



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

|                                                                                                 |
|-------------------------------------------------------------------------------------------------|
| (1) REPORTABLE: <del>YES</del> /NO                                                              |
| (2) OF INTEREST TO OTHER JUDGES: <del>YES</del> /NO                                             |
| (3) REVISED                                                                                     |
| _____<br>DATE : 4 November 2025                                                                 |
| <br>SIGNATURE |

CASE NO: 11971/2020

HEARD ON: 16 August 2025  
JUDGMENT: 4 November 2025

In the matter between:-

THABISO DICK MOKONE

PLAINTIFF

AND

THE MINISTER OF POLICE

DEFENDANT

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JUDGMENT

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Strijdom J

1. This is a civil claim for damages against the defendant arising from an unlawful arrest, detention and assault of the plaintiff by members of the South African Police Service (SAPS) who were employees of the defendant.
2. The plaintiff was arrested on 24 July 2019 without a warrant of arrest by police officers on an alleged charge of possession of a stolen motor vehicle.
3. The plaintiff was subsequently detained by or at the instance of the members of the SAPS as until 26 July 2019, after which the charges were withdrawn against the plaintiff.
4. The amended plea was based on a defence contained in section 40(1)(a) of the Criminal Procedure Act 51 of 1977, (the Act )which provided that “a peace officer may, without warrant arrest any person (a) who commits or attempts to commit any offence in his presence.
5. The defendant further denies any liability to the plaintiff and that the members of the SAPS never assaulted the plaintiff on the date of arrest. The members of the SAPS only fired a warning shot with the intention of stopping the plaintiff from fleeing. The defendant abandoned the special plea in terms of Section 3 and 4(1)(a) of Act 40 of 2002.

6. The plaintiff has two separate claims for damages against the defendant. These claims are as follows:
  - 6.1 A claim for unlawful arrest and detention of the plaintiff; and
  - 6.2 A claim for damages resulting from the plaintiff being assaulted, (shot) by members of the SAPS.
7. The claim is premised on vicarious liability, the reason being that the police officers committed the alleged unlawful acts during the course and scope of their employment and whilst executing their duties.<sup>1</sup>

### **COMMON CAUSE FACTS**

8. The following facts are common cause between the parties:
  - 8.1 The plaintiff was arrested without a warrant of arrest on 24 July 2019 by members of the SAPS.
  - 8.2 Plaintiff was shot in his right leg by a member of the SAPS on 24 July 2019;
  - 8.3 Plaintiff was detained at hospital on a charge of possession of a stolen vehicle from 24 July 2019 until 26 July 2019;
  - 8.4 Charges were withdrawn against plaintiff on 26 July 2019.

### **ISSUES IN DISPUTE**

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<sup>1</sup> *K v Minister of Safety and Security* 2005 (3) SA 179 (SCA)

9. The following issues were in dispute between the parties:
  - 9.1 Whether the arrest and detention of the plaintiff was unlawful;
  - 9.2 Whether the plaintiff was assaulted by members of the SAPS.

## **EVIDENCE**

10. Mr Semenya, a Provincial Inspector with five years in rank and nine years in the Department testified that on 24 July 2019 between 10:00 and 12:00, while on operation in Eersterust with deceased colleague Constable Masango, he received information about a stolen Toyota Land Cruiser from Centurion.
11. He noticed the vehicle on Alwyn Road towards Nellmapius but could not recall the registration. Driving from Garsfontein on Alwyn Road, the Land Cruiser turned left onto Love Drive. There were three cars behind the Land Cruiser when they approached it. The Land Cruiser stopped on the shoulder of the road with the engine running; the driver alighted and entered a grey Polo.
12. The Polo sped off. They activated blue lights and a siren but the Polo did not stop and they followed. The Polo drove recklessly towards Eerstefabriek road. Inspector Semenya heard 3 or 4 gunshots possibly from their own vehicle.
13. Whilst the cars were still moving, the Polo's doors opened, one passenger ran to the left and another to the right. The police vehicle was behind the Polo. Only the driver

remained in the Polo. Inspector Semenya pointed his firearm at the driver and instructed him to exit with his hands up. The driver complied, opened the door, lifted hands, and he ordered the driver to lie down.

14. The helicopter arrived searching for the other suspects. One passenger was caught and brought back, the other passenger ran into a squatter camp but could not be located. He intended to cuff the driver but he saw that he was bleeding as a result of being shot. An ambulance was summoned and assisted the injured driver (plaintiff). Semenya confirmed that he did not shoot the plaintiff but his colleague Masango did. The plaintiff was taken to Wilgers Hospital and the passenger to Silverton Police station.

#### **PLAINTIFF'S EVIDENCE**

15. The plaintiff testified that he is 31 years old, currently in property development and on 2019 operated logistics and taxi through own company Kawurepi Pty (Ltd).
16. On 24 July 2019 he and his friend were at Menlyn Shopping Centre and left at about 13:30.
17. He was driving a silver-grey Polo sedan not his own car but his friends, a mechanic by the name of Thabiso Phuti who was fixing his car's radiator leak.

18. He was with his friend Tshepo Zulu. He described his route as follows: he turned right on Atterbury road, left in January Masilela, right in Lynnridge, left in Simon Vermoten to Mamelodi; after N4, right in Alwyn road and left in Love Drive.
19. On Love drive he noticed a white Golf 7 with blue lights on, three to four cars away behind him.
20. The Golf 7 overtook the other cars and drove directly behind him. The Golf 7 switched on his siren, and he heard a gunshot from behind. He slowed down and pulled over to the left side of the road. He checked the rear window, and the driver of the Golf 7 shouted: "get out of the car".
21. He saw the driver in brownish police uniform, holding a gun. He slowly opened the driver's door and stepped out of the vehicle with his right foot. Two more shots were fired; one hit him in his upper right femur, and he fell to the ground. Police officers came running towards him and he informed them that he could not stand because he was shot. One of the police officers said he should have shot him in his private parts and the other one said he should have shot him in the head.
22. The plaintiff was subsequently handcuffed and placed with his back against the vehicle. His passenger was also handcuffed. The plaintiff was transported by ambulance to Wilgers Hospital. He was under police supervision whilst in hospital until 26 July 2019 when the charges were withdrawn against him.

## EVALUATION OF THE EVIDENCE

23. in *Stellenbosch Farmer's Winery Group Limited and Another v Martel CIE and Others*

<sup>2</sup>it was decided that:

“The technique generally employed by courts in resolving factual disputes of this nature might conveniently be summarized as follows: To come to a conclusion on the disputed issues a court must make findings on (a) the credibility of the various factual witnesses (b) their reliability, - and (c) the probabilities.”

24. It was submitted by the defendant that the evidence of the plaintiff should be rejected. No reasons were proffered why the court must reject the evidence of the plaintiff and why the court must accept the evidence of the defendant.

25. The defendant contended that the arrest was lawful, and it was not necessary for a warrant of arrest as the police were responding to a tip-off about a stolen vehicle.

26. It was contended by the defendant that its witness has placed evidence before the court which shows that the plaintiff was an accomplice as he was assisting a person who was driving a stolen vehicle. The defendant further concluded that it was necessary for the police officer to fire a warning shot in order for the plaintiff to stop his vehicle but

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<sup>2</sup> 2003 (1) SA 11 (SCA)

unfortunately the plaintiff was mistakenly shot. The resultant shooting of the plaintiff was therefore lawful and justified.

27. Inspector Semanya did not impress me as a reliable and/or credible witness. His evidence regarding the incident was not free from material contradictions and discrepancies concerning the details.
28. He testified that whilst following the Polo vehicle, shots were fired. He was unable to explain whether the shots were fired from the police vehicle or the Polo vehicle. When he was confronted during cross-examination with his written statement,<sup>3</sup> he conceded that it was Constable Masango who fired shots at the Polo.
29. He did not testify that a suspect in the Polo pulled out a firearm and pointed it at them. In paragraph 5 of his written statement he stated as follows: "The suspect that was sitting at the rear pulled out a firearm and faced towards us; The crew took out the rifle and fired a warning shot; then they realized that the suspect pointing his firearm or pistol at us; that's when my crew fired the second shot which hit the driver ..."
30. It was put to the witness during cross-examination that his evidence in chief is completely different from the version in his written statement. He was proffered the opportunity to explain the discrepancies. He answered by stating that he cannot remember and must have forgotten what exactly happened.

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<sup>3</sup> Exhibit "A"

31. Inspector Semenya could not explain how the plaintiff was shot in his right leg. It is highly improbable that if warning shots were fired from behind the Polo when the plaintiff was in the driver's seat that the plaintiff could have been shot in his right leg. The version of the plaintiff is more probable that he was shot in the right leg when he alighted from the vehicle.
32. *In S v Mafaladiso en Andere*<sup>4</sup> the following was decided in respect of material differences between witness's evidence and previous statement:
- “... the contradictory versions must be considered and evaluated on a holistic basis. The circumstances under which the versions were made, the proven reasons for the contradictions, the actual effect of the contradictions, with regard to the reliability and credibility of the witness, the question whether the witness was given a sufficient opportunity to explain the contradictions and the quality of the explanations and the connection between the contradictions and the rest of the witness' evidence amongst other factors, to be taken into consideration and weighed up.”
33. No evidence was tendered by the defendant to corroborate the evidence of inspector Semenya. Constable Masango could not testify as he is deceased.

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<sup>4</sup> 2003 (1) SACR 583 (SCA).

34. The plaintiff was charged with possession of a stolen motor vehicle. Inspector Semanya conceded that the Polo was not reported as stolen. He further conceded that he wasn't the arresting officer and that the plaintiff did not sign the notice of rights in terms of the Constitution.
35. The plaintiff gave a detailed and thorough account of the incident in a straightforward manner. He was not seriously cross-examined by counsel for the defendant. He made a favourable impression on me as an intelligent witness whose account was truthful and reliable. There is nothing to cast doubt on his veracity concerning the actual incident. His evidence was credible and free from contradictions and discrepancies.
36. In assessing the probabilities the conclusion seems to me to be inescapable that of the two versions before me as to what occurred on the day of the incident, the plaintiff's version is the more probable.

#### **THE ARREST AND DETENTION**

37. The defendant relies on section 40(1)(a) of the CPA which states that a peace officer may without a warrant of arrest, arrest any person (a) "who commits or attempts to commit any offence in his presence."

38. It is trite that arrest and detention are prima facie unlawful in the absence of valid justification.<sup>5</sup> Once arrest and detention have been admitted or established, the onus of proving lawfulness rests on the defendant.<sup>6</sup>
39. The uncontested evidence of the plaintiff indicates, he was driving his mechanic's Polo vehicle with one passenger, pulled over voluntarily after a warning shot was fired, and was shot in his right leg while exiting the vehicle.
40. Having accepted the version of the plaintiff, there is no evidence that the plaintiff committed or attempted to commit an offence in the presence of a peace officer.
41. The test is an objective one and the question to be answered is whether the arresting officer had direct personal knowledge of sufficient facts at the time of the arrest on the strength of which it can be conceded that the arrestee had prima facie committed an offence in his presence.
42. Inspector Sememya wasn't the arresting officer. Constable Masango who is deceased was the arresting officer. No evidence was tendered by the arresting officer that the plaintiff committed an offence or attempted to commit an offence in his presence. The evidence of inspector Sememya was rejected by this Court. No evidence was tendered that the plaintiff was in possession of a stolen vehicle.

### **THE ASSAULT**

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<sup>5</sup> *Gellman v Minister of Safety and Security* Case no: A3009/2007, SAFLI, par 51

<sup>6</sup> *Cele v Minister of Safety and Security* [2007] 3 ALL SA 365 (D)

43. It is trite that every infringement of the bodily integrity is prima facie unlawful. Once the infringement is proved, the onus rests on the defendant to prove grounds of justifying the assault.
44. It is common cause that the plaintiff was shot in his right leg by the police and was subsequently taken to the hospital.
45. The uncontested evidence of the plaintiff is that he was shot in the upper right femur after complying with an order to exit his vehicle. It is also common cause that the plaintiff was not in possession of a firearm.
46. No evidence was tendered by defendant to show that the plaintiff poses a threat of violence to the arrestor or any other person. The assault on the plaintiff in my view was not reasonably necessary and proportional in the circumstances.
47. On a conspectus of all the evidence before me I concluded that the defendant failed to discharge its onus to prove on a balance of probabilities that the arrest, detention and assault on the plaintiff was lawful.
48. In the result, the following order is made:  
  
(1) The defendant is held liable for 100% of the plaintiff's proven or agreed damages for unlawful arrest and detention.

(2) The defendant is held liable for 100% of the plaintiff's proven or agreed damages for the assault suffered by the plaintiff.

(3) Costs of the suit, including costs of counsel on scale B.

  
Strijdom JJ

Judge of the Hight Court, South Africa

Gauteng Division, Pretoria

Appearances:

For the plaintiff: Adv RA Britz

Instructed by: Branden Swanepoel Attorneys

For the defendant: Adv LB Maphelela

Instructed by: State Attorney, Pretoria