



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 54384/2018

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: YES/NO ✓
(2) OF INTEREST TO OTHER JUDGES: YES/NO ✓
(3) REVISED: ✓

8.9.2025

DATE

SIGNATURE

In the matter between:

RUDI BOTHA

Plaintiff

And

MINISTER OF POLICE

Defendant

JUDGMENT

RAULINGA J

1. The Plaintiff in this application seeks damages against the defendant, arising out of the alleged unlawful arrest and detention by members of the defendant.
2. The plaintiff submits that the arrest and detention by the members of the defendant was unlawful and without just cause and was not carried out in accordance with the laws of the Republic of South Africa, and consequently the plaintiff is entitled to compensation for damages as fully set out in the quantum argument.
3. The defendant pleads that it is common cause that the plaintiff was arrested without a warrant on 26 January 2017 by constable Piet Mafodi Thobane (Constable Thobane) of the South African Police Service (SAPS). The arrest was based on a complaint that was lodged by Mr. Floors Petrus Jacobus Smit on 2 January 2013 where an allegation of malicious damage to property was leveled against the plaintiff and two other suspects.
4. The defendant avers in its plea that the plaintiff was arrested in terms of section 40(1)(b) of the Criminal Procedure Act¹ (the "CPA") and that the offence was a schedule 1 offence. The defendant pleads further that the arrest of the plaintiff was to source the plaintiff's attendance at court.
5. The plaintiff pleads that he was wrongfully and willfully arrested after honoring a meeting with Constable Thobane and no statements were taken from the plaintiff as to the detention after arrest. It was put to the arresting officer in cross-examination that this was unlawful due to the alleged unlawful arrest, alternatively, that the plaintiff should have been released on bail in terms of section 59 of the CPA.
6. The plaintiff further testified that the arresting officer did not inform him about bail and about the inhumane and dirty condition of the cell.
7. The defendant denies allegations of unlawfulness and pleads that the arresting officer exercised his discretion to effect arrest after his rights were explained to him.

¹ 51 of 1977.

8. The jurisdictional facts for reliance on section 40(1)(b) of the CPA and the test to be applied were set out in the Supreme Court of Appeal in the matter of *Minister of Safety and Security v Sekhoto*² where four jurisdictional facts were laid out for compliance with section 40(1)(b), which the defendant must plead and prove as follows:
- a. The arrestor must be a peace officer.
 - b. That he or she entertained a suspicion.
 - c. That suspicion was that the arrestee had committed a scheduled offence.
 - d. That suspicion was based on reasonable grounds.³
9. All the jurisdictional facts in these proceedings are common cause, barring only one which the defendant had to prove, which is whether there was a suspicion which was entertained by the arresting officer and if so, whether the suspicion was based on reasonable grounds to effect an arrest.
10. The test for determining the existence of a reasonable suspicion is an objective one, that is, the grounds of suspicion must be those which would induce a reasonable person to have the suspicion. In *R v Van Heerden*⁴, Jones AJP put in *Rossouw v Boshoff*⁵ “when one comes to consider whether he had reasonable grounds, one must bear in mind that in exercising those powers, he must act as an ordinary honest man would act and not merely act on wild suspicions, but suspicions which have a reasonable basis”.
11. A further submission by the plaintiff is that the defendant has not only failed to justify an arrest but also detention of the plaintiff that the defendant was empowered by s 59 of the CPA to grant the plaintiff bail upon arrest, however, the plaintiff failed to exercise such a discretion.

² 2011 SACR 315 (SCA) at para 6.

³ See also *Duncan v Minister of Law and Order* 1986 (2) SA 805 (A).

⁴ 1958 (3) SA 150 T at 152.

⁵ 1945 CPD at 145-147

12. For the purposes of this judgment, this matter can be decided only on the disputed jurisdictional fact. There is no need to dwell into other issues and/or as to whether Constable Thobane had the power to grant bail nor not. The matter is that the plaintiff was not granted bail and was detained at Soshanguve Police Station until he was taken to court on 27 January 2017. There is no need to grope in the dark and trying to clutch on straws on a matter that can be decided on a few relevant aspects.
13. In support for the submission that the arresting officer exercised a reasonable suspicion, the defendant relies on the judgment *Biyela v Minister of Police*⁶ in which the court held that:
- "The issue is not whether there is evidence admissible to the arresting officer, but whether there was information available which would cause him to reasonably suspect the suspect of having committed the relevant offence. The reasonableness requirement therefore extends to the reliability or accuracy of the information upon which an arrest is founded, including the quality and ambit thereof. It must at the outset be emphasized that the suspicion need not be based on information that would subsequently be admissible in a court of law. What is required is that the arresting officer must form a reasonable suspicion that a Schedule 1 offence has been committed based on credible and trustworthy information. Whether that information would later in a court of law be found to be inadmissible is neither here nor there for the determination of whether the arresting officer at the time of arrest harbored a reasonable suspicion that the arrested person committed a Schedule 1 offence."*⁷
14. In countering this argument, the plaintiff submits that there are factual disputes in this matter. Therefore, for the court to come to the conclusion on the disputed issue, a court must make findings on the credibility of the various factual witnesses, their reliability and the probabilities⁸.

⁶ (1017/2020) [2022] ZASCA 36 (1 April 2022).

⁷ Id at para 23.

⁸ See *Stellenbosch Farmers Winery Group Ltd & Another v Martell & CIE SA and Others* 2003 (1) SA 11 (SCA) (6 September 2002).

15. One may add that the court will also have to look into a variety of subsidiary factors such as:

15.1 The witness's candor and demeanor in the witness box.

15.2 His bias.

15.3 Latent and blatant internal contradictions in his evidence.

15.4 External contradictions with what was pleaded or put on his behalf or with established fact or with his own extra curial statement or actions.

15.5 The probability or improbability of the particular aspects of his version.

15.6 The calibre and cogency of his performance compared to that of other witnesses testifying about the same incident or events.

16. To the extent that the plaintiff might have contradicted himself in his testimony, this is very minimal compared to the substantial contradictions by the defendant witness, Constable Thobane.

17. There is doubt that Constable Thobane obtained a statement from the complainant's son in that he could not recall the events as they happened a long time ago and further that he might have obtained the statement and/or he might have not obtained the son's statement and/or even that the statement might have been lost or removed from the docket. This is confirmed by the fact that the prosecutor declined to prosecute because the statement was not in the document.

18. In my view, the evidence of the defendant's witness lacks quality and reliability, which renders the information he relied on inaccurate.

19. Further my view is that the evidence of Constable Thobane is not credible based on the fact that the probabilities favour the plaintiff. The calibre and cogency of this performance of Constable Thobane compared to that of the plaintiff leads to the direction that the claim by the plaintiff should be granted with costs. The arrest was unlawful.

QUANTUM

20. In determining the quantum that the plaintiff is entitled to, the court should consider the period for which the plaintiff was detained as well as the conditions of detention under scrutiny.
21. Further, the court in assessing 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 such needed solace 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. 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 seriousness with which any arbitrary deprivation of personal liberty is viewed in our law. It is also impossible to determine an award of damages for this kind of injury with any kind of mathematical accuracy.⁹
22. In this regard, the defendant posits that in comparable cases awards of R15 000, R25 000 and R75 000 were granted in 2009, 2022 and 2025 respectfully.
23. In casu, the plaintiff was detained for about a day. In my view, an amount of R90 000 suffices in the circumstances.
24. As a consequence, the following order is made:
 - a. The plaintiff's claim succeeds.
 - b. Damages in the amount of R90 000 are granted.
 - c. The defendant is ordered to pay the costs of suit on party and party, taxed on scale B.

⁹ See Minister of Safety and Security v Tyulu 2009 (5) SA 85 (SCA).


J Raulinga
Judge of the High Court
Gauteng Division, Pretoria

Appearances

For Plaintiff: Adv M G Senyatsi instructed by Chauke Attorneys.

For Defendant: Adv NMA Ndaba instructed by State Attorney Pretoria.

Date of hearing: 3 July 2025.

Date of Judgment: 8 September 2025.