



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

CASE NO: 31702/2017

- | | |
|-----|---------------------------------|
| (1) | REPORTABLE: NO |
| (2) | OF INTEREST TO OTHER JUDGES: NO |
| (3) | REVISED. |

30 September 2025

Date

K. La M Manamela

In the matter between:

ZANTON MELVYN THOMAS

Plaintiff

and

THE MINISTER OF POLICE

First Defendant

THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

Second Defendant

DATE OF JUDGMENT: This judgment is issued by the Judge whose name is reflected herein and is submitted electronically to the parties/their legal representatives by email. The judgment is further uploaded to the electronic file of this matter on CaseLines by the Judge's secretary. The date of the judgment is deemed to be 30 September 2025.

JUDGMENT

KHASHANE MANAMELA, AJ

Introduction

[1] The plaintiff, Mr Zanton Melvyn Thomas, is a self-employed businessperson and a resident of Lenasia, Johannesburg. In April 2017, the plaintiff was incarcerated for about fourteen days following his mother's complaint to the police which included that he broke window(s) to the house she shared with him. She later withdrew the complaint, which led to the release of the plaintiff from jail.

[2] The plaintiff blames the Minister of Police, the first defendant, and the National Director of Public Prosecutions, the second defendant, for his prolonged incarceration, which according to him was prolonged by their refusal for the complainant to withdraw the complaint and an erroneous (as it has been withdrawn) record of a previous conviction for fraud to his name.

[3] On 24 August 2017, the plaintiff caused summons to be issued against the defendants comprising three claims, as follows: (a) unlawful arrest without a warrant by members of the South African Police Service ('SAPS' or 'the police');¹ (b) erroneous record of previous conviction of the plaintiff on a withdrawn charge of fraud in Bellville, Cape Town,² and (c) injury to his left leg allegedly sustained by the plaintiff from a spider bite whilst incarcerated.³ He seeks compensation from the defendants in a total amount of R15 million. The defendants are disputing the plaintiff's claims in their nature and extent.⁴

[4] The matter became part-heard, after it came before me for a trial scheduled for three to four days from 10 to 13 March 2025. Mr J Keyser appeared for the plaintiff and Mr D Mphephu

¹ Pars [6]-[8] for the full details on the plaintiff's Claim A.

² Pars [9]-[10] for the full details on the plaintiff's Claim B.

³ Pars [11]-[12] for the full details on the plaintiff's Claim C.

⁴ Footnotes 1 to 3 above, for selected details from the defendants' plea.

appeared for the defendants. The trial could not be finalised and closing legal argument by counsel only took place on 9 May 2025 through a virtual link, when this judgment was reserved.

Pleadings (essentials thereof)

General

[5] The pleadings closed without delivery of a replication by the plaintiff. As already stated, the plaintiff's claim comprises three heads of claim, branded A, B and C. I consider it necessary to reflect the essentials of these claims, accompanied by aspects of the defendants' plea.

Plaintiff's Claim A (and defendants' plea thereto)

[6] The plaintiff claimed that on 13 April 2017, he was unlawfully arrested without a warrant by members of SAPS, acting within the course and scope of their employment with the Minister of Police ('the Minister'), the first defendant. He was accused of malicious damage to property ('MDP'). He pleaded that his arrest was unlawful, as he did not commit the crime of MDP and as the arrest was not justified under section 40⁵ of the Criminal Procedure Act 51 of 1977 ('the CPA'). In the alternative, the plaintiff claimed that his detention was malicious and unlawful for a number of reasons, including from the purview of section 56⁶ of the CPA.

[7] The plaintiff sought compensation for what he considers unlawful and unreasonable detention at the Lenasia Police station ('Lenasia SAPS') cells until 18 April 2017. He made his first appearance before the Lenasia Magistrates Court ('Lenasia Court') on 18 April 2017. His mother's attempt to withdraw the MDP complaint was refused by an unknown public prosecutor, acting within the course and scope of his or her employment with the National Director of Public Prosecutions ('the NDPP'), alternatively the Lenasia SAPS. Also, the NDPP acted negligently by not informing the Lenasia court that the complainant wanted to withdraw

⁵ Section 40 of the Criminal Procedure Act 51 of 1977, discussed in pars [40]-[41] below.

⁶ Section 56 of the CPA, quoted in footnote 53 below.

her complaint. Consequently, the plaintiff was incarcerated for a further seven days at the Johannesburg prison. He was released from prison on 25⁷ April 2017, when the charges against him were withdrawn. The plaintiff pleaded that, consequently, he suffered damages in the amount of R2 million for injury to his privacy, dignity and bodily integrity, due to his incarceration.

[8] The defendants' case with regard to plaintiff's Claim A is that the plaintiff was lawfully arrested by members of the Lenasia SAPS on 13 April 2017, albeit without a warrant, as envisaged by section 40(1)(b) of the CPA.⁸ The plaintiff was reasonably suspected of committing a schedule 1 offence. He was lawfully detained at the Lenasia SAPS until he was released. The latter averment was amended without objection on the first day of the hearing to the effect that the plaintiff was lawfully and reasonably detained at Lenasia SAPS until 18 April 2017 and, thereafter, at the Johannesburg prison until 24 (sc. 25)⁹ April 2017. The defendants mostly denied the allegations made in support of Claim A.

Claim B (and defendants' plea thereto)

[9] This head of claim relates to an alleged previous conviction of the plaintiff on a charge of fraud in Bellville, Cape Town (under CAS 541/12/2010) ('the criminal record'). The plaintiff pleaded that when he was informed of the criminal record by the prosecutor at his first appearance, on 18 April 2017, before the Lenasia Court, he denied same. It is now common cause between the parties that the criminal record does not exist. The plaintiff says that it was added unlawfully or wrongfully to his name (i.e. SAP69). According to the plaintiff the criminal record led to his further incarceration (on the MDP charge) for the period of seven days, referred to under Claim A above. Although, he was unaware of it, the plaintiff suspects

⁷ The date reflected in the plaintiff's particulars of claim ('PoC') is 24 April 2017, but does not accord with the rest of the documents in the trial bundle.

⁸ Pars [40]-[41] below, for a reading of s 40(1)(b) of the CPA.

⁹ Footnote 7 above.

that the criminal record may have led to his failure or inability to secure employment in the past. He suffered damages due to loss of earnings or earning capacity or what he branded ‘Loss of Employability/Embarrassment/Damaged Reputation’.¹⁰ Claim B is in the amount of R15 000 000.

[10] The defendants, as with Claim A, pleaded that the plaintiff was lawfully arrested by the police on 13 April 2017 without a warrant in compliance with section 40(1)(b) of the CPA. The defendants simply (without expatiation) denied the remainder of the allegations made by the plaintiff in support of his Claim B.

Claim C (and defendants’ plea thereto)

[11] Claim C relates to an alleged injury to the plaintiff’s left leg sustained during his incarceration at the Johannesburg prison from 18 to 24 April 2017. He seeks compensation from the NDPP, alternatively the police, for pain and suffering arising from the injury. Claim C is also for compensation for emotional and psychological trauma allegedly suffered due to the plaintiff’s detention. He, further, claims to be suffering from post-traumatic stress disorder (‘PTSD’), anxiety and depression, as a result. Claim C is in the amount of R3 250 000.

[12] The defendants also call for the dismissal with costs of the plaintiff’s Claim C, on the ground that the plaintiff was lawfully arrested without a warrant in compliance with section 40(1)(b). The remainder of the allegations are again denied without further ado.

Testimony of the witnesses, written expert evidence and counsel’s submissions

General

[13] The parties called witnesses to give oral evidence before the Court advancing their respective cases. The parties, also, relied on the written reports by medical experts, who assessed the plaintiff, regarding the impact of his arrest and incarceration in April 2017, as well

¹⁰ PoC par 7, CL 004-14.

as the criminal record. I deal with the pertinent issues from the oral evidence and the expert reports, next.

Mr Thomas (the plaintiff, as the first witness in his case)

[14] The plaintiff, Mr Thomas, was the first witness to take the stand during the trial to advance his case. His testimony included the following. He is currently 55 years of age and unmarried with children from previous marriage(s). The children are not staying with him. He stays with his mother in Lenasia. He is not employed, but derives income from the rental of his business or business premises. On 13 April 2017 he was arrested by the police. His mother had called the police on him. He was in his car, parked in the yard and consuming alcohol. He had emotional issues emanating from the divorce from his ex-wife and his lack of access to their son. His mother complained about his drinking. He shouted at her. After he started the engine of the car, his mother came forward and forced him to stay. His mother called the police and they came to the house around 20h00 on 12 April 2017. The police gave him a warning. But, after he continued shouting at his mother, she called the police again. They returned and took him to Lenasia SAPS where he was detained on a complaint of MDP. But he had only touched or pushed a window pane to close it and it cracked. This was already in the morning of 13 April 2017. The next day was a public holiday of Good Friday and the following Monday, on 17 April 2017, was another public holiday and the plaintiff's birthday. He waited all day long, on 13 April 2017, to be taken to court, but in vain. His request for police bail or, in his words, 'station bail', was to no avail.

[15] On 18 April 2017, he was taken to the Lenasia Court and held in a crowded cell. It was extremely busy. He was afraid of his fellow inmates. Amongst them was a gangster who had killed his father. But I remember that at some stage in his testimony the plaintiff said the victim was the gangster's uncle. The plaintiff and the gangster were the last to be called into court and they were handcuffed together. The gangster was granted R500 bail, despite his murder charge,

but the plaintiff was not. I hasten to say that I found this incredible. Ms Muller, a senior public prosecutor at Lenasia Court, who came later to testify for the defendants actually disputed this.¹¹ According to the plaintiff, the prosecutor refused when his mother wanted to withdraw the complaint against him. The matter was postponed, despite the presiding magistrate saying that the plaintiff should get bail. I also found this part incredible. I will say more below. The plaintiff was transported to Johannesburg prison, colloquially known as Sun City.

[16] At the Johannesburg prison, the plaintiff says he came across very dangerous people in the cells. It was packed and the food and living conditions were horrible. He was threatened, but some people promised to look after him. His experience whilst there included observing inmates being assaulted by prison staff and inmates assaulting one another. He had some reprieve when he managed to source in some cash and cigarettes from his shop through his girlfriend. At some stage during his testimony the plaintiff appeared to be emotional, but some of it appeared to me to be exaggerated.

[17] On 25 April 2017, he was transported to the Lenasia Court. When he appeared in court he was told his case has been withdrawn. When he inquired about why he had to spend all this time in jail he was told that he had a criminal record and that is the reason why he did not get bail. He felt that his dignity had been tarnished and he is embarrassed explaining to friends, family and church members about his incarceration. He grew up in a very dignified family and started drinking only in 2017. His credit score had declined without explanation. He is unable to pay maintenance for his kid now. The prosecutor ought to have been more diligent in verifying the criminal record and not just insisted that he should go prison. He would not have experienced the trauma he did. The plaintiff appeared very emotional around this stage of his testimony, and I even offered a comfort break.

¹¹ Par [26] below.

[18] The plaintiff was referred by his counsel to various documents in the trial bundle, including those from the SAPS crime administration system regarding the criminal record. He told the Court the crime of fraud relates to his ex-wife. They were still living in Cape Town when they were charged for her deeds, but charges against him were subsequently withdrawn. His ex-wife, however, ended up being convicted of fraud and sentenced to five years imprisonment.

[19] The plaintiff was also referred to a letter or note by a certain Ms T Pillay, dated 21 February 2018.¹² The plaintiff said that years back he was informed by Ms Pillay, his ex-girlfriend, to apply for a position of a salesperson where she worked. He did not get the job, but was told subsequently that, although he was the perfect person for the job, only declined due to the criminal record. He had similar experience elsewhere, including by his previous employer and relative(s). He started drinking as a result. He was not aware that he had a criminal record, until in April 2017 when he appeared in the Lenasia Court. It is common cause that the erroneous criminal record has since been rectified by the State.¹³ But the plaintiff told the Court that the whole ordeal has had a major effect on his life. He was 42 years starting his life and he had opened up his own business and suddenly everything fell apart. He wanted to achieve, but all doors were closed.

[20] The plaintiff's testimony under cross examination included what appears next. His highest academic qualification is a grade 10. He left school in grade 11. He confirmed that on 12 April 2017, he had an argument with his mother and she called the police, as she was scared. When the police arrived for the first time, they did not arrest him, but only told him to calm down and be peaceful. He did not heed the advice and they returned (after his mother called them again) around midnight to arrest him. The police did not tell him the reason for his arrest,

¹² CL 005-45.
¹³ CL 005-428.

although he was given a document pertaining to his rights, which clearly reflected the MDP offence.¹⁴ He now confirmed that he broke a window and this prompted his mother to call the police. This was upon being told by the defendants' counsel that Sergeant Qwanyashe, previously with the Lenasia SAPS, would come tell the Court that he was violent on the day he was arrested and had, actually, broken a window. The plaintiff changed his earlier version that he merely touched the window. I got the impression that the plaintiff - in some respects - was making up part of his story as he testified. This includes when he started consuming alcohol. He also conceded that the police had the right to arrest him. He insisted that he was denied bail due the criminal record. Counsel for the defendants put to him that he was released due to the withdrawal by his mother, as the criminal record remained added to the plaintiff's name until years later on 19 February 2021.¹⁵ He conceded that his released from jail was due to the withdrawal statement made by his mother on 25 April 2017. The plaintiff, despite his earlier statement that the 2017 arrest on the MDP offence was his first, conceded that he was previously arrested for the Bellville fraud proceedings relating to the criminal record. The detectives picked him up from his shop and placed him in jail in Alberton.

[21] At the beginning of the second day of trial, on 11 March 2025, counsel for the plaintiff applied for the re-opening of his client's case in order to deal with Claim C. He had omitted to deal with this the previous day when the plaintiff, testified. This was allowed in the absence of a real objection from the defendants. The plaintiff testified that on 24 April 2017, whilst still in custody, he was bitten by a spider. It didn't seem to be a serious injury, when he was released. He simply washed the injury or wound with medication bought for him by his mother, but days later, on 19 May 2017, he saw Dr GV Naidoo. Dr Naidoo treated him and explained to the plaintiff that he had been bitten by a black spider. It took him one and half weeks to get better.

¹⁴ CL 005-26.

¹⁵ CL 005-428.

The medical note issued to the plaintiff by Dr Naidoo is dated 28 January 2019. Evidently, this was more than one and half years after the consultation. But in terms of Dr Naidoo's note, the plaintiff was booked off work until 22 May 2017.¹⁶ The plaintiff confirmed the photographs, in the trial bundle, depicting the alleged injury/spider bite.¹⁷ I must add that there was no allusion to a spider bite in the pleadings, only to an injury.¹⁸ Under his cross-examination on Claim C, counsel for the defendants pointed out the 'discrepancies' regarding dates on Dr Naidoo's medical note, as already indicated. Counsel, branded the medical note a contrived afterthought. But, the plaintiff mentioned that he lacks knowledge on how long a black spider bite takes to get worse.

Ms Isabel Violet Docrat (the complainant and plaintiff's mother, as plaintiff's second witness)

[22] The second witness to testify in the plaintiff's case was Ms Isabel Violet Docrat, the plaintiff's mother. She has a hearing problem and uses a hearing-aid in the left ear. She formerly worked as a teacher and was 83 years old at the time of her testimony. She confirmed that she complained about the MDP to the Lenasia SAPS. She also told the Court that the plaintiff was drunk and wanted money. She called the police to keep him for the night. It was the first time this happened, she added. But she went to the police the following day to withdraw the complaint, but they refused. They did not give her a reason. This was on 13 April 2017. She went to Lenasia Court on 18 April 2017, when the plaintiff was refused bail due to the criminal record. She did not remember whom she spoke to, but they again refused for her to withdraw the complaint. She went back to court on 25 April 2017. She mentioned that this was when she found out about the fraud case. She confirmed her statement of withdrawal of the case made on 25 April 2017.

¹⁶ CL 003-11 to 003-12.

¹⁷ CL 014-1.

¹⁸ PoC par 4, CL 004-17.

[23] Her cross examination included the following. She called the police after the plaintiff broke a six-pane window which he tried to force open. She was scared, as an elderly person. At some stage I got the impression that the witness seemed to be in some form of pain and, even, looked confused. On 25 April 2017, she spoke to the prosecutor, the same prosecutor as before. This time the prosecutor allowed her to withdraw the case against her son, the plaintiff.

Ms Carlette Muller (senior public prosecutor, as the defendants' first witness)

[24] The first witness to testify for the defendants was Ms Carlette Muller. What follows are the pertinent parts of her testimony. She is the senior public prosecutor at the Lenasia Court and had been a prosecutor for 33 years. Her duties or role included receiving and reading dockets. The volume of her duties doubles over long weekends, such as the one during which the plaintiff made his first appearance on 18 April 2017. His docket was presented to her. After reading it she decided that the plaintiff should be prosecuted and that the matter should be placed on the roll. This was on the basis of the statement made by the complainant of MDP in the form of a broken window with the estimated value of R360.¹⁹ The plaintiff was not given bail because in cases where there is a domestic relationship - to get bail - an accused ought to indicate an alternative address which would have to be verified by the police. Further, reference is also made to the profile of the accused in the B section of the docket. In the plaintiff's docket there was reference to the Bellville criminal record. Ms Muller mentioned that this was the second ground for opposing bail. She noted that the matter was remanded for formal bail application.

[25] Regarding the complainant's testimony that she advised the prosecutor on 18 April 2017 that she was withdrawing the case, Ms Muller testified that no matter will be withdrawn without written representations from the accused person or withdrawal statement from the

¹⁹ The complaint's statement dated 12 April 2017, CL 005-28 to 005-29.

complainant. Both of them ought to be consulted. The case against the plaintiff was withdrawn on the basis of the withdrawal statement made by the complainant. The plaintiff had indicated that he occupies the adjacent shack and, thus, not sharing residence with the complainant.²⁰ The process included mediation between the accused and the complainant.

[26] The cross examination of Ms Muller by the plaintiff's counsel concentrated on the fact that she was not personally involved in most of the material activities, including attending court. It is common cause that the material activities were attended to by her colleagues. She conceded this much. But she would be aware of developments or activities from a reading of the section C in the docket. If the mother's address was given it would have been in the section C, as they need to verify the address. The fact that it was an MDP case involving property valued at R360, did not matter. At this stage, I got the impression that the witness seems frank and straightforward. She insisted that it is a general practice at any court, due to probability of intimidation of the witness and fear of the accused reoffending. Counsel for the plaintiff disputed that the CPA forbade the granting of bail for MDP. The witness agreed to that, but persisted that those are the facts that they use to oppose bail, even if the plaintiff did not have a criminal record. He had to indicate an alternative address. She denied the plaintiff's assertion that R500 bail was granted to an accused charged with murder in the Lenasia Court. She, further, confirmed that a withdrawal statement is taken by the police. The matter would have been in all probabilities not enrolled for a hearing if the complainant on 13 April 2017 have withdrawn the complaint, Ms Muller confirmed. She also testified about the length of time it takes for verification of address. Further, that they are only allowed to set down for hearing a specified number of matters per day.

²⁰ CL 005-37.

Attorney-client issue before the Court

[27] The second day of hearing ended up earlier than scheduled due to an incident - of an attorney-client nature – involving the plaintiff and Mr Keyser, his attorney of record and counsel before the Court. The Court was asked to intervene and I called the plaintiff to the fore and asked him to address the Court directly on whether he wanted to continue with the trial without any legal representation or had other plans. But, eventually the plaintiff confirmed that he would retain Mr Keyser, as his attorney in the matter. The Court adjourned earlier at the request of plaintiff's counsel to allow a 'cooling-off' moment before resumption of the trial the next morning.

Mr Lunga Qwanyashe (the arresting police officer, as the defendants' second witness)

[28] The third day of trial was on 12 March 2025. Mr Lunga Qwanyashe took the stand as the second witness for the defendants. He testified through a Zulu-English interpreter. His testimony included what appears next. He has been a policeman since 2005. At the time of his testimony he was a sergeant attached to the infrastructure department of the SAPS. In 2017, when the incident material to this matter occurred, he was at the sector policing of the Lenasia SAPS. He confirmed that he arrested the plaintiff on 12 or 13 April 2017, after a case of MDP was opened by the complainant for broken windows to her house. He attended at the complainant's address, but initially could not find the plaintiff. He interviewed the complainant and she mentioned to him that the plaintiff was drunk and had become violent. Upon her request, he gave her his cellphone numbers to call him directly in case the plaintiff returned. The complainant called around 01h00 and informed him that the plaintiff had indeed returned to the house and he was pulling the butler-door as he wanted to get into the house by force. Sergeant Qwanyashe and colleague(s) returned to the complainant's address. They found the plaintiff hiding at the back. The complainant mentioned that she was afraid of the plaintiff and wanted him to be taken away. She refused the plaintiff's request to talk to her and mentioned

that she will talk to him in court. The plaintiff was arrested without any resistance. Sergeant Qwanyashe confirmed that he was protecting the complainant from the plaintiff. The plaintiff's rights were also explained or read to him. I got the impression that the witness was very relaxed and seemed confident and could recall the material he was testifying on. After completing the arresting procedures the plaintiff was detained at the Lenasia SAPS. The arrest was without a warrant in terms of section 40 of the CPA. At some stage, Mr Keyser, for the plaintiff, objected to the plaintiff appearing to read from a piece of paper for his testimony. I explained to the witness that he is allowed to refer to records or notes in his possession, as the material events had taken place a while back in 2017, but that he needed to disclose to the Court that he was relying on records he kept for his testimony.

[29] Under cross examination by counsel for the plaintiff, Sergeant Qwanyashe's testimony included the following. He arrested the plaintiff without being in possession of the docket. The docket was back at the police station. He had not yet seen the statement or complaint made by the complainant. Counsel for the plaintiff probed the witness about the discrepancy between his reference to windows when the complainant mentioned only one window. The witness later appeared to confirm that there was only one window - with more than one window panes – broken by the plaintiff. He was also probed on his understanding of section 40(1)(b) of the CPA. He, also, confirmed that a charge of MDP was a schedule 1 offence. The plaintiff was smelling of liquor when he was arrested and Sergeant Qwanyashe stated that, in his observation, the plaintiff was drunk.

Expert evidence (both sides)

[30] Day four of the trial, on 13 March 2025, was dedicated to reports of the expert medical witnesses. But there was no oral evidence adduced by the experts. Both sides had filed expert reports. The parties had agreed that the expert reports and minutes filed ought to be accepted as evidence. I juxtapose the respective expert reports in the discussion which follows.

Dr Giada del Fabro (plaintiff's clinical psychologist)

[31] The plaintiff was assessed by Dr Giada del Fabro, a clinical psychologist, on 18 September 2018.²¹ Dr Del Fabro produced a report dated 4 October 2018 on the mental state or psychological evaluation of the plaintiff. The report was focused on the determination of the psychological impact of the incarceration of the plaintiff in 2017. She concluded that the plaintiff met 'the criteria for Post-Traumatic Stress Disorder' which had 'commenced after his time in prison and can be causally linked to the events that he witnessed whilst incarcerated'. And that, had the plaintiff not been incarcerated 'the probability is low that he would have developed this disorder'.²²

Mtimkulu- Nagel and Associates (defendants' clinical psychologist)

[32] On 24 October 2019, the plaintiff was jointly assessed by Mesdames Evelyn L Nagel, Vuyelwa T Mtimkulu and Lindelwa Mkhabela, clinical psychologists from Mtimkulu-Nagel and Associates. They subsequently produced a report, branded a neuropsychological report, dated 1 November 2019.²³ The objective of their assessment was to determine whether the plaintiff had suffered a formal psychological/psychiatric condition arising from his incarceration in April 2017. They made a number of findings and recommendations, including that the plaintiff: (a) 'presented with significant psychological syndromes prior to the incident under discussion which had impacted negatively on significant areas of function'; (b) had trauma experience from the unlawful incarceration which 'exacerbated his already compromised psychological well-being contributed 20% towards his functioning'; (c) 'would benefit from inpatient rehabilitation for the alcohol use disorder, because this condition seems to have been pre-existing however the use of ineffective coping mechanisms in dealing with

²¹ Plaintiff's clinical psychologist report, CL 003-7 to 003-10.

²² Plaintiff's clinical psychologist report, CL 003-9.

²³ Defendant's clinical psychologists report, CL 003-15 to 003-38.

the trauma cannot be excluded as somewhat contributing to this, thus the state may be held liable for 20% of his inpatient rehabilitation'.²⁴ [underlining added for emphasis]

Joint minute of the clinical psychologists

[33] The abovementioned clinical psychologists retained by the parties prepared a joint minute dated 22 June 2020,²⁵ in which they essentially confirmed their findings and recommendations above.²⁶

Plaintiff's industrial psychologists

[34] The industrial psychologists of Premier Consult (i.e. mesdames Roelien van Niekerk and Carina Steenkamp) assessed the plaintiff on 13 April 2021 and furnished their report dated 9 June 2021.²⁷ But on 2 February 2023, the plaintiff was virtually re-assessed by a completely new industrial psychologist, namely, Ms Mariella Noriega del Valle. Her report (as with the previous psychologists was also said to be aimed at determining the extent and impact of the relevant incidents and their *sequelae* on the plaintiff's employability and earning capacity prior and after the incidents). No explicit reason was given for retaining new psychologist.²⁸ Ms Noriega del Valle furnished a report dated 2 January 2023,²⁹ branded an 'addendum report'.³⁰

[35] I consider the following to be amongst the most pertinent parts of the report by Ms Noriega del Valle in respect of the plaintiff's pre-incident career aspirations and earning potential, had the material incidents not occurred, that: (a) the plaintiff's lack of a Grade 12 qualification and extended absence from the labour market prior to 2011 would have limited

²⁴ Defendant's clinical psychologists report, CL 003-36.

²⁵ Joint minute of the clinical psychologists, CL 003-41 to 003-42.

²⁶ Joint minute of the clinical psychologists, CL 003-42.

²⁷ Plaintiff's industrial psychologists' report, CL 003-45 to CL 003-60.

²⁸ The Premier Consult industrial psychologists stated that their report was valid for a period of 18 months from date of assessment. See plaintiff's industrial psychologists' report, CL 003-60.

²⁹ Plaintiff's industrial psychologist's addendum report, CL 003-97 to CL 003-121.

³⁰ Ms Noriega del Valle stated that the previous report by the Premier Consult industrial psychologists was not made available to her. See plaintiff's industrial psychologist's addendum report, CL 003-98 to CL 003-101.

his ‘employability within the formal corporate sector of the labour market’, irrespective of any criminal record; (b) the plaintiff, consequently, would have probably continued as a spaza shop owner; (c) the plaintiff’s reported earnings could not be verified and an income compatible to Koch Spaza Shop Owner Upper quartile of R48 000 per annum (in 2011 terms) may be utilised; (d) ‘considering the plaintiff’s objective earning capacity with regards to his age, level of education and vocational experience’ the plaintiff could have secured employment within the non-corporate sector by January 2014 (comparable to Koch Semi-skilled salary ranges of R88 000 per annum with progression to the median/upper scale of R140 500 per annum, in 2021 terms) by April 2024 at the age of 55 years and, thereafter with inflationary increases until retirement at the age of 65.³¹

[36] According to Ms Noriega del Valle the following is material for the plaintiff’s post-incident career postulation: (a) the plaintiff suffered ‘a hypothetical loss of potential earnings as a result of the erroneous criminal record’; (b) the existence of the criminal record ‘led to his wrongful detention, which was a traumatic experience, and which exacerbated his vulnerabilities, resulting in Post-Traumatic Stress Disorder’; (c) considering his advanced age, Grade 11 level of education, and vocational experience, ‘it seems reasonable to assume that he would be able to continue in informal employment earning comparable to Koch’s Assumptions for spaza shop owners (R 85,000.00 per annum, 2021 terms)’; (d) the plaintiff would be able ‘to pursue self-employment by January 2022 earning comparable to the Koch Semi-skilled scale (R 88,000.00 per annum; 2021 terms) at the age of 52 years’; (e) but given the time lapse, advanced age and psychological shortfall ‘it seems highly unlikely that any formal market prospects would realise’ for the plaintiff, and (f), consequently, the plaintiff would ‘likely only receive inflationary increases until retirement age’.³²

³¹ Plaintiff’s industrial psychologist’s addendum report, CL 003-115 to 003-117.

³² Plaintiff’s industrial psychologist’s addendum report, CL 003-119 to 003-120.

Defendants' industrial psychologist

[37] The plaintiff consulted with Mr Tshepo Tsiu, an industrial psychologist, retained by the defendants, on 9 February 2023 and he produced a report dated 16 February 2023.³³ The objective of the assessment is stated as an evaluation of the *sequelae* of the plaintiff's psychological and physical trauma (due to the alleged criminal record in 2012 and unlawful arrest in 2017) and the impact thereof on his past and future earning capacity and expression of an opinion thereon.³⁴ The following opinions regarding the plaintiff's employment prospects and earning potential are expressed: (a) due to limited information available, the plaintiff's claim could be calculated using the Koch Quantum Yearbook 2017 for the 'weighted average for self-employed persons [of] R49,200.00 per annum in the informal sector'; (b) in Koch Quantum Yearbook 2019, the 'suggested earnings for self-employed individuals in the informal sector' ranged from a lower quartile of R17 200 per annum to an upper quartile of R129 500 per annum, with a median quartile of R39 800 per annum; (c) the reported plaintiff's pre-morbid earnings fell 'way above' the aforesaid upper quartile; (d) the plaintiff 'would have likely continued receiving these earnings of R49,200.00 per annum with annual inflationary increases until retirement age at 65', but for the 'false arrest' incident.³⁵

[38] Mr Tsiu expressed the following opinions had the incident not occurred: (a) the plaintiff 'would have likely continued receiving [the abovementioned] earnings of R49,200.00 per annum with annual inflationary increases until retirement age at 65', despite the 'false arrest incident under discussion'; (b) in the event the Court rules the detention unlawful the calculation of the plaintiff's loss of past earnings may be on the basis of R49 200 per annum 'with annual inflationary increases being indicated for the period between 26 July 2012 and 20 June 2020'; (c) the plaintiff has 'decreased psychological ability as a result of the false arrest

³³ Defendant's industrial psychologist's report, CL 003-135 to .

³⁴ Defendant's industrial psychologist's report par 1.1.2, read with par 1.1.1, CL 003-138.

³⁵ Defendant's industrial psychologist's report, CL 003-145 to 003-148.

incident under discussion’ and has been ‘rendered a more vulnerable candidate due to post traumatic stress disorder, sleep problems, Increased alcohol use, Isolation and withdrawal’; (d) the plaintiff ‘is currently able to meet the demands of his current work, he does so while suffering psychologically’; (e) the plaintiff ‘will continue to experience residual nightmares, post-traumatic stress disorder, increased alcohol use, isolation and withdrawal in the future and require psychological treatment’; (f) the plaintiff’s excessive alcohol consumption and psychological deficits are ‘likely to impact negatively on his work performance and income generation should he wish to become more than a landlord and increase his gainful income and may prevent him from pursuing alternative employment opportunities’.³⁶ [underlining added for emphasis]

Applicable legal principles

[39] This matter, essentially, constitutes a delictual claim³⁷ due to: (a) alleged unlawful arrest; (b) alleged unlawful or malicious detention, and (c) erroneous record of previous conviction. The defendants, through their duly authorised functionaries, are said to have acted negligently and, thus, having caused the plaintiff to suffer damages for which the plaintiff seeks compensation. Therefore, the legal principles applicable to the issues to be determined are those from the law of delict and criminal procedure. Some of these principles are reflected under this part.

[40] Paramount amongst the applicable legal principles is section 40(1) of the CPA, providing for arrest by a peace officer - without warrant - of a person reasonably suspected of an offence in schedule 1. Schedule 1 of the CPA includes the offence of MDP or ‘malicious

³⁶ Defendant’s industrial psychologist’s report, CL 003-147 to 003-149.

³⁷ A delict is ‘the wrongful causing of patrimonial or pecuniary loss (*damnum iniuria datum*), the wrongful infliction of pain and suffering associated with bodily injury to the plaintiff and the wrongful infringement of interests of personality (*iniuria*)’: In *Delict: The Law of South Africa (LAWSA)*³⁷ JR Midgley, *Delict : in The Law of South Africa* (or LAWSA) Vol 15 (3rd edn, LexisNexis 2016) at 72 and the authorities cited there.

injury to property'. The learned Harms DP held in *Minister of Safety and Security v Sekhoto and another*³⁸ that schedule 1 offences are serious offences.³⁹

[41] The arrestor or peace officer ought to establish the jurisdictional facts for a lawful arrest under section 40(1)(b) of the CPA.⁴⁰ Whether a suspicion harboured by the arresting peace officer is reasonably within the confines of section 40(1)(b) requires objective determination.⁴¹ In *Rautenbach v Minister of Safety and Security*⁴² it was clarified that the standard for determining whether the arrest was lawful is not that of 'perfection', but a 'range of rationality' - laced with a 'measure of flexibility' and dependent on the facts of a specific matter - in that it suffices if the arrestor can show that he or she had exercised 'discretion in a manner ... deemed optimal' by a court.⁴³

[42] Section 60 of the CPA, deals with application for bail by an accused person, and provides as follows in the material part:

(1) (a) An accused who is in custody in respect of an offence shall, subject to the provisions of section 50 (6), be entitled to be released on bail at any stage preceding his or her conviction in respect of such offence, if the court is satisfied that the interests of justice so permit.

(b) ...

(c) If the question of the possible release of the accused on bail is not raised by the accused or the prosecutor, the court shall ascertain from the accused whether he or she wishes that question to be considered by the court.

...

(4) The interests of justice do not permit the release from detention of an accused where one or more of the following grounds are established:

(a) Where there is the likelihood that the accused, if he or she were released on bail, will endanger the safety of the public, any person against whom the offence in

³⁸ *Minister of Safety and Security v Sekhoto and another* 2011 (1) SACR 315 (SCA), 2011 (5) SA 367 (SCA).

³⁹ *Minister of Safety and Security v Sekhoto* 2011 (1) SACR 315 (SCA), 2011 (5) SA 367 (SCA) [21]. See also Albert Kruger, *Hiemstra's Criminal Procedure* (LexisNexis 2025) at p 5-8.(2).

⁴⁰ The arrestor or peace officer bears the onus to justify the arrest in terms of s 40(1)(b) of the CPA by establishing the following jurisdictional facts: (a) the arrestor must be a peace officer; (b) the arrestor must entertain suspicion; (c) the suspicion must be that the suspect committed an offence, referred to in Schedule 1 of the CPA, and (d) the suspicion must be premised on reasonable grounds. See *Duncan v Minister of Law and Order* 1986 (2) SA 805 (A) at 818G-H; *Minister of Safety and Security v Sekhoto* 2011 (1) SACR 315 (SCA), 2011 (5) SA 367 (SCA) at [6] and [28]. See also *Hiemstra's Criminal Procedure* at p 5-8.

⁴¹ *Mabona and Another v Minister of Law and Order* 1988 (2) SA 654 (SE) at 658 E-H.

⁴² *Rautenbach v Minister of Safety and Security* 2017 (2) SACR 610 (WCC) [43].

⁴³ *Barnard v Minister of Police and Another* 2019 (2) SACR 362 (ECG) [10]. See *Hiemstra's Criminal Procedure* at p 5-8(1).

question was allegedly committed, or any other particular person or will commit a Schedule 1 offence;

..

(9) In considering the question in subsection (4) the court shall decide the matter by weighing the interests of justice against the right of the accused to his or her personal freedom and in particular the prejudice he or she is likely to suffer if he or she were to be detained in custody ...

[43] Regarding an alternative method of securing the attendance of court by an accused person it was held in *Minister of Safety and Security v Sekhoto* there is no fifth jurisdictional requirement for an arresting officer to consider whether there are less invasive options to bring a suspect to court.⁴⁴

[44] Overall, section 35(1)(d) of the Constitution of the Republic of South Africa, 1996 ('the Constitution'), located in the Bill of Rights to the Constitution, guarantees a person arrested for an alleged offence the right 'to be brought before a court as soon as reasonably possible, but not later than - (i) 48 hours after the arrest; or (ii) the end of the first court day after the expiry of the 48 hours, if the 48 hours expire outside ordinary court hours or on a day which is not an ordinary court day'. Section 60 of the CPA is part of giving effect to this constitutional right.

[45] From the perspective of the law of delict, a delict comprises the following elements: (a) human conduct (be it an omission or a positive act); (b) wrongfulness; (c) fault, commonly in the form of negligence; (d) causation, and (e) harm or damage.⁴⁵

Closing legal argument

General

[46] The closing argument by counsel was preceded by counsel's written argument. I am grateful to counsel in this regard. I confirm that I have had regard of all submissions made,

⁴⁴ *Minister of Safety and Security v Sekhoto* 2011 (1) SACR 315 (SCA) [22]. See also *Hiemstra's Criminal Procedure* at p 5-8.

⁴⁵ Johan Scott, 'A reassuring judgment for "slip and fall" victims with a caveat to restaurateurs to reassess the effectiveness of their disclaimer notices : *Morrison v MSA Devco (Pty) Ltd* (5229/2018) 2025 ZAWCHC 21 (30 January 2025)' [2025] TSAR 579 <<https://doi.org/10.47348/TSAR/2025/i3a10>> at 580-581.

only that it is not necessary to repeat everything. The pertinent aspects of the submissions by counsel appear below

Submissions on behalf of the plaintiff

[47] To recap: the plaintiff considers his arrest to have been unlawful and his detention to have been unlawful and/or malicious. He seeks compensation for the damages he allegedly suffered segmented into three claims.⁴⁶

[48] Counsel submitted that the plaintiff was denied a release on bail and to consult an attorney during the period from 13 to 17 April 2021, despite his numerous requests, due to his criminal record. He endured (said to be the origin of ‘the majority’ of his trauma) conditions at the Johannesburg prison over the seven days of his incarceration in that facility. Subsequent to his release from jail it dawned on him that the Belville criminal record negatively affected his life and attempts to secure employment since 2013. Counsel submitted that his client was a reliable and honest witness, as with Ms Docrat, the complainant and the plaintiff’s mother.

[49] According to counsel for the plaintiff, the evidence by Ms Muller, the senior public prosecutor, constitutes ‘general’ statements or hearsay evidence, as she was not personally involved in the material activities. Her assertion regarding an ‘alternative address’ is a fabrication to justify the plaintiff’s prolonged detention, neither mentioned in docket nor required in terms of the law. Further, counsel submitted that Sergeant Qwanyashe failed to exercise his discretion as he felt obliged to arrest the plaintiff once a complaint was lodged with the police, contrary to the law.⁴⁷ This rendered the arrest and subsequent detention unlawful.

⁴⁶ Pars [6]-[12], above.

⁴⁷ *Diljan v Minister of Police* (Case no 746/2021) [2022] ZASCA 103 (24 June 2022); *Minister of Safety and Security v Sekhoto* 2011 (1) SACR 315 (SCA) [28], [38]. See also *Hiemstra's Criminal Procedure* at p 5-8(1).

[50] The submissions by counsel for the plaintiff also included that: (a) the detectives at the Lenasia SAPS could have granted the plaintiff 'station bail'; (b) the plaintiff had a traumatic experience whilst detained at the Lenasia SAPS and Johannesburg prisons, and his evidence is unchallenged in this regard; (c) the complainant's unsuccessful attempt to withdraw the case is unchallenged; (d) the erroneous previous criminal record is the only reason a formal bail application had to be brought by the plaintiff; (e) the Court should fix the quantum of the damages for the arrest and detention whilst bearing in mind the violation of plaintiff's constitutional rights⁴⁸ and comparative cases⁴⁹ against the fact that the plaintiff was detained for twelve days. The plaintiff, it is further submitted, should be awarded an amount of R600 000 in respect of his claim for loss of income, as per the actuarial calculation.⁵⁰

Submissions on behalf of the defendants

[51] Counsel for the defendants conceded that the defendants, particularly the first defendant, bears the onus to justify the lawfulness of the arrest and the detention. His submissions included the following.

[52] Sergeant Qwanyashe, it is submitted by counsel, was very honest and reliable when he testified before the Court. And his evidence was consistent throughout and credible. Sergeant Qwanyashe told the Court that the complainant said she was scared of the plaintiff, felt unsafe and wanted the plaintiff to be arrested. He was empowered by section 40 of the CPA to arrest the plaintiff without a warrant. Counsel disputed that the complainant wanted the police to arrest the plaintiff only for him to sober up. The plaintiff had broken windows, a violent conduct. Sergeant Qwanyashe, it is also submitted, was corroborated by both the plaintiff and the complainant in all material respects.

⁴⁸ Par [44] above on s 35(2) (e) of the Constitution.

⁴⁹ Par [67] below on comparable cases cited by counsel.

⁵⁰ *Seria v Minister of Safety and Security and Others* 2005 (5) SA 130 (C) at 151.

[53] Ms Muller, the senior public prosecutor, told the Court that there was no evidence of the plaintiff asking for bail. But, bail would have been refused given the nature of the offence the plaintiff was accused of, as he needed to provide ‘alternative address’ for bail. This is the practice in the courts, nationally, albeit not derived from the CPA. Further, counsel points to Ms Muller’s testimony that had the complainant’s withdrawal statement being done earlier than 25 April 2017 it would have been acceded to. Regarding the criticism of Ms Muller’s evidence as hearsay, counsel submitted that she had knowledge of the material issues as she placed the matter on the roll. The criminal record was not the sole fact for consideration when determining bail where charges involve an element of violence. There is a need for postponement of such matters for investigation and, thus, the plaintiff’s detention was reasonable and justified, counsel further submitted. Counsel submitted that Ms Muller was an honest and credible witness before the Court.

[54] According to counsel for the defendants, the plaintiff was evasive and avoided simple questions and continuously made long defensive statements. He, at first, did not disclose that his arrest was for MDP, but said that it was for being drunk and shouting at his mother. His version changed only when told that the arresting officer would come testify about his violent conduct. The plaintiff was not a reliable and honest witness, and most part of his testimony was full of contradictions, counsel submitted.

[55] The evaluation of the evidence and further submissions by counsel for the defendants included: (a) criticism of the plaintiff’s evidence regarding his consultation with Dr Naidoo, which counsel branded an attempt on the part of the plaintiff to justify his claim; (b) disputing that the sole reason for the complaint by the plaintiff’s mother was to secure his overnight detention and that this was not divulged to the police; (c) the complainant’s alleged attempts to withdraw the case is an afterthought, as she failed to call the police using the number given to her by the arresting officer to inform him that she had changed her mind; (d) the plaintiff’s inability to find a job due

to the erroneous criminal record was not supported by proof due to the dates surrounding the note furnished by Ms T Pillay, and (e) the experts casted some doubt on the plaintiff's employability, based on his academic qualifications and inability to secure employment even prior the criminal record.

[56] Counsel for the defendants, also, submitted that part of the plaintiff's Claim C or its underlying cause of action had prescribed in terms of section 11(d) of the Prescription Act 68 of 1969 as it arose three years prior to the service of summons on the defendants.

Issues requiring determination

[57] The following are the issues requiring determination by the Court to dispose of this matter: (a) was the plaintiff's arrest lawful; (b) was the plaintiff's detention justifiable or malicious and unlawful; (c) did the erroneous criminal record lead to the plaintiff's incarceration; (d) did the erroneous criminal record lead to the plaintiff's failure to secure employment, as well as other associated claims; (e) the plaintiff's pain and suffering arising from the injury to the left leg during his incarceration; (f) compensation for emotional and psychological trauma due to his detention, and (g) prescription of part of the plaintiff's claim. These issues are discussed under self-explanatory subheadings below and, in some instances, the issues are discussed jointly due to the inherent interlinkages.

Was the arrest of the plaintiff lawful?

[58] The plaintiff claims that his arrest on 13 April 2017, without a warrant, for the MDP offence by members of SAPS was unlawful. In his pleadings the plaintiff denied the MDP offence, but he unequivocally admitted same during the trial. His own mother confirmed this.

[59] The defendants disputed the claim and asserted that the arresting officer satisfied the requirements of the law, including section 40(1) of the CPA.⁵¹ I agree. I consider the police to

⁵¹ Pars [40]-[41] above.

have acted reasonably and lawfully in arresting the plaintiff after his mother's complaint. There is also nothing amiss regarding the exercise of discretion by the police, including Sergeant Qwanyashe. Besides, the law does not expect the police to conduct themselves perfectly when effecting a lawful arrest, but only rationally and in a flexible manner under the given circumstances of a matter.⁵² The police acted accordingly and, therefore, the plaintiff's arrest was lawful.

Was the plaintiff's detention justifiable or malicious and unlawful?

[60] The plaintiff, also, claims that his detention was not justified, alternatively was malicious and/or unlawful. He could have been given police bail or released on notice in terms of section 56⁵³ of the CPA prior to his first appearance in court on 18 April 2017 given the nature of his alleged offence and the circumstances. For his detention from 18 April 2017 onwards the plaintiff says this was due to the criminal record, which made a formal bail application necessary for his release. For both periods of detention, the plaintiff says he should have been released because his mother was ignored or impeded in withdrawing the complaint against him.

[61] Paramount amongst plaintiff's grounds that he shouldn't have been further detained is that his mother wanted to withdraw her complaint earlier than she did on 25 April 2017. The mother, as a complainant, says that she went to the Lenasia SAPS on 13 April 2017 and someone there refused her request to withdraw the complaint. She tried this again at the Lenasia Court on 18 April 2017, when the matter was postponed for further investigation. But on 25 April 2017 her withdrawal statement was taken.

[62] I do not accept Ms Docrat's testimony that she was impeded in her attempts to withdraw

⁵² *Barnard v Minister of Police* 2019 (2) SACR 362 (ECG) [10]. See *Hiemstra's Criminal Procedure* at p 5-8(1). See par [41] above.

⁵³ Section 56 of the CPA provides for a securing the attendance of court by an accused through a written notice, where 'an accused is alleged to have committed an offence and a peace officer on reasonable grounds believes that a magistrate's court, on convicting such accused of that offence, will not impose a fine exceeding the amount determined by the Minister from time to time by notice in the *Gazette* ...whether or not the accused is in custody'.

her complaint against the plaintiff, as it clearly does not comport with the surrounding evidence. She is a well-educated person, who despite the frailty of old age, was able to act in protection of her rights by standing up against her violent son, the plaintiff. Twice calling the police and refusing his instantaneous olive branch to talk, whilst advising him that she would do so in court. Her withdrawal statement makes her timing and reasons for the withdrawal abundantly clear. She stated under oath that she has by then ‘had time to reconsider the charge after [the plaintiff’s] stay at the Johannesburg Prison [from 18 to 25 April 2017] and [wished by then] to withdraw the said charges’. This was contemporaneously when the plaintiff was released. Her testimony did not explain why she has shifted from this version. Her lack of details regarding who she spoke to at the Lenasia SAPS and Lenasia Court, also, doesn’t bode well for her credibility.

[63] I, therefore, do not agree that the plaintiff should have been released on 13 April 2017 by the police either due to the alleged withdrawal of the complaint, warning or police bail. I consider the two latter modes of release to have been legally impossible due to the serious nature of the offence of MDP, particularly under the circumstances it was alleged to have been committed. It warranted further investigation by the police, which investigation would involve the wellbeing of the complainant, in this matter an elderly lady. The seriousness of the offence is also marked by the processes the complainant and the plaintiff (as an accused) undertook for the plaintiff’s release.⁵⁴ It included declarations and undertakings by them as to their living arrangements. The plaintiff, in my view, made his first appearance squarely within the confines of the law.

[64] Accepting that the plaintiff’s detention from 13 to 18 April 2017 when he first appeared in court was justified and lawful, I turn to his subsequent detention. I repeat what I have stated

⁵⁴ CL 005-37.

above regarding the complainant's withdrawal of the complaint to secure plaintiff's release. I also accept the evidence by Ms Muller of the requirement of an alternative address. It is far from being an afterthought as it is reflected in the contemporaneous documentation for the withdrawal of the complaint.⁵⁵

[65] What remains now is the plaintiff's assertion that his further detention from 18 to 25 April 2017 was due to the erroneous criminal record. It is argued in this regard that the erroneous criminal record is the only reason a formal bail application was necessary. Ms Muller testified that it was the second ground regarding the release of the plaintiff on bail. I must say that I find the plaintiff's case in this regard to be contradictory to his other assertion that his release from prison could have been secured through his mother's withdrawal of the complaint. But, from the objective evidence before the Court clearly confirms that plaintiff was released from prison despite the erroneous criminal record. It was only expunged from the plaintiff's records almost four years later on 19 February 2021.⁵⁶ Evidently, this was three and half years after the plaintiff had instituted these proceedings against the defendants. But, Ms Muller says the criminal record was considered when the matter was postponed and the plaintiff further incarcerated at the Johannesburg prison. Therefore, it is my view that the plaintiff's incarceration from 18 to 25 April 2017 was the result of both the complaint by his mother and the criminal record. I consider detention on the basis of the former to have been lawful and detention on the basis of the latter (i.e. the criminal record) to have been unlawful. But there is nothing available to the Court to suggest the proportion at which apportionment to these two causes could be effected. It would seem artificial to state that the plaintiff's unlawful detention be on an equal (or 50/50) basis. Therefore, the plaintiff's detention from 18 to 25 April 2017 was unjustified and, thus, unlawful to the extent that the criminal record had a bearing.

⁵⁵ CL 005-37.

⁵⁶ CL 005-428.

[66] In addition to the actual detention, it is also submitted that, the conditions under which the plaintiff was detained at Lenasia and Johannesburg prisons violated his rights in terms of the Constitution. The plaintiff, therefore, is entitled to compensation by the defendants.

[67] Counsel cited the following cases in support of the possible award of general damages to be made. In *Van der Merwe v Minister van Veiligheid en Sekuriteit en 'n Ander*⁵⁷ the Northern Cape Division dealt with a matter involving a 63-year-old male building contractor detained for a period of two and half hours for which he was severely traumatised and received psychological and psychiatric treatment, but without positive results. He was awarded an amount of R25 000 in 2009 (amounting to R56 000 in 2025) by the court. The case of *Van Rensburg v City of Johannesburg*⁵⁸ concerned a 74-year-old plaintiff who was wrongfully detained by the police for an afternoon (i.e. 6 hours) after his arrest at a roadblock for failure to appear at court on several traffic violations and, consequently awarded damages in the amount of R75 000 in 2009. In another decision of this Division in *Lifa v Minister of Police and Others*⁵⁹ a plaintiff who had spent a period of six days in custody was awarded general damages in the sum of R600 000 in 2022. I also considered the decision of a Full Court of this Division in *Skhosana v Minister of Police*⁶⁰ in which the decision of the court *a quo* was set aside and the claimant awarded an amount of R600 000 for his torture and unlawful detention over a period of 65 days.

[68] In my view considering the plaintiff's incarceration for a period of seven days (i.e. 18 to 25 April 2017) at the Johannesburg prison; the conditions under which he was incarcerated and the psychological sequelae arising from his incarceration in terms of expert opinion and

⁵⁷ *Van der Merwe v Minister van Veiligheid en Sekuriteit en 'n Ander* 2010 (6K2) QOD 1 (NCK) *per* Matjiedt J.

⁵⁸ *Van Rensburg v City of Johannesburg* 2009 (2) SA 101 (W) *per* Horwitz AJ.

⁵⁹ *Lifa v Minister of Police and Others* (2020/17691) [2022] ZAGPJHC 795; [2023] 1 All SA 132 (GJ) (17 October 2022) *per* Wanless AJ (as he was then).

⁶⁰ *Skhosana v Minister of Police* (2024/A200, 30147/2013) [2025] ZAGPPHC 240 (10 March 2025) Coram: Mbongwe J, Bam J and Labuschagne J.

other factors in this matter, I consider an amount of R175 000 as a just and appropriate award for general damages suffered by the plaintiff.

The erroneous criminal record and its further aftermath

[69] The erroneous criminal record is also relevant to the plaintiff's case for another reason than his incarceration at the Johannesburg prison. It is also the plaintiff's case that he was unable to secure employment, due to same. He claimed that the erroneous criminal record impeded his efforts to secure employment, even from family sources. The only evidence before the Court in this regard is that of the plaintiff himself and collateral evidence by way of a letter penned by Ms Pillay, his former girlfriend.

[70] I agree that the erroneous criminal record had some form of negative impact on the plaintiff's social and work life, including his employability and, therefore, capacity to earn a living. The varying expert opinions and the plaintiff's pre- and post-incident earning postulations were discussed above.

[72] But, I am of the view that the plaintiff's failure or inability to secure employment was not solely due to the erroneous criminal record. He was already 41 years of age in 2011 and his academic qualification and period of absence from the sector of his previous employment would have had a bearing on his prospects. I can only attribute the erroneous criminal record to have been part of the reasons why the plaintiff would have been unemployed from 2011 to 2021. Therefore, I will reflect this in the contingency deductions effected to the figures postulated for the plaintiff's earnings.

[73] I will adopt the 5% and 15% contingency deductions suggested by the plaintiff's actuary regarding the plaintiff's past earnings and future premorbid earnings.⁶¹ I will apply a 25% (equalling R219 607) contingency deduction (as opposed to the 35% suggested by the

⁶¹ CL 003-85, 003-87.

actuary) on the figure of R878 428 postulated for the post-morbid earnings to arrive at a figure of R658 821. The net result is the amount of R439 395 for the plaintiff's future earnings which when added to the past earnings of R136 525 equals a total of R575 920.00 for the plaintiff's loss of earnings or earning capacity.

The plaintiff's pain and suffering arising from the injury to the left leg during his incarceration

[74] The plaintiff also seeks compensation for pain and suffering arising from an injury to his left leg sustained during his incarceration at the Johannesburg prison from 18 to 24 April 2017. During the trial the alleged injury was specified as a bite to the plaintiff's left leg by a black spider on 24 April 2017. This formed part of Claim C for compensation in the amount of R3 250 000.

[75] The plaintiff told the Court that the bite by the spider occurred on 24 April 2017, a day before he was released from jail. One of the criticism of the plaintiff's testimony by counsel for the defendants was that the plaintiff continuously made long defensive statements. But on this issue the plaintiff was very cryptic. There is no indication of: (a) where exactly in jail or cell the injury occurred; (b) what time of the day or night this occurred; (c) who besides him was there when this occurred (considering the plaintiff gave detailed testimony of the company he kept whilst in jail); (d) why the incident was not reported to the authorities or the Lenasia Court; (e) why the particulars of claim only gave a generic description of 'an injury';⁶² (f) why the medical note which includes booking off from work is only dated 28 January 2019,⁶³ and (g) why the medical note only refers to treatment for 'abscess'. But nothing would turn on this absent evidence.

⁶² Par [22] above.

⁶³ Par [21] above.

[76] What the plaintiff did provide to the Court are photographs of the injury or spider bite.⁶⁴ He also explained that the injury did not seem serious at the time of his release and that he merely washed it with some unspecified, presumably off-shelf, medication bought for him by his mother. This would have been from 25 April 2017 until he saw Dr Naidoo on 19 May 2017.

[77] The plaintiff's claim for the injury and its sequelae in the form of 'severe pain and suffering in the amount of **R500 000-00**'.⁶⁵ No medical evidence was led on the cause and severity of the plaintiff's pain and suffering. It is not even clear from when during the period from the moment the plaintiff was bitten the injury became painful, as he did not initially think it was serious. There is no evidence whether Dr Naidoo's intervention offered relief from pain and, if not, why the plaintiff did not seek further medical attention. Dr Naidoo's note is only limited to one consultation, contemporaneously dispensed and/or prescribed medication and nothing more.⁶⁶

[78] The plaintiff did not say (in pleadings and evidence) why the defendants should be liable for his injury, but I suppose it would be on the basis of negligence (i.e. *culpa*) on the part of one of the (or both) defendants.⁶⁷ It is trite that negligence refers to the 'absence of that degree of diligence which the law expects to be observed by everyone in the ordinary relations of life' which may be manifested either by an act of commission or omission.⁶⁸ I, further, assume – in the absence of evidence – that the plaintiff relies on an omission of some form of legal duty by the defendants.⁶⁹ This would entail that the defendants had a duty to perform an act and omitted to do so, hence the plaintiff's injury.⁷⁰ But no such duty has been established

⁶⁴ CL 014-1.

⁶⁵ PoC par 4, CL 004-17.

⁶⁶ CL 003-11 to 003-12.

⁶⁷ Midgley, *Delict* at 72 and the authorities cited there.

⁶⁸ H Daniels, *Beck's Theory and Principles of Pleadings in Civil Actions* (6th edn, LexisNexis 2002) par 13.62.1 at 349.

⁶⁹ Daniels, *Beck's Theory and Principles of Pleadings* par 13.62.1 at 349.

⁷⁰ Daniels, *Beck's Theory and Principles of Pleadings* par 13.62.4.2 at 351-352.

on the part of the defendants. Therefore, I find this part of the plaintiff's claim not established and will be dismissed.

Prescription of part of the plaintiff's claim.

[79] For completeness, I turn to part of the legal argument by counsel for the defendants that, the plaintiff's Claim C or its underlying cause of action had prescribed as it relates to the plaintiff's inability to secure a job between 2013 and 2017, due to the erroneous criminal record. Counsel invoked section 11(d) of the Prescription Act which states that a debt would prescribe after a period of 'three years in respect of any other debt' other than those specified in other subsections of section 11. Section 12 of the Prescription Act provides that the period of prescription 'commence[s] to run as soon as the debt is due' and that a debt only becomes due when 'the creditor has knowledge of the identity of the debtor and of the facts from which the debt arises'.⁷¹ It is common cause in this case that the plaintiff became aware of the erroneous criminal record in April 2017. This is when prescription of his debt would have started to run. The plaintiff issued summons promptly in the same year. Therefore, the defendants' prescription issue or plea has no merit. Besides the prescription issue was not properly raised in this matter in the pleadings, for example, by way of a special plea.⁷²

Conclusion and costs

[80] As indicated above the plaintiff will be awarded the amount of R575 920.00 for his loss of earnings or earning capacity and an amount of R175 000 as general damages suffered by the plaintiff relating to his unlawful detention and *sequelae*. Therefore, the defendants will be ordered to pay to the plaintiff an amount of R750 920.

⁷¹ *Van Zijl v Hoogenhout* [2004] 4 All SA 427 (SCA), 2005 (2) SA 93 (SCA); *ATB Chartered Accountants (SA) v Bonfiglio* [2011] 2 All SA 132 (SCA). See also L T C Harms, *Amler's Pleadings* (Tenth Edition, LexisNexis, 2024) at 311; JS Saner, *Prescription in Law of South Africa (LAWSA)*, Volume 33 (Third Edition, LexisNexis, 2025 Cumulative Supplement, Update Information) at 238.

⁷² Harms, *Amler's Pleadings* at 310.

[81] This means that the plaintiff was only partially successful in his claim(s) against the defendants. But I do not consider the partial success to fall below the threshold of substantial success. Therefore, the outcome – in terms of the convention – would be accompanied by party and party costs, at the scale B where applicable.

Order

[82] In the premises, I grant an order in the following terms, that:

- a) the first and second defendants are liable to pay to the plaintiff an amount of R750 920 for his loss of earnings and general damages, jointly and severally, the one paying the other to be absolved;
- b) the first and second defendants are liable for interest at the prescribed rate from date of this judgment to date of final payment;
- c) first and second defendants are liable to pay the plaintiff's party and party costs, at scale B where applicable, and
- d) the plaintiff's claims - to the extent not provided for in a) hereof - are dismissed with no order as to costs.



Khashane La M. Manamela
Acting Judge of the High Court

Dates of Hearing : **10, 11, 12 and 13 March, 09 May 2025**
Date of Judgment : **30 September 2025**

Appearances:

For the Plaintiff : Mr Keyser
Plaintiff's Attorneys by : Jean Keyser Attorneys

For the Defendants : Mr D Mphephu
Defendant's Attorneys : State Attorney