



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

CASE NO.: 1012/2020

Reportable	Yes/No
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In the matter between:

BAZOLILE SIHLALI

Plaintiff

and

MINISTER OF POLICE

Defendant

JUDGMENT

Cengani-Mbakaza AJ

[1] The plaintiff instituted an action against the Minister of Police, (the defendant) claiming damages in the amount of R600 000 (Six Hundred Thousand Rand) for the alleged unlawful arrest, search and detention. It is common cause that the claims are based on vicarious liability, it being pleaded that the members of the South African Police Services (SAPS) committed a delict when acting in the scope and course of the defendant's employment.

[2] According to the plaintiff's particulars of claim, on or about 23 September 2019, near Tsolo, t
the floor.

[3] The plaintiff was never brought to court after being unlawfully searched, arrested and detained by SAPS and no charges were laid against him. He was pushed into the police van, which was then driven at a high speed to the Magistrates' Court, where he was offloaded. The plaintiff alleges that there was no reasonable information to suggest that he was reasonably suspected of being involved in the commission of an offence.

[4] The plaintiff avers that he was humiliated and degraded by the conduct of the SAPS who failed to justify their actions and properly investigate the case against him. As a result, the plaintiff was deprived of his freedom and subjected to humiliation, embarrassment and degradation. Consequently, the plaintiff's reputation was tarnished and he was perceived as a criminal.

[5] In his plea, the defendant denies that an arrest, search and detention took place. Instead, he alleges that SAPS members observed the plaintiff exchanging an item with a known drug dealer. When questioned, the plaintiff fled. He then refused to be searched without a warrant, claiming to be an attorney. The defendant disputes that the plaintiff was pulled or pressed to the ground. Instead, the plaintiff apologised to the SAPS for causing unnecessary noise and was given a lift to his workplace.

[6] The trial proceeded based on a pre-trial conference, where it was agreed that there would be no separation between the merits and quantum. Considering that the claims were denied from the onset, the trial proceeded on the basis that the plaintiff bore the *onus* of proving unlawful arrest, search and detention. Consequently, the plaintiff had a duty to begin presenting evidence.

[7] At the time of the institution of the proceedings, the plaintiff, a practising attorney trading under the name and style of the Sihlali Attorneys, was a candidate attorney employed by the Legal-Aid South Africa (LASA). On the day in question, he was on duty at Tsolo Magistrates' Court. He had gone to buy lunch after the court had adjourned.

[8] Due to a long queue at Spar, he left without making a purchase and returned to the court to collect the vehicle he was driving which belonged to LASA. As he

walked back to court, he met a young man he did not know. The young man asked him R2. Since he did not have the exact change, he gave the young man R10 and asked him to get a change from a nearby shop.

[9] After getting the change, the young man returned, he gave him R2 and they parted ways. The plaintiff took a few steps away when an unknown man grabbed him. The man informed him that he was under arrest for dealing in drugs. The plaintiff was shocked because the man was in civilian clothes and wearing a long jacket and a balaclava over his face. This made it difficult for him to believe that the man was a genuine police officer, so he testified.

[10] Despite his doubts about the man's identity as the police officer, the plaintiff responded by informing him that he was not selling drugs. While still being detained, as alleged, a second man wearing a cap joined them. When he removed his cap, he revealed a hoodie covering his head, obscuring his face. The plaintiff testified that he could only see the man's nose as his eyes were hidden.

[11] Given the circumstances he thought he was being robbed because both men were gripping him tightly by his clothing and his arms, with no space between them. He asked a bystander in a nearby shop to call the police. However, the two men told him to be quiet, claiming they were police officers. The man wearing the balaclava then pointed a firearm at him ordering him to shut up.

[12] A scuffle ensued between them continuing until they entered the shop. During the struggle, his car keys and state petrol card fell out of his pocket. Throughout the altercation, the plaintiff consistently maintained that he was not selling drugs, repeatedly informing the two men that he was an attorney working at LASA. By the time he identified himself as an attorney, he had already been forced to the ground and searched.

[13] The plaintiff testified that both men continued searching him and later stopped. One of them took him to a corner inside the shop asking him to repeat what he had said earlier. The plaintiff informed the man again that he was an attorney and

not selling drugs. He further explained the situation that a young man had approached him asking for money which he had given him.

[14] The plaintiff later realised that the two men were indeed SAPS members. One of the men brushed him off, as he was dirty from being forced to the ground. A crowd of onlookers had gathered to witness the incident. The police officers then apologised and offered to drop him off at the court premises. They all proceeded to the police van which was parked on the street and drove the plaintiff back to the court.

[15] After being dropped off, the plaintiff drove to his office and reported the incident to his superiors. Subsequently, he went to the police station to lay criminal charges against the two SAPS members. The plaintiff testified that the matter was not investigated further by the Independent Complaint's Directorate, resulting in the prosecution declining to prosecute the case.

[16] The plaintiff further testified that, although he suffered no physical injuries, during the ordeal he was left in a state of distress. The incident had a traumatic impact on him particularly the experience of being pointed with a firearm. When recalling the incident, so he alleged, he would experience fears and flashbacks. When asked to explain why his pleadings state that he was pushed into the police van, the plaintiff testified that he was never pushed, instead an agreement was reached between him and SAPS members that he would be transported to the court premises.

[17] After the closure of the plaintiff's case, the defendant presented the testimony of one Mr Luvo Abednego Thile, a police sergeant (Sgt Thile). Sgt Thile testified that at the time of the incident he was working as a police officer at Crime Prevention Unit in Tsolo district. He explained that the area was experiencing a problem with drug dealing. He described Tsolo district as a small town, where it was relatively easy to identify notorious individuals.

[18] Sgt Thile confirmed that he was dressed in civilian clothes at the time as he wanted to investigate crimes discreetly without being identified as a police officer. He

testified that he was with his colleague when they spotted the plaintiff and a notorious young man exchanging a substance in a white plastic bag. At the time of the exchange they were about 6 metres from the pair.

[19] Although he saw the plastic bag, he could not identify its contents. When they approached the pair, they both fled the scene. He focused on the plaintiff following him as he entered the shop. His intention was to determine what he had in his possession, he testified. Since he had an identification card with him, he identified himself as a police officer. The plaintiff asked why he was not wearing a police uniform. A scuffle ensued between them causing him to fall to the ground. People inside the shop started screaming and making a commotion.

[20] During the struggle, his firearm fell and his colleague joined. Once the struggle subsided, introductions were made. Thereafter, they had a peaceful conversation and left the scene. They proceeded to the police van and later dropped off the plaintiff in the court premises.

[21] The issues for determination are whether the conduct of the SAPS amounted to unlawful arrest, search and detention. Another point of contention is whether the amount of damages claimed is justified in the circumstances of this case.

[22] Considering the principal points for determination which relate to the defendant's contention that no arrest, search and detention took place in this case, the point of departure is to define what constitutes an arrest. Guided by the Constitution of the Republic of South Africa, 1996 (the Constitution) and the case law, arrest constitutes a serious restriction of an individual's freedom of movement and also affects their dignity¹ and privacy². The Constitution protects the fundamental rights, including the right to freedom and security of the persons. It enshrines the right to be free from arbitrary deprivation of liberty without just cause.³

¹ Section 10 of the Constitution.

² Section 14 of the Constitution.

³ Section 12 of the Constitution.

[23] The legislation that governs the manner and effect of arrest is s 39 of the Criminal Procedure Act 51 of 1977 (CPA). This section provides:

'39 Manner and effect of arrest

(1) An arrest shall be effected with or without a warrant and, unless the person to be arrested submits to custody, by actually touching his body or, if the circumstances so require, by forcibly confining his body.

(2) The person effecting an arrest shall, at the time of effecting the arrest or immediately after effecting the arrest, inform the arrested person of the cause of the arrest or, in the case of an arrest effected by virtue of a warrant, upon demand of the person arrested hand him a copy of the warrant.

(3) The effect of an arrest shall be that the person arrested shall be in lawful custody and that he shall be detained in custody until he is lawfully discharged or released from custody.'

[24] Therefore, an arrest occurs as soon as the arrestor assumes control over the movements of a person being arrested.⁴ Although it is imperative that an arrestee be informed that they are under arrest, as found in *State President & Others v Tsenoli*,⁵ failure to do so does not necessarily mean that an arrest has not taken place. The court in *Willie v Minister of Police and Others*,⁶ found that an arrest had indeed taken place although the police officer erroneously believed that his actions constituted a mere request and not arrest. This was because the police officer held the arrestee's arm and led her to a police van.

[25] These are civil proceedings and the plaintiff bears the *onus* to prove his case on a balance of probabilities. Furthermore, the court is called upon to make credibility findings before a clear determination can be made on the police actions. This is so because the versions of the plaintiff and Sgt Thali are mutually destructive. According to our jurisprudence, there is no exhaustive list and dogmatic approach on

⁴ R v Mazema 1948 (2) SA 152 (E) 154, *Kerchhoff & Another v Minister of Law and Order & Others* 1986 (4) SA 1150 (A) 1186C-D; Du Toit *et al*, Commentary on the Criminal Procedure Act 51 of 1977, Service 67 2021.

⁵ 1987 (1) PH H24 (AD).

⁶ Unreported FB appeal case no (A170/2019) [2020] ZAFSHC 122 8 June 2020) at [10]; see also Du Toit *et al* at fn 1 *supra*.

how to make credibility findings. Each case is decided on its own facts. Notwithstanding this, the Supreme Court of Appeal (SCA) serves as a guide on how to approach this subject. In *Stellenbosch Famers' Winery Group Ltd and Another v Martell et Cie and Others*,⁷ the court held that:

'The technique generally employed by courts in resolving factual disputes of this nature may conveniently be summarised as follows. To come to a conclusion on the disputed issues a court must make findings on (a) the credibility of the various factual witnesses; (b) their reliability; and (c) the probabilities. As to (a), the court's finding on the credibility of a particular witness will depend on its impression about the veracity of the witness. That in turn will depend on a variety of subsidiary factors, not necessarily in order of importance, such as (i) the witness's candour and demeanour in the witness-box, (ii) his bias, latent and blatant, (iii) internal contradictions in his evidence, (iv) external contradictions with what was pleaded or put on his behalf, or with established fact or with his own extracurial statements or actions, (v) the probability or improbability of particular aspects of his version, (vi) the calibre and cogency of his performance compared to that of other witnesses testifying about the same incident or events. As to (b), a witness's reliability will depend, apart from the factors mentioned under (a)(ii), (iv) and (v) above, on (i) the opportunities he had to experience or observe the event in question and (ii) the quality, integrity and independence of his recall thereof. As to (c), this necessitates an analysis and evaluation of the probability or improbability of each party's version on each of the disputed issues. In the light of its assessment of (a), (b) and (c) the court will then, as a final step, determine whether the party burdened with the onus of proof has succeeded in discharging it. The hard case, which will doubtless be the rare one, occurs when a court's credibility findings compel it in one direction and its evaluation of the general probabilities in another. The more convincing the former, the less convincing will be the latter. But when all factors are equipoised probabilities prevail.'

⁷ 2003 (1) SA 11 para 5.

[26] This court further takes cognisance of the plaintiff's single evidence which must be approached with caution. I have considered the succinct oral and written submissions raised by both parties. Furthermore, I have noted the contradiction between the plaintiff's pleaded version and his testimony regarding alleged pushing into the police vehicle. However, I find the contradiction to be immaterial given that the plaintiff honestly clarified that no such pushing occurred. Furthermore, despite this immaterial contradiction, the plaintiff's version corroborated that of Sgt Thile, particularly on material issues.

[27] I disagree with the defendant's counsel who argued that it is highly improbable for someone to give a stranger money for change and have it returned. This argument is highly presumptuous and unsupported by the facts. Sgt Thile could not hear the conversation taking place between the plaintiff and a young man. Therefore, the plaintiff's version remains unchallenged in this regard.

[28] Upon proper examination of the probabilities, it is clear that something untoward occurred between the plaintiff and SAPS members. The fact that they ended up inside the shop does not seem coincidental. In my opinion, the plaintiff had no reason to flee, as he had no drugs in his possession. This is a version that was corroborated by Sgt Thile's admission that nothing was found in the plaintiff's possession. Although Sgt Thile attempted to justify this by suggesting that the drugs might have fallen, the circumstances do not support this proposition.

[29] The uncontroverted evidence is that the only items that fell from the plaintiff's possession were his car keys and the state's petrol card. In fact, it does not make sense that the plaintiff would sell drugs to a young man and later flee with drugs that he had already sold. Sgt Thile's version that the plaintiff was selling drugs is implausible, even based on his own account. Although not stated in the pleadings, the allegations regarding the pointing of a firearm are plausible, given Sgt Thile's confirmation that he had a firearm in his person which fell during the scuffle.

[30] The discrepancy between the pleading and Sgt Thile's testimony where he claimed that the exchanged item was a plastic bag with a white substance inside, reveals that Sgt Thile made assumption about drugs being exchanged without actual

knowledge. Therefore, there is no cogent reason to disbelieve the plaintiff's version that he was being generous to a young man who randomly asked R2 from him. Despite the plaintiff's initial confusion about being robbed, the evidence overwhelmingly suggests that he was in fact under arrest.

[31] I agree with the plaintiff's counsel that Sgt Thile's action specifically the touching and placing the plaintiff in his custody satisfy the elements of arrest as outlined in s 39(1) of the CPA. Other than arrest, there is no justification for Sgt Thile's action in confining the plaintiff and leaning on top of him. Furthermore, the plaintiff's clothes being dusty all over corroborates his version of being placed on the floor during arrest. I therefore conclude that the arrest was based on an unreasonable and baseless assumptions and therefore irrational. Considering the fact that the arrest and detention was unlawful, the plaintiff's resistance to being arrested and confined was justified. Consequently, the plaintiff's claims must succeed.

[32] I now proceed to deal the alleged unlawful search. Sgt Thile's assertion that he did not search the plaintiff is improbable. His concession that nothing was found in the plaintiff's possession strongly intensifies the plaintiff's version that a search did take place. The question that remains is whether the search was lawful.

[33] The CPA lists certain provisions that are instrumental in assisting police investigations through search and seizures of articles. Section 20(a) of the CPA enables the state to seize articles that may serve as evidence for prosecution, but only if those articles are reasonably suspected to be connected to the commission of the offence. Section 20(b) of the CPA refers to articles that may afford evidence in the commission of the offence, whether in the Republic or elsewhere. Furthermore, s 20(c) of the CPA specifically targets articles intended for use or reasonably believed to be intended for use in committing an offence.

[34] Section 21 of the CPA deals with circumstances where articles may be seized without a warrant, while s 22 of the CPA empowers peace officers to seize articles without a warrant. The provisions of s 22 of the CPA are couched as follows:

'22 Circumstances in which article may be seized without a search warrant.

A police official may without a warrant search any person or container or premises for the purpose of seizing any article referred to in section 20–

- (a) if the person concerned consents to the search for and the seizure of the article in question, or if the person who may consent to the search of the container or premises consents to such search and the seizure of the article in question; or
- (b) if he on reasonable grounds believes–
 - (i) that a search warrant will be issued to him under paragraph (a) of section 21 (1) if he applies for such warrant; and
 - (ii) that the delay in obtaining such warrant would defeat the object of the search.'

[35] The plaintiff relied on s 22 (1) of the CPA arguing that he never consented to a search by the SAPS. To resolve this dispute, a holistic evaluation of the evidence presented by both parties is necessary in this regard. It has already been established that a search did occur.

[36] It is well acknowledged that police officers have a critical obligation to maintain law and order, with a strong emphasis on crime prevention. However, it is imperative that this duty be discharged within the confines of the law. In *Magobodi v Minister of Safety and Security & Another*,⁸ a case that I was referred to by the plaintiff's counsel Miller J held:

'[15] Random searches by police officials without objective grounds for the search are, in my view, contrary to the norms of an open and democratic society. If it is felt that there is a particular need for such searches to take place then legislative machinery is provided for the authorisation thereof by section 13 of Act 68 of 1995. If a police official performing routine duties takes it upon himself or herself to conduct such random searches then, at least, the aforementioned requisites relating to the obtaining of consent to search

⁸ 2009 (1) SACR 355 (Tk).

should be complied with by the police official in order to obtain a valid and voluntary consent.’

[37] Considering the contradictions in the Sgt Thile’s evidence, coupled with the altercation between the parties, this court concludes that the plaintiff did not consent to the search and there was no probable cause for search. In the circumstances of this case, it is unnecessary to extensively consider the provisions of s 22 (2) of the CPA, as it was not part of the defendant’s pleaded case, no evidence was led and no submissions were made in this regard.

[38] The last issue is the determination of the quantum of damages. Our Courts have consistently frowned upon the deprivation of the person’s liberty, regarding it as a serious infringement of individual’s rights. In a free society like ours, liberty is a fundamental right and it should be zealously guarded and protected at all times.⁹

[39] I endorse the sentiments raised by Jones J in *Olgar v Minister of Safety and Security (Olgar)*,¹⁰ which can be paraphrased as follows: *when assessing damages for unlawful arrest and detention, a just award should reflect the importance of the individual’s constitutional right to freedom, taking into account the specific facts of the case, the victim’s personal circumstances and the nature, extent and degree of the affront to the individual’s dignity and personal worth. These considerations should be balanced with restraint and a proper regard to the value for money avoiding extravagant awards that might be seen as unjustly depleting the defendant’s resources.*

[40] In addition to the circumstances endorsed in *Olgar*, other factors also play a significant role. The Supreme Court of Appeal in *Rahim & 14 Others v Minister of Home Affairs*¹¹ has identified further consideration, including the circumstances under which the deprivation of liberty occurred, the conduct of the defendants and the nature and duration of the deprivation.

⁹ Thandani v Minister of Law and Order 1991 (1) SA 702 (E).

¹⁰ Unreported Case No: 608/07.

¹¹ 2015 (4) SA 433 (SCA) para 27.

[41] I acknowledge that assessing the quantum of damages lacks mathematical precision. Our courts have endorsed the principle that the previous cases can serve as a guide, although they are fraught with difficulties.¹²

[42] With these principles in mind, I consider it unnecessary to reiterate the plaintiff's personal circumstances which are adequately outlined in the summary of his testimony. The defendant presented no evidence to rebut the plaintiff's personal circumstances, including the impact of the SAPS's unlawful conduct which occurred in full view of the public. Consequently, there is no evidence to refute the impairment of his dignity or the emotional impact caused by the SAPS's unlawful actions.

[43] Although it is acknowledged that the plaintiff was a candidate attorney who was treated like a criminal and suffered significant humiliation, the all-inclusive amount of R400 000 (Four Hundred Thousand Rand) for compensation as recommended by the plaintiff's counsel in his heads of argument is not justified. It is notable that SAPS partly acknowledged responsibility for their conduct by transporting the plaintiff to the court premises after their unlawful actions. Furthermore, the duration of the arrest, search and detention was minimal, lasting less than an hour. Therefore, in exercising my discretion, I conclude that a fair and reasonable amount for compensation in this case is the all-inclusive amount of R120 000 (One Hundred and Twenty Thousand Rand).

Order

[44] Resultantly, I make the following order:

1. The plaintiff's claims succeed.
2. The defendant shall pay an all-inclusive amount of R120 000 (One Hundred and Twenty Thousand Rand) for damages suffered by the plaintiff as a result of unlawful arrest, search and detention.
3. The defendant shall pay interest at the rate of 10,25% per annum calculated from the date of the summons to the date of payment.

¹² Rahim and 14 Others, fn 7 above.

4. The defendant shall pay costs on scale A as contemplated under Rule 67A read with Rule 69 of the Uniform Rules of Court.

N CENGANI-MBAKAZA
JUDGE OF THE HIGH COURT (ACTING)

APPEARANCES:

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Heard on : 08 May 2025
Judgment delivered on : 21 August 2025