



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

CASE NO: 2021-53475

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

18/11/2025
DATE


SIGNATURE

In the matter between:-

LIESCHEN MECKAYLER ROBIN CARELSE

Plaintiff

and

THE MINISTER OF POLICE

Defendant

JUDGMENT

Mfenyana J

[1] This is a claim for damages arising from the alleged unlawful arrest and

detention of the plaintiff. On 3 March 2021, the plaintiff was arrested by employees of the defendant after she presented herself at their offices. On 4 March 2024, the plaintiff appeared in court, and the matter was postponed for further investigation.

[2] The plaintiff alleges that members of the South African Police Service (SAPS) unlawfully arrested her without a warrant. She further avers that after her arrest, she was unlawfully detained at the holding cells in Sophiatown Police Station and thereafter at the holding cells in the Johannesburg Central Magistrates' Court until 4 March 2021. She contends that as a result of her arrest and detention, she suffered injury to her privacy, dignity, contumelia, emotional stress, shock and trauma consistent with post-traumatic stress and will in future suffer from post-traumatic stress. She claims damages in the amount of R500 000.00.

[3] When the trial was called, there was no appearance on behalf of the defendant. The matter, thus, proceeded on a default basis in accordance with the provisions of Rule 39(1) of the Rules of this court. Earlier in the day, before the commencement of the trial, counsel on behalf of both parties attended at chambers for the purpose of introducing themselves, in keeping with tradition. Ms Maimane, who appeared on behalf of the defendant, indicated that she was double-briefed and that she would seek postponement of the matter. Having established that the issue had not been discussed with Ms Mandizha, on behalf of

the plaintiff, I directed Ms Maimane to confer with Ms Mandizha.

[4] Both counsel thereafter left the chambers. On resumption of the matter, Ms Maimane was not in court. On enquiring from Ms Mandizha, I was advised that Ms Maimane had indicated that she would attend to her other matter in order to remove it from the roll. Ms Maimane did not return to court and remained absent for the duration of the trial.

[5] In cases of unlawful arrest and detention, it is trite that once a plaintiff proves that an arrest and detention occurred, the burden shifts to the defendant to prove that the arrest was lawful. This is so because any deprivation of liberty is presumed unlawful. It is for the defendant to rebut the presumption by proving justification for the arrest.

[6] The arrest and detention in this matter is common cause having been conceded by the defendant during the pretrial conference. The defendant denies that the arrest was unlawful. However, in the absence of a rebuttal from the defendant, it is presumed that the arrest and detention was unlawful and the defendant has failed to discharge the onus which rests on it. No onus rests on the plaintiff in this regard.

[7] The defendant further challenged the time of the arrest, the duration of the detention and the quantum. The plaintiff gave two versions of the time she was

arrested. In the pretrial minute, it is recorded that the plaintiff was arrested at 06h00 on 3 March 2021 and released at 13:30 on 4 March 2021. The record in the pretrial minute is that this was disputed by the defendant, who contended that the plaintiff was arrested at 09h00 on 3 March 2021 and released at approximately 09:55 the same day.

[8] In her testimony, the plaintiff stated that she went to the police station between 07h30 and 08h00 on 3 March 2021, after which she was released at 13h00 and instructed to go to court the following day. The plaintiff contradicted herself in this regard. Even in the absence of any evidence from the defendant, the plaintiff's contention that she went to the police at 06h00 is improbable in light of her own evidence (contradicting herself), coupled with the record of the pretrial minute. It is therefore probable that she was arrested at 09:00.

[9] The plaintiff's allegation that she was detained on 4 March 2021 is unsubstantiated and improbable. Her evidence was that she was released on 3 March 2021 and instructed to attend court on 4 March 2021. On 4 March 2021, she attended court and the case was postponed. The claim for damages relative to the detention on 4 March 2021 is not supported by the evidence.

[10] In respect of quantum, the court should have regard to the manner in which the arrest was carried out, the length of the detention, the personal circumstances of the plaintiff, the conditions in which the plaintiff was kept and any factors which

may have a bearing on the plaintiff's arrest and detention. The list is not exhaustive, and the specific facts of each matter will play a role in the determination.

[11] In **Minister of Safety and Security v Tyulu** , Bosielo AJA noted that:

“ In the assessment of damages for unlawful arrest and detention, it is important to bear in mind that the primary 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.”

[12] The conditions under which the plaintiff was arrested in the present matter, are relevant to the determination of quantum. She testified that she went to the police station after her mother told her that the police wanted to see her. She proceeded thereto fully dressed in her school uniform. She avers that being arrested in her school uniform caused her embarrassment. This is an election she made. Moreover, she makes no mention of the manner in which she was arrested, save to state that the holding cells were dirty and that water was leaking from the toilet.

[13] In **Minister of Safety and Security v Seymour**¹, Nugent JA put it aptly when

¹ 2007 (1) All SA 558 (SCA).

he noted that:

"The assessment of awards of general damages with reference to awards made in previous cases is fraught with difficulty. The facts of a particular case need to be looked at as a whole and few cases are directly comparable. They are a useful guide to what other courts have considered to be appropriate, but they have no higher value than that"².

[14] In **Diljan v Minister of Police**³, in awarding R120 000.00 arrest and detention of three days, the SCA noted as follows:

"...A word has to be said about the progressively exorbitant amounts that are claimed by litigants lately in comparable cases and sometimes awarded lavishly by our courts. Legal practitioners should exercise caution not to lend credence to the incredible practice of claiming unsubstantiated and excessive amounts in the particulars of claim. Amounts in monetary claims in the particulars of claim should not be "thumb-sucked" without due regard to the facts and circumstances of each case. Practitioners ought to know the reasonable measure of previous awards, which serve as a barometer in quantifying their clients' claims even at the stage of the issue of summons. They are aware, or ought to be, of what can reasonably be claimed based on the principles enunciated above."⁴

[15] The above award works out to R40 000.00 per day. I must also consider the time value of money and that *Diljan* was decided in 2022. At R500 000.00, the plaintiff's claim is exorbitant and grossly out of kilter with the facts of this matter, the conditions of the plaintiff's arrest as admitted by her, the duration of the detention in her own words and the wealth of previous decisions from which this court takes guidance. It is a textbook example of an amount that has been thumb-

² Ibid, para 17.

³ (746/2021) [2022] ZASCA 103 (24 June 2022).

⁴ Ibid, para 20.

sucked and over-inflated. Her own evidence, as presented to this court, shows that she was arrested at 09:00 on 3 March 2021 and released at 13:00 on the same day. In the circumstances, an amount of R7 667.00 (seven thousand six hundred and sixty seven rand) is fair and reasonable.

[16] The general rule is that costs follow the result. I cannot find any reason to deviate from this established rule.

[17] In the result, the following order issues:

- a. The arrest and detention of the plaintiff on 3 March 2021 were unlawful.
- b. The defendant is liable for payment of the plaintiff's damages arising from her unlawful arrest and detention in the amount of R7 667.00 (seven thousand six hundred and sixty seven rand), with interest at the prescribed rate, from date of judgment to date of payment.
- c. The defendant shall pay the costs of suit on a party and party scale on the Magistrates' court tariff.


S MFENYANA

Judge of the High Court
Johannesburg

This judgment was handed down electronically by circulation to the parties' representatives by email and by uploading the judgment onto Caselines. The date of handing down of the judgment is deemed to be 18 November 2025.

Appearances:

For the Plaintiff:

Counsel: HR Mandizha

Instructed by: Bessinger Attorneys

For the Defendant:

Counsel: K Maimane (failed to appear)

Instructed by: State Attorney, Johannesburg

Date of hearing: 20 May 2025

Date of judgment: 18 November 2025