



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

**Case No: CA 122/2024**

In the matter between:

**STORM COCOA**

**Appellant**

and

**THE MINISTER OF POLICE**

**Respondent**

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**JUDGMENT**

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**MOLONY AJ:**

**Introduction**

- [1] The appellant in this matter instituted action against the respondent on 8 July 2021, claiming damages for unlawful, wrongful assault (claim 1) and unlawful, wrongful and malicious arrest and detention (claim 2).

[2] The appellant claimed R 200 000.00 in damages in regard to claim 1, and R 400 000.00 in damages in regard to claim 2, thus claiming a total amount of R 600 000.00.

[3] The respondent defended the matter. After evidence and argument was heard, the presiding magistrate handed down judgment on 31 May 2024, dismissing both claims and ordering that each party pay their own costs.

[4] The appellant noted an appeal on 1 July 2024, appealing the entire judgment of the presiding magistrate.

[5] The grounds of appeal (in summary) are that the presiding magistrate erred and misdirected herself in the following manner:

5.1 By only considering the evidence of the respondent's witnesses favourably, and incorrectly evaluating the evidence.

5.2 When finding that the arrest was justified in terms of section 40(1)(b) of the Criminal Procedure Act 51 of 1977 ('the CPA'), given the relevant evidence available, including:

- (i) The version of the arresting officer relating to seeing the plaintiff, on 22 March 2021, running in the area where a robbery had taken place, whereas the presiding magistrate found that the arresting officer identified the plaintiff positively on the scene of the crime.
- (ii) The evidence of the arresting officer was that if he had known that the complainant did not want to continue with the matter, as she could not positively identify anyone who robbed her, he would not have arrested the plaintiff, yet the presiding magistrate found that his suspicion was justified.

5.3 In finding that there was a reasonable suspicion in terms of section 40(1)(b) of the CPA that the appellant had committed the offence of

robbery, when the respondent's own evidence did not support such a conclusion.

5.4 When finding that the appellant and his witness had fabricated a version of the assault claim, and made such finding on the basis of *inter alia* speculation (including that the appellant's injuries would have been more serious had the assault in fact occurred), despite the evidence of Detective Meyer, who corroborated the appellant's injuries as he had noted in the warning statement of the appellant.

5.5 By failing to consider certain pertinent information in regard to the timeline of events, including when it became known that the complainant did not wish to proceed with the matter, which led to the appellant's arrest and detention, and thus erred in finding that they were lawful.

5.6 By failing to take into account certain past interactions between the appellant and the arresting officer.

5.7 By finding that the detention from 8 April 2021 to 12 April 2021 was lawful, when the appellant should have been taken to court prior to 12 April 2021.

5.8 By failing properly to assess the contradictions in the evidence of the respondent's witnesses.

[6] The judgment of the presiding magistrate was extremely lengthy and was unfortunately not a model of clarity. The presiding magistrate also did not provide any further reasons for her decision.

## **Timeline**

[7] The following timeline of events is relevant:

7.1 On the morning of 22 March 2021, a complainant in a robbery matter had been accosted by three coloured males, two of whom had knives, who

took her cell phone from her. All three were wearing dark clothing. This caused a docket to be opened in this regard. The complainant was unable to identify any of the perpetrators, and neither was her husband who, along with the complainant, sought to pursue the robbers in a vehicle.

7.2 On the same day (22 March 2021) Constable Holster ('Holster') and Constable de Doncker ('de Doncker') allegedly saw three males (one of whom was wearing all black clothing) running in the same area in which the robbery occurred. At the time neither knew anything about the robbery involving the complainant. They were, nonetheless, suspicious of the three males. One of the males, who they identified as the appellant (who was the person wearing black clothing), was not wearing a mask, and turned around and shouted at them before fleeing (the evidence of Holster and de Doncker differed in regard to whether or not the appellant swore at them when shouting words to the effect that they would not search him that day).

7.3 A search followed but they could not find the appellant. During this time, they were approached by the complainant and her husband (the husband, in his statement, confirmed approaching some police officers, but did not identify them), who had been pursuing the robbers in their motor vehicle. Holster allegedly understood the complainant to have seen one of the perpetrators wearing black clothing, which confirmed (in Holster's mind) that the appellant was one of the perpetrators.

7.4 It was not in dispute that Holster and de Doncker considered the appellant to be a known robber in the area, and periodically picked him up and took him to the police station for 'profiling', before releasing him. The appellant had evaded many criminal convictions in the past, according to Holster and de Doncker, however their view was that this was purely due to good fortune on the part of the appellant, who they considered to be a serial criminal. The appellant's view was that Holster was targeting and harassing him (the appellant).

7.5 On 23 March 2021 (i.e. the very next day) the investigating officer, Constable Majali ('the I/O'), made an entry into the investigation diary, which recorded *inter alia* that the complainant was no longer interested in the matter, as she would not be able to identify the perpetrators.

7.6 This position was confirmed on 24 March 2021 by the complainant's husband and the complainant's lack of interest was again recorded on 25 March 2021. No mention was made of Holster or de Doncker.

7.7 Despite the appellant allegedly being suspected of a very serious offence, neither Holster nor de Doncker attempted to search for the appellant after 22 March 2021. Holster initially claimed that he had been too busy to do so, then later testified that he had been on rest days during the relevant period, whilst de Doncker testified that they were, essentially, too busy to do so. Neither of them made a statement about what they had seen that day and were content to presume that their presence would have been recorded by the complainant when she went to lay charges, and that an investigating officer would have followed up with them. This did not occur, and so the appellant's name did not appear in the docket as a suspected perpetrator. Holster and de Doncker did not draw any of their colleagues' attention to what they had seen on 22 March 2021. The investigation diary also revealed that the I/O had made enquiries in the area, but with negative results. There were apparently, at that point, no clues and no witnesses.

7.8 The appellant was arrested on the morning of 8 April 2021 by Holster, with the assistance of three female police officers, one of whom was de Doncker. The appellant was spotted (after information was received from a community member) whilst walking with three other males and was apprehended after being pursued since he ran from the police.

7.9 Holster was of the view that the appellant was detained, but not in fact arrested, until they reached the police station, as Holster first checked whether or not the complainant's docket was still active.

7.10 It appears that Holster did not go beyond confirming that the docket was still active, and so was unaware that the complainant did not wish to proceed with the matter. The docket was, on 8 April 2021, with the public prosecutor, the note in the investigation diary stating that the complainant wanted to withdraw the complaint.

7.11 It was after he was detained on that day that the appellant alleged that he was assaulted by Holster. The assault, according to the appellant, continued once they reached the police station. The respondent's witnesses denied any assault.

7.12 It was only on 8 April 2021 that de Doncker and Holster deposed to affidavits which referred to the appellant allegedly being involved in the robbery of 22 March 2021.

7.13 Due to the docket being with the public prosecutor on 8 April 2021, Detective Meyers only received it on 9 April 2021, and it was then that the appellant was processed. The notes relating to the complainant's decision not to proceed with the matter were apparently missed by Detective Meyers, who agreed that he did not read that portion of the investigation diary. It was, once Detective Meyer was finished, too late to take the appellant to court, and he was required to remain in custody until Monday 12 April 2021.

7.14 It was accepted by all three police officers that testified that the appellant would not have been arrested had they been aware of the complainant's decision not to proceed with the matter. Meyers conceded, under cross-examination, that the appellant effectively remained in custody 'for nothing'. Police bail was apparently not a possibility at the

time due to the nature of the charge. Bail was, in fact, set to be opposed when the matter finally went to court.

7.15 On 12 April 2021 the appellant and docket were sent to court. The matter was not enrolled and the appellant was released without making a court appearance. The entry in the investigation diary for that day recorded that the case was not enrolled due to:

- (i) The I/O's statement, which recorded that the complainant did not wish to proceed with the matter.
- (ii) There being no evidence that linked the appellant to the crime except that he was running and wore black clothes.
- (iii) Nothing was recovered and the appellant was arrested days after the incident.

7.16 On the same day (12 April 2021) the appellant laid criminal charges against Holster, alleging assault. Whilst processing the appellant, Detective Meyer had recorded that the appellant claimed he had been assaulted by police, and that the appellant had swollen knees, stitches due to a past stabbing incident, and bumps on his head. There is no indication that Detective Meyer sought medical attention for the appellant or drew this issue to anyone's attention.

7.17 After the appellant's release he did not seek medical attention, choosing to recover at home.

## **The Law**

- [8] The appellant bore the onus of proving that the assault by Holster had occurred (claim 1).

[9] The appellant, in regard to claim 2, pleaded that the arrest was malicious, wrongful and unlawful and, since the pleadings are not a model of clarity, presumably intended to plead that the arrest and detention were, in the alternative, wrongful and unlawful.

[10] In *Minister of Police v Heleni (Appeal)*<sup>1</sup> the court had occasion to consider a fairly similar matter:

[50] Regarding claim 2, the plaintiff's action for malicious arrest and detention (analogous to malicious prosecution) lies where the defendant has intentionally, maliciously and without reasonable and probable cause, instigated the arrest or detention of the plaintiff by the proper authorities. In this instance the police officers implicated just so happened to be those "proper authorities" who were responsible for putting the plaintiff through the wringer, as it were, under the guise of an arrest.

[51] A plaintiff must prove that the defendant: (a) instigated the arrest; (b) acted without reasonable and probable cause; and (c) had animus iniuriandi which includes malice.

[52] Malice in the sense of absence of an honest belief coincides with want of reasonable and probable cause in the subjective sense, and will be inferred from the latter. In cases where malice has been inferred from want of reasonable and probable cause, there has been an absence of an honest belief in the guilt of the accused. Where absence of reasonable and probable cause in the subjective sense is not relied upon, want of reasonable and probable cause in the objective sense must be proved and, in addition, there must be malice in the sense of absence of purpose for which the law allowed the arrest. Want of lawful purpose in the case of malicious arrest means that the defendant had some purpose other than that of bringing the

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<sup>1</sup> (CA 4/2022) [2023] ZAECKMHC 55 (11 May 2023).

plaintiff to justice and having him or her convicted or having judgment given against him or her.

- [53] Absence of reasonable and probable cause means either:
- (a) that subjectively the defendant had no honest belief that the plaintiff had committed an unlawful act for which he or she could have been arrested; or
  - (b) that objectively on the facts and the law as known to the defendant at the time a reasonable person could not have concluded that the plaintiff had committed such unlawful act.

[54] If neither element is proved, the plaintiff will not have shown absence of reasonable and probable cause and his or her action will fail. Conversely, if either element is proved the defendant would have acted without reasonable and probable cause.'

[11] The respondent pleaded that the appellant's arrest was lawful *inter alia* because the respondent complied with section 40(1)(b) of the Criminal Procedure Act 51 of 1977 ('the CPA'). The requirement of reasonable and probable cause (in regard to malicious arrest) is distinct from the concept of a reasonable suspicion, in a claim for unlawful arrest and detention.<sup>2</sup> Invoking section 40(1)(b) means that once the arrest has been established, the defendant bears the onus to prove the following jurisdictional facts:

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<sup>2</sup> See *Newman v Prinsloo and Another* 1973 (1) SA 125 (W) at 127:

'Mr. Kruger, who appeared for the defendants, was disposed to concede that, in wrongful arrest cases, the onus of proving justification rests on the defendants, but he contended that the plaintiff's case as pleaded was not one of wrongful arrest but of malicious arrest. Mr. Kruger took me through some of the cases in which the distinction between these two delicts is explained. Stated shortly, the distinction is that in wrongful arrest, or false imprisonment, as it is sometimes called, the act of restraining the plaintiff's freedom is that of the defendant or his agent for whose actions he is vicariously liable, whereas in malicious arrest the interposition of a judicial act, between the act of the defendant and the apprehension of the plaintiff, makes the restraint on the plaintiff's freedom no longer the act of the defendant but the act of the law. The importance of the distinction is that, in the case of wrongful arrest, neither malice nor absence of justification need be alleged or proved by the plaintiff, whereas in the case of malicious arrest it is an essential ingredient of the plaintiff's cause of action, which must be alleged and proved by him, that the defendant procured or instigated the arrest by invoking the machinery of the law maliciously.'

- 11.1 The arrestor must be a peace officer.
- 11.2 The arrestor must entertain a suspicion.
- 11.3 The suspicion must be that the suspect committed an offence referred to in Schedule 1.
- 11.4 The suspicion must rest on reasonable grounds.
- 11.5 If the above-mentioned jurisdictional factors are present, then the issue arises of the proper exercise of the arresting officer's discretion.<sup>3</sup>

[12] The versions of events provided by the appellant and the respondent's witnesses were, for the most part, diametrically opposed.

[13] In *National Employers' General Insurance Co Ltd v Jagers*<sup>4</sup>, the court set out the correct approach to be adopted in analysing and assessing evidence in a civil case as follows:

'It seems to me, with respect, that in any civil case, as in any criminal case, the onus can ordinarily only be discharged by adducing credible evidence to support the case of the party on whom the onus rests. In a civil case the onus is obviously not as heavy as it is in a criminal case, but nevertheless where the onus rests on the plaintiff as in the present case, and where there are two mutually destructive stories, he can only succeed if he satisfies the Court on a preponderance of probabilities that his version is true and accurate and therefore acceptable, and that the other version advanced by the defendant is therefore false or mistaken and falls to be rejected. In deciding whether that evidence is true or not the Court will weigh up and test the plaintiff's allegations against the general probabilities. The estimate of the credibility of a witness will therefore be inextricably bound up with a consideration of the probabilities of the case and, if the balance of probabilities favours the plaintiff, then the Court will accept his version as being probably true. If, however the probabilities are evenly balanced in the sense that they do not favour the plaintiff's case any more than they do the defendant's, the plaintiff can only succeed if the Court nevertheless believes

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<sup>3</sup> See Du Toit *et al*: Commentary on the Criminal Procedure Act at RS 74, 2025 ch5 – p14C.

<sup>4</sup> 1984 (4) SA 437 (ECD) at 440 D – 441 A.

him and is satisfied that his evidence is true and that the defendant's version is false.'

[14] In *Stellenbosch Farmers' Winery Group Ltd & Another v Martell & Cie SA & Others*<sup>5</sup> the issue of factual disputes was considered:

'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.'

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<sup>5</sup> 2003 (1) SA 11 (SCA) at para 5.

## Analysis

[15] In regard to the assault allegedly perpetrated by Holster, the appellant's version of events when giving evidence was not consistent with the version set out in the statement he made when he laid criminal charges against Holster on 8 April 2021. Examples of such inconsistencies are the following:

15.1 When testifying, the appellant alleged that Holster had started smacking him in the face repeatedly with an open hand prior to placing him in the police van. In his statement no mention was made of the alleged smacking.

15.2 In his statement, the appellant alleged that he was handcuffed at the scene of the arrests, whilst he claimed, when testifying, that he was only handcuffed after they reached the police station. The appellant was of the view that his statement was incorrect in this regard.

15.3 In his evidence, the appellant referred to Holster throwing him against a wall, which was not mentioned in his statement.

[16] The appellant was, furthermore, clearly not a model witness. One example of this was his absurd allegation that his statement (where it referred to him running from the police) was incorrect, as he had rather been 'aggressively walking' (as opposed to simply walking, which he had initially stated he was doing in his evidence in chief).

[17] The severity of the assault allegedly perpetrated by Holster was, furthermore, so significant, that it would have been inconceivable that the appellant would not have required urgent medical attention. The failure on the part of the appellant to seek medical attention after his release similarly points to the fact of an assault, as described by the appellant, being improbable. The injuries recorded by Detective Meyer were also incompatible with the type of assault described by the appellant.

- [18] It is accordingly clear that the appellant did not prove the alleged assault on a balance of probabilities.
- [19] In regard to whether or not the appellant's arrest and detention were malicious, wrongful and unlawful (or alternatively wrongful and unlawful), it is highly improbable that the incident of 22 March 2021, as referred to by Holster and de Doncker, in fact occurred. It is inexplicable that neither of the aforementioned police officers would forget to inform anyone, or take any action in order to find the appellant, after having essentially seen the appellant (in their view) running from the scene of an alleged robbery.
- [20] The fact that nothing in the docket pointed to the involvement of Holster and de Decker on 22 March 2021, and that they only mentioned it for the first time after arresting the appellant on 8 April 2021, reinforces that this version of events was highly improbable, and that Holster and de Doncker most likely manufactured a reason to arrest and detain the appellant. This, in my view, along with their pre-existing views of the appellant as being a known robber, who they occasionally picked up to interrogate (but who had so far escaped conviction) points to an absence of reasonable and probable cause, and the probability of the presence of malice on the part of the police officers involved.
- [21] Even if I am incorrect in regard to the above, and the appellant was in fact seen by Holster and de Doncker on 22 March 2021, the reasons why the matter was not enrolled on 12 April 2021, as set out succinctly in the investigation diary entry on that date, demonstrate that Holster and de Doncker would not have had appropriate grounds to claim the requisite reasonable suspicion required to invoke section 40(1)(b) of the CPA.
- [22] The apparent comedy of errors relating to Holster, de Doncker and Meyer not being aware of the complainant's intention to withdraw her charges, speaks to a scenario involving unfortunate, but not deliberate, police incompetence.

[23] The presiding magistrate did not, in my view, appropriately assess the above-mentioned evidence, and thus misdirected herself.

[24] The appellant's claim of malicious, wrongful and unlawful arrest and detention has accordingly been proven on a balance of probabilities.

## Quantum

[25] In the matter of *Minister of Police v Page*<sup>6</sup> the following was stated in regard to quantifying damages in such matters:

[7] It is trite that in cases involving deprivation of liberty, the quantum of damages to be awarded is in the discretion of the trial court, to be exercised fairly, and generally calculated according to what is equitable and good, and on the merits of the case itself (*ex aequo et bono*). As a result, an appeal court should be slow to interfere, unless there are specific reasons to do so. Also, no judgment can be all-embracing, and the omission of a specific factor from a judgment does not necessarily imply that the court *a quo* failed to consider the factor in exercising its discretion. Furthermore, in the absence of material, demonstrable misdirection on the part of the trial court, its findings of fact must stand as presumptively correct.

[8] Various factors play a role in determining an appropriate amount, including the circumstances under which the deprivation of liberty took place; the presence or absence of improper motive or 'malice' on the part of the defendant; the harsh conduct of the defendants; the duration and nature of the deprivation of liberty; the status, standing, age, health and disability of the plaintiff; the extent of the publicity given to the deprivation of liberty; awards in previous comparable cases (together with the effect of inflation) and the fact that, in addition to physical

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<sup>6</sup> 2021 JDR 0757 (ECGEL) – available on w[...]

freedom, other personality interests (such as good name and honour) and constitutionally protected fundamental rights have been infringed.

[9] It is useful to consider the assessment of awards for damages in previous cases, although this exercise poses its own challenges. In *Minister of Safety and Security v Seymour*, for example, the SCA considered a series of cases before noting that there was no 'discernable pattern other than that our courts are not extravagant in compensating the loss' and that in the process of quantifying non-patrimonial loss, principles of fairness and conservatism play a decisive role in assessing damages.'

[26] In the matter of *Mphindwa v Minister of Police*<sup>7</sup> the court, in considering the issue of quantum, made reference to various similar awards:

'[35] In dealing with awards, I have thus had regard to previous awards including made in this Division:

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[35.2] In *Hoco v Mtekwana and Another* 2010 (2) SACR 536 (ECP) the plaintiff was arrested without a warrant and detained for almost four days. He was awarded compensation of R80 000.00.

[35.3] In *Goliath v Minister of Police*, the appeal court found the arresting officer to have arrested the appellant without ascertaining the severity of the complainant's injuries including the nature of the injuries sustained and without any information upon which he could reasonably have suspected that the appellant had inflicted a dangerous wound upon the Respondent. This is after the arresting officer had arrested the appellant without physically examining the wounds. The arrest

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<sup>7</sup> 2019 JDR 0333 (ECM).

was held to be unlawful and so was the detention which lasted for 38 hours. It was the appellant's first experience of being in custody. The court awarded R50 000.00 damages as compensation for both the unlawful arrest and detention.'

[27] In *Minister of Safety v Tyulu*<sup>8</sup> the court stated:

'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 injuria 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 17; **Rudolph & others v Minister of Safety and Security & others** (380/2008) [2009] ZASCA 39 (31 March 2009) (paras 26-29).'

[28] In the matter of *Nyanya v Minister of Police*<sup>9</sup> the plaintiff, who was a tailor by profession with no previous convictions or issues which lowered his status in the community, was detained at home at 21h00 in front of his family, and

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<sup>8</sup> 2009 (5) SA 85 (SCA) at para 26.

<sup>9</sup> 2020 (2) SACR 550 (ECG).

taken to the local police station by a group of people. He was held in the police cells for three and a half days. He was a diabetic and was denied medication and family visits. He was embarrassed and humiliated by the arrest. The prosecution was not proceeded with. In this matter it was determined that an award of R 160 000 would be appropriate.

[29] In the matter of *Madze v Minister of Police*<sup>10</sup> the plaintiff was awarded R120 000 for unlawful arrest and detention for a period just short of four days. No evidence was led concerning the conditions of the plaintiff's detention, nor the effect it may have had on him, but the court took into account the fact that conditions in police cells anywhere in the Eastern Cape are generally unsavoury and far from comfortable or clean.

[30] In *Minister of Police v Ose*<sup>11</sup> a full court of this division stated that:

*'[35] The purpose of awarding damages is not to enrich a claimant, but to offer him solatium for his injured feelings. There should be a rational link between the harm caused and the damages awarded. The award should accordingly be commensurate with the harm. In the final analysis, each case must be decided on its on facts, which must be looked at as a whole. The quantum of damages must be determined on those facts and be fair not only to the claimant, but also to the party who has been ordered to pay the damages.'*

*[36] An award of damages for unlawful arrest and detention must express the premium that our courts place on the right to freedom as well as the right to have a person's right to dignity respected and protected.*

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<sup>10</sup> 2016 (7K6) QOD 229 (ECG).

<sup>11</sup> (CA70/2023) [2024] ZAECMKHC 78 (11 June 2024).

*[42] Counsel also referred to Motsaathebe v Minister of Police wherein the plaintiff was unlawfully arrested and detained for one day in “inhumane conditions. There was no water. The latrine was not functioning. The blankets in the cell were inadequate given the number of detainees”. On 19 January 2024 he was awarded R30 000 for damages arising from his arrest and detention.*

*[43] I have also considered Rudolph wherein the appellants were unlawfully arrested at about 17h00 on a Friday and released at about midday on the following Tuesday. They were subjected to what the Supreme Court of Appeal described as humiliating conditions. Those conditions were that “the cell in which they were held was not cleaned for the duration of their detention. The blankets they were given were dirty and insect-ridden and their cell was infested with cockroaches. The shower was broken and they were unable to wash. They had no access to drinking water. Throughout their detention the first appellant, who suffers from diabetes, was without his medication. They were not allowed to receive any visitors, not even family members.” On 31 March 2009 the Supreme Court of Appeal awarded each of the appellants the sum of R100 000 for arrest and detention. That sum equates to R217 000 in 2024.*

*[44] In Diljan v Minister of Police the Supreme Court of Appeal warned against the “progressively exorbitant amounts that are claimed by litigants lately in comparable cases and sometimes awarded lavishly by our courts”. The court referred to the high court judgment in Khedama as an example. That was before the full court reduced the award granted by the trial court to R350 000. The appellant in Diljan was arrested at about 16h00 on a Friday and thereafter detained until the following Tuesday morning. She did not appear in court. The court described the conditions under which she was detained as appalling. The police cell in which she was detained was filthy with no hot water; the blankets were dirty and smelling; the toilet was blocked; she was not provided with toilet paper; she was not*

*allowed visitors; and she could not eat the bread and peanut butter that was the only food provided to her. She was deprived of visitation rights by her family and that resulted in her not receiving medication for her heart condition. Her arrest caused her humiliation which was exacerbated by her children, grandchildren and neighbours witnessing her arrest. On 24 June 2022 the amount of R120 000 was awarded to her for arrest and detention. That amount equates to R135 240 in 2024.*

*[45] In the present case, I have considered that the respondent was arrested in the presence of his wife and son; is a leader at his church; is permanently employed by a local municipality; after his arrest, he witnessed captain Hlwempu putting his hand on his wife's breast; it was the first time that he was arrested; he was detained in a filthy cell and given a thin plastic mattress with filthy blankets, causing him not to sleep during the period of detention; shared the cell with other persons; was provided with inedible food; and the police officers refused to accept the food that his wife wanted to give him. Taking all the facts of this case into account and having regard to comparable cases, particularly Rudolph and Diljan, I am of the view that an appropriate amount of damages would be R160 000. Since the difference of what was awarded by the trial court and what I deem appropriate is so vast, the amount of R350 000 should be reduced to R160 000.'*

- [31] In this matter the appellant was detained for approximately 3.5 to 4 days. The appellant testified in regard to the filthy conditions in the cells, referring to dirty, lice infested blankets and a lack of water. Whilst the appellant himself was considered to be a criminal by the police, such a view certainly would not justify maliciously arresting and detaining the appellant without reasonable suspicion, under circumstances where such arrest and detention were, in any event, unnecessary, as the complainant involved had not wished to continue with the matter.

[32] Given all of the above, my view is that a suitable award would be one of R 150 000.00.

### **Costs**

[33] In the court *a quo* the parties were ordered to pay their own costs as, in the presiding magistrate's view, the appellant had been justified in launching his claim.

[33] No reason has been advanced as to why, in the event of success (partial or otherwise) on appeal, the costs should not follow the result, in regard to both the main action and the appeal. There is, furthermore, no readily apparent reason to award the costs of counsel on scale B or C.

### **Order**

The following order is accordingly issued:

(a) The appeal in regard to claim 1 is dismissed.

(b) The appeal in regard to claim 2 is upheld, and the order of the court *a quo* is set aside, to be replaced with the following:

(i) The defendant is to pay to the plaintiff the amount of R150 000.00 in damages in regard to claim 2, with interest at the prescribed rate from 31 May 2024.

(ii) The defendant is to pay the plaintiff's costs of suit, including the costs of counsel.

(c) The respondent is to pay the costs of the appeal.

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**N MOLONY**  
**ACTING JUDGE OF THE HIGH COURT**

I agree

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**A GOVINDJEE**  
**JUDGE OF THE HIGH COURT**

Appearances:

For the applicant: Adv M du Toit

Instructed by: Carol Geswint Attorneys  
**GQEBERHA**

For the first respondent: Adv X Nogantshi

Instructed by: State Attorney  
**GQEBERHA**

Heard on: 30 May 2025

Judgment delivered on: 2 September 2025