

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 23702/2016

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

10 DECEMBER 2025

In the matter between:

CHESLIN ASHLEY VAN VUUREN

Plaintiff

and

THE MINISTER OF POLICE

Defendant

JUDGMENT

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 10h00 on 10 December 2025.

MALUNGANA AJ:

INTRODUCTION

- [1] In this action, the plaintiff, a former sales representative instituted an action against the minister of police seeking damages from the latter for wrongful arrest and detention.
- [2] It is common cause that the plaintiff was arrested without a warrant by members of the South African Police, acting within the cause and scope of their employment with the defendant. The arrest took place at Clearwater Shopping Mall, at the security control room on 25 November 2015. The case turns on whether the arrest and detention were unlawful.
- [3] Following his arrest, the plaintiff was detained at Honeydew Police Station and subsequently taken to Roodepoort Police Station where he was charged with fraud. He alleges in the particulars of claim that he suffered damages for the deprivation of liberty, impairment of dignity, self-esteem, contumelia, and loss of income caused by the unlawful arrest and malicious detention in the sum of R640 000.00
- [4] On the cover of police docket, the nature and description of the offence for which the plaintiff was arrested was reflected as having committed 'fraud by using false documents. The warning statement concerning the allegations of fraud contained in the docket, signed by the plaintiff in response thereto, states that he would give his side of the story in court.
- [5] In terms of section 40(1) of the Criminal Procedure Act 51 of 1977 ("CPA"), a peace officer may arrest any person without a warrant, that he reasonably suspects of having committed an offence referred to in Schedule 1. The Bill of Rights guarantees the right of security and freedom of the person which includes the right 'not to be deprived of

freedom arbitrarily or without just cause' (s 12(1)(a) of the Constitution). Any deprivation of freedom has always been regarded as *prima facie* unlawful and required justification by the arresting officer.

[6] It follows from the above that the defendant bore the onus of proving that the arrest was lawful and justified in the context of section 40(1) and section 50 of the CPA.

THE EVIDENCE

[7] The defendant led evidence in support of its contention that the arrest was lawful by calling its witness Constable Jeffrey Maswanganyi. He testified that on 25 November 2015, he was busy performing his crime prevention duties when he received a call via the police radio to the effect that there was a complaint at Clearwater Shopping Mall, Vodacom store.

[8] Constable Maswanganyi together with his crew, Constable Donovan Croucamp proceeded to Clearwater Shopping Mall to attend to the complaint. There they interviewed Mr Ntisa, the assistant manager at Vodacom 4U Store who was at the security control room with two security officers and the plaintiff. Mr Ntisa told them that they discovered some fraudulent irregularities in the processing of cell phone contract done by the plaintiff. According to the witness, Mr Ntisa handed him certain documents which pointed out towards the plaintiff for failing to send the application to the head office for verification.

[9] During the interview of Mr Ntisa, constable Matswanganyi was informed that the application in question concerned one Mr Venter who was not in Gauteng at the time when it was processed. On examining the documents he noticed that certain information were omitted which according to Ntisa ought to have been completed for the application to comply with the requirements. He testified that the customer had applied for iPhone 6 worth about R15 000.00. Amongst other criminal elements observed in the transaction was that the signature on the proxy letter did not match that of Mr Venter appearing on his statement. His first names were spelled incorrectly. Instead of Shaine, they wrote "Shaun." He then came to the conclusion that there was a probable fraud in the application.

[10] After his interview with Mr Ntisa, he went to the plaintiff and informed him about the allegation of fraud levelled against him by his Manager. When he could not give an answer he instructed his colleague, Mr Croucamp to effect the arrest.

[11] The plaintiff was taken to Honeydew Police Station where he was processed and handed over to Client Service Commander.

[12] During cross examination, he testified that he did not make a statement, but constable Donovan who effected the arrest on his instructions made a statement. He also testified that Vodacom policies did not allow proxies such as what happened in the transaction. Then he was alerted to fraud on the 25th of November 2015 not on the 15th of November 2015 when it took place. According to him it did not matter when the offence took place because an 'offence is an offence.'

[13] Asked about how the plaintiff was arrested. Constable Maswanganyi testified that he was handcuffed and made to sit at the back of the police van at about 15H00. He stated that there were no so much activities around the security room when the plaintiff was arrested. He refuted the allegations that the plaintiff was paraded in the mall in view of the shoppers. He also mentioned that Clearwater Mall is a busy mall, the police try to limit chances of the suspects escaping.

[14] The witness conceded that he interviewed the plaintiff for five minutes. He informed the latter that his manager gave them information to the effect that he committed fraud. His discussion with Mr Ntisa lasted for about twenty minutes.

[15] The next witness was Sergeant Oupa Macheke who was based at Honeydew Police Station. He testified that he is an investigating officer. The docket relating to the plaintiff was assigned to Sergeant Maphoto for investigation. He was merely handling it on behalf of Sergeant Maphoto who was not present at the time. Asked why the plaintiff was not detained at Honeydew, he responded that they normally use Randburg Police or Roodepoort Police cells, because Honeydew does not have holding cells. He charged the plaintiff, administered the plaintiff's warning statement with Miss Kola who was assisting him to complete the relevant forms to process the plaintiff. His role ended when the plaintiff's finger prints were taken.

[16] Under cross examination, Sergeant Macheke testified that the interview with the suspect lasted for about an hour because there were other cases which they were

handling. Asked about the discrepancies in the warning statement and SAP 10 which states that the plaintiff was charged on the 27th of November 2015. His response was that he did not proceed with the matter beyond 26 November 2015, someone responsible for the docket was appointed by the commander. He did not make follow ups on the matter. He maintained that the plaintiff was charged of fraud on 26 November 2025,

[17] Sergeant Lebokgang Kola testified that she is a member of Honeydew Police Service. She was together with Sgt Macheke when they charged the plaintiff. At Honeydew police station they do not have holding cells, so they went to Roodepoort police station, where the plaintiff was charged. At about 11:30 they interviewed the plaintiff and helped in preparing the warning statement. They asked the plaintiff if he wanted to make a statement. On the allegations levelled against him by the complainant. He replied that he would make his statement in court. The interview with the suspect was very brief.

[18] On the discrepancies concerning the dates on which the plaintiff was charged, she too maintained that the plaintiff was charged on 26 November 2015. She stated that she was not involved in the matter beyond the said date.

[19] Mr Van Vuuren, the plaintiff, testified for his own account as follows: He was employed by Vodacom as a sales representative since March 2015. In the morning of the 25th of November 2015, his manager, Rennel Jacobs, called him into her office. She was in the company of Vusi Ntisa and Eunice Mthethwa the Regional Manager, Westrand. They informed him of fraud that they have discovered in the processing of contract for relating to Shaun Venter. They spent about 20 to 30 minutes discussing the matter. He was surprised about this turn of events as according to him the following requirements were needed for purposes cell phone contract, namely (i) Identity document; (ii) 3 (three) months bank statements; (iii) letter of authorisation in the case of proxy and original identity document. On 16 November 2025, a certain Mr Khumalo walked into the store to apply for cell-phone contract on behalf of one Mr Shaun Venter. He assisted him in completing the application form, after which it was vetted for approval by the back office. Before his arrest on the 25th of November 2015, Eunice, the regional manager, told him to prepare his resignation letter in order to avoid being

arrested for fraud. Despite having prepared the resignation letter, he was summoned to the security control room. Two police officers came into the security room, handcuffed him and took him to the police van parked at the basement of the mall. He was first taken to Honeydew police station, thereafter transported to Roodepoort police station. Along the way, the police van stopped, and he saw one of the police officers going into Builders' warehouse. He then asked him if he could go to the bathroom but his request was turned down. He had wet in his trousers. Upon his arrival at Roodepoort police station, he was detained in a tiny police cell which was dirty and stinky. He was refused access to a phone. His girlfriend came to check on him the following day. The police refused to let him change into the clothes she brought for him. All the documents signed by him in the docket were done on the 27th of November 2015. He was taken to court on the 30th November 2015. Later on, that day his legal representative informed him that the case was withdrawn.

[20] After his release from prison, he went to the CCMA who ordered his reinstatement. But the employer subsequently suspended him for the same allegations, and then dismissed him after the disciplinary inquiry found him guilty of misconduct.

[21] Under cross examination he testified that if the bank statements prove that there is a constant income, no proof of employment is required. He maintained that the verification of the customer is done at the back office. He conceded that there was no indication in the application as to which bank account of the applicant was to be debited, and that same was important requirement. There was also no signed authority to the effect that Vodacom would debit the account for monthly subscription. There was no details of the nature of price plan the customer was concluding with Vodacom. There was no contract period, and nature of subscription. He further denied that he was interviewed by constable Maswanganyi prior to his arrest.

Whether the Defendant acted rationally and had satisfied the jurisdictional requirements of s 40(1)(b) of the CPA.

[22] Counsel for the defendant submitted that Constable Maswanganyi's evidence demonstrates that he had applied his mind before effecting the arrest of the plaintiff, when he sought clarity from the plaintiff about the allegations levelled against him by

Mr Ntisa, and the senior manager of Vodacom. He further submitted that the plaintiff offered no explanation when questioned about the allegations of fraud. Upon perusal of the documents he noticed certain discrepancies, namely the names on the letter dated the 16th of November 2015 was written as Mr Shaun Venter while the one on the letter of the 18th November was Shain Venter. Certain parts of the cell phone contract were not completed.

[23] In contrast, counsel for the plaintiff submitted that the defendant failed to prove a reasonable suspicion and had simply accepted the complainant's version of events. She questioned the failure of the defendant to call crucial witness such as such as Croucamp whose version under oath corroborated the plaintiff's version. According to the plaintiff there was no reasonable explanation why the warrant of arrest was not issued when the defendant had an ample time to so.

[24] In *Sekhoto v Minister of Safety and Security* ZASCA 14; 2011 (5) SA 367 at paragraphs 30-31, the Court held that: 'an arrest will accordingly be irrational and consequently unlawful if the arrestor exercised his discretion to arrest for a purpose not contemplated by law.

[25] According to the police docket which has been uploaded onto case lines, under the heading 'Statement Regarding Interview with Suspect', the plaintiff was charged with fraud on 26 November 2015, and not on 27 November 2015 as submitted by counsel for the plaintiff. When his constitutional rights were read out to him by Sgt Macheke, he stated that: "I will give statement at court."

[26] Regarding the plaintiff's arrest, constable Maswanganyi testified that he formulated his suspicion that the plaintiff had committed fraud based on his interview he had with the plaintiff's former managers, Ntisa and Eunice who then provided him with evidence of the proxy Contract Agreement, which on the face of it have more blank spaces than the completed portions. He also observed that the proxy letter dated the 16th of November 2015 had not been signed by Mr Venter on whose behalf the contract was being applied.

[27] The test of whether a suspicion is reasonably entertained within the meaning of section 40(1)(b) is objective.¹ "Would a reasonable man in the second defendant's position

¹ *Mabona & another v Minister of Law & order & others* 1988 (2) SA 654 (SE) at 658E at 33H.

and possessed of the same information have considered that there were good and sufficient grounds for suspecting that the plaintiff was guilty of conspiracy to commit robbery or possession of stolen property knowing it to have been stolen? ...The reasonable man will therefore analyse and assess the quality of the information at his disposal critically, and he will not accept it lightly or without checking it where it can be checked. It is only after the examination of this kind that he will allow himself to entertain a suspicion which will justify an arrest. This is not to say that the information at his disposal must be of sufficiently high quality and cogency to engender in him a conviction that the suspect is in fact guilty. The section requires suspicion but not certainty. However,, the suspicion must be based upon grounds. Otherwise, it will be flighty or arbitrary, and not a reasonable suspicion.

[28] The evidence also reveals that the arresting officers had regard to the letter dated the 18 November 2015 written by Mr Venter in which he affirmed that he not applied for cell phone contract in question. Upon examining the proxy letter which was handed over by Khumalo who facilitated the application on behalf of Venter, the following become immediately evident: The letter does not bear the signature of Mr Venter. One would expect an important document of this nature to include the applicant's physical address or mobile phone number for verification purposes. where he could be contacted to verify the mandate which Khumalo, the proxy applicant had. It is unsurprising that the senior officials at Vodacom flagged the transaction upon perusing the application. To my mind, it is not clear why any reasonable salesperson such as the plaintiff would consider such a letter as qualifying to establish a contractual relationship with his employer, Vodacom.

[29] Counsel for the plaintiff submitted that the plaintiff was charged on the 27th of November 2015 as per SAP 10. This allegation was denied by both constable Macheke and Kola. According to the duo they had no involvement with the docket relating to the plaintiff beyond the 26th of November 2015. The two police officers maintained that their task was to charge the plaintiff on behalf of Sergeant Maphogo, to whom the docket was assigned by the commander in charge.

[30] Looking at the facts as a whole, I am of the considered view that constable Maswanganyi and his crew, obtained cogent evidence from Mr Ntisa which on the face of it was acceptable and corroborated. Therefore, the defendant has successfully

proven that it is protected by section 40(1)(b) of the Act. It follows that the arrest of the plaintiff was not unlawful. I now proceed to deal with the issue of unlawful detention.

[31] It is trite that a police officer must apply his mind to the arrestee's detention and the circumstances relating thereto, and failure to properly do so, is unlawful. ² In *Minister of Justice and Constitutional Development and Another v Zealand* (387/06) [2007] ZASCA 92; 2007 (2) SACR 401 (SCA) (20 June 2007), the Supreme Court of Appeal held as follows:

"[4] The right to freedom is entrenched in the Constitution .- When a person is arrested and detained public power is being exercised by the executive administration of the state which may not exercise any power or perform any function beyond what is conferred by law.- This is in accordance with the doctrine of constitutional legality, an incidence of the rule of law, which is a foundational value of the Constitution....It goes without saying that the State has a burden to prove that the exercise of its power was lawful."

[32] Section 50 of the Criminal Procedure Act of 1977 as amended, provides that an arrested person must be brought to court within 48 hours, unless the 48 hours falls outside the ordinary court days in which event he/she will be brought to court before the end of the next court day.

[33] In paragraph 45 of the defendant's heads of argument, Mr Tshitereke submitted as follows:

"45. The fact that the Plaintiff was not taken to court on either the 26th or 27 November 2015 is not in dispute. Counsel for the Minister of Police has been forthcoming and frank with the Honourable Court and will make further submissions on this aspect at the hearing of the matter."

[34] Given the fact that the parties opted to rely on written submissions, no oral argument was led at the close of the trial, being the 4th of September 2025. Based on the objective facts I could not find any lawful justification for the continued detention of the plaintiff beyond the period from 26th of November 2015 to the 30th of November

² Hofmeyr v Minister of Justice and Another 1993 (3) SA 131 (A) at 1571.

2015. Absent lawful justification, I conclude that the detention of the plaintiff beyond the 26th of November 2015 was unlawful

[35] It is trite that courts adjudicate issues outlined by the parties in their pleadings. In this regard see *Fischer and Another v Ramahlele and Others* [2014] 3 All SA 395(SCA) para 13. To a certain extent, the plaintiff's submission in regard to the detention is conformable with what has been pleaded in paragraph 7 of the amended particulars, in which the plaintiff averred that he was detained until the 30th November 2015. He then claimed the amount of R 150 000.00 in respect of unlawful detention. No amendment was made to the particulars of claim to justify the amount counsel for the plaintiff submits is appropriate for this subhead of damages.

[36] I was referred to various authorities relating to the question of quantum. I also took time to refer to others for purposes of arriving at the correct quantum. The notable one is that of *Diljan v Minister of Police*³ in which the Supreme Court held as follows:

"The acceptable method of assessing damages includes the evaluation of the plaintiff's personal circumstances; the manner of the arrest; the duration of the detention; the degree of humiliation which encompasses the aggrieved party's reputation and standing in the community; deprivation of liberty; and other relevant factors peculiar to the case under consideration.

...

"It should be emphasised. However, that this process of comparison does not take the form of meticulous examination of awards made in other cases in order to fix the amount of comparison."

[37] In *Diljan supra*, the plaintiff was awarded the amount of R120 000, 00 for four nights on appeal. See also *Motladile v Minister of Police* [2023] ZASCA 94; 2023 (2) SACR 274 (SCA) para 17 where the court on appeal awarded R200 000 for four nights. In comparison with the cases which I have had regard to, and taking into account the relevant factors as stated in *Diljan* I regard the amount of R150 000,00 to be an appropriate award for unlawful detention of Mr van Vuuren. There was no justifiable reason to have the plaintiff detained beyond the 26th November 2015. The right to

³ *Diljan v Minister of Police* [2022] ZASCA 103; 2022 JDR 2998 (SCA) PARAS 18-19

freedom and security is enshrined in the Constitution, and is inviolable. Its violation cannot be lightly taken by the courts. The defendant bore the onus to satisfy the court that the conduct of its employees in detaining the plaintiff after being charged of fraud, is lawful. It has failed to discharge its onus in this regard.

ORDER

Accordingly, the order I make is as follows:

1. The defendant is ordered to pay the plaintiff the sum of R150 000,00 plus interest at the prescribed rate to run from the date of this order, to date on which the judgment is satisfied.
2. The defendant is ordered to pay the plaintiff's costs of ~~action on scale A.~~



P.H MALUNGANA

Acting Judge of the High Court

**Gauteng Division,
Johannesburg**

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

Date of hearing: 04 September 2025

Date of judgment: 10 December 2025

Appearances:

For the Plaintiff: Adv N. Makopo

Instructed by: Madelaine Gowrie Attorneys

For the Defendant: Adv. T. Tshitereke

Instructed by: The State Attorney