that the only issues in dispute per the pleadings were the wrongfulness and unlawfulness of the arrest and detention, and where the appellant resides. On behalf of the respondent it was submitted that the appellant was arrested, detained and further detained pursuant to his first court appearance. The respondent however disputes any liability in respect of these events as pleaded.

[8] Against aforementioned the court *a quo* proceeded to receive the evidence of Constable Mokoena, the investigating officer, Constable Makalima as arresting officer, the appellant and Ben Joseph Zima.

[9] During the evidence of Constable Mokoena, an objection was raised by the appellant to the admissibility of Constable Mokoena's evidence. The basis of the objection was that the evidence of Constable Mokoena, to the extent that it indicates that the SAPS did not oppose bail, was inadmissible in light of the admissions in the pleadings, specifically paras 4.2 and 4.3 of the particulars of claim. Counsel for the appellant contended that these admissions were conclusive of the fact that the respondent is liable for the entire period of detention, including the detention post the first court appearance.

[10] On behalf of the respondent, it was argued that the admission of certain facts should not be viewed in isolation. Instead, the whole plea wherein liability is denied and especially

¹ *Harlech-Jones Treasure Architects CC v University of Fort Hare* 2002 (5) SA 32 (E) at 50B-C and 52A.

para 10.2, where the respondent pleads that the appellant's continued detention after appearing in court was at the instance of the court, should be taken into account. The latter also served as the basis for introducing the evidence.

[11] The court *a quo* allowed the evidence and reasoned that the appellant will have an opportunity to cross-examine and argue against reliance on said evidence at the end of the trial. During argument both parties repeated their respective contentions set out above.

[12] The court *a quo* found that the admissions on the pleadings were not dispositive of the question of the respondent's liability for the entire period of detention. Furthermore, reliance on the pleadings without further adjudication of the evidence before court would be misplaced and negate the causality test as enunciated in *De Klerk v Minister of Police*² (*De Klerk*).

[13] The court *a quo* proceeded to consider the evidence of Constable Mokoena and found that the postponement on the first court appearance was not at the instance of the respondent, but a decision of the court, and concluded that compensation for the appellant's unlawful detention should be limited to the period before his first court appearance.

[14] In this court, the appellant raised the same argument. In amplification it was contended that para 10.2 of the plea was directed at the alternative claims, which alternative claims were abandoned. Therefore, so the argument went, the respondent could not rely on para 10.2 of the plea to adduce the evidence of Constable Mokoena that she did not oppose bail at the appellant's first appearance.

[15] Further to the admissions argument, the appellant contended that Constable Mokoena failed to place the prosecutor in a position to make an informed decision regarding bail, and failed to attend court or ensure that the docket was brought to court at the appellant's first appearance. For these reasons the SAPS should be held liable for the appellant's continued detention following the initial court appearance.

[16] Lastly, the appellant submitted that should the court find the SAPS liable for the full duration of the detention, the award of damages ought to be increased to R400 000.

[17] On behalf of the respondent, it was submitted that the court correctly applied the principle of causation as set out in *De Klerk*, and that the appellant had failed to establish the necessary causal link. It was further contended that for an admission of fact in a pleading

² *De Klerk v Minister of Police* [2019] ZACC 32; 2020 (1) SACR 1 (CC) (*De Klerk*).

to be binding on the respondent in the manner asserted by the appellant, such admission must be either expressly stated or necessarily implied.

[18] Prior to addressing the limited issue on appeal, it is necessary to consider the appellant's submissions regarding the admissions as conclusive judicial facts and the admissibility of Constable Mokoena's evidence relating to bail. These submissions bear significantly on the question of what was established by the pleadings and the composition of the body of evidence. It is therefore appropriate that these issues be determined first.

[19] The appellant's claim was pleaded as follows:

'AD CLAIM – UNLAWFUL ARREST AND/OR DETENTION

4.

4.1 On or about 20 June 2020 at the Plaintiff's permanent place of residence he was wrongfully and unlawfully arrested by members of the Phuthaditjaba Police Station on alleged charges of pointing of a firearm, malicious damage to property and assault to do grievous bodily harm.

4.2 The aforementioned arrest was effected without a warrant of arrest.

4.3 The Plaintiff was thereafter transported, detained and charged at the holding cells of the Phuthaditjaba Police Station at the instance of the SAPS members until 29 June 2020.

4.4 On 22nd of June 2020 the Plaintiff was transported to the Phuthaditjaba Magistrate's Court where members of the Defendant opposed his bail and the matter was further postponed.

4.5 The Plaintiff was thereafter transported to the Harrismith Correctional Facility and further detained until 29 June 2020.

4.6 On the 29th of June 2020 the Plaintiff was granted bail in the sum of R500.00 and warned to appear on the next occasion at the Phuthaditjaba Police Station.' (Own underlining.)

[20] In para 6 of the particulars of claim the appellant pleads that: 'The arrest and detention was unlawful due to the fact that: . . .' and then proceeds to list under three subparagraphs that the SAPS did not take s 12 of the Constitution of the Republic of South Africa into account; the appellant was arbitrarily and without good cause deprived of his freedom and that there were no grounds to interfere with the appellant's constitutional rights.

[21] This is followed by paras 7, 8 and 9 wherein the appellant pleaded three alternatives, being that there were no *prima facie* and/or reasonable grounds to arrest and detain the appellant; that the members of the SAPS did not exercise their discretion and/or the SAPS

members did not comply with the prescripts of the Standing Order (General) 341 of the SAPS Standing Orders.

[22] The alternatives were pleaded cumulatively and/or in the alternative through the use of the phrase 'AND/OR'. Throughout the particulars of claim no differentiation is made between detention directly after arrest and detention pursuant to the first court appearance. Save in paragraph 9 the words 'subsequent detention' appear.

[23] In response to the facts pleaded in para 4 of the particulars of claim, the respondent admitted the arrest but denied the unlawfulness thereof and pleaded that the arresting officer was acting in accordance with ss 40(1)(b) and 40(1)(h) of the Criminal Procedure Act 51 of 1977 (as amended) (CPA). The same is pleaded in respect of paras 7 and 8 of the particulars of claim. The contents of paras 4.2 to 4.6 were admitted and para 6 of the particular of claim was denied in its totality.

[24] Dealing with the third 'and/or' alternative and where specific reference is made to subsequent detention, the respondent pleads in paragraph 10.2 of the plea that:

'in amplification of the denial above, the defendant pleads that the arrest and the detention were lawful, and further the detention of the plaintiff was in accordance with section 51 of the Criminal Procedure Act 51 of 1977 and the further detention of the plaintiff was at the instance of the court'.

[25] In the relevant portion of the pre-trial minute the parties recorded that the admissions are as contained in the pleadings and directly thereafter the common cause facts are listed to be:

'The Plaintiff's names; The Court's jurisdiction; The arrest and detention; The arrest was carried out without a warrant; That all charges against the Plaintiff were withdrawn; That the said SAPS officials were acting within the course and scope of their employment with the Defendant; That the Plaintiff has complied with Section 3(1) of Act 40 of 2002 and no Special Plea was raised by the Defendant.'

[26] Under the heading disputed facts it was listed: 'Remainder of the Plaintiff's citation; The lawfulness of the arrest and detention; That the Defendant is liable for any damages and the Quantum as claimed.'

[27] The Constitutional Court in *De Klerk* restated the requirements of a claim under the *actio iniuriarum* for unlawful arrest and detention to be:

'(a) the plaintiff must establish that their liberty has been interfered with; (b) the plaintiff must establish that this interference occurred intentionally. In claims for unlawful arrest, a plaintiff need only show that the defendant acted intentionally in depriving their liberty and not that the defendant knew that it was wrongful to do so; (c) the deprivation of liberty must be wrongful, with the onus falling 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.’³ (Own underlining.)

[28] The appellant and respondent were *ad idem* that the wrongful and unlawfulness of the detention were in dispute, and consequentially the liability of the respondent for damages, notwithstanding the admission of the facts in paragraphs 4.2 and 4.3 of the particulars of claim. What the parties were plainly not *ad idem* on was the legal effect of the admissions contained in paragraphs 4.2 and 4.3 of the particulars of claim. This crucial distinction appears to have been overlooked or misconstrued before the court *a quo*.

[29] Put differently, did the admissions that:

‘4.3 The Plaintiff was thereafter transported and detained and charged at the holding cells of the Phuthaditjaba Police Station at the instance of the SAPS members until the 29th of June 2020.’ and ‘4.4 On 22nd of June 2020 the Plaintiff was transported to the Phuthaditjaba Magistrate’s Court where members of the Defendant opposed his bail and the matter was further postponed’ (own underline) have the result that the detention following the first court appearance was unlawful and established a causal link sufficient to attribute liability to the respondent without the need for further proof.

[30] It is trite that a party is usually bound by its pleadings and generally the admission(s) made therein. As held in *AA Mutual Insurance Association Ltd v Biddulph and Another*:⁴ ‘For an admission of a fact in a plea has important and serious consequences for a defendant. . .’⁵ When a fact is admitted it would be unnecessary for the party in whose favour the admission was made to adduce evidence to prove the admitted fact and incompetent of the other party making the admission to adduce evidence to contradict it.⁶ Parties are equally bound by their pre-trial agreement.

[31] An admission in its formal sense also requires at least an intention, explicit or inferred, and unequivocal, to remove a fact that depends on proof from the field of contention.⁷ Accordingly, for the consequences of an admission to be sustained against a defendant, it must clearly and unequivocally appear from the pleadings that such admission

³ Ibid para 14.

⁴ *AA Mutual Insurance Association Ltd v Biddulph and Another* 1976 (1) SA 725 (A) (*AA Mutual Insurance*).

⁵ Ibid at 735A.

⁶ *Gordon v Tarnow* 1947 (3) SA 525 AD at 531-532.

⁷ *Saayman v Road Accident Fund* [2010] ZASCA 123; 2011 (1) SA 106 (*Saayman*) para 28.

was made either expressly or by necessary implication. Failing this, the defendant may be prejudiced.⁸

[32] In *Saayman v Road Accident Fund 2011 (1) SA 106 (SCA)* it was stated: 'In the context of civil proceedings an admission is a statement against interest which has the effect of binding the party on whose behalf it is made. If that effect is absent the statement cannot amount to an admission and the well established rules relating to the withdrawal of admissions cannot apply to it. In fact, a withdrawal is strictly unnecessary, and prejudice to the other party is not an issue.'⁹

[33] As quoted with approval in *AA Mutual Insurance Association Ltd*, De Villiers JA said in *Rance v. Union Mercantile Co. Ltd 1922 AD 312* at 315:

'The fact of the matter is the party making the admission is bound by it to the extent to which the admission goes. To press it against him beyond that, under all circumstances, may lead to inequitable results. The passage in Beck, *Pleading in Civil Actions*, 3rd ed., para. 38, pp. 54 - 5, relating to an admission in a plea, is also apposite and supports the above approach. It reads: "Its effect is to bind the party making it and he is bound to the extent of its inevitable consequences or necessary implications unless these are specially stated to be denied. . . But an admission does not entail the admission of anything which cannot fairly be regarded as an inevitable consequence or a necessary implication."¹⁰

[34] The purpose of pleadings and pre-trial procedures is to clarify the issues before the court and to inform the parties of the case they must meet, thereby defining the matters upon which reliance is to be placed. In the present matter, however, the particulars of claim, the plea, and the pre-trial minute were each marked by defects and inaccuracies. Neither party utilised the available clarification remedies.¹¹

[35] In adjudicating an exception to a pleading, it is an established principle that pleadings are to be construed holistically. The court should eschew an overly technical approach and instead look at the pleadings benevolently rather than over-technical.¹² By applying parity of reasoning, pleadings ought to be examined through the same lens when the court reviews them to ascertain the implication of an admission or disputed issues as are present herein.

⁸ *AA Mutual Insurance* at 735C.

⁹ *Saayman* para 28.

¹⁰ *AA Mutual Insurance Association Ltd* 735C-F.

¹¹ *Ibid* at 736B and D-E.

¹² *Telematrix (Pty) Ltd t/a Matrix Vehicle Tracking v Advertising Standards Authority* SA 2006 (1) SA 461 (SCA) at 465H; *First National Bank of SA Ltd v Perry* NO 2001 (3) SA 960 (SCA) at 972I.

[36] The record of proceedings does not disclose any abandonment of the alternative claims pleaded in paragraphs 7 to 9 of the particulars of claim, and therefore does not exclude paragraph 10.2 of the plea, as contended on behalf of the appellant. Accordingly, paragraph 10.2 remained a relevant part of the pleadings before court.

[37] Having regard to that set out above and upon a holistic examination of the pleadings in their entirety, together with the contents of the pre-trial minute, the admissions of paragraphs 4.2 and 4.3 of the particulars of claim cannot be regarded as clear and unequivocal. Nor is it justified to imply that these admissions constitute an acknowledgment by the respondent of unlawfulness and causation, such as to preclude the respondent from adducing evidence on those issues or to constrain the court *a quo*'s inquiry accordingly.

[38] Even assuming that the admissions of paras 4.2 and 4.3 of the particulars of claim were clear and unequivocal, such admissions do not, in all circumstances, bind the court. In *Canaric NO v Shevil's Garage* 1932 TPD 196 the court was for the purpose of argument prepared to accept:

'With regard to the first point I am prepared to assume that the Court may disregard an admission made in the pleadings, where it is clear after a full investigation that this admission is contrary to the facts and where injustice would result from an adherence to the admission.'

[39] A court may ignore an admission on the pleadings when it appeared clearly, after full investigation of the facts, that the admission did not accord with the facts and where injustice would result if the admissions were given effect to.¹³

[40] In the circumstances the court *a quo* cannot be criticised for, upon being alerted to the admissions of paras 4.2 and 4.3 of the particulars of claim, electing to proceed with a full enquiry into the facts. This included receiving the evidence of Constable Mokoena, who was subjected to extensive cross-examination, hearing the evidence of the appellant and considering full argument presented by counsel on behalf of the parties. The court was, in the circumstances, entitled to consider the issue of causation notwithstanding the admissions.

[41] Having found as aforesaid, it is now considered, in light of the pleadings, the body of evidence, the probabilities and the applicable case law, whether the respondent is liable for the post-first appearance detention.

¹³ *Fourie v Sentrasure Bpk* 1997 (4) SA 950 (NC) at 973I-J and 974B-C.

[42] In *Minister of Police and Another v Erasmus*¹⁴ the court sets out the recent developments relating to the law concerning unlawful arrest and detention, where it states: ‘. . . When the police wrongfully detain a person, they may also be liable for the post-hearing detention of that person. The cases show that such liability will lie where there is proof on a balance of probability that, (a) the culpable and unlawful conduct of the police, and (b) was the factual and legal cause of the post-hearing detention. In *Woji v Minister of Police* [2014] ZASCA 108; 2015 (1) SACR 409 (SCA), the culpable conduct of the investigating officer consisting of giving false evidence during the bail application caused the refusal of bail and resultant deprivation of liberty. Similarly, in *Minister of Safety and Security v Tyokwana* [2014] ZASCA 130; 2015 (1) SACR 597 (SCA), liability of the police for post-hearing detention was based on the fact that the police culpably failed to inform the prosecutor that the witness statements implicating the respondent had been obtained under duress and were subsequently recanted and that consequently there was no credible evidence linking the respondent to the crime. In *De Klerk v Minister of Police* [2019] ZACC 32; 2020 (1) SACR (CC) paras 58 and 76, the decisive consideration in both the judgments that held in favour of the appellant was that the investigating officer knew that the appellant would appear in a “reception court” where the matter would be remanded without the consideration of bail. Finally, in *Mahlangu and Another v Minister of Police* [2021] ZACC 10; 2021 (2) SACR 595 (CC), the investigating officer deliberately suppressed the fact that a confession which constituted the only evidence against the appellants, had been extracted by torture and thus caused their continued detention.’

[43] The most germane principles dealt with by the Constitutional Court in *Mahlangu and Another v Minister of Police*,¹⁵ and relevant to the present matter are that the Minister of Police was liable for post-appearance detention where the wrongful and culpable conduct of the police had materially influenced the decision of the court to remand the person in question in custody. The court further noted that this reasoning ‘. . . effectively means that it is immaterial whether the unlawful conduct of the police is exerted directly or through the prosecutor’.¹⁶

[44] The court *a quo* found the arrest and detention prior to the first court appearance to be unlawful, therefore wrongful. Thus, as in *De Klerk*, there are prior wrongful conduct which factually caused the appellant to suffer harm. When regard is had to the particulars of claim and although not as eloquently pleaded as we would have hoped, the appellant pleaded that because of the arrest, which was unlawful, he was detained from date of arrest, being 20 June 2020, until his release on bail on 29 June 2020.

¹⁴ *Minister of Police and Another v Erasmus* [2022] ZASCA 57.

¹⁵ *Mahlangu and Another v Minister of Police* [2021] ZACC 10; 2021 (2) SACR 595 (CC).

¹⁶ *Ibid* para 33.

[45] No reliance was placed in the pleadings on any omission by members of the SAPS to prevent the applicant's continued detention as a basis for establishing wrongfulness following his first court appearance. However, it was submitted and argued before this Court that Constable Mokoena failed to obtain and furnish the necessary information that would have enabled the prosecutor to make an informed decision on whether to oppose bail at the first appearance. In support of this contention, it was submitted that Constable Mokoena neither attended court nor ensured that the docket was brought to court on the day of the first appearance, thereby depriving the prosecutor of the information required.

[46] The appellant's pleaded case is that the unlawful arrest, rather than an omission by members of the SAPS at the time of his first court appearance before, was the cause of the harm he suffered. As such this case will be approached on said basis and as one of legal causation and not as one of wrongfulness based on an omission by Constable Mokoena at the first court appearance.

[47] As in the court *a quo*, the appellant in this court placed reliance on *De Klerk* in seeking to hold the respondent liable for the entire period of detention founded upon the contention that the appellant has established causation. The general principles of causation were aptly set out in *De Klerk*, where it is stated:

'[24] Causation comprises a factual and legal component. Factual causation relates to the question whether the act or omission caused or materially contributed to the harm. The "but-for" test (*conditio sine qua non*) is ordinarily applied to determine factual causation. If, but for a wrongdoer's conduct, the harm would probably not have been suffered by a claimant, then the conduct factually caused the harm...

[25] Legal causation is concerned with the remoteness of damage. This entails an enquiry into whether the wrongful act is sufficiently closely linked to the harm for legal liability to ensue. Generally, a wrongdoer is not liable for harm that is too remote from the conduct concerned or harm that was not foreseeable.

[26] The function of legal causation is to ensure that liability on the part of the wrongdoer does not extend indeterminately...The question of legal causation is whether that further harm is too remote from the initial conduct for liability to be imputed to the defendant ...

...

[28] Legal causation is resolved with reference to public policy...

[29] Legal causation involves a flexible test that may consider a myriad of factors . . . The traditional criteria are, among others, reasonable foreseeability, adequate causation, whether a novus actus interveniens intrudes and directness...

[30]. . . It follows that the traditional criteria must be treated as being subsidiary to the considerations of public policy, reasonableness, fairness and justice . . . ' (Footnotes omitted.)

[48] As in *De Klerk*, the factual component of causation was satisfied in this case. But for the arrest, the appellant would probably not have been brought before the court and consequently remanded for a week to 29 June 2020.

[49] As referred to by the court a quo, the court in *De Klerk* held:

' . . . the liability of the police for detention post-court appearance should be determined on an application of the principles of legal causation, having regard to the applicable tests and policy considerations. This may include a consideration of whether the post-appearance detention was lawful. It is these public policy considerations that will serve as a measure of control to ensure that liability is not extended too far. The conduct of the police after an unlawful arrest, especially if the police acted unlawfully after the unlawful arrest of the plaintiff, is to be evaluated and considered in determining legal causation. In addition, every matter must be determined on its own facts – there is no general rule that can be applied dogmatically in order to determine liability.'¹⁷ (Footnotes omitted.)

[50] As in *De Klerk* the concerned SAPS member (therein the arresting officer, herein Constable Mokoena, the investigating officer) recommended that the appellant could be released on bail. In *De Klerk* a key factor that suggested the Minister of Police should not be held liable for the further detention was the mechanical and unlawful nature of the decision by the Magistrate to remand Mr De Klerk in custody, as founded in the principles of separation of powers.¹⁸

[51] However, the court in *De Klerk* found that:

'While there are strong public policy reasons to only find the Minister of Police delictually liable in this case, there are, in my view, stronger public policy reasons for finding fully for the applicant on these facts. This is where I part ways with the third judgment. Ultimately, the test for legal causation, while infused with constitutional considerations, must remain flexible and fact-sensitive. I disagree with the third judgment to the extent that it finds that the separation of powers invariably means that the police cannot be liable for detention after a remand order. All relevant factors must be considered on a case-by-case basis. There may be times, as in this case, where the police must be liable

¹⁷ *De Klerk* para 63.

¹⁸ *Ibid De Klerk* para 66 and discussion on paras 67-74.

notwithstanding the persuasive separation of power considerations expressed in the third judgment.’¹⁹

[52] The court in *De Klerk* proceeded to state and find that:

‘. . . subjective foresight of harm cannot itself necessarily imply that harm is not too remote from conduct. It is, however, a weighty consideration. In the present matter, Constable Ndala subjectively foresaw the precise consequence of her unlawful arrest of the applicant. She knew that the applicant’s further detention after his court appearance would ensue. She reconciled herself to that consequence. What happened in the reception court was not, to Constable Ndala’s knowledge, an unexpected, unconnected and extraneous causative factor – it was the consequence foreseen by her, and one which she reconciled herself to. In determining causation, we are entitled to take into account the circumstances known to Constable Ndala. These circumstances imply that it would be reasonable, fair, and just to hold the respondent liable for the harm suffered by the applicant that was factually caused by his wrongful arrest. For these reasons, and in the circumstances of this matter, the court appearance and the remand order issued by the Magistrate do not amount to a fresh causative event breaking the causal chain.’²⁰

[53] The evidence before the court *a quo* was that Constable Mokoena in preparing the appellant for court completed the pro-forma A6-bail form (bail form) on 21 June 2020, the day after the arrest. Thereupon she, amongst others, indicated that the appellant had a fixed address, was easy to trace, was co-operative, posed no danger to a person or community, would not interfere with witnesses, should not be kept in prison, should not be placed under electronic monitoring and no special conditions were required in respect of his release on bail.

[54] Constable Mokoena explained further that she initially ticked off ‘no’ next to the question ‘can be released on bail?’, but changed it on the same day by crossing it out pursuant to confirming that the appellant had no pending cases against him. She elaborated upon this during cross-examination, stating that as soon as an arrested person is processed you can access the system by utilising an identity number to ascertain if the person has any pending cases. This is done to verify the verbal indication that an arrested person will give you in respect of pending cases or previous convictions. Once she checked the system on 21 June 2020, she changed the answer from ‘no’ to ‘yes’ pertaining to her opinion in respect of whether the appellant could be released on bail. Constable Mokoena testified that the

¹⁹ Ibid *De Klerk* para 75.

²⁰ Ibid *De Klerk* para 75

content of the bail form thus indicated her election that she did not oppose the appellant being released on bail.

[55] According to Constable Mokoena, having completed the bail form, the docket with the bail information as set out on *inter alia* the bail form was sent to court and indicated to the prosecutor that the appellant could be released on bail when he arrived at court. She confirmed that where it has been indicated, as in this matter, that the arrested person could be released on bail, she as an investigating officer would not attend court on the first court appearance. The prosecutor would receive the docket with the bail information, consider same and make the decision on how to proceed. She explained that engagement between the investigating officer and prosecutor would only ensue if there is an indication that an investigating officer intends to oppose bail or required clarity on something, which did not happen in the present matter.

[56] The appellant led no evidence in respect of that which specifically transpired during his first court appearance. His evidence was simply that he appeared on Monday 22 June 2020 with the assistance of a lawyer, Mr Shabangu, and 'they' said to him that the matter is going to be postponed for seven days for a bail application.

[57] This matter is factually distinguishable from *De Klerk*. In the present case, there is no indication that Constable Mokoena subjectively foresaw the specific consequence of the appellant's unlawful arrest. No evidence was placed before the court a quo to suggest that Constable Mokoena knew or ought to reasonably have known that the appellant's continued detention following his first court appearance would result. On the contrary, Constable Mokoena's evidence indicated that she expected the appellant to be released on bail, as she had completed the relevant bail form recommending that bail be granted. This expectation is further supported by Constable Mokoena's non-attendance of court on the appellant's first appearance, which was informed by the relevant information she provided to the prosecutor by way of the docket and completed bail form, in accordance with the standard practice where bail is not opposed.

[58] Taking into account the circumstances known to Constable Mokoena, it cannot be concluded that Constable Mokoena reconciled or should have reconciled herself to the consequence that the appellant would not be granted bail and that the matter would be postponed. There was no suggestion that as in *De Klerk* the court was a reception court where the issue of bail would routinely be postponed. The consequence was thus not foreseen by her, and one which she reconciled herself to.

[59] In *Botha v Minister of Safety and Security, January v Minister of Safety Security*²¹ when dealing with the obligation of a police official relating to detention it was stated that: ‘... This, in my view, includes any further detention for as long as the facts which justify the detention are within the knowledge of the police official. Such police official has a legal duty to inform the public prosecutor of the existence of information which would justify the further detention. Where there are no facts which justify the further detention of a person, this should be placed by the investigator before the prosecutor of the case and the law casts an obligation on the police official to do so... This information, which must have been established by the police officer, will enable the public prosecutor and eventually the magistrate to have an informed decision whether or not there is any legal justification for the further detention of the person.’²² (Footnotes omitted and own underlining.) Constable Mokoena’s evidence revealed that she executed her obligation and placed information before the prosecutor that there were no facts justifying the appellant’s further detention.

[60] The circumstances of this matter does not imply that it would be reasonable, fair and just to hold the respondent liable for the entire period of detention. Having regard to the pleadings, the body of evidence, the probabilities and applicable case law, and on the basis of the reasons set out above, there is no justification to interfere with the judgement and order of the court *a quo*.

Reinstatement of appeal and condonation for late filing of the respondent’s heads of argument

[61] It is necessary to briefly deal with the peripheral issues as they unfolded during the hearing of the appeal.

[62] Approximately one month prior to the scheduled hearing of this appeal on 24 March 2025, the appellant instituted a substantive application for the reinstatement of the appeal. The respondent was required to file a notice of intention to oppose within ten days of service, and an answering affidavit within fifteen days thereafter. Due to the timing of the application, the respondent’s answering affidavit was served only one court day before the appeal was due to be heard. Consequently, it became necessary for this court to first determine the application for reinstatement before considering the merits of the appeal.

[63] The basis for the application for reinstatement was, in essence, that although the appellant complied with Uniform Rule 49(2) by timeously filing the notice of appeal, he failed

²¹ *Botha v Minister of Safety and Security, January v Minister of Safety Security* [2011] ZACPEHC 12; 2012 (1) SACR 305 (ECP).

²² *Ibid* paras 29-30.

to serve and file the appeal bundles in accordance with the provisions of Uniform Rule 49(7)(a). Similarly, the appellant did not comply with Uniform Rule 49(6)(a) in relation to the application for a hearing date. As a result, the deeming provision in Uniform Rule 49(6)(a) was triggered, which provides that 'if no such application is made by either party the appeal and cross-appeal shall be deemed to have lapsed.'

[64] The explanation advanced by the appellant was that, although all necessary arrangements had been made for the record to be transcribed by Gauteng Transcribers, the secretary to the appellant's attorney of record failed to print the transcribed record or bring it to the attorney's attention upon receipt. Instead, the office file was returned to filing without any further action being taken. This oversight only came to light in January 2024, whereafter the appeal record was compiled into three bundles as required, delivered to the Bloemfontein correspondent during the week of 22 January 2024, and ultimately served on the respondent's attorneys of record on 28 February 2024.

[65] Pursuant to the above, the appellant applied for a hearing date and the matter was set down for hearing on 24 March 2025. Acknowledging that there had not been strict compliance with Uniform Rule 49, the appellant addressed written correspondence to the respondent on 7 November 2024, requesting an indication as to whether the respondent would be amenable to condoning the late filing of the appeal record. No response was received. The appellant submitted that, given the significant time lapse since the error had been rectified specifically, that the record had been filed more than a year prior to the hearing date and due to the respondent's failure to engage, there could be no prejudice occasioned to the respondent. As is customary in applications of this nature, the appellant also addressed the prospects of success on appeal. The allegations in the founding affidavit were corroborated by contemporaneous documents annexed thereto.

[66] The respondent opposed the application for reinstatement. While not directly disputing the factual allegations, the respondent contended that the explanation furnished by the appellant did not adequately justify the extended period of non-compliance with the rules of court and in any event, that the reasons advanced were not reasonable or satisfactory. The respondent further argued that the prejudice suffered by being required to defend an appeal that had lapsed could not be remedied by an award of costs alone.

[67] The respondent's heads of argument were filed late and only on 20 March 2025, being one court day before the hearing of the appeal and reinstatement application. The respondent explained from the bar that the cause was the reinstatement application, which

required judicial determination before the heads of argument were actually due. That said, the heads of argument were prepared and filed albeit late.

[68] Having considered the merits of the reinstatement application, as well as the respondent's opposition thereto, prayers 1 to 4 of the notice of motion were granted. The respondent's late filing of its heads of argument were likewise condoned.

Costs

[69] The general rule in civil litigation is that the successful party should be awarded costs in its favour, unless there is just cause to depart therefrom.²³ There is no justifiable circumstances present in this matter to deviate from the general position. As to the scale at which counsel's fees should be taxed, both parties contended for scale B and it seems to be the appropriate scale in the circumstances.

Order

[70] Consequently, the following order is made:

- 1 The late service and filing of the appeal record is condoned.
- 2 The late application for the allocation of a date for hearing of the appeal and notice of set down are condoned.
- 3 The appellant's appeal is reinstated.
- 4 The late filing of the respondent's heads of argument is condoned.
- 5 The appeal is dismissed with costs, which costs shall include counsel fees to be taxed on Scale B.

GREYLING-COETZER AJ

We agree and it is ordered.

²³ *Motala v Master, North Gauteng High Court* [2019] ZASCA 60; 2019 (6) SA 68 (SCA) at 102G–104C.

MBHELE AJP

VAN ZYL J

Appearances:

For the Appellant:

MCC De Klerk

Instructed by:

Loubser Van der Walt Inc
C/O: Jacobs Fourie Inc

For the Respondent:

PS Mphuloane

Instructed by:

The State Attorney
Bloemfontein