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REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE**

CASE NO: 687/2021

(1) REPORTABLE: NO

(2) OF INTEREST TO THE JUDGES: NO

(3) REVISED.

DATE: 22/10/2025

SIGNATURE:

In the matter between:

SEEMA MOHALE

Plaintiff

And

MINISTER OF POLICE

Defendant

Delivered: This judgment is handed down electronically by circulation to the parties through their legal representatives' email addresses. The date for the hand-down is deemed to be **22 OCTOBER 2025**.

JUDGMENT

NGCANGCA AJ

INTRODUCTION

- [1] The Court is called upon to Adjudicate on a Civil claim for damages, instituted by the Plaintiff. The Plaintiff based his claim for damages he suffered due to his Unlawful arrest and Detention. Which was carried out by the Defendant or his employees, during the scope of their duties.
- [2] The Plaintiff is at such claiming damages for an amount of R1.5 Million Rands for the Damages he suffered. The first aspect will be for the Court to determine if the Arrest and subsequent Detention was Lawful and Justified as the Defendant contend that.

BACKGROUND

- [3] The Plaintiff in his Summons alleges that on the 16TH December 2018, at Bochum he was unlawfully arrested by the South African Police members unlawfully and detained for a period of 1 month until his release on the 16 January 2019 by the Court after a bail application.

- [4] The Defendant in it's Plea contend that, they arrested the Plaintiff after a charge of Rape was opened against the Plaintiff by the Victim who is a 13 years old Girl and her Mother. Both the Victim and the Mother made statements to that effect. At such the Defendant contend that, the arrest of the Plaintiff was Lawful and his subsequent resultant Detention.

ISSUES // FACTS IN DISPUTE

- [5] Based on the brief background, from the Plaintiff Summons and the Defendant Plea. And cardinal aspects laid down by both Parties in their evidence, the Court has to adjudicate in this matter, determine if the Arrest and Detention was Unlawful.
- [6] The Defendant started to tender evidence and called the Police officer who effected the Arrest of the Plaintiff. The witness name was Winnie Manamela, an investigating officer with 23 years' experience as a member of the South African Police.
- [7] She informed the Court that, she was working on Rape, Domestic Violence and Child protection Unit at Seshego SAPS. On the 17th December 2018 she was allocated the docket by her commander wherein the complainant was M[...] M[...] , who was an adult female and also a mother of the victim M[...]2 M[...] a 13 years old girl.
- [8] A charge of Rape was opened against the Plaintiff. Statements of both the complainant and the victim were in the docket. She interviewed both the complainant and the victim, the victim knew the Plaintiff. The victim, the mother and herself they all travelled to Desmond Park and being directed by

the victim. The victim lead them to the Plaintiff residence and pointed him out being the person who raped her.

- [9] Having introduced herself as a Police Officer, and informing the Plaintiff the purpose of her visit. She informed the Plaintiff that, he is being arrested for Rape he had committed on the victim and also explained her rights as an arrested person.
- [10] The arrest was conducted without a warrant of arrest, she testified that she effected it in terms of **Section 49 of the Criminal Procedure Act**, which permit her to arrest without a warrant. The witness further testified that, she was diligent to ensure that Plaintiff appeared within 48 hours in Court.
- [11] Plaintiff appeared on the 19TH December 2018, Plaintiff case was postponed several times for bail application purposes and in a month time he was granted bail. After several Court attendances, charges were withdrawn on the 28TH August 2019.
- [12] The witness testified that, she evaluated statements of the victim and her mother as complainant and convinced herself that the offence of Rape was indeed committed. She felt that, arrest which she effected was justified, reasonable and Lawful.
- [13] At all material times, the Defendant was being subjected to cross examination after her evidence in Chief.
- [14] The Plaintiff, himself testified in his quest to demonstrate that he was arrested without a just cause and unlawfully. His testimony was very brief, he

said that he was surprised by the Defendant being at his place to arrest him for a charge of Rape he did not commit and knows nothing about.

- [15] Plaintiff further testified that, he does not know the Victim and she must have mistaken him with someone. The arrest was Unlawful and it's subsequent Detention. That upon his release, he found his wife having deserted him. Plaintiff was also subjected to cross examination by the Defendant. Both parties brought one witness each and closed their case respectively.

LEGISLATION // CASE LAW

- [16] The arresting officer was asked, as to why she did not have a warrant of arrest when she went to pick up the Plaintiff? Her response was that, despite the case having been opened a month before the arrest. She only received the Docket a month later and having read the statements of the complainant and the victim and interviewed them, she reasonably suspected that Rape offence has been committed.
- [17] And on cross examination she said that, **Section 40 of the Criminal Procedure Act** allowed her to effect an arrest without a warrant. The Court is firstly tempted to visit the statute concerned. **Section 40** of the said Act laid down a number of instances where an arrest can be done without a warrant by a Police Officer.
- [18] The relevant instance is listed in **section 40 (1)(b)** of the said act. The section say *"a Police officer may arrest without a warrant any Person whom he reasonably suspect of having committed an offence referred to in Schedule 1"*.

- [19] The Defendant testified that, statements in the docket of both the complainant and the mother were her first point of departure. Subsequent interview with them and the victim leading them to the crime scene and pointing out the perpetrator, who is the Plaintiff. All those aspects strengthen her reasonable belief that, Plaintiff is the perpetrator and she arrested him.
- [20] **Section 49 (1)(b) of the Criminal Procedure Act 51 of 1977** is the key legislation governing arrest without a warrant. The Court had to specifically seek judgments covering Unlawful Arrests in Rape matters. Persuasive judgments considered by the Court were the following: (1) ***KAMPI // MINISTER OF POLICE AND OTHER (37677 / 2020) ZAGPJHC 344 (20 MAY 2022)*** Plaintiff was arrested without a warrant of arrest in Westonaria for a Rape and Kidnapping charge. The Police on the 19 March 2020 arrested the Plaintiff after he was pointed out by the Victim. Plaintiff was kept in custody until 17 June 2020 when charges were withdrawn. The Court held that, Plaintiff in proving it's case has to show that, Defendant deprived it's liberty or freedom. The said was done intentionally, wrongfully and without legal justification.
- [21] While the Defendant has to show that, he is a peace officer. Arrested the Plaintiff without a warrant of arrest and the Plaintiff is reasonably suspected to have committed a schedule 1 offence and being a justification of the arrest.
- [22] Suspicion has to be based on reasonable grounds to enable the Police exercise it's discretion to arrest. The Defendant in this case testified that before it made the arrest, during the parade in the morning he read the docket which had 2 statements, both of the victim and witness who saw victim being dragged by Plaintiff and Plaintiff was brandishing a knife, and a

J88 was also available which did not exclude possibility of Rape. Further interview with Victim, was convincing that she was raped.

- [23] Defendant was convinced that victim was raped and proceeded to arrest Plaintiff, who was pointed out by victim. All the above convinced the Court that, Defendant had made out a reasonable suspicion which justified the arrest, further the Court stated that the reasonable suspicion did not require the actual proving of the case.
- [24] Despite the Defendant's convincing exercise, and precaution before making an arrest, it transpired that the victim had long informed the Defendant that she was not raped, this was immediately after Plaintiff was arrested and that was also reduced into a statement kept on investigation diary.
- [25] An important aspect which was withheld from the Prosecutor. At such the Prosecutor had to withdraw the charges against the Plaintiff.
- [26] The reasonable suspicion and discretion to arrest by Peace officer, under **Section 49 (1)(b) of the Criminal Procedure Act**, has to be exercised carefully in Rape cases given that such offences take place in private and predominately where perpetrator and victim are the only two individuals, and the offence is reported after it took place.
- [27] IN THE CASE OF: **TEBOHO RATHEBE // MINISTER OF POLICE AND OTHERS FREE STATE HIGH COURT HELD IN BLOEMFONTEIN (583 / 2021) ZAFSHC 54 (01 MARCH 2024)** The court held that, Defendant had failed to exercise reasonable discretion, was not objective only effected an arrest on basis of victim statement, who was a minor and without statements

of people mentioned as witnesses in that victim statement and there was no J88 indicative of Rape.

- [28] In this case the victim reported a case of Rape against his father, 2 weeks after the incident had taken place on 30 March 2019.
- [29] The victim only opened criminal charge of Rape against Plaintiff, on the 14 April 2019 without any concrete excuse. Plaintiff said in her statement, she visited Plaintiff together with her friend and Plaintiff called him inside the room and raped her. Further she did not disclose, in her statement that the Plaintiff against whom she was opening the case is her biological Father.
- [30] On the basis of that statement, the Police went to arrest the Plaintiff. No witness statement of the friend who accompanied the Victim was obtained and there was no J88 filed in the docket. And unknown by the Victim that on the alledged date of the 30 March 2019, her Mother was inside the Plaintiff house given that they were still in a love relationship.
- [31] Further, the victim was being entertained by the Plaintiff sister, who gave her a burger to eat and further assisted in fetching water.
- [32] The Court held that, Defendant did not exercise a basic precaution, to firstly obtain statements of witnesses she mentioned in her statement and diagnose crucial reasons for failure to have been taken to hospital immediately after being Raped and why her mother statement was not obtained.

- [33] At such the Defendant acted unreasonable, he hastily decided to Arrest. The Arrest and Detention of the Plaintiff was deemed “Unlawful, Unreasonable and not Justified”

ANALYSIS OF FACTS BY PARTIES AND THE LAW

- [34] Defendant testified first and told the Court that, she decided to arrest Plaintiff without a warrant empowered and having a discretion in terms of **Section 49 (1)(b) of the Criminal Procedure Act**. She read the statement of the Victim and the mother, who was a complainant having opened a missing child docket case during October 2018 and victim statement made around the 16TH November 2018 for the Rape charge and having interviewed the child about her statement.
- [35] Defendant, drove with the victim and the mother to arrest the Plaintiff. Victim directed the Defendant to the Plaintiff's place and victim further pointed out the Plaintiff to be arrested. All those aspects being, analysis or reading of victim statement, interviewing her and further being taken to the Plaintiff place and being positively identified, strengthen reasonable suspicion that the victim was indeed raped.
- [36] The Plaintiff being the second party to testify, he told the Court that he was surprised by the arrest. He does not know the Victim and was seeing her for the first time when he was being arrested. That being the gist of the Plaintiff testimony, the Court had to apply its mind by perusing the docket copies and went through the statements of both Parties.
- [37] The Victim statement which was used by the Defendant is found in the paginated bundle 2 of the Plaintiff's Attorney, page 33 to 89. According to the

victim statement, she started to know the Plaintiff in September 2018 school holidays when she visited one Sister Moloko in Desmond Park. It was then, that Plaintiff proposed love to her.

[38] During October 2018, victim was invited by Sister Moloko with the view to stay with her at Desmond Park. She obliged and went to her, unfortunately she arrived while she was still at work. Victim decided to wait for her at the Plaintiff house. She eventually arrived and later around 19:00 when she went to Sister Moloko house, which is in the same street with that of the Plaintiff. She was told not to rush coming back since there is a visitor expected.

[39] Victim eventually slept at the Plaintiff home, and nothing bad happened. Victim kept spending time at the Plaintiff's place. Suddenly on the 30TH October 2018, the Plaintiff decided to forcefully had sex with her. The victim was subjected to Rape until the 15TH October 2018 and on the 16TH October 2018, she managed to run away from Plaintiff place and phoned her mother and they met and proceeded to lay charges at the Police station. On the 18TH November 2018 victim was examined at Helen Franz Hospital and the J88 report compiled, in D section thereof it indicate that victim had sexual intercourse during October month 2018 and being the period of the alledged Rape.

RULING // COURT FINDINGS

[40] Firstly the Court has to consider the ambit of **Section 40 (1)(b) of the Criminal Procedure Act 51 of 1977**, where a Peace Officer can effect an Arrest if they reasonably suspect that a person has committed a schedule 1 offence , except escaping from lawful custody.

- [41] Defendant is a Police officer and classified as a Peace officer, she testified that she had received a docket with Complainant and Victim statement. She went further to interview the victim. There after she formulated a reasonable suspicion that the victim was raped.
- [42] Defendant further testified that, she was directed and lead by the victim to the Plaintiff house, where she was pointed out by victim and arrested. Plaintiff house was in the same street with her Sister Moloko house, she always visited. The statement of the victim, disclosed numerous encounters which she had with the Plaintiff, also that she use to sleep at the house of the Plaintiff without any violation being made on her by Plaintiff, until the Plaintiff started to rape her from the 30TH November 2018 to the 15TH December 2018 when she escaped.
- [43] The Plaintiff testimony, only confined itself in denying seeing and knowing the Victim. The Court find it improbable, for the Plaintiff to ignore the crucial portion of the Victim statement which elaborated how and to what extent they knew each other.
- [44] It must be noted that the Court, referred to statement of the Victim which formed the Discovery bundle filed by the Plaintiff himself before this Honourable Court and to which the Defendant alledged she read and interviewed the Victim about to asses how reasonable allegations made against the Plaintiff.
- [45] And the Court, further take into consideration that the J88 D section indicate sexual intercourse encounter during the period of October 2018, and being a period coinciding with Victim presence at Plaintiff residence.

ORDER

[46] Plaintiff's Claim is hereby dismissed with costs.

L.K. NGCANGCA

ACTING JUDGE OF THE HIGH COURT

LIMPOPO DIVISION, POLOKWANE

APPEARANCES

FOR PLAINTIFF

**: ADV M. SIIMA
LR RAPUDI ATTORNEYS INC
POLOKWANE**

FOR DEFENDANT

**: ADV P.S. HOPANE
STATE ATTORNEYS (POLOKWANE)**

HEARD ON

: 18, 19, 22 AUGUST 2025

DELIVERED ON

: 22 OCTOBER 2025