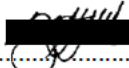




**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Case Number: 41295/2019

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


.....
SIGNATURE

6 October 2025
.....
DATE

In the matter between:

RAMOTHOPO RATSHWENE

Plaintiff

and

MINISTER OF POLICE

Defendant

JUDGMENT

FORD. AJ

Introduction

1. *“Some police are useless”*. These few words, spoken by an innocent civilian to a friend, within earshot of police officers, resulted in his vicious attack, undignified treatment and abuse at the hands of members of the South African Police Service (“SAPS”). Their conduct violated the constitutional mandate, which define their role, and which they ought to embrace with pride. Sadly, their unlawful conduct has now given rise to a delictual claim of considerable financial

proportions, which must, most unfortunately, be paid for – from an already strained, public purse.

2. This judgment intends to achieve four purposes. First to compensate the plaintiff for his claim. Second, to impress on the SAPS officers the importance of their role within the landscape of our constitutional democracy. Third, to encourage the South African public to record police interactions with members of the public, so as to stem the floodgates of abuse that individuals suffer at the hands of the police. By recording police engagements with the public, as was done in this case, some circumspection may result. Fourth, to direct the Minister to instruct IPID to conduct a full-scale investigation into the events that transpired at Meadowlands Police Station, in relation to the incidents set out herein.

The evidence

3. The plaintiff, Mr. Ramothopo Ratshwene (“Ratshwene”) aged 42, instituted an action for damages, against the Minister of Police (“the defendant”), arising out of, what he claims to be, his unlawful and wrongful torture, assault, arrest and detention, deprivation of freedom without just cause, physical trauma and malicious prosecution, suffered on 4 March 2019, at the hands of members of SAPS Meadowlands, while on duty. The action is opposed.
4. On 4 March 2019, at approximately 22h00, Ratshwene, an Uber driver, accompanied by a friend, Mr. Mahlori Maluleke (“Maluleke”) were enroute to Zone 2 in Meadowlands, Soweto. They came across an accident scene involving two vehicles, a Polo and a Toyota Quest. They stopped, and proceeded to offer assistance to the occupants of the vehicles.
5. One of the occupants in the Polo, a female, sustained injuries from the accident and requested Ratshwene to accompany her to a nearby police station, in order to get assistance. The police station was less than 100 metres from the scene of the accident. Ratshwene left his friend at the scene and drove the female occupant (accident victim) to the police station.

6. When they arrived at the police station, the female accident victim walked ahead of Ratshwene, and entered the station. A female police officer was upset with the accident victim who entered the police station, holding a can containing liquor. In an attempt to de-escalate the situation, Ratshwene intervened. He explained that the lady was involved in an accident and asked her to wait outside. Realising that the female police officer was upset, he and the lady went back to the accident scene.
7. When they returned to the accident scene, they found JMPD (Johannesburg Metropolitan Police Department) officers as well as a SAPS vehicle. Shortly thereafter, the JMPD vehicle left. Back at the scene, Ratshwene spoke to his friend and informed him that they (Ratshwene and the lady) did not get help from the police station. He enquired why, and Ratshwene explained that the female police officer was angry and wouldn't help them. The lady who Ratshwene accompanied went back to the people she was travelling with, in the Polo. A few SAPS officers were standing close by.
8. Ratshwene proceeded to tell his friend about a robbery that happened at KFC, at the Engen garage, and that the police did not help. He explained that he reported the robbery to the police, but they failed to go to the scene. He then uttered the words – *“some police are useless”*.
9. One of the police officers overheard what Ratshwene told his friend. The policeman (later identified as Tshabuse), aggressively approached Ratshwene instructing him to repeat what he told his friend. Ratshwene repeated that *“some police are useless”* advising that he was making reference to a previous robbery incident. Tshabuse told Ratshwene that *‘he was talking shit’*. A heated argument ensued between Ratshwene and Tshabuse arising from Ratshwene's statement that *“some police are useless”*. Tshabuse and Ratshwene swore and insulted one another.
10. Ratshwene tried to reason with Tshabuse, while trying to get into his car. Tshabuse, did not relent, he dragged Ratshwene from his car, alleging that he is refusing lawful arrest, which he denied. Additional police arrived, Ratshwene

was, held by his private parts, overpowered, manhandled, cuffed and forced into the police van by Tshabuse and others. He pleaded with the officers, who was handling him, not to strangle him.

11. Maluleke, recorded the incidents of the manner in which the police forced Ratshwene into the back of the police van, on his mobile telephone.
12. Upon arrival at the police station, the abuse continued. Ratshwene who remained handcuffed, was taken by Tshabuse to a passage behind the charge office. Tshabuse proceeded to lock the burglar door separating the passage and the charge office, and instructed Ratshwene to repeat what he had said at the scene. Ratshwene explained what he meant when he said, "*some police are useless*".
13. This comment awoke the fury in Tshabuse, he became more aggressive and said that he will now teach Ratshwene a good lesson. He started punching and kicking Ratshwene laying helpless and handcuffed on the floor. What is tragic, harrowing, appalling, devastating, and heartbreaking about this incident, is the fact that the assault on Ratshwene continued in full view of the officers at the charge office. Nobody lifted a finger to come to Ratshwene's aid.
14. A police officer stationed at the front desk of the charge office, who witnessed Tshabuse assaulting Ratshwene, said that he (Ratshwene) and other foreigners are law abiding while in Zimbabwe, but break the law when in South Africa. To add to Ratshwene's dehumanisation, the police officer who made the comments about Zimbabweans, handed Tshabuse an electric tazer, which he used on Ratshwene.
15. To Ratshwene's relief, Tshabuse stopped the assault and dragged him to a cell and left. Later on, paramedics arrived. They examined Ratshwene and informed the police that he was badly injured and should immediately be taken to a hospital for further examination and medical treatment.

16. The police advised that Ratshwene was under arrest, and the station does not have enough manpower to escort and guard him, should he be hospitalised. The paramedics decided to leave Ratshwene at the police station.
17. Ratshwene recalled hearing one of the police officers (a lonesome voice) informing the paramedics, that he called paramedics to attend to Ratshwene, as they were aware of the state of his injuries from the assault, and had pleaded with Tshabuse to stop the assault.
18. During the early hours of the morning on 5 March 2019 (between 05h00 and 06h00) Tshabuse returned. He told Ratshwene that he will be taken to court that same morning. Tshabuse did nothing to help the plaintiff with his injuries. Instead, he left Ratshwene at the police station, after he charged him and made him sign an acknowledgement of his constitutional rights as an arrested person. Ratshwene was not read his constitutional rights when Tshabuse brought him to the police station the previous evening.
19. On 5 March 2019, Ratshwene was taken to court, battered and bleeding, charged with "*assaulting the police and refusing lawful arrest*". He was released on bail.
20. Immediately after court, he consulted a private doctor at PrideMed that same day. The next day he went to Bheki Mlangeni clinic, due to persistent pains on his face, teeth, wrist, face and back. The pictures taken of Ratshwene depicted him in blood soiled clothes.
21. Ratshwene was unable to work as an Uber driver for a few weeks after the assault and lost income as he could not drive while in that state. The vehicle he used was returned after 5 weeks, but he unfortunately had to give up Uber driving, as he could no longer sit for long periods, due to back pains. He lost income of approximately R13,000 for a period of 5 weeks.
22. On 2 August 2019, the charges against Ratshwene were withdrawn, after a period of 5 months of attending court.

23. Ratshwene laid a formal complaint of assault, wrongful arrest and detention, malicious prosecution, deprivation of freedom without just cause and physical trauma as a result of the conduct of the members of SAPS while on duty with IPID. The matter was last heard at the Orlando police station during February 2025 and continues. Tshabuse had in the interim resigned from SAPS.
24. The defendant sought to introduce a statement issued by Captain Phalane Sithole, from Meadowlands SAPS. The basis for seeking such inclusion was on the grounds that Captain Phalane passed away, and his statement confirms that he affected Ratshwene's arrest. Phalane explained in his statement, that when he arrived at the scene of the accident on 4 March 2019, he was busy helping the drivers of the vehicles involved in the accident. A female person and an African male (Ratshwene) arrived, assaulted the police and poured beer on Phalane. He was then charged for interfering and obstructing the police. Because Ratshwene was fighting (in terms of the statement), backup was called to come and assist. Ratshwene was thereafter detained at the Meadowlands police station, where he was informed about his constitutional rights. Having considered the application, I admitted the hearsay evidence in terms of section 3(1)(c)(v) of the Law of Evidence Amendment Act, 45 of 1998.
25. I have considered the evidence of Phalane which, quite apart from the fact that the statement cannot be challenged by way of cross-examination, I have disregarded in light of the following. The video footage presented at the trial shows how Ratshwene was forced into the police van. None of the recordings showed an incident where Ratshwene assaulted police officers or poured beer on them. Ratshwene testified that there was an altercation between him and Tshabuse, triggered by the statement "*some police are useless*". That evidence was corroborated by an eyewitness Maluleke. Moreover, in the common cause facts recorded by the defendant's counsel, she confirms that, there was no assault at the scene and during the arrest.
26. The defendant did not call any witnesses.

Analysis of the evidence and arguments

27. Ratshwene's claim is based on delict (an actionable wrong). Delict has five elements or requirements that a plaintiff must satisfy, namely:
- 27.1. the commission or omission of an act (*actus reus*);
 - 27.2. which is unlawful or wrongful (wrongfulness);
 - 27.3. committed negligently or with a particular intent (*culpa* or fault);
 - 27.4. resulting in or causes the harm (causation);
 - 27.5. and the suffering of injury, loss or damage (harm).
28. A delict encompasses the commission of wrongful and blameworthy conduct by an individual, resulting in demonstrable harm to another individual, the causal nexus of which remains proximate.¹
29. Before I address these elements, I wish to emphasise the importance of the role played by SAPS in the South African landscape.
30. SAPS forms an indispensable component of our constitutional democracy, deriving its mandate from Chapter 11 of the Constitution.² Its members give effect to the objects of SAPS, and are required to *prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law*.
31. Members of SAPS are naturally required to perform their duties within the confines of the law, and to do so without fear or favour. They are to uphold and safeguard the fundamental rights of every person as guaranteed in the

¹ *Oppelt v Head: Health, Department of Health, Western* 2016 (1) SA 325 (CC) at para 34.

² Chapter 11 of the Constitution (2008) s. 205. Police service

- 1. The national police service must be structured to function in the national, provincial and, where appropriate, local spheres of government.
- 2. National legislation must establish the powers and functions of the police service and must enable the police service to discharge its responsibilities effectively, taking into account the requirements of the provinces.
- 3. The objects of the police service are to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law.

Constitution. The public should, especially when in the presence of the police, feel safe – knowing that their fundamental rights (as guaranteed in our constitution) will be protected.

32. It is disheartening, as this case convincingly demonstrates, to encounter situations where *some* members of SAPS fail to live up to the high honour that our Constitution expects from them, treat members of the public with indignity, abuse their position and role when engaging with the public, disgraces the hard-fought constitutional values they are required to uphold, dishonours the badge and reign with rampant impunity.
33. On 4 and 5 March 2019, Ratshwene came face-to-face with that vulgarity, which left him severely assaulted by the very individuals who ought to have jealously guarded his safety.
34. The question facing this court, as correctly phrased by the Ratshwene's counsel, is who must bear the responsibility for the unlawful and wrongful conduct of the members of SAPS, more particularly for the damages suffered by Ratshwene. Ratshwene contends that the defendant should be liable as claimed in terms of the amended particulars of claim, in that, the defendant failed to provide any good reason and / or basis why Ratshwene was unlawfully and wrongfully tortured, assaulted, arrested and detained, deprived of freedom without just cause, physically traumatised and subjected to malicious prosecution.
35. In order to succeed in his claim, Ratshwene is required to prove the various elements of his delictual claim, namely, the wrongful acts as manifested in the alleged assault, wrongful torture, arrested and detention, deprivation of freedom without just cause and physical trauma. The evidence presented by Ratshwene, in respect of the various wrongful acts that he was subjected to, quite apart from the fact that the defendant did not lead any evidence, other than the admitted hearsay evidence, was overwhelming. The first two elements of the delictual claim, have been satisfactorily met. Over and above the evidence presented by Ratshwene and his witness, I had the opportunity to observe him closely during

his evidence. He was cogent, consistent, answered questions without hesitation and was on the whole, a very impressive witness.

36. There is simply no lawful basis on which it can be found that the treatment that Ratshwene was subjected to by SAPS members, was justified. It was deplorable.

37. The repeated and sustained assaults, and the manner in which they were perpetrated on him, point singularly to the conclusion that it was done intentionally. Thabsue was offended. His anger gave rise to the relentless assault of a helpless civilian, in the presence of other police officers. The words of St. Augustine, when reflecting on the abuse that Ratshwene was subjected to, rings true:

"Not to oppose error is to approve it; and not to defend truth is to suppress it; and indeed to neglect to confound evil men, when we can do it, is no less a sin than to encourage them."

38. The harm and loss suffered by Ratshwene is directly attributed to being unlawfully and wrongfully tortured, assaulted, arrested and detained, deprived of freedom without just cause, physically traumatised and being subjected to malicious prosecution.

39. Our Constitution³ "enshrines the right to freedom and security of the person, including the right not to be deprived of freedom arbitrarily or without just cause."⁴

40. In *Thandani v Minister of Law and Order*, it was held that:

"The liberty of the individual is one of the fundamental rights of a man in a free society which should be jealously guarded at all times and there is a

³ The Constitution of the Republic of South Africa, 1996.

⁴ *Zealand v Minister for Justice and Constitutional Development and another* 2008 (4) SA 458 (CC) at para 24.

duty on our courts to preserve this right against infringement".⁵ (Own emphasis)

41. In instances such as in this case, where the harm by the members of SAPS entails a transgression of personal interests due to deliberate actions, the aggrieved party must initiate the *actio iniuriarum* (action for non-pecuniary damages) to seek redress for the endured non-pecuniary detriment.⁶

42. In *De Klerk v Minister of Police*, the court held that:

"A claim under the *actio iniuriarum* for unlawful arrest and detention has specific requirements: the plaintiff must establish that their liberty has been interfered with;

- (a) the plaintiff must establish that this interference occurred intentionally;
- (b) the deprivation of liberty must be wrongful, with the onus falling on the defendant to show why it is not; and
- (c) the plaintiff must establish that the conduct of the defendant must have caused, both legally and factually, the harm for which compensation is sought."⁷

43. In this matter the defendant could not gainsay the evidence of Ratshwene that he was assaulted by a SAPS member. Moreover, counsel for Ratshwene points out, that in its pleadings, the defendant admitted the assault. And a party stands or falls by their pleadings. In terms of the particulars of claim, Ratshwene alleged that he was physically and emotionally abused while in police custody, and while in handcuffs.⁸ The defendant in the plea admitted that the plaintiff was physically and emotionally abused while in police custody, and while handcuffed.⁹ It is also uncontested that Ratshwene was arrested and detained, and that the criminal prosecution against him was withdrawn. The question whether such an arrest and detention was lawful, must be answered, on the strength of evidence, in Ratshwene's favour. His arrest and detention was unlawful.

⁵ *Thandani v Minister of Law and Order* 1991 (1) SA 702 (E) at 707B; and recently confirmed by Constitutional Court in *De Klerk v Minister of Police* 2021 (4) SA 585 (CC) at para 13.

⁶ *De Klerk v Minister of Police* 2021 (4) SA 585 (CC) at para 13.

⁷ *Ibid* at para 14.

⁸ *Ibid*.

⁹ *Ibid*.

44. This court has a wide discretion in granting compensation in respect of both general damages, and damages for the various wrongs that Ratshwene was subjected to.

45. In *Rahim v The Minister of Home Affairs*¹⁰ the Court held, as follows on the question of deprivation:

“The deprivation of liberty is indeed a serious matter. In case of non-patrimonial loss where damages are claimed the extent of damages cannot be assessed with mathematical precision. In such cases the exercise of a reasonable discretion by the court and broad general considerations play a decisive role in the process of quantification. In cases involving deprivation of liberty the amount of satisfaction is calculated by the Court *ex aequo et bono*. Inter alia the following factors are relevant (i) (ii) (iii) circumstances under which deprivation of liberty took place; the conduct of the defendants; and the nature and the duration of the deprivation.”

46. Similarly, in *Ferdinand v The Minister of Police* the Court held:

“In deprivation of liberty the amount of damages is in the discretion of the Court. Factors which play a role are the circumstances under which the deprivation of liberty took place; the presence or absence of improper motive or malice on the part of the Defendant; the duration and nature of the deprivation of liberty; the status; standing; age; health and disability of the Plaintiff; the extent of the publicity given to the deprivation of liberty; the presence or absence of an apology or satisfactory explanation of the events by the Defendant; and awards in previous comparable cases.”¹¹

47. In *Latha and another v Minister of Police and others* the court held that:

“While I consider the Constitution enshrines the right to freedom and security of the person, including the right not to be deprived of freedom arbitrarily or without just cause, as well as the founding value of freedom, in my view, courts should be careful not to overemphasise the right in order to punish a guilty party unduly. A delicate balance must be struck between the rights of an aggrieved party on the one hand and the guilty party on the other, in order to arrive at an assessment which is fair and reasonable in the circumstances.”¹²

¹⁰ 2015 (4) SA 433 SCA at para 27

¹¹ *Ferdinand v The Minister of Police* [2018] ZALMPPHC 58 (7 March 2018).

¹² *Latha and another v Minister of Police and others* 2019 (1) SACR 328 (KZP) at para 8.

48. In *Minister of Safety and Security v Tyulu*¹³ the Court in dealing with the assessment of general damages said:

“ In the assessment of damages for unlawful arrest and detention, it is important to bear in mind that the purpose is not to enrich the aggrieved party but to offer him or her some much-needed solatium for his or her injured feelings. It is therefore crucial that serious attempts be made to ensure that the damages awarded are commensurate with the injury inflicted. However, our courts should be astute to ensure that the awards they make for such infractions reflect the importance of the right to personal liberty and the seriousness with which any arbitrary deprivation of personal liberty is viewed in our law. I readily concede that it is impossible to determine an award of damages for this kind of injuria with any kind of mathematical accuracy. Although it is always helpful to have regard to awards made in previous cases to serve as a guide, such an approach if slavishly followed can prove to be treacherous...”

49. In order to compute the total amount for general damages to be awarded, I do not intend to consider the incidents in isolation, nor would it be practical to separate the assaults from the arrest, as correctly argued by Ratshwene’s counsel. To award a specific amount for compensation of the assaults and, an additional amount for compensation of the arrest and detention, will detract from the holistic view of damages suffered by Ratshwene, as a result of the defendant's [SAPS] employees’ actions.
50. There are no reasonable grounds upon which the members of SAPS (Tshabuse in particular) assaulted, arrested and detained Retswane. The comment made by the Resweane, whilst displeasing to the police as a whole, should not have attracted the sort of disdain and disapproval, that resulted in the perilous assault that Restwane was subjected to.
51. In *Thulagano Edward Mokomele vs the Minister of Police* the court, commenting on the duty of the police to act with restraint, said:¹⁴

“where the facts are similar to this case, FMM Snyman J aptly stated that members of the SAPS are tasked with the duty to protect and serve the

¹³ 2009(5) SA 85 (SCA) at para 26

¹⁴ Unreported Judgment, Case No 1/2018, North West Division, Mahikeng.

community members, and there's no excuse for excessive force, and assault, by a member of the SAPS towards a member of the public."¹⁵

52. In *Xaba and Another v Minister of Police*¹⁶, the Court clearly alive to the issue of police brutality, as evinced in this type of litigation and the burden it brings to bear on the tax payers, said that:

Police brutality has also been bemoaned and berated by our Courts. Most court rolls are clogged up and inundated with these type of matters (unlawful arrest, detention and / or assault by police officers) against the Minister of Police. Surely, something needs to be done, as it does not only prejudice the parties affected but also courts and other litigants. These matters eat into the limited resources allocated to courts, which must be shared amongst other litigants who approach courts for justice. Also concerning is that, taxpayers have to bear the ever increasing fiscal brunt for the unscrupulous police officers incompetency and gross misconduct as the monetary orders given in these matters are paid from the public purse. This inevitably burdens the taxpayer. (Own emphasis)

53. In the matter before me, as pointed out above, Ratshwene was indeed unlawfully and wrongfully assaulted, arrested, and detained, deprived of his freedom without just cause, suffered physical trauma, and was maliciously prosecuted as a result of the conduct of the members of SAPS while on duty.
54. This court is indebted to Mr. Maluleke who filmed the police in their dealing with Ratshwene. It is often (as seen in a number of cases, here and abroad) the conduct of concerned third party bystanders who, by recording the police, ensures the promotion of accountability and respect for the rule of law, as long as in making such a recording the third party does not interfere with the execution of the police's duties. In a recent decision of this court, Twala J, in *Jacobs v Minister of Police and Others*¹⁷ held, in relation to an incident where a private citizen recorded the conduct of JMPD officials, that:

¹⁵ *Ibid* at para 39

¹⁶ [2023] ZANWHC 154 (31 August 2023) para 48

¹⁷ [2025] ZAGPJHC 722 (12 June 2025) para 32; See also: 27-CR-20-12646: *State vs. Derek Chauvin*

I am of the considered view therefore that the arrest of the plaintiff without a warrant was unjustified and unlawful since there was no offence committed by the plaintiff in the presence of the arresting officer nor did the plaintiff interfere with the police officers in the execution of their duties. I hold the view that citizens are entitled to ask questions and are entitled to explanations from the law enforcement officers in respect of their conduct and that cannot be regarded as interference with the execution of their lawful duties.

55. The defendant's counsel, sought to downplay the period that Rastwene was held in custody (relatively brief) , but overlooks the unassailable evidence of his repeated assaults, and the pain and suffering he endured, at the hands of the persons who ought to have protected him.
56. The conduct of SAPS members was contrary to their constitutional mandate.
57. In the result, I make the following order.

Order

1. The defendant is ordered to pay 100% of the plaintiff's damages, for his unlawful arrest and detention, *contumelia*, deprivation of freedom, physical trauma, malicious prosecution and general damages, in the amount of R1,750 000.00 (One million, seven hundred and fifty thousand rand).
2. The defendant is ordered to pay the plaintiff an amount of R65,000.00 for loss of earnings.
3. The defendant is ordered to pay the plaintiff's cost of suit on the scale as between attorney and client. Counsel costs shall be paid on Scale C.
4. The payments due to the plaintiff shall be paid to his attorneys of record, within 30 (thirty) court days of this order.

5. A copy of this judgment is to be served on the Minister of Police, the Provincial Commissioner for Gauteng and IPID;
6. A copy of this judgment is also to be issued to each of the SAPS members stationed at Meadowlands Police Station.



B. FORD

Acting Judge of the High Court
Gauteng Division of the High Court,
Johannesburg

Delivered: This judgment was prepared and authored by the Judge whose name is reflected on 6 October 2025 and is handed down electronically by circulation to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 6 October 2025.

Date of hearing: 6 February 2024, 8 & 10 April 2025
Heads of arguments: 27 June 2025
Date of judgment: 6 October 2025

Appearances:

For the plaintiff: Adv. M. Shakung
Instructed by: Ditheko Lebethe Attorneys

For the defendant: Ms. N. Cingo
Instructed by: The State Attorney