



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

CASE NO: 502/2020

In the matter between:

BANOYOLO MAGXALA

Plaintiff

and

MINISTER OF POLICE

Defendant

JUDGMENT

RUSI J

[1] On 11 February 2020, the plaintiff sued the defendant for damages in the sum of R500 000.00, resulting from his unlawful arrest and detention. He was arrested on 28 March 2017, and detained, thereafter, until 29 March 2017, on charges of murder, attempted murder and assault with intent to do grievous bodily harm. On 12 March 2025, the matter served before me for the determination of the quantum of the plaintiff's damages.

The pleadings

[2] The plaintiff pleaded that he was unlawfully arrested and detained by police officers named Bhebhula, Lumeza, and other unknown police officers on 28 March 2017 on false charges of murder, attempted murder and assault with intent to do grievous bodily harm, and subsequently detained until 29 March 2017. His arrest and detention took place in full view of the members of the public and he was thereby humiliated and degraded.

[3] The police had no reasonable and probable cause for arresting him, they entertained no reasonable suspicion that he had committed an offence listed in Schedule 1 (of the Criminal Procedure Act 51 of 1977). They failed to investigate the charges against him for them to entertain a reasonable suspicion that he committed the offences they arrested him for. The plaintiff further pleaded that the police acted with malice in arresting and detaining him, and they had an intention to injure his reputation and good name. They failed ensure that they dealt with the charges against him in accordance with the law and according to the dictates of justice.

[4] No plea was filed by the defendant, and on 29 July 2020, the court, after separating the merits of the plaintiff's claim from the quantum of damages, entered judgment by default in favour of the plaintiff, in which it found the defendant liable for the agreed or proven damages that he suffered as a result of his unlawful arrest and detention.¹

[5] At the trial of the matter the plaintiff was the only witness in his case. This is a summary of his evidence in support of the quantum of damages he claims. On 27 March 2017, while in Rustenburg where he had conveyed passengers for reward, he received a phone call from a police officer named Bhebhula (Bhebhula) who requested him to call in at his offices in the PRD Building, Mthatha. Bhebhula did not disclose the reasons for his invitation. His call came after an incident of taxi violence killings which

¹ Per order of Dukaka AJ (as he then was) dated 29 July 2020.

took place in Ntlaza, Libode, during a feud between the Taxi Association of which he was a member and a rival Taxi Association.

[6] He returned from Rustenburg on 28 March, and around 10h00 on the same day, he arrived at the PRD Building where Bebhula invited him. On arrival there, he found several police officers. He was with four other male persons who were apparently also called by Bhebhula to the same building. Two of these male persons were his sibling and cousin, respectively.

[7] On arrival at the PRD building, Bhebhula exclaimed that 'they were the persons they were looking for in connection with the killings during the taxi feud.' He denied involvement in the killings, stating that he was in Rustenburg at the time the incident took place. He was handcuffed and, together with his counterparts, he was driven by the police out of the PRD building. As they exited the building, he spotted a group of members of the rival Taxi Association. In full view of the members of the public and the members of the rival Taxi Association, Bhebhula and his colleagues were saying "here are the killers of the people who died in Ntlaza".

[8] From the PRD building, he and his counterparts were taken to the Central Police Station, Mthatha. At the police station they were caused to sign documents, and their fingerprints were taken. It was explained to them that they were being formally charged. After that they were taken to the police cells where they were detained in one cell.

[9] The cell in which they were detained was dirty, it had a toilet which did not flush and there was no privacy when using it. There were five of them in the cell. They were made to sleep on mattresses. The mattresses and blankets were dirty and looked soiled. He could not sleep on the mattress and opted to wrap himself in the blanket on the cement floor. The blanket was on the knee level as he could not cover himself with since it was dirty and had crusty patches. He did not sleep at night.

[10] Around 04h00 or 05h00 on 29 March 2017, Bhebhula and another person who introduced himself to him as 'Siya' called his names, and he was taken out of the cell. Bhebhula and Siya told him that they were going with him to the Mthatha dam where they would beat him up until he told them the truth regarding his involvement in the taxi violence. He was put in the police bakkie, and he sat next to Siya as Bhebhula was the driver.

[11] Instead of taking the route to the Mthatha dam, Bhebhula drove the vehicle towards town. On the way, Siya remarked that he did not believe that he was guilty of any of the offences he was arrested for because of his young age. He was 22 years old when he was arrested. Bhebhula drove further ahead towards the Mthatha High Court building. He stopped the vehicle and asked where it would be convenient for him to alight therefrom. He requested Bhebhula to take him to the homestead of a fellow member of his Taxi Association named 'Banana', in Corana Locality. Bhebhula refused his request and went to drop him off, instead, at Madeira Street from where he walked to Corana. The time was approximately 05h10. He was picked up along the way by a vehicle after walking approximately 5 km.

[12] His arrest tarnished his reputation in that he was labelled as a killer, and he could not visit Ntlaza, where his mother's maiden home is, because his mother's family was warned that he and other children of that family who were involved in the killings must not set their foot there. When Bhebhula dropped him off at Madeira Street in the early hours of the morning, he feared that some of the members of the rival Taxi Association who lived in Mthatha might spot him and kill him. He also feared that he would be victim to criminals.

[13] He suffered from a cold as a result of sleeping in the police cells and he could not work for two weeks. That he had a cold was diagnosed by a doctor who examined him at some point after his release from custody. He lost his employment when the taxi he was driving before he was arrested was taken away from him. His family lost his financial support as a result.

[14] There was no meaningful cross-examination of the plaintiff by Ms *Gxagxisa* who represented the defendant. She principally cross-examined the plaintiff regarding how he was able to estimate the time at which he was detained and taken out of the holding cell. It was the plaintiff's evidence that he gleaned the time of his release from the vehicle he was travelling in with Bhebhula and Siya.

Arguments

[15] On behalf of the plaintiff, Mr *Mapekula* submitted that the court must take into consideration the arbitrary conduct of the police in arresting the plaintiff without a warrant when they had no reasonable and probable cause for doing so, as well as the manner in which he was treated by the police. He further submitted that the plaintiff's age at the time, the conditions in which he was detained, and how his arrest and detention affected his social connections, must be taken into account in determining a fair award of damages.

[16] Ms *Gxagxisa* submitted that no sufficient evidence was adduced to justify the quantum of damages that the plaintiffs has claimed.

The legal principles

[17] Nugent JA once said that 'money can never be more than a crude solatium for the deprivation of what in truth can never be restored, and there is no empirical measure for the loss.'² The Constitutional Court, in *Mahlangu and Another v Minister of Police*³, held that damages are awarded to deter and prevent future infringements of fundamental rights by organs of state. They are a gesture of goodwill to the aggrieved

² *Minister of Safety and Security v Seymour* [2007] 1 All SA 558 (SCA); 2006 (6) SA 320 (SCA), para 20.

³ *Mahlangu and Another v Minister of Police* (CCT 88/20) [2021] ZACC 10; 2021 (7) BCLR 698 (CC); 2021 (2) SACR 595 (CC) (14 May 2021).

and they do not rectify the wrong that took place.⁴ A claim for damages is not a get rich quick opportunity.⁵

[18] In *EFF and Others v Manuel*⁶, the Supreme Court of Appeal emphasized that claims for unliquidated damages by their very nature involve a determination by the court of an amount that is just and reasonable in the light of a number of indeterminable and incommensurable factors, and that in order to determine an appropriate award relevant evidence has to be presented and fully explored.⁷

[19] The unlawful deprivation of a person's liberty is, in itself, a serious injury which constitutes an impermissible infringement of his/her constitutional rights to freedom and security of the person, and to human dignity.⁸ When the issue to be determined is the *quantum* of damages to be awarded for the violation of a person's liberty, evidence of the conditions under which a person was arrested and detained plays a significant part.⁹ The Court in *Motladile v Minister of Police*,¹⁰ laid down the approach to be followed in the assessment of damages as follows:

'[T]he assessment of the amount of damages to award a plaintiff who was unlawfully arrested and detained, is not a mechanical exercise that has regard only to the number of days that a plaintiff had spent in detention. Significantly, the duration of the detention is not the only factor that a court must consider in determining what would be fair and reasonable compensation to award. Other factors that a court must take into account would include (a) the circumstances under which the arrest and detention occurred; (b) the presence or absence of

⁴ Ibid para 50.

⁵ *Spannenberg and Another v Minister of Police*⁵ (2993/2019) [2022] ZANWHC 4 (24 February 2022) para 20.

⁶ *EFF and Others v Manuel* (711/2019) [2020] ZASCA 172 (17 December 2020).

⁷ Ibid, paras 93 and 96; See also *Minister of Police v Mzingeli and Others* (115/2021) [2022] ZASCA 42 (5 April 2022), *Rahim v The Minister of Home Affairs*, (965/2013) [2015] ZASCA 92; 2015 (4) SA 433 (SCA); [2015] 3 All SA 425 (SCA) (29 May 2015), para 27.

⁸ *Motladile v Minister of Police* (414/2022) [2023] ZASCA 94 (12 June 2023) para 22.

⁹ *Zealand v Minister for Justice and Constitutional Development and Another* (CCT54/07) [2008] ZACC 3; 2008 (6) para 40-41.

¹⁰ Supra footnote 8.

improper motive or malice on the part of the defendant; (c) the conduct of the defendant; (d) the nature of the deprivation; (e) the status and standing of the plaintiff; (f) the presence or absence of an apology or satisfactory explanation of the events by the defendant; (g) awards in comparable cases; (h) publicity given to the arrest; (i) the simultaneous invasion of other personality and constitutional rights; and (j) the contributory action or inaction of the plaintiff.’¹¹

[20] It bears emphasizing that although previous awards aid the assessment of damages, they are not meant to be a benchmark of the quantum of damages to be awarded in a given case, otherwise, the court’s discretion in determining an appropriate award of damages would be impermissibly fettered. Each case must be decided on its own peculiar facts and circumstances.¹² As held in *Minister of Safety and Security v Tyulu*¹³ while it is always helpful to have regard to previous awards, 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.¹⁴

[21] In the discussion that follows, I consider what the appropriate award would be in the present case, having regard to these legal principles.

Discussion

[22] The evidence of the plaintiff stands uncontroverted. The total period of his detention was estimated by Mr *Mapekula* and Ms *Gxagxisa* to be 17 hours from the time he was arrested (around 10h00 on 28 March 2017) until his release around 05h10 on the following day.

¹¹ Id, at para 17.

¹² *Spannengurg v Minister of Police*, footnote 5 supra.

¹³ 2009 (5) SA 85 (SCA).

¹⁴ Ibid, para 26.

[23] The plaintiff testified that he was released to the streets in the early hours of the morning, without being made to appear in court. I note, however, that no averment was made in the plaintiff's particulars of claim as the basis of his claim for unlawful arrest and detention that he was not arrested with an object of bringing him to court and that he was released without being made to appear in court. While, in addition, the plaintiff had alleged in his particulars of claim that his arrest and detention were malicious, the defendant was found liable in terms of this Court's order dated 29 July 2020, for damages resulting from unlawful arrest and detention. It bears mentioning, for the sake of completeness, that there is a great difference – a finding that the arrest and detention were malicious would presuppose that in arresting and detaining the plaintiff, the police used the machinery of the law to achieve an ulterior motive.¹⁵

[24] Be that as it may, on the plaintiff's version, not only was he unlawfully arrested and detained overnight from 28 to 29 March 2017, but when the police decided to release him, they went and dumped him on the streets. When this happened, his safety was compromised by the very same persons whose duty it is to protect the safety of the inhabitants of the Republic, including him. This, significantly, after their failed attempt to coerce the plaintiff to admit involvement in the crimes for which they arrested him, by threatening him with severe assault at some secluded place.

[25] In as much as there is no formula in determining an appropriate award of damages with precision, as a starting point, I have taken into consideration the fact that the conduct of the police in arresting and detaining the plaintiff was arbitrary and in absolute disregard of his sacrosanct right to liberty and dignity. The uncontroverted evidence before this Court is that the plaintiff went to the offices of Bhebhula and Lumeza in answer to a phone call that he received from Bhebhula that he must present himself at their offices.

[26] What is disconcerting is that the plaintiff was not told by Bhebhula, why, he had to present himself to the police. The hour may have arrived for the Courts to voice their

¹⁵ *Newman v Prinsloo* 1973 (1) SA 125 (W) at 127H-128A.

disquiet at the tendency of the police to misuse their powers by, inter alia, making such demands in circumstances where, in most cases, the persons concerned would not even be aware of their right to refuse to heed such calls where no reasons are given to them why they must submit themselves to the police.

[27] The plaintiff was 22 years old at the time, and this was his first encounter with the law. He was humiliated in full view of the public as he was being marched by a contingent of police officers to their vehicle outside their offices. He was being labelled as 'a killer'. This, with little to no regard to the incendiary nature of such public utterances in a potentially volatile situation where a number of people were killed in an incident of taxi violence. Describing an instance of abusive treatment and humiliation similar to the present, Jolwana J, in *Mahlanza v Minister of Police*¹⁶ remarked as follows:

'The plaintiff was arrested in a humiliating and degrading manner. He was frogmarched by a large group of [police] officers in handcuffs and in the process, he was made a public spectacle in violation of his inalienable right to dignity.'¹⁷

[28] Furthermore, the conditions in which the plaintiff was detained were appalling and inhumane. Even though the plaintiff testified that he also lost employment, no claim was made in his combined summons for this head of damage. I need not consider this assertion for the present purposes. Regarding his illness after his stay in the police cell, it is his say-so which stands unsupported by any form of medical records which would give objective indication of the alleged condition.

[29] While no two cases will be identical, previous awards, as aforementioned, remain an invaluable guide to what award will be fair in the circumstances; regard being had to

¹⁶ *Mahlanza v Minister of Police* (EL1326/2017) [2019] ZAECELLC 32 (26 November 2019).

¹⁷ *Ibid*, para 47.

all the facts of the particular case.¹⁸ In the present case, the plaintiff was detained for approximately 17hrs in the already mentioned conditions.

[30] In *Mhlanza v Minister of Police*,¹⁹ the plaintiff was awarded R75 000.00 for detention overnight (from 13h00 on the day of arrest until the morning of the next day after appearance in court). In *Minister of Police v Mjali and Others*,²⁰ an award of R200 000.00 for arrest and detention for a period of two days, was reduced on appeal, to R100 000.00. In *Minister of Police v Page*,²¹ an award of R60 000.00 for detention overnight was reduced on appeal to R30 000.00. The Court, in *Peterson v Minister of Safety and Security*,²² awarded R60 000.00 for unlawful arrest and detention for one night. In *Madyibi v Minister of Police*,²³ the plaintiff was awarded R40 000.00 in damages for unlawful arrest and overnight detention. The appellant, in *Van Rooyen v Minister of Police*,²⁴ was awarded R35 000.00 for detention overnight.

[31] The conduct of the police was clearly in breach of the law as well as the purpose for which they are endowed with their powers in terms of the Constitution, which entails securing the inhabitants of the Republic, and upholding and enforcing the law.²⁵ In this case, the police were on a witch-hunt, they had no reasonable suspicion that the plaintiff was guilty of the offences they sought to arrest him for. They acted *in fraudem legis*. To add insult to injury, they dumped him on the streets as though they were discarding an object devoid of value. Such conduct is reprehensible, and it constituted an egregious violation of the plaintiff's personal rights to liberty and dignity. The award that I make below marks this Court's disapproval of the conduct of the police, and it is what I consider to be a fair compensation for the plaintiff's injury.

¹⁸ *Protea Insurance v Lamb* 1971 (1) SA 530 (A) at 535B; *Hully v Cox* 1923 AD 234 at 246.

¹⁹ Foot note 16, *supra*.

²⁰ *Minister of Police v Mjali and Others* (CA 91/2022) [2023] ZAECMHC 62 (7 November 2023).

²¹ *Minister of Police v Page* (CA 231/2019) [2021] ZAECGHC 22 (23 February 2021).

²² *Peterson v Minister of Safety and Security* [2009] ZAECGHC.

²³ *Madyibi v Minister of Police* 2020 (2) SACR 243 (ECM).

²⁴ *Van Rooyen v Minister of Police* (CA 332/2018) [2020] ZAECGHC 44 (26 March 2020).

²⁵ See section 205(3) of the Constitution, Act 108 of 1996.

[32] Even though the plaintiff's arrest and detention took place in 2017, with the merits of his claim determined in 2020, I am enjoined to have regard to the depreciating value of money due to the effects inflation. As held in *SA Eagle Insurance Co Ltd v Hartely*,²⁶ the Court's evaluation of an appropriate award must take into account the current day value of currency and not at the earlier time. For the purposes of the instant case an award that I consider appropriate must be in terms of the value of currency in 2025 being the time of assessment of the plaintiff's damages.

Costs

[33] Ms *Gxagxisa* submitted that the duration of the plaintiff's detention warranted the hearing of the matter in the Magistrates' Court, and therefore, costs must be awarded on the Magistrate's Court scale. In response, Mr *Mapekula* who readily conceded that the matter is not a complex one in that it does not raise complex issues of facts and the law, submitted that even though the award that this Court may make might be smaller than what the plaintiff claimed, regard must be had to the fact that the matter involves a violation of the plaintiff's personality rights to liberty and dignity.

[34] While I agree that the matter involves a violation of the plaintiff's rights to liberty and dignity, the overriding factor, in this context, is the monetary value of the claim at the time the plaintiff instituted the action, not the period for which he was detained after his arrest, or the award of damages that the court makes. As the Supreme Court of Appeal held in *Vorster v Clothing City (Pty) Ltd*,²⁷ the sole test in determining whether a claim or a matter in dispute falls within the jurisdiction of the Magistrates' Court, is the amount claimed.²⁸

[35] The amount claimed by the plaintiff in his particulars of claim was R500 000.00. This amount falls beyond the jurisdiction of the Magistrate's Court which, at the time he

²⁶ 1990 (4) SA 833 at 841D-E.

²⁷ *Vorster v Clothing City (Pty) Ltd* (159/2023) [2024] ZASCA 53; 2025 (2) SA 156 (SCA) (19 April 2024).

²⁸ *Ibid*, para 11.

instituted his claim, in terms of the Magistrate's Court Act 32 of 1944,²⁹ was a maximum of R200 000.00 for the ordinary Magistrates' Court and a maximum of R400 000.00 for the Regional Court. There is, in the present case, no reason why the plaintiff's costs should be awarded on a scale lower than that applicable in the High Court.

[36] In the result, I make the following order:

1. The defendant shall pay to the plaintiff, within 30 days from the date of this judgment, an amount of R100 000.00 for the damages suffered by the plaintiff resulting from his unlawful arrest on 28 March 2017 and detention until 29 March 2017.
2. This award shall attract interest at the prescribed legal rate per annum, calculated from the date of judgment to date of payment.
3. The defendant shall pay the plaintiff's costs on the scale applicable in the High Court, together with interest thereon at the prescribed legal rate per annum, calculated from a date 14 (fourteen) days from taxation to date of payment.

L RUSI
JUDGE OF THE HIGH COURT

Appearances:

For the plaintiff : *Adv. SST Mapekula*
Instructed by : M.S Ginya Incorporated, Mthatha

²⁹ In terms of s 29(1)(g) read with s 29(1A) of the Magistrates' Court Act 32 of 1944, the Minister is empowered to determine the monetary jurisdiction in respect of district and regional courts. The Minister has since determined the minimum and the maximum monetary jurisdiction of the Magistrates' Court as a maximum of R 200 000 for district courts and above R 20 000 up to R 400 000 for regional courts by Government Notice GG37477/27-3-2014.

For the defendant : *Ms A Gxagxisa*
T. Noah & Sons Attorneys, Mthatha

Dates heard: 12 March 2025.

Date delivered: 09 September 2025