

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

(1)	NOT REPORTABLE
(2)	NOT OF INTEREST TO OTHER JUDGES

CASE NO: 2020-000987

DATE: 26 NOVEMBER 2025

In the matter between:

LEROY QUINTON THERON

First Plaintiff

GAVIN FISHER

Second Plaintiff

VUSIMUSI MAKONI

Third Plaintiff

and

THE MINISTER OF POLICE

First Defendant

**THE NATIONAL DIRECTOR OF
PUBLIC PROSECUTIONS**

Second Defendant

Neutral Citation: *Theron and Others v Minister of Police and Another* (2020-091784) [2025] ZAGPJHC ---- (26 November 2025)

Coram: Adams J

Heard: 6, 7, 8, 9 May 2025 and 12 June 2025

Closing Arguments: 31 July 2025 – Heard ‘virtually’ as a videoconference on *Microsoft Teams*.

Delivered: 26 November 2025 – This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to *CaseLines* and by release to SAFLII. The date and time for hand-down is deemed to be 14:30 on 26 November 2025.

Summary: Criminal law and procedure – Criminal Procedure Act 51 of 1977 – section 40(1)(b) – unlawful arrest and detention – whether the plaintiff's arrest and detention were lawful in terms of s 40(1)(b) of the Criminal Procedure Act, read with schedule 1 thereto, which includes any offence, the punishment wherefor may be a period of imprisonment exceeding six months, without the option of a fine – the plaintiffs were, at the time of their arrest, suspected of having committed the crimes of robbery, assault GBH and attempted murder – therefore, arrest and detention justified – no malicious prosecution either –

Factual disputes – mutually destructive versions – correct approach – to come to a conclusion on the disputed issues a court is required *inter alia* to make a finding on the probability or improbability of each party's version – it is only where a consideration of the probabilities fails to indicate where the truth probably lies, that recourse is had to an estimate of relative credibility apart from the probabilities –

Plaintiffs' claims dismissed.

ORDER

- (1) The first, second and third plaintiffs' claims are dismissed with costs.
 - (2) The first, second and third plaintiffs, jointly and severally, the one paying the other to be absolved, shall pay the first and the second defendants' costs, including Counsel's charges on scale 'B' of the tariff applicable in terms of the Uniform Rules of Court.
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JUDGMENT

Adams J:

[1]. On Sunday morning, 10 June 2018, at about 09:00, Sergeant Thandeka Buthelezi (Sgt Buthelezi) was on duty in the Client Service Centre ('CSC') at the Parkview Police Station, when two members of the public, a Mr Rubin Adams and his son, Mr Ronald Adams ('the complainants'), came to lay charges of assault, with intent to do grievous bodily harm, and armed robbery against the plaintiffs. The complainants alleged that they were assaulted the previous night (Saturday, 9 June 2018) at about 21:00 by the plaintiffs and robbed of cash and a cell phone. At the time that the complainants arrived at the Police Station, a Sergeant Ndivhuho Muregu (Sgt Muregu) was also on duty in the CSC with Sgt Buthelezi. Sgt Muregu, who at the time held the rank of Constable, as did Sgt Buthelezi, was in fact the CSC Commander, and he listened in whilst the complainants were reporting to Sgt Buthelezi the events of the previous night.

[2]. When they arrived at the police station, Mr Rubin Adams had blood on his head and on his face and he indicated to the police officers that he had been assaulted with a 'plank' and kicked repeatedly by the plaintiffs, who were known to him at the time. He also confirmed that they (the complainants), like the plaintiffs, were living on the streets in the Parkview area and all of them were making a living informally as so-called 'car guards' at the shops and shopping

centres in the vicinity. The plaintiffs were also known to Sgt Muregu as persons 'living on the streets' and, as luck would have it, whilst the complainants were being interviewed by the police officers, two of the plaintiffs came walking past the police station. They were apprehended by Sgt Muregu and taken into the CSC, where they were pointed out by the complainants as the persons who had assaulted and robbed them the previous night. The plaintiffs were thereafter arrested by the police and detained until their release during June 2019, after they were acquitted and discharged in terms of section 174 of the Criminal Procedure Act 51 of 1977 ('the CPA'). They were released after facing charges of armed robbery and attempted murder and after standing trial in the Johannesburg Regional Court. By then they had been prosecuted and the trial proceeded to the close of the State's case, at which point (on 12 June 2019) they were discharged in terms of s 174 of the CPA and acquitted.

[3]. In this consolidated action, the first plaintiff, the second plaintiff and the third plaintiff claim delictual damages for unlawful arrest and detention from the first defendant (the National Minister of Police ('Minister')). From the second defendant (the National Director of Public Prosecutions ('NDPP')) all of the plaintiffs claim damages on the basis of malicious prosecution. In pursuing their claims in this matter, the plaintiffs set great store to the fact that the Johannesburg Regional Court had discharged them in terms of s 174 of the CPA, which confirms, so the plaintiffs aver, that the State had no case against them and should never have arrested, detained or prosecuted them. For the reasons mentioned *infra*, this argument is misdirected and ill-advised.

[4]. The first defendant denies liability for the claims of the plaintiffs. His case is that the arrest and the detention were lawful in that the plaintiffs were suspected – reasonably so – of having committed the crimes of armed robbery, with aggravating circumstances, and attempted murder. The second defendant also denies liability for damages as a result of alleged malicious prosecution for the simple reason that the Prosecuting Authority had every right to prosecute the plaintiffs and that they had failed to prove that the prosecution was malicious.

[5]. The issue to be considered in this action is therefore whether, all things considered, the arrest of the plaintiffs and their subsequent detention were lawful. Put another way, the issues to be decided in this matter is whether the arresting officers had reasonable grounds to arrest the plaintiffs and whether they had reasonable grounds thereafter to detain him. A further issue relates to whether the prosecution of the plaintiffs was malicious.

[6]. Prior to adjudicating the foregoing issues, the court is required to try and assess the facts in the matter. In that regard, there are two mutually destructive versions – one on behalf of the plaintiffs and the other on behalf of the defendants, in relation to the circumstances surrounding and leading up to the arrest and detention of the plaintiffs. In other words, there is a factual dispute between the parties relating to a material issue in the matter, which dispute is required to be considered and decided upon by the court.

[7]. Before dealing with the facts in the matter, it may be apposite to traverse and consider firstly the applicable legislative framework and the relevant legal principles.

[8]. An arrest or detention is *prima facie* wrongful. Once the arrest and detention are admitted, as is the case *in casu*, the onus shifts onto the State to prove the lawfulness thereof and it is for the defendants to allege and prove the lawfulness of the arrest and detention. So, for example, it was held by the Supreme Court of Appeal as follows in *Zealand v Minister of Justice & Constitutional Development & Another*¹:

'This is not something new in our law. It has long been firmly established in our common law that every interference with physical liberty is *prima facie* unlawful. Thus, once the claimant establishes that an interference has occurred, the burden falls upon the person causing that interference to establish a ground of justification.'

¹ *Zealand v Minister of Justice & Constitutional Development & Another* 2008 (4) SA 458 (SCA) at para 25;

[9]. Section 40(1)(b) of the CPA confers the power on a police officer, without warrant, to arrest a person reasonably suspected of having committed a schedule 1 offence. Schedule 1 includes the following crimes: -

‘Murder.

Robbery.

Assault –

- (a) when a dangerous wound is inflicted;
- (b) involving the infliction of grievous bodily harm; or
- (c) where a person is threatened –
 - (i) with grievous bodily harm; or
 - (ii) with a firearm or dangerous weapon, as defined in section 1 of the Dangerous Weapons Act, 2013 (Act 15 of 2013).

Theft, whether under the common law or a statutory provision.

Any offence, except the offence of escaping from lawful custody in circumstances other than the circumstances referred to immediately hereunder, the punishment wherefor may be a period of imprisonment exceeding six months without the option of a fine.

Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule.’

(Emphasis added).

[10]. In this matter, the case on behalf of the defendants is to the effect that the plaintiffs were reasonably suspected of having committed one or more of the following crimes: robbery, attempted murder and assault, all of which are section 1 offences. The offences of which the plaintiffs were suspected of having committed therefore clearly falls within the ambit and the contemplation of s 40(1)(b) of the CPA. Provided the arresting officers’ suspicion that the plaintiffs had committed any one or more of these crimes, was reasonable, they would have been entitled and empowered to arrest the plaintiffs without a warrant. Section 50(1)(a) requires that such arrested person be brought, as soon as possible, to a police station, and be there detained. And section 50(1)(b) provides that he or she, as soon as reasonably possible, be informed of his or her right to institute bail proceedings.

[11]. It is not required for a successful invocation by a peace officer of s 40(1)(b) of the CPA, that the offence was actually committed. The question is whether the

arresting police officer had reasonable grounds for suspecting that such a crime had been committed. This requires only that the arresting officer should have formed a suspicion that must rest on reasonable grounds. It is not necessary to establish as a fact that the crime had been committed². 'Suspicion' implies an absence of certainty or adequate proof. Thus, a suspicion might be reasonable even if there is insufficient evidence for a *prima facie* case against the arrestee³.

[12]. In cases such as *Duncan v Minister of Law and Order*⁴, *Minister of Law and Order v Kader*⁵, *Powell NO and Others v Van der Merwe NO and Others*⁶, the Supreme Court of Appeal has endorsed and adopted the following formulation of the meaning of 'suspicion' by Lord Devlin:

'Suspicion in its ordinary meaning is a state of conjecture or surmise where proof is lacking; "I suspect, but I cannot prove". Suspicion arises at or near the starting point of an investigation of which the obtaining of *prima facie* proof is the end.'

[13]. The question, whether the suspicion by the police officer effecting the arrest is reasonable, as envisaged by s 40(1)(b), must be approached objectively. Accordingly, the circumstances giving rise to the suspicion must be such as would ordinarily move a reasonable person to form the suspicion that the arrestee had committed a first-schedule offence. The information before the arresting officers must be such as to demonstrate an actual suspicion, founded upon reasonable grounds, that a schedule 1 offence had been committed by the person or persons to be arrested.

[14]. That then brings me back to the facts in the matter, as elicited from the evidence led during the trial. In that regard, only the second plaintiff gave evidence in support of the case on behalf of all three plaintiffs. Strangely, the first and the third plaintiffs did not give evidence and it was explained in very general

² *R v Jones* 1952 (1) SA 327 (E) at 332;

³ *Duncan v Minister of Law and Order* 1986 (2) SA 805 (A) ([1996] ZASCA 24) at 819I – 820B;

⁴ *Duncan v Minister of Law and Order* 1986 (2) SA 805 (A) ([1996] ZASCA 24) at 819I;

⁵ *Minister of Law and Order v Kader* 1991 (1) SA 41 (A) ([1990] ZASCA 111) at 50H – I;

⁶ *Powell NO and Others v Van der Merwe NO and Others* 2005 (1) SACR 317 (SCA) (2005 (5) SA 62; 2005 (7) BCLR 675; [2005] 1 All SA 149) para 36;

terms by their Counsel that both of them were not available at the time when the trial proceeded before me during May and June 2025. If I understood Mr Mudimeli, Counsel for the plaintiffs, correctly, the first plaintiff was incarcerated for an unrelated crime at the relevant time and the third plaintiff could not be located by his legal representatives. I am not sure that the explanation proffered on behalf of the plaintiffs for the absence of the first and the third plaintiffs are satisfactory. Moreover, I am not convinced that an adverse inference, insofar as it may be necessary, cannot and should not be drawn from their failure to give evidence in support of their causes.

[15]. On behalf of the defendants the following witnesses testified: The arresting officers, namely Sergeant Buthelezi and Sergeant Muregu; the investigating officer, Warrant Officer Tshifhiwa Muluvhu, and a prosecutor, Ms Colleen Ryan.

[16]. The second plaintiff's evidence, in a nutshell, was to the effect that on a Sunday morning, 10 June 2018, at about 08:00, whilst in the company of the first and the third plaintiffs and whilst they were walking along a particular street in Parkview, they were accosted out of the blue by police officers and arrested. The police officers were travelling in a police van and, when they confronted them, so the second plaintiff testified, the police officers advised them that a case of attempted murder and robbery had been opened against them by the complainants. They were put into the police van and transported back to the Parkview Police Station, where they saw the complainants, who, so the second plaintiff testified, showed no signs of having been assaulted or having been seriously injured.

[17]. The second plaintiff denies that he and his friends assaulted or robbed the complainants. On being asked why the complainants, in particular Mr Rubin Adams, would lie about being assaulted and robbed by him and the other two plaintiffs, the second plaintiff suggested that the complainants fabricated the story against them out of jealousy. The complainants, so the second plaintiff surmised, did not like the idea that he (the second plaintiff) was making more money than them (the complainants) from the car-guarding business.

[18]. The second plaintiff confirmed that at the police station they were 'processed' and detained in the police cells until their first court appearance on the Tuesday, 12 June 2018. Thereafter, they attended court on a few occasions whilst their matter proceeded to trial until their acquittal on 12 June 2019, whereafter they were released from prison. All the time – for the whole year, they remained in custody, awaiting trial, at the Johannesburg Prison. Importantly, during his cross-examination, the second plaintiff confirmed that shortly after they were arrested initially, all three of them 'abandoned' their bail applications mainly because the investigating officer was finding it impossible to confirm their residential addresses. Importantly, the second plaintiff did not strenuously dispute, nay did not dispute at all the contention on behalf of the defendants that neither he nor the other two plaintiffs had fixed residential addresses as they were living in a public park in the Parkview area. It is therefore understandable that they were not released on bail.

[19]. In sum, the version of the defendants, based on the evidence of the arresting officers, is as set out in the above introduction and the first two paragraphs of this judgment. The complainants arrived at the police station and laid charges of robbery and assault, with the intention to do grievous bodily harm, alternatively attempted murder, against the plaintiff. One of the complainants was seriously injured as a result of the assault on their persons by the plaintiffs. At some point, whilst the complainants were being interviewed by the police, two of the plaintiffs came walking past the Police Station, whereupon they were arrested and charged with robbery and attempted murder

[20]. Sergeant Muregu, who was the second witness for the defendants, corroborated in all the material respects the testimony of Sgt Buthelezi. He confirmed that, on their arrival at the police station, he could clearly see that Mr Rubin Adams was bloodied and had been seriously injured. He also confirmed that Mr Rubin Adams reported to them that, during the assault the previous night, he was hit with a plank and that the plaintiffs kicked him. He was the one who, whilst standing on the 'veranda' of the police station, noticed the first and the second plaintiffs walking past the police station and he accordingly brought them

into the police station. Later on, whilst they were still busy processing the first and the second plaintiffs, the third plaintiff also arrived at the police station and he was also arrested.

[21]. The Investigating Officer, Warrant Officer Muluvhu, testified with regard to the docket, which was given to him on Monday, 11 June 2018. He testified that he took their warning statements from the plaintiffs and readied them for court the next day, being Tuesday, 12 June 2018. He also confirmed that he had difficulty in confirming the plaintiffs' fixed places of residence in view of the fact that they were living 'on the streets'. This, he explained, was the reason why the plaintiffs were not released on bail in addition to the fact that they had in fact abandoned their bail applications.

[22]. Lastly, the prosecutor, Ms Ryan gave evidence, explaining why the plaintiffs were prosecuted. She also confirmed that the plaintiffs abandoned their bail applicants and that is why they remained in custody for the duration of their matter going on trial. In any event, so Ms Ryan explained, the plaintiffs were facing schedule 5 charges, which meant that they probably would not have been granted bail even if they proceeded with their bail applications. The fact that the first complainant suffered serious injuries, so she testified, was confirmed by the Form J88 medical report by a medical practitioner

[19] As I have already indicated, the dispute between the plaintiffs and the defendants is a factual one. I have before me two mutually destructive versions relating to the events surrounding the arrest and the detention of the plaintiffs. If I accept the version of the police, the plaintiffs' claims must fail. I revert to the reasons for such conclusion later on in the judgment. However, having said that, it should be born in mind that the version of the police is to the effect that they arrested the plaintiffs on the strength of the claim by Mr Rubin Adams that he was robbed and seriously injured by the plaintiffs. The plaintiffs do not seem to seriously take issue with the foregoing, although they do deny having assaulted and robbed the complainants. The point is that the undisputed and unchallenged version before me is that the complainants accused the plaintiffs of having

assaulted and robbed them, which resulted in serious injury to Mr Rubin Adams. That means that, howsoever one views the matter, the police were fully entitled to arrest the plaintiffs in terms of s 40(1)(b) of the CPA – on the basis of what they were told by the complainants, the police had a reasonable suspicion that the plaintiffs had committed a schedule 1 offence. Is that not the end of the matter, I ask rhetorically.

[20] All the same, the question to be considered by the court is therefore whether, having regard to all of the evidence before me, the version of the defendants is more probable than that of the plaintiffs. The defendants bear the onus of proving the lawfulness of the arrest and the detention of the plaintiffs, which includes proving the facts in support of a conclusion that the arrest and detention were lawful. If the probabilities are equally balanced, then the plaintiffs get the benefit of the doubt.

[21] In *Stellenbosch Farmers' Winery Group Ltd and Another v Martell and Others*⁷, the Supreme Court of Appeal explained how a court should resolve factual disputes and ascertain, as far as possible, where the truth lies between conflicting factual assertions. The SCA held 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 probability or improbability of each party's version on each of the disputed issues.

In light of the assessment of (a), (b) and (c), the court will then, as a final step, determine whether the party burdened with the onus of proof has succeeded in discharging it. The hard case, which will doubtless be a rare one, occurs when a court's credibility findings compel it in one direction and its evaluation of the general probabilities in another. The more convincing the former, the less convincing will be the latter. But when all factors equipoised, probabilities prevail'. (Emphasis added)

[22] Also in *National Employers' General Insurance Co Ltd v Jagers*⁸ the court remarked as follows:

⁷ *Stellenbosch Farmers' Winery Group Ltd and Another v Martell and Others* 2003 (1) SA 11 (SCA) at para 5.

⁸ *National Employers' General Insurance Co Ltd v Jager* 1984 (4) SA 437 (ECD) at 440D-441A.

'It seems to me, with respect, that in any civil case, as in any criminal case, the onus can ordinarily only be discharged by adducing credible evidence to support the case of the party on whom the onus rests. In a civil case the onus is obviously not as heavy as it is in a criminal case, but nevertheless where the onus rests on the plaintiff as in the present case, and where there are two mutually destructive stories, he can only succeed if he satisfies the court on a preponderance of probabilities that his version is true and accurate and therefore acceptable, and that the other version advanced by the defendant is therefore false or mistaken and falls to be rejected. In deciding whether that evidence is true or not the court will weigh up and test the plaintiff's allegations against the general probabilities. The estimate of the credibility of a witness will therefore be inextricably bound up with a consideration of the probabilities of the case and, if the balance of probabilities favours the plaintiff, then the court will accept his version as being probably true. If however the probabilities are evenly balanced in the sense that they do not favour the plaintiff's case any more than they do the defendant's, the plaintiff can only succeed if the court nevertheless believes him and is satisfied that his evidence is true and that the defendant's version is false.

This view seems to me to be in general accordance with the views expressed by Coetzee J in *Koster Ko-operatiewe Landboumaatskappy Bpk v Suid-Afrikaanse Spoorweë en Hawens* (supra) and *African Eagle Assurance Co Ltd v Cainer* (supra). I would merely stress however that when in such circumstances one talks about a plaintiff having discharged the onus which rested upon him on a balance of probabilities one really means that the court is satisfied on a balance of probabilities that he was telling the truth and that his version was therefore acceptable. It does not seem to me to be desirable for a court first to consider the question of credibility of the witnesses as the trial judge did in the present case, and then, having concluded that enquiry, to consider the probabilities of the case, as though the two aspects constitute separate fields of enquiry. In fact, as I have pointed out, it is only where a consideration of the probabilities fails to indicate where the truth probably lies, that recourse is had to an estimate of relative credibility apart from the probabilities'. (Emphasis added)

[23] Lastly, in *Govan v Skidmore*⁹, the following principle was enunciated:

'In finding facts or making inferences in a civil case, it seems to me that one may, as *Wigmore* conveys in his work on evidence ... by balancing probabilities select a conclusion which seems to be the more natural or plausible conclusion from amongst several conceivable ones, even though that conclusion may not be the only reasonable one.'

[24] I need to apply these authorities to the matter before because I am faced with two mutually destructive versions on the incident in question. The version of

⁹ *Govan v Skidmore* 1952 (1) SA 732 (N).

the plaintiffs is irreconcilable with that of the defendants. Accepting the one means of necessity a rejection of the other.

[25] The starting point of the discussion and the analysis is the probabilities. As was held in *Stellenbosch Farmers' Winery* (supra), I am required to assess the probability or improbability of each party's version on each of the disputed issues. In that regard, I am of the view that the version of the plaintiffs is an inherently improbable one. One needs only to relate the story to conclude that it is improbable. The important part of the version is that the SAPS Officers, for no apparent reason, have fabricated the whole narrative that the complainants laid charges against the plaintiffs, which resulted in them being arrested and detained. This is the very definition of inherent improbability. What the plaintiffs say is that the SAPS Officers, who had no axe to grind with them, decided to implicate them in crimes in which they were not involved. Moreover, they then, between themselves and the complainants, decided to fabricate the whole concocted story against them. That just cannot possibly be. We know from our everyday experience that things happen for a reason.

[26] In my view and having regard to the above considerations and the probabilities in their totality, the version of the defendants is more probable than that of the plaintiffs. Therefore, to borrow from the dicta in the *National Employers' General Insurance Co Ltd* (supra), I am satisfied that the defendants' evidence is true and that the plaintiffs' version is false.

[27] Mr Mudimeli urged me to reject the defendants' version on the basis that there were contradictions between the evidence given by the various witnesses. Much was made of the fact there were discrepancies between evidence given and statements previously made by the witnesses, as well as contradiction between the evidence of the witnesses.

[28] The difficulty with this contention is that the evidence on behalf of the plaintiffs was equally problematic. Moreover, as I indicated above, I can and should draw an adverse inference from the failure on the part of the first and the

third plaintiffs to give evidence. The point is simply that the criticism levelled against the evidence on behalf of the defendants is equally applicable to the evidence on behalf of the plaintiffs.

[29] Moreover, the contradictions complained of are, in my view, not of a material nature and are not of the kind that it can be said with any conviction that they show that the defendants' witnesses were dishonest. As was held by the Appellate Division in *S v Mkhle*¹⁰, citing with approval the dicta in *S v Oosthuizen* 1982 (3) SA 571 (T)¹¹, 'contradictions *per se* do not lead to the rejection of a witness' evidence; they may simply be indicative of an error. Not every error made by a witness affects his credibility; in each case the trier of fact has to make an evaluation, taking into account such matters as the nature of the contradictions, their number and importance, and their bearing on other parts of the witness' evidence'.

[30] In any event, the contradictions alluded to by Mr Mudimeli are relied upon by him presumably to impugn the credibility of the defendants' witnesses. However, in view of my above findings relating to the probabilities in the matter, a finding relating to credibility is unnecessary. As was held in *Jagers* (supra), it is only where a consideration of the probabilities fails to indicate where the truth probably lies, that recourse is had to an estimate of relative credibility apart from the probabilities. I have already found that the probabilities undoubtedly favour the defendants.

[31] The only question remaining is whether these facts, as found by me based on the evidence of the defendants' witnesses, ground a conclusion that the arrest and detention were lawful.

[32] There can be no doubt that the arresting officers manifestly harboured a suspicion that the plaintiffs had committed the said crimes. They, in my view, had

¹⁰ *S v Mkhle* 1990 (1) SACR 95 (A).

¹¹ *S v Oosthuizen* 1982 (3) SA 571 (T) at 576B-C and 576G-H.

sufficient evidence to support their suspicion, which was reasonable if regard is had to the statements by Mr Adams and his son.

[33] The question, whether the suspicion by the arresting officer affecting the arrest is reasonable, must, as I have said, be approached objectively. Therefore, the circumstances giving rise to the suspicion must be such as would ordinarily move a reasonable person to form the suspicion that the arrestee had committed a first-schedule offence. In my view, the defendants had established that there were reasonable grounds to suspect that the plaintiff had committed the schedule 1 offence. The arrests and subsequent detention were therefore lawful.

[34] On the basis of the facts in this matter, there is no evidence to support a conclusion, either directly or inferentially, that the police, when arresting the plaintiffs, acted unreasonably and without reasonably suspecting that they had committed the crimes complained of. The arresting officers were, in my judgment, not subjectively motivated by any irrelevant personal considerations of sympathy or vengeance. They just had no reason to be so motivated. Their suspicion that the plaintiffs had committed the said crimes was based on reasonable grounds, notably information received from the complainants and what they themselves observed regarding the injuries sustained by the complainants.

[35] The same considerations and conclusions apply in relation to the claims based on malicious prosecution. In sum, it cannot possibly be said with any conviction that the prosecution of the plaintiffs, in the circumstances of the matter, was malicious.

[36] In conclusion, it bears emphasising, that, as was held by this court in *Senti v Minister of Police and Another*¹², the mere fact that in the end the plaintiffs were discharged in terms of s 174 of the CPA does not detract from the reasonableness of the suspicion that the crime had in fact been committed by the plaintiffs. If anything, there are a myriad of reasons why the criminal case took a

¹² *Senti v Minister of Police and Another* 2023 JDR 3425 (GJ).

turn for the worse as it did. Objectively viewed, it is difficult to see on what basis the arresting officers can be said not to have subjectively had a reasonable suspicion that the crime had been committed. Furthermore, the plaintiffs were not unlawfully detained. They abandoned their bail applications in the face of them being unable to provide the police with fixed addresses.

[37] For all of these reasons, the plaintiffs' claim fall to be dismissed.

Costs

[38] The general rule in matters of costs is that the successful party should be given his costs, and this rule should not be departed from except where there are good grounds for doing so. I can think of no reason why I should deviate from this general rule.

[39] The plaintiffs should therefore be ordered to pay the defendants' costs of the action.

Order

[40] Accordingly, I make the following order: -

- (1) The first, second and third plaintiffs' claims are dismissed with costs.
- (2) The first, second and third plaintiffs, jointly and severally, the one paying the other to be absolved, shall pay the first and the second defendants' costs, including Counsel's charges on scale 'B' of the tariff applicable in terms of the Uniform Rules of Court.



L R ADAMS

*Judge of the High Court of South Africa
Gauteng Division, Johannesburg*

HEARD ON:	6, 7, 8, 9 May 2025 and 12 June 2025
CLOSING ARGUMENTS ON:	31 July 2025 – heard ‘virtually’ as a videoconference on <i>Microsoft Teams</i>
JUDGMENT DATE:	26 November 2025 – judgment handed down electronically
FOR THE FIRST, SECOND AND THIRD PLAINTIFFS:	M O Mudimeli
INSTRUCTED BY:	Tlaweng Lechaba Incorporated, Northcliff, Randburg
FOR THE FIRST AND SECOND DEFENDANTS:	S P Mabiletsa
INSTRUCTED BY:	The State Attorney, Johannesburg