

REPUBLIC OF SOUTH AFRICA



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

CASE NO: A2024-140407

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

24 November 2025

In the matter between

CLEMENT MAFELO MOGOMOTSI
Appellant

And

MOGALE CITY LOCAL MUNICIPALITY

Respondent

JUDGMENT

Mdalana-Mayisela J

Introduction

[1] This is an appeal against the whole of the judgment and order of Magistrate F Ishmael sitting in the Mohale City Magistrate's Court, Krugersdorp, delivered on 25 July 2024. The trial court dismissed the appellant's action for damages arising from his alleged unlawful arrest and detention on 16 March 2020.

[2] The application for condonation for the late filing of the appeal record is unopposed. The affidavit of Mr. Naidoo sets out a satisfactory explanation for the delay, which was primarily due to administrative and logistical challenges in obtaining a complete and compliant transcript from the transcribers and the court. The application is granted.

Background

[3] The material facts are largely common cause. On 16 March 2020, the appellant, together with four other passengers, was driving from Magaliesburg to Kagiso township. He was stopped by the respondent's traffic officers for a routine vehicle check. He was requested to produce his driver's license, and he complied. The officers determined that the font size on his vehicle's number plates did not conform to SABS specifications. Officer Seiso proceeded to issue a summons in terms of section 56 of the Criminal Procedure Act 51 of 1977 ("the CPA").

[4] The central dispute of fact at the trial concerned the events that followed. The appellant testified that he provided his name and address, but Officer Seiso stated he was speaking too fast. Upon repeating his details, the appellant addressed Officer Seiso as "muna" (an informal term for "my man"). Officer Seiso took offence, deemed this disrespectful, and thereafter ignored the appellant. The appellant, aggrieved by this conduct, informed Officer Seiso that he was leaving to report him to the Krugersdorp traffic department and then did so.

[5] The respondent's version, as given by Officers Seiso and Matlhaga, was that the appellant refused to provide his address, became aggressive, tried to grab his driver's license back, and then fled the scene without warning.

[6] It is a common cause that the appellant drove directly to the respondent's Traffic Department. The very officers he had encountered at the roadside arrived shortly thereafter and arrested him. He was detained at the Krugersdorp police station from approximately 16:40 on 16 March until his release on police bail around 17:00 on 17 March 2020. The charges against him were subsequently withdrawn.

The judgment of the court a quo

[7] The trial court accepted the respondent's version in material respects. It found that the appellant, by speaking fast, knew the officer would be unable to write down his particulars, and that this was "tantamount to not complying." It further found that leaving the scene without permission was unlawful. On this basis, citing the offences of the non-compliant number plate and failure to comply with instructions, it concluded that the arrest was lawful.

Grounds of appeal and issues for determination

[8] The appellant raises numerous grounds of appeal, which can be expressed in the following core issues:

[8.1] Whether the trial court misdirected itself in its factual findings and its application of the principle for resolving disputed facts as set out in *Stellenbosch Farmers' Winery Group Ltd and Another v Martell & Cie SA and Others*¹.

[8.2] Whether the trial court erred in law by finding that the respondent had discharged the onus of proving that the arrest was lawful under section 40 of the CPA.

¹ (427/01) [2002] ZASCA 98; 2003 (1) SA 11 (SCA) para 5.

[8.3] What the appropriate quantum of damages is, should the appeal succeed.

Evaluation

[9] It is trite that the Court of Appeal should not lightly interfere with the factual findings of a trial court. It must recognize and respect the advantages which the trial court enjoyed by virtue of having seen, heard, and appraised the witnesses, and it must accept the trial court's findings of fact, in the absence of a demonstrable and material misdirection by the trial court. However, this principle is not absolute. Where a trial court's assessment of facts is fundamentally flawed, or where it has drawn inferences that are not supported by evidence or the probabilities, an Appeal Court is not only entitled but obliged to intervene.²

[10] The trial court committed a material misdirection on the facts. Its key factual finding, that the appellant's act of talking fast was a deliberate ploy to avoid compliance, cannot be sustained. This inference is not only speculative but is also overwhelmingly contradicted by the objective probabilities. The most compelling objective fact is that the appellant, immediately after leaving the scene, drove directly to the Traffic Department. This conduct is entirely consistent with his version of how he intended to file a complaint. It is wholly inconsistent with the conduct of a person who was seeking to evade the issuance of a fine. The trial court's failure to afford this crucial fact the weight it deserved constitutes a clear misdirection.

[11] Furthermore, the respondent's own evidence was contradictory. Officer Seizo initially testified that the appellant refused to give his address, yet the OB entry and the notice of rights, both completed by the respondent's officers, contained the appellant's correct full name. Officer Matlhaga's evidence on who received the phone call and the precise reasons for the arrests was inconsistent with that of Officer Seizo. The trial court did not adequately

² Santam Bpk v Biddulph 2004 (5) SA 586 (SCA) (23 March 2024).

address these material contradictions, which undermine the credibility and reliability of the respondent's witnesses.

[12] The lawfulness of the arrest is the cornerstone of the appeal. The respondent bore the burden of proving that the arrest was lawful. For a warrantless arrest under section 40(1) of the CPA, the arresting officer must have had reasonable suspicion that a Schedule 1 offence had been committed or must have witnessed the commission of an offence.

[13] The respondent's pleaded justification was the "failure to furnish information" and "escaping from the scene whilst the officer is issuing a summons." The court a quo added "failure to comply with instructions" and the initial number plate infringement.

[14] None of these grounds, individually or collectively, justify the arrest in the circumstances of this case for the following reasons:

[14.1] The number plate infringement was a minor traffic offence, for which the section 56 summons being prepared was the prescribed and proportionate response. An arrest for such a minor infringement is disproportionate and unlawful.

[14.2] Failure to furnish information (s 41 of the CPA) or failure to comply with the instructions of the traffic officer (s 3J of the National Road Traffic Act 93 of 1996) are regulatory offences. They are not Schedule 1 offences and, in the context of a minor traffic stop where the offender's identity is known (via his driver's license), do not warrant the severe intrusion of an arrest. The finding that "talking fast" constitutes an offence justifying arrest is a fundamental error of law.

[14.3] Escaping from the scene or leaving without permission is not, in these circumstances, the equivalent of escaping from lawful custody. The appellant was not under arrest at the roadside. His conduct, even on the respondent's version, was at worst disrespectful and uncooperative, but it did not rise to the level of a serious offence justifying the drastic step of a warrantless arrest.

[15] The constitutional context is paramount. Section 12(1)(a) of the Constitution of the Republic of South Africa provides that everyone has a right to freedom and security of the person, which includes not to be deprived of freedom arbitrarily or without just cause. As reiterated in *Minister of Safety and Security v Sekhoto*,³ while peace officers have a discretion to arrest, that discretion must be exercised properly and rationally. Arrest is a measure of last resort, not a first port of call for securing a person's attendance in court for minor offences, especially where, as here, the person's identity and address are readily ascertainable.

[16] The arrest of the appellant at the Traffic department, the very place he had gone to assert his rights, was, in the circumstances, arbitrary and punitive. The respondent failed to prove the existence of any jurisdictional fact under section 40(1) of the CPA that could render this arrest lawful. Consequently, the arrest and the ensuing detention were unlawful.

Quantum

[17] The appellant claimed damages in the sum of R175,000.00. The primary purpose of such an award is to provide *solatium* for the injured feelings of the plaintiff, the indignity, humiliation, and loss of personal liberty.

[18] I have considered the circumstances: the appellant was detained for approximately 26 hours; the conditions of his detention were described as atrocious, involving overcrowding, dirt, and a non-functional toilet; the arrest itself was aggravated by its context, occurring while he was attempting to lodge a complaint. I have also considered the comparative case law provided by both parties.

[19] The respondent's contention that an award of R20,000.00 would be appropriate is so detached from contemporary awards for similar deprivations of liberty that it is untenable. Recent authorities, such as *Diljan v Minister of Police*,⁴ support significantly higher awards. Having considered all the factors,

³ 2011 (1) SACR 315.

⁴ [2022] ZASCA 103 (24 June 2022).

including the duration, conditions, and aggravating features of the arrest context, I find that an award of R50,000.00 is fair and commensurate with the injury suffered.

ORDER

[20] In the result, the following order is made;

1. The application for condonation for the late filing of the appeal record is granted.
2. The appeal is upheld with costs.
3. The judgment of the Magistrate's Court for the district of Mogale City, Krugersdorp, under the case number 2752/20, is set aside and replaced with the following.

"1. The plaintiff's arrest on 16 March 2020 and his subsequent detention until 17 March 2020 are declared unlawful.

2. The defendant is ordered to pay general damages to the plaintiff in the sum of R50,000.00 (fifty thousand rand) together with interest thereon at the legal rate calculated from 25 July 2024.

3. The defendant is ordered to pay the plaintiff's costs of suit in the lower court."

I agree


MMP Mdalana-Mayisela
Judge of the High Court
Gauteng Division


C J Dreyer
Acting Judge of the High Court
Gauteng Division

Digitally delivered by uploading to Caselines and emailing to the parties.

Date of hearing: 7 August 2025

Date of delivery: 24 November 2025

Appearances:

For the appellant: Mr L Naidoo

Instructed by: Logan Naidoo Attorneys

For the respondent: Adv S Mfeka

Instructed by: Ntanga Nkuhlu Incorporated