



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

Reportable

CASE NO: 3950/2021

In the matter between:

XOLISA MGWEBI

Plaintiff

and

MINISTER OF POLICE

Defendant

JUDGMENT

RUSI J

[1] The plaintiff sued the defendant for damages in the sum of R1 000 000.00, for contumelia, injury to his reputation, trauma and discomfort, resulting from his arrest and detention by the members of the defendant on 15 April 2021 in Mt Frere. He alleges that he was unlawfully arrested and subsequently detained at the instance of the members of the defendant, for a period of 13 days, from 15 to 28

April 2021. The arrest followed his failure to appear in the Mt Frere Regional Court on 23 March 2021.

[2] In his particulars of claim, the plaintiff, chiefly, alleged that his arrest and detention were unlawful in that he was arrested on the strength of a defective warrant. He had not committed any offence in the presence of the police, and he was misinformed of the date of his appearance in court as being 22 March 2021, which day fell on a public holiday. He further alleged that his arrestors failed to properly apply their discretion in relation to his arrest and detention, and/or acted mala fide with ulterior motives. He was not brought to court immediately after his arrest, alternatively, he was brought before an incorrect court.

[3] Regarding his detention, he pleaded that he was detained in the Mt Frere police station holding cells from 15 to 17 April 2021, whereafter he was transferred to the Mthatha Correctional Centre where he was further detained until 28 April 2021. The conditions in which he was detained in the Mthatha Correctional Centre were unhygienic. As a result of his unlawful arrest and detention, he suffered contumelia, injury to his reputation, and he was subjected to trauma and discomfort.

[4] The defendant denies liability for the plaintiff's claim. In essence, the defendant pleaded that the plaintiff was lawfully arrested on the strength of a warrant of arrest that was issued by the Magistrate for his failure to appear in court on 23 March 2021 in connection to a charge of murder after he had been released on bail. Since there had been two warrants of arrest that were previously issued against the plaintiff, at the time of his arrest, Sgt Nongqwenga erroneously exhibited to him the incorrect warrant of arrest.

[5] In resisting liability for damages that resulted from the plaintiff's detention after his arrest, the defendant pleaded that once the plaintiff was brought before court, the decision regarding his further detention fell within the powers of the court.

[6] On the date of the trial of the matter, the parties applied that the merits of the plaintiff's claim be separated from the quantum of damages. This application was granted.

[7] The parties presented a stated case as envisaged in Rule 33(1) of the Uniform Rules of Court. These are facts agreed upon by the parties pertaining to the merits of the plaintiff's claim. The plaintiff failed to appear before the Mt Frere Regional Court on 23 March 2021. On the same day, a warrant was authorized for his arrest, his bail money was provisionally forfeited to the State, and his bail was provisionally cancelled. On 15 April 2021 around 13h30, he was arrested by Sgt Sompa in the company of his female colleague, Sgt Nongqwenga. The arrest was effected near Cash Build, in Main Street, Mount Frere.

[8] The warrant that was executed on the plaintiff in Mt Frere is the warrant of arrest that was issued in the Ntabankulu District Court and had eventually been withdrawn. The plaintiff was made to appear before the Mt Frere Regional Court in the same afternoon of his arrest. After his arrest, he was detained in the Mt Frere SAPS holding cells, and on 17 April 2021, he was transferred to the Mthatha Correctional Centre. He was released on 28 April 2021, being the day on which he was brought to the Mt Frere Regional Court for an enquiry into his failure to appear in court. Consequent to his arrest, he remained in custody for thirteen (13) days.

[9] In the statement of agreed facts, the parties made reference to annexures which entailed the record of proceedings against the plaintiff in the Mt Frere Regional Court, the warrant of arrest that was issued by the Magistrate, Ntabankulu District Court, on 28 October 2020 and on the strength of which the plaintiff was arrested on 15 April 2021 (the incorrect warrant), and the warrant of arrest that was issued on 23 March 2021 by the Mt Frere Regional Court. In the parties' minutes of their pre-trial conference in terms of Rule 37 of the Uniform Rules, dated 20 July 2023, it was agreed that all discovered documents or copies thereof will, without further proof, serve as evidence of what they purported to be.

The question of law

[10] The parties formulated the question of law to be determined as whether the plaintiff's arrest and detention flowing from the defective warrant, were unlawful or not. If they were unlawful, who should bear liability for the plaintiff's damages resulting therefrom.

The parties' contentions

[11] It is the plaintiff's contention that his claim against the defendant ought to succeed, with costs, for the following reasons: an arrest flowing from a defective warrant of arrest is inherently unlawful. In the light of the defendant's admission that his members "erroneously" showed plaintiff the incorrect warrant of arrest, his arrest was unlawful. The plaintiff's detention prior and post appearance in court, on the 15 April 2021, is consequently unlawful. The defendant is wholly liable for such detention as it flowed from the execution of a defective warrant. But for the execution of the defective warrant, the plaintiff would not have been detained.

[12] The defendant contends that the plaintiff was in violation of his bail conditions, as a result, the warrant of arrest dated 23 March 2021 was lawfully

issued and it had not been withdrawn. The defendant denies liability for damages resulting from both the arrest and detention for the following reasons: the plaintiff had a warrant of arrest issued against him, and he was sought by the police. He was spotted by the arresting officer who arrested him.

[13] Even though an incorrect warrant of arrest was exhibited to the plaintiff, the same person who was sought by the police was eventually arrested. The defendant did not take any further part ‘in the conduct and treatment’ of the plaintiff after causing him to appear before the Magistrate. The detention of the plaintiff in the Mthatha Correctional Centre was authorized by the Magistrate without the influence of the defendant. In the event the court finds against the defendant, its liability ought to be limited to the time from the plaintiff’s arrest up to the time he appeared before the Magistrate.

The parties’ legal submissions

[14] Mr *Matanda* who appeared for the plaintiff submitted that the exhibition of the incorrect warrant to the plaintiff at the time of his arrest, was a clear dereliction of duty on the part of the plaintiff’s arrestors, notwithstanding the plaintiff’s sacrosanct right to liberty.

[15] In the plaintiff’s supplementary heads of argument filed, with leave of court, on 03 March 2025, it was further submitted, with reference to *Minister of Police v Sabisa and Another*,¹ that the defendant’s contention that it was sufficient that a warrant was obtained against the plaintiff, even if it was not in the possession of the arrestor at the time of the arrest, cannot be sustained. In that case, it was held that the existence of a warrant ‘somewhere’ does not (by itself) make the execution

¹ *Minister of Police v Sabisa and Another* (725/2023) [2024] ZASCA 105; 2024 (2) SACR 553 (SCA) (28 June 2024).

of the arrest lawful. The arresting officer must be able to exhibit it to the intended arrestee, at the time of the arrest or immediately thereafter, otherwise the object of section 39(2) of the Criminal procedure Act 51 of 1977 is defeated.²

[16] He further submitted that upon the plaintiff's appearance in court on 15 April 2021, the Magistrate overlooked the issue of the defective warrant of arrest. Mr *Matanda* was of the view that the unlawful conduct of the defendant's members is causally linked to the decision of the Magistrate to detain the plaintiff further, and that they subjectively foresaw that an enquiry into his failure to appear in court would not be concluded on that same date of his appearance in court. Relying on *De Klerk v Minister of Police*,³ Mr *Matanda* submitted that it was sufficient for the plaintiff to sue only the defendant, he was not obliged to sue the Minister of Justice.

[17] On behalf of the defendant, Mr *Gumede* principally submitted that even though a defective warrant was used in arresting the plaintiff, the valid warrant was still in force and the members of the defendant were still entitled to arrest the plaintiff following his failure to appear in court. As regards the plaintiff's detention after his appearance in court, he submitted that the defendant cannot be held liable for that detention since it was the prerogative of the Magistrate. According to Mr *Gumede*, since the plaintiff has not joined the Minister of Justice in these proceedings, no liability can be placed on the defendant for the conduct of the Magistrate once the plaintiff appeared before court.

² Ibid, para 25.

³ *De Klerk v Minister of Police* (CCT 95/18) [2019] ZACC 32; 2019 (12) BCLR 1425 (CC); 2020 (1) SACR 1 (CC); 2021 (4) SA 585 (CC) (22 August 2019), (*'De Klerk'*), para 83.

The legislative framework and legal principles

[18] Since the arrest that forms the subject of the present case was on the strength of a warrant of arrest that was issued in terms of the Criminal Procedure Act 51 of 1977 (the Act), the lawfulness or otherwise of the actions of the police in arresting and detaining the plaintiff, must be determined through the prism of the relevant provisions of the Act.

[19] Section 67 of the Act governs the procedure to be followed when the accused who was released on bail fails to appear in court. The relevant parts of this section, for the present purposes, are the following:

- (1) If an accused who is released on bail—
 - (a) fails to appear at the place and on the date and at the time—
 - (i) appointed for his trial; or
 - (ii) to which the proceedings relating to the offence in respect of which the accused is released on bail are adjourned; or
 - (b) fails to remain in attendance at such trial or at such proceedings, the court before which the matter is pending shall declare the bail provisionally cancelled and the bail money provisionally forfeited to the State, and issue a warrant for the arrest of the accused.
- (2)(a) If the accused appears before court within fourteen days of the issue under subsection (1) of the warrant of arrest, the court shall confirm the provisional cancellation of the bail and the provisional forfeiture of the bail money, unless the accused satisfies the court that his failure under subsection (1) to appear or to remain in attendance was not due to fault on his part.
- (b) If the accused satisfies the court that his failure was not due to fault on his part, the provisional cancellation of the bail and the provisional forfeiture of the bail money shall lapse.

(c) If the accused does not appear before court within fourteen days of the issue under subsection (1) of the warrant of arrest or within such extended period as the court may on good cause determine, the provisional cancellation of the bail and the provisional forfeiture of the bail money shall become final.

(3) ...’

[20] Once a warrant of arrest has been issued in terms of the Act, it must be executed in accordance with the terms set out therein. This is in terms of section 44 of the Act which provides:

‘A warrant of arrest issued under any provision of this Act may be executed by a peace officer, and the peace officer executing such warrant shall do so in accordance with the terms thereof.’⁴

[21] A peace officer effecting an arrest, whether with a warrant issued in terms of any provision of the Act or without a warrant, is obliged, at the time of effecting the arrest or immediately after effecting the arrest, to 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. The provisions of section 39(2) of the Act are peremptory in this regard.

[22] With the plaintiff’s arrest and detention admitted, the onus rested on the first defendant to justify the arrest and detention.⁵ I turn to consider the question of law before me.

Discussion

⁴ Emphasis intended.

⁵ *Minister of Law and Order and others v Hurley and another* 1986 (3) SA 568 (A).

[23] For reasons that will become clearer later on in this judgment, it is significant to highlight that the warrant that was issued against the plaintiff for his failure to appear in court on 23 March 2021 whereas it was a condition of his release on bail that he does so, was issued by the Magistrate in terms of section 67 of the Act.

[24] Unlike in the case of a warrant issued in terms of section 43 of the Act,⁶ the factors that will trigger the issue of the warrant forming the subject of this action are that the accused:

- (a) Was released on bail;
- (b) Failed to appear at the place and on the date and at the time appointed for his trial; or to which the proceedings relating to the offence in respect of which she/he was released on bail are adjourned; or
- (c) Failed to remain in attendance at such trial or at such proceedings.

[25] It is common cause between the parties that the plaintiff had been released on bail when failed to appear in court the Mt Frere Regional Court on 23 March

⁶ Section 43 provides:

‘43 (1) Any magistrate or justice may issue a warrant for the arrest of any person upon the written application of an attorney general, a public prosecutor or a commissioned officer of police—

(a) which sets out the offence alleged to have been committed;

(b) which alleges that such offence was committed within the area of jurisdiction of such magistrate or, in the case of a justice, within the area of jurisdiction of the magistrate within whose district or area application is made to the justice for such warrant, or where such offence was not committed within such area of jurisdiction, which alleges that the person in respect of whom the application is made, is known or is on reasonable grounds suspected to be within such area of jurisdiction; and

(c) which states that from information taken upon oath there is a reasonable suspicion that the person in respect of whom the warrant is applied for has committed the alleged offence.

(2) A warrant of arrest issued under this section shall direct that the person described in the warrant shall be arrested by a peace officer in respect of the offence set out in the warrant and that he be brought before a lower court in accordance with the provisions of section 50.

(3) A warrant of arrest may be issued on any day and shall remain in force until it is cancelled by the person who issued it or, if such person is not available, by any person with like authority, or until it is executed.’

2021, resulting in the issue of a warrant for his arrest. The parties further made common cause of the fact that on 15 April 2021, the plaintiff was arrested on the strength of an incorrect warrant that was issued by the Magistrate in Ntabankulu for his failure to appear in that court on 28 October 2020.

[26] It must necessarily follow that the warrant that was exhibited to the plaintiff at the time of his arrest was an incorrect warrant for the purposes of his arrest on 15 April 2021. Among the basis on which this must be so, is the fact that *ex facie* that same warrant, it was alleged that he had failed to comply with a bail condition that he shall appear in the Ntabankulu Magistrates' Court on 28 October 2020. This was clearly not the basis for his arrest in so far as the warrant for which he was purportedly arrested, dated 23 March 2021, was concerned.

[27] As a starting point, it must be emphasized that since arrest is a drastic infringement of a person's right to liberty, strict compliance with the provisions of the Act in executing it is required.

[28] I shall proceed with the determination of the issues before me on the acceptance of the fact that the plaintiff made no claim that he demanded a copy of the warrant on the strength of which he was arrested. In any event, a concession was made by the defendant that at the time of his arrest the plaintiff was erroneously shown the incorrect warrant of arrest.

[29] When effecting an arrest, the police are held to the standard of reasonableness or rationality. Any conduct that does not meet such standard translates to unlawfulness. The reasons are not far to seek – as mentioned, arrest constitutes a drastic infringement of a person's right to liberty. The defendant's contention is that the correct warrant, which indeed forms part of the documents that the parties relied on for the determination of the question before me, was in

existence somewhere at the time his members spotted the plaintiff near Cash Build in Mt Frere.

[30] The concession that the defendant made, that his members displayed to the plaintiff an incorrect warrant of arrest gives rise to an important question whether, at the crucial time of exhibiting the warrant arrest and arresting the plaintiff, the plaintiff's arrestors acted lawfully in arresting him. I have not come across, nor was I referred by Counsel to any authority that deals with the lawfulness of an arrest based on 'an incorrect warrant' in circumstances where the correct warrant was in existence 'somewhere' and not in the possession of the arresting officer.

[31] However, as the Court held in *Ivanov v Northwest Gambling Board and Others*,⁷ a warrant is no more than a written authority to perform an act that would otherwise be unlawful. It must comply with the statutory provisions.⁸ It stands to reason that the lawfulness of the plaintiff's arrest in the circumstances of the present case, depended on the legality of the warrant of arrest on the strength of which he was arrested. The importance of this must be seen against the background of the trite principle of our law that the deprivation of person of their liberty must be for acceptable reasons and it must be done in a manner that is procedurally fair.⁹

[32] Even though the case of *Ivanov* related to a defective warrant, I see no reason why the same principle should not apply in the case of an incorrect warrant being used in performing the act in question, such that, if a person is arrested on the strength of an incorrect warrant, from inception, the action taken on the strength of that warrant becomes unlawful. The rationale behind this reasoning was

⁷ *Ivanov v North West Gambling Board and Others* (312/2011) [2012] ZASCA 92; 2012 (6) SA 67 (SCA); 2012 (2) SACR 408 (SCA); [2012] 4 All SA 1 (SCA) (31 May 2012).

⁸ *Ibid*, para 14.

⁹ *S v Coetzee and Others* 1997(3) SA 527, at 591G-I.

explained, albeit in a context different from the present, by Harms DP in *Cadac (Pty) Ltd v Weber-Stephen Products Co*,¹⁰ in this way:

‘The declaration of invalidity operates retrospectively and not prospectively. This means that once a warrant is set aside it is assumed that it never existed, and everything done pursuant thereto was consequently unlawful.’

[33] But as the court held in *Minister of Police v Sabisa and Another*,¹¹ the fact that at the time of the arrest there existed somewhere, in a real sense, a properly issued warrant of arrest cannot, without more, lead to a finding that the arrest was lawful. Even though, in this case, plaintiff made no demand for the warrant, but his arrestors displayed it on their own, that cannot exonerate them from strictly complying with the provisions of the Act in arresting the plaintiff on the strength of the purported warrant of arrest.

[34] In upholding strict compliance with the provisions of section 39(2), the Court, in *Minister van Veiligheid en Sekuriteit v Rautenbach*,¹² held that section 39(2) reflects well-known and weighty principles of legal policy. The arrest of a person deprives them of their liberty. It is therefore essential that, as soon as reasonably possible, they must be informed of the reason for this drastic infringement on their fundamental rights. To achieve this objective, a strict application of the statutory requirements must be employed, rather than a lenient one.¹³ I accept that the facts of *Rautenbach* are distinguishable from those in the present case, in that the plaintiff in *casu*, unlike the respondent in *Rautenbach*, did not request a copy of the warrant. However, this principle and the rationale behind it, find application in *casu*.

¹⁰ *Cadac (Pty) Ltd v Weber-Stephen Products Co* 2011 (3) SA 570 (SCA) para 18, referred to in *Ivanov*, at para 14.

¹¹ Foot note 1, *supra*, at para 25.

¹² 1996 (1) SACR 720 (A), at 731g-h.

¹³ *Ibid*, at 731g-h. See also, see also unreported Full Bench appeal judgment of Rugunanan J, in *Magoabi v Minister of Police* (CA303/2017) [2019] ZAECHC 74 (8 August 2019), para 7.

[35] Not only was an incorrect warrant exhibited to the plaintiff at the time of his arrest, but as agreed by the parties in their statement of agreed facts, that warrant was eventually withdrawn by the court that issued it. In essence, that warrant no longer had any legal force or effect by reason of the fact that it was withdrawn. I am acutely alive to the fact that Sgts Nongqwenga and Sompa had to act swiftly upon spotting the plaintiff in town. Since the arrest was authorized by a warrant, on a proper reading of section 39(2), if, for one reason or the other, there could not be compliance with the provisions of this section at the time of the arrest, Sgts Nongqwenga and Sompa still had the opportunity, immediately after arresting the plaintiff, to comply with the said provisions by exhibiting the (correct) warrant of arrest. Regard must of course be had on this score, to the fact that ‘immediately’ does not mean ‘instantaneously,’ as well as the fact that trifling delays will not amount to non-compliance.

[36] The statement of agreed facts is bereft of any indication that immediately thereafter, or as soon as it became practical, Sgt Nongqwenga and/or Sgt Sompa exhibited the proper warrant upon realizing their error. This brings to question their intent and ability to comply with the provisions of section 39(2) of the Act at the time of his arrest.

[37] The contention that the existence of the correct warrant in a real sense, is sufficient to justify the plaintiff’s arrest, can therefore not be sustained. It must follow that the plaintiff’s arrest was unlawful.

[38] It bears remarking, in passing, that even though, in terms of section 67A of the Act, failure to appear in court as a condition of bail is an offence punishable by a fine or imprisonment not exceeding one year, the plaintiff’s arrestors would not have been in a position to arrest him without a warrant in any event – not on any of the grounds listed in section 40 of the Act. I turn to deal with the question whether

the defendant ought to then be held liable for the detention of the plaintiff following his arrest up to the time of his appearance in court until his release on 28 April 2021.

The detention after arrest

[39] In terms of section 39(3) of the Act, 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. That the plaintiff was in the custody of the police who arrested him from the point of his arrest near Cash Build on Main Street, Mt Frere, until the point of his appearance before the Magistrate, is incontrovertible. In the light of the finding I made that his arrest on the incorrect warrant was unlawful, his subsequent detention, up to the point he appeared before the Magistrate was unlawful.

[40] In determining whether the defendant is liable for the plaintiff's detention after his appearance before the Magistrate, it had to be established that the unlawful conduct of the police was closely linked to his subsequent detention by the Magistrate. Simply put, the question to be asked is whether, but for the unlawful arrest by the police, the plaintiff would not have been detained by the Magistrate.

[41] The plaintiff was arrested for his failure to appear on 23 March 2021 in the same court that ordered his detention on 15 April 2021. After his (unlawful) arrest, he was immediately brought to court. When he was brought to the Mt Frere Regional Court the same afternoon of his arrest, his bail had become finally cancelled with his bail money forfeited to the state. Upon his appearance, he was remanded in custody until 16 April 2021. On this latter day, he was further remanded in custody until 19 April 2021, and further from that date until 22 April

2021. On 22 April 2021, his case was postponed until 28 April 2021 for an enquiry before a different magistrate into his failure to appear in court on 23 March 2021. Whether the proposed procedure was correct in the light of the fact that the plaintiff's bail was finally forfeited to the state when he was brought before court, falls beyond the scope of these proceedings.

[42] It was on 28 April 2021 that a different magistrate made a finding that the plaintiff was not properly before court as he had been arrested and brought there on the strength of a defective warrant. The public prosecutor who was seized with the matter conceded this point.

[43] There cannot be any controversy regarding the fact that the plaintiff's subsequent detention after he was brought to the Mt Frere Regional Court was at the instance of the Magistrate whose 'employer', the Minister of Justice, is not a party to these proceedings. From the facts agreed between the parties and the record of proceedings in the Mt Frere Regional Court, the plaintiff was remanded in custody by the Magistrate from 15 April 2021 until 28 April 2021 despite him having been brought to court on an incorrect warrant. Viewed in this light, it can be said that the plaintiff's detention after his appearance in court from 15 April to 28 April 2021 was indeed unlawful.

[44] I must interpose to refer to the provisions of section 50(1) of the Act which read:

'(1) (a) Any person who is arrested with or without warrant for allegedly committing an offence, or for any other reason, shall as soon as possible be brought to a police station or, in the case of an arrest by warrant, to any other place which is expressly mentioned in the warrant.'

[45] It is indeed so, that in terms of the incorrect warrant the arresting officer was directed to bring the plaintiff before court. In the present context that would be the

Ntabankulu court as specified in that warrant. What the statement of agreed facts establishes is that Sgts Nongqwenga and Sompa's actions in failing to arm themselves with the correct warrant after they spotted the plaintiff in town, was negligent, thus rendering their actions unreasonable.

[46] Must it then follow that the defendant is liable for the plaintiff's subsequent detention after he appeared before the Magistrate? In *De Klerk*,¹⁴ Theron J, who wrote for the majority, held that if the defendant is to be held liable for the detention of the plaintiff post first court appearance, it must be shown that there is a sufficiently close causal link between a wrongful act or omission of the arresting officer and the subsequent detention after appearance in court.¹⁵ For this reason, it matters not that the plaintiff has not sued the Minister of Justice.¹⁶ However, the Court further held that there is no general rule that can be applied dogmatically in order to determine liability, every matter must be determined on its own facts.¹⁷

[47] In the present case, the plaintiff would have been in the custody of the police from the point of his arrest near Cash Build in Mt Frere, up to the point of his appearance before the Magistrate who, upon that appearance, would determine whether his further detention was justified. That this is so, is apparent from the above quoted provisions of section 67(2) of the Act.

[48] The upshot of the facts agreed upon between the parties regarding the date when the correct warrant of arrest was issued, viz, 23 March 2021, is that at the time the plaintiff was brought to court on the defective warrant, a period of 14 days after the issue of that warrant had elapsed. This gives rise to two scenarios for the

¹⁴ *De Klerk*, footnote 3, supra.

¹⁵ Ibid, para 60, 63.

¹⁶ Ibid, para 83.

¹⁷ Id.

plaintiff – firstly, after the lapse of 14 days without him appearing in court after he was released on bail, he no longer had bail which had secured his pre-trial freedom. The provisional cancellation of his bail and provisional forfeiture of the bail money under the above quoted provisions of section 67, would have automatically become final.

[49] Secondly, this would mean that upon his appearance in court, whenever that would be, he would, by automatic operation of the provisions of section 67(2)(c) afore quoted, remain in custody until he makes a fresh application for his release. This position would have prevailed even where the plaintiff was lawfully arrested on the strength of the correct warrant of arrest. For this reason, in the circumstances of the present case, it cannot be said that but for the unlawful actions of the police in arresting the plaintiff, he would not have been detained upon his appearance in court.

[50] An ineluctable finding is that the link between the culpable conduct of the police in arresting the plaintiff and his further detention at the instance of the Magistrate from 15 April 2021 to 28 April 2021 is too remote. In these circumstances, the defendant cannot be held liable for the plaintiff's further detention after his court appearance. The defendant's liability is limited to the plaintiff's arrest at or about 13h00 on 15 April 2021 near Cash Build in Mt Frere, and his subsequent detention until his appearance before the Mt Frere Regional Court. The question that remains is that of costs.

Costs

[51] The general rule is that the successful litigant must be awarded its costs unless there are exceptional circumstances which justify a deviation therefrom. It is trite that in awarding costs, the court exercises its discretion in accordance with

what is fair between the parties. One of the factors that the court takes into consideration in its determination, is the extent of the parties' success in a given lawsuit. In the present case, the plaintiff was partially successful on the lawfulness of his arrest and detention to a limited extent from the point of his arrest to his appearance before the Magistrate. He was arrested at or about 13h30 on 15 April 2021 and immediately brought to court. When regard is had to the claim he instituted, the greater portion of it is the detention after his appearance in court for a substantial period of 13 days.

[52] That being said, the conduct of the members of the defendant, in not ensuring that the plaintiff's arrest was in strict compliance with the provisions of statute, remains unconscionable. Therefore, despite the partial success of the plaintiff's claim, the issues of law on which that aspect of the claim turned are important and warrant a commensurate cost order. The order I make below on costs is what I consider appropriate in this case.

Order

[53] In the result, the following order shall issue:

1. The defendant is held liable for the agreed or proven damages resulting from the plaintiff's unlawful arrest on 15 April 2021, and subsequent detention by his members, only from the time of arrest until the time of plaintiff's appearance before the Magistrate in the Mt Frere Regional Court on 15 April 2021.
2. The defendant shall pay the plaintiff's costs.
3. The determination of the plaintiff's quantum of damages shall stand over for determination at a later date.

L RUSI
JUDGE OF THE HIGH COURT

Appearances:

For the plaintiff	:	<i>Adv. EM Matanda</i>
Instructed by	:	Jayiya Ngcaba Attorneys, Mthatha
For the defendant	:	<i>Adv. MN Gumede</i>
Instructed by	:	The Office of the State Attorney, Mthatha
Date heard	:	27 February 2025
Date delivered	:	02 September 2025

