

Reportable:	NO
Circulate to Judges:	NO
Circulate to Magistrates:	NO
Circulate to Regional Magistrates:	NO



IN THE NORTH WEST HIGH COURT, MAFIKENG

CASE NO: 661/2021

In the matter between:

MARITZ DITEBOGO RAYMOND

Plaintiff

AND

MINISTER OF POLICE

Defendant

DATE OF HEARING : 13 NOVEMBER 2024

DATE OF JUDGMENT : 15 JANUARY 2025

FOR THE APPLICANT : ADV. MAREE

FOR THE RESPONDENT : ADV. MKATSHWA

JUDGMENT

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives *via* email. The date and time for hand-down is deemed to be 10h00 on 15 January 2025.

ORDER

Resultantly, the following order is made:

- (i) The defendant is ordered to pay an amount of R350 000.00 to the plaintiff as damages for unlawful arrest and detention.**
- (ii) The defendant is ordered to pay interest on the aforementioned amount of R350 000.00 from date of this judgment until date of final payment, at the applicable prescribed rate.**
- (iii) The defendant is ordered to pay the cost of suit, on the High Court scale, Scale B.**

JUDGMENT

HENDRICKS JP

Introduction

- [1] Mr. Ditebogo Raymond Maritz ('plaintiff') instituted an action for damages against the Minister of Police ('defendant') for unlawful arrest and detention for the period 08 September to 01 October 2018, on a charge of stock theft. The defendant bears the onus to justify the lawfulness of the arrest, as an arrest is *prima facie* unlawful and an invasion of a

person's constitutional right to freedom and liberty. The defendant also bears the duty to begin.

- [2] The defendant called Sergeant Metsi ('Metsi') to testify on his behalf. His evidence are as follows. On Friday, 08 September 2018, he was on duty with his colleague Constable Kgomotso. He received a call from Mr. Anton Barnard ('Barnard') who made a report to him that there were persons slaughtering his mother-in-law's cow on her farm. He and his colleague then went to the farm. Upon arrival, he found Barnard and his employees at a half-skinned cow carcass. There was also a man by the name of Thato Lekame, who was tied with cable ties around his wrists and feet. He also had a rope tied around his neck and fastened to the half-skinned cow carcass.
- [3] Thato, when asked about what happened, confessed that he and three other men stole the cow and were busy slaughtering it. Thato was untied and placed in the police van. Barnard told Metsi that a security officer and Warrant Officer (W/O) Maritz, a police official, are chasing after the other suspects that fled the scene. After a passage of time, the security officer and W/O Maritz arrived at the scene. They were in the company of the suspects whom they allegedly chased after in hot pursuit. The suspects were the plaintiff and one Letlabeng. After being questioned, they were placed inside a van. They were transported to Ganyesa police station where they were processed. Thereafter they were transported to Morokweng police station where they were detained on a charge of stock

theft. They were taken to court the following Monday, 10 September 2018. Metsi was the only witness called by the defendant. The defendant then closed its case.

- [4] The plaintiff testified and made it common cause that he was arrested on 08 September 2018. His sequence as to how the events of the day unfolded are as follows. He, Thato and Letlobeng were on their way to a nearby farm in search of employment as farm workers. *En route* they decided to take a shortcut and walk through a neighboring farm. This was a route usually taken by people who were walking on foot and use as a thorough-fare to get to the other side of the farm. Five other people were also using this thorough-fare on that day.
- [5] Whilst still walking, they saw a motor vehicle branded “Plaaswag” approaching. A gunshot was discharged from this motor vehicle. They ran away in different directions. He was followed. Three man, to wit a caucation and two black men, apprehended him. They tied his hands and placed him on the back of an Isuzu van. That is not the van branded “Plaaswag”. He was taken to the scene where the cow was slaughtered. There he found Thato, whose hands and feet were tied and he was tied with a rope to the cow carcass, that was half-skinned. He tried to explain his innocence but the police did not want to listen. They were transported to the police station and ultimately detained. They were taken to court the following Monday, 10 September 2018, but did not appear as the court officials had already knocked-off duty. When he re-appeared before

court, he was informed that the police oppose his release on bail. The matter was remanded on several occasions. Eventually on 01 October 2018, he was admitted to bail. That concluded the evidence presented by the plaintiff in his case. No other witness(es) were called and the plaintiff's case was closed.

- [6] Its quite apparent that these are two diametrically opposed and conflicting versions that cannot both be true. This Court will be guided by the principles enunciated in the case of **Stellenbosch Farmers' Winery Group Ltd and Another v Martell & Cie SA and Others** 2003 (1) SA 11 (SCA) at para [5], where the following is stated:

"[5] On the central issue, as to what the parties actually decided, there are two irreconcilable versions. So too on a number of peripheral areas of dispute which may have a bearing on the probabilities. 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] It is prudent to highlight the fact that it is common cause that the plaintiff was arrested on 08 September 2018 on a charge of sock theft and detained until 01 October 2018. The manner of the arrest and the lawfulness thereof is disputed. Of importance is the fact that the plaintiff was not arrested at the scene where the half-skinned cow carcass was. He was apparently apprehended by a Warrant Officer, shearing the same surname of Maritz, and a security official. After being apprehended, he was taken to the scene where the half-skinned cow carcass was. His arrest was therefore at the place where he was apprehended by Warrant Officer ("W/O") Maritz.

[8] W/O Maritz was not called to testify. There is therefore no evidence placed before this Court as to how W/O Maritz affected the arrest on the plaintiff and how that process unfolded. On the evidence presented by Metsi, it was accepted by both counsel that Metsi was the arresting officer and not W/O Maritz. In my view, this is incorrect. The plaintiff's liberty was removed the minute he was apprehended and not after he was taken to the scene where the half-skinned cow carcass was. This is critically important. There is no evidence that the minute the plaintiff was arrested, W/O Maritz explained his section 35 constitutional rights to him. In my view, this should have happened. It however does not end there.

[9] When the plaintiff was taken to the scene where the half-skinned cow carcass was, he was according to Metsi asked for an explanation to determine whether his explanation was reasonable. According to Metsi he could not proffer any reasonable explanation. According to the plaintiff, when he attempted to explain his innocence, he was told to keep quiet and he reluctantly obliged. He was then transported to the police station where he was made to sign a 'Notice of Rights' document, which was not explained to him nor did he read it. He was then detained.

[10] It is trite that an arrest can be affected on a suspect who is suspected of stock theft, without a warrant of arrest been obtained. Section 40 (1) (g) of the Criminal Procedure Act 51 of 1977, as amended, provide:

"40 Arrest by peace officer without warrant

(1) *A peace officer may without warrant arrest any person —*

(g) *who is reasonably suspected of being or having been in unlawful possession of stock or produce as defined in any law relating to the theft of stock or produce;”*
(my own underlining)

[11] Section 2 of the Stock Theft Act 57 of 1959 creates the offence of failure to give a satisfactory account of possession of stock or produce, in that any person who is found in possession of stock or produce in regard to which there is a reasonable suspicion that it has been stolen, and is unable to give a satisfactory account of such possession, shall be guilty of an offence. In terms of section 6 of the Stock Theft Act 57 of 1959, failure to furnish documents of identification by a person who disposes of stock to another shall be guilty of an offence.

[12] It need to be emphasized that the plaintiff was not found in possession of the half-skinned cow carcass. He was not even in the immediate vicinity of it. The only evidence that was presented about the apprehension of the plaintiff is that of Metsi. Metsi received a report from Barnard. The said Barnard was not called as a witness, neither was any of his employees called as witnesses. Ideally, they would be best suited to testify and explain the circumstances surrounding the slaughtering and skinning of the cow. The failure on the part of the defendant to call any or all of them as (a) witness(es), are indeed fatal to the defendant's case. Furthermore, to add to this, W/O Maritz and the security officer who went

in pursuit of the alleged perpetrators of the crime of stock theft, were also not called as witnesses to testify on behalf of the defendant. This is equally fatal to the defendant's case. Undoubtedly, all these witnesses or any one of them could have enlightened this Court with regard to the circumstance of the arrest of the plaintiff.

[13] Insofar as any reliance can be placed on the evidence of Metsi, who claimed to be the arresting officer, the following. Metsi relied on the report made by one Barnard to him. According to Barnard, his mother-in-law is the owner of the farm and the cow that was slaughtered. No enquiries were made about the whereabouts of the owner of the cow. No further investigations were conducted to determine the wrongfulness of the slaughtering of the cow. Metsi relied on the say-so of Barnard, who even allegedly showed him an ear-tag of the cow. The evidence of Barnard or even his mother-in-law is crucial in this regard.

[14] Metsi's evidence is also lacking as to how he satisfied himself that the plaintiff was indeed involved in the slaughtering and skinning of the cow, bearing in mind that the plaintiff was not arrested at the scene. He relied solely on the report he received from Barnard and conducted no further investigation of his own. He did not even obtain a written statement from Barnard or any of his employees, nor from W/O Maritz and the security officer. No enquiries whatsoever were made as to how the plaintiff was linked to the slaughtering and skinning of the cow. The fact that Thato allegedly admitted that they stole the cow and slaughtered it, was also

not investigated and taken any further. This, once again, is crucial evidence that was not investigated. No evidence was also tendered by the investigating officer about the investigations that (s)he conducted in this matter. Much criticism can be levelled against the manner in which this matter was handled from the initial stage of the arrest of the plaintiff, up until and including how the trial was conducted.

[15] It is trite law that the following jurisdictional facts must be proven to substantiate a defence premised on section 41 (1) (g), namely:

- (i) the arrestor must be a police officer;
- (ii) the arrestor must entertain a suspicion;
- (iii) the suspicion must be that the arrestee committed an offence referred to in section 2 of the Stock Theft Act 57 of 1959;
- (iv) the suspicion must be that the arrestee was or is in the unlawful possession of stock or produce as defined in any law relating to the theft of stock or produce;
- (v) the suspicion must be based on reasonable grounds.

[16] The version of the plaintiff was to a large extent uncontested. His version is also more probable if regard is had to the probabilities. His evidence is uncontroverted that he, Thato and Lethobeng were taking a short-cut using the thorough-fare frequently used, not only by them. At least five (5) other people were also seen doing the same. This is not disputed. They were approached and apprehended at a place different from the scene of crime, where the half-skinned cow carcass was. As to the

circumstances of his arrest, there was no evidence presented to disprove his version. Not Barnard nor his employees, W/O Maritz, the security official or even Metsi's colleague, Constable Kgomotso who accompanied him, were called to testify. There was no evidence presented that linked the plaintiff to the commission of the offence. For example, there was no evidence that his hands or even his clothes were bloodstained, as can be expected when a cow is slaughtered and half-skinned.

[17] There is also a claim for unlawful detention. No evidence whatsoever was presented with regard to the lawfulness or otherwise of the detention of the plaintiff. The plaintiff allege that he was detained following his arrest on 08 September 2018 at approximately 17h40 and only admitted to bail on 01 October 2018 at 11h00. This version is uncontested. So too, is it uncontested that when he was taken to court on Monday, 10 September 2018, there were no court officials present or on duty and that he was further detained. Further, that his bail will be opposed. The matter was remanded on several occasions and he was ultimately admitted to bail on 01 October 2018. All this is undisputed.

[18] The conditions under which he was detained is also undisputed. It was a small cell which he shared with other incarcerated persons. The toilet area does not allow for any privacy, and were dysfunctional at times. The food that was provided was unpalatable. He could not exercise nor was any reading material provided to him.

[19] I am of the considered view that the defendant did not discharge the onus resting on him to prove, on a balance of probabilities, that the arrest of the plaintiff was lawful, as enjoined by law. [Section 40 (1) (g)]. No proper investigations were conducted in the exercise of his discretion by Metsi, who is believed to be the arresting police officer. Metsi accepted, unreservedly so, the report made to him by Barnard. None of the other possible witnesses were questioned by Metsi, as to how the plaintiff was apprehended and brought to him, before he placed him in the van. Metsi did not exercise any discretion whatsoever whether or not to arrest the plaintiff. The plaintiff was, based solely on the report by Barnard, summarily placed in the police van and later locked-up. The unlawfulness of the detention of the plaintiff was also unchallenged. In the absence of any evidence to the contrary, I am satisfied that the arrest and subsequent detention of the plaintiff was unlawful.

[20] Insofar as quantum is concerned, the plaintiff was detained for twenty-three (23) days. This entire period must be taken into consideration when determining the amount to be awarded as compensation, as was stated in **De Klerk v Minister of Police** 2021 (4) SA 585 (CC). However, the purpose of compensation is not to enrich the plaintiff but to pay him a *solatium* for damages suffered as a result of the unlawful arrest and detention. The personal circumstances of the plaintiff must be taken into account. He is 34 years of age, unmarried, the father of two minor children who are attending primary school. He was employed as a farm worker. His earnings as a farm worker is however unknown. The

deprivation of the liberty of a person is very serious. High premiums should be placed on personal liberty.

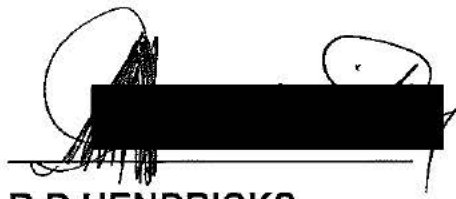
See: **Minister of Safety and Security v Tyulu** 2009 (5) SA 85 (SCA).

[21] I am of the view that an amount of R350 000.00 would be fair, just and equitable under the circumstances of this case. Insofar as interests are concerned, it should be awarded from the date of this judgment. Costs should follow the result and be awarded in favour of the successful litigant, the plaintiff.

Order

[22] Resultantly, the following order is made:

- (i) The defendant is ordered to pay an amount of R350 000.00 to the plaintiff as damages for unlawful arrest and detention.
- (ii) The defendant is ordered to pay interest on the aforementioned amount of R350 000.00 from date of this judgment until date of final payment, at the applicable prescribed rate.
- (iii) The defendant is ordered to pay the cost of suit, on the High Court scale, Scale B.



R D HENDRICKS
JUDGE PRESIDENT OF THE HIGH COURT,
NORTH WEST DIVISION, MAHIKENG