



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable

Case no: 750/2022

In the matter between:

LESOALE SOLDAAT KALAKE

Plaintiff

and

THE MINISTER OF POLICE

Defendant

Neutral Citation: *Kalake v Minister of Police* (750/2022) [2025] ZAFSHC 354
(13 November 2025)

Coram: Opperman J

Heard: 5-6 March 2024, 23 July 2024, 16 September 2024, 26
November 2024 & 15 April 2025

Delivered: The judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for the hand-down is deemed to be 13 November 2025 at 15h00.

Summary: Delict – unlawful arrest and detention – assault by members of the South African Police Services – damages to and loss of property while in police custody – quantum – damages.

ORDER

1 The defendant is liable for damages suffered by the plaintiff for unlawful arrest, detention and assault.

2 The defendant is ordered to pay the plaintiff an amount of R180 000.00 (one hundred and eighty thousand rand) in respect of the plaintiff's claim for unlawful arrest, detention and assault.

3 The defendant is ordered to pay interest on the amount in para 2 at the applicable rate of interest calculated from the date of service of the summons to the date of final payment.

4 The defendant is liable to compensate the plaintiff for the loss of the following items:

4.1 A RS Pro 84-piece toolbox and set.

4.2 Seven collectors' R200 notes.

4.3 A canister containing mercury.

4.4 A 1965 silver R1.00 coin and a 1965 silver 50 cent coin.

4.5 A Makita Drill HR4002.

4.6 A container wherein coins and notes were stored.

4.7 A collectors' 1931 3rd 'tickey' coin.

4.8 A Nokia Cellphone and a memory stick.

5 The defendant is liable to compensate the plaintiff for the damage caused to his vehicle as proven.

6 The quantum of damage pertaining to paras 4 and 5 is to be proven in due course as separated and the matter is postponed to the Pre-Trial Roll, 23 February 2026 at 14h15.

7 The defendant is to pay the costs of the trial on a party and party scale to be taxed on scale B. Costs to include the drafting of heads of argument. The costs of travelling and accommodation of the plaintiff and his witnesses are referred to the Taxing Master. All costs reserved are unreserved and to be paid by the defendant.

JUDGMENT

Opperman J

Introduction

[1] On 10 August 2021, the plaintiff was taken into custody by the South African Police Service (SAPS), and some personal property belonging to the plaintiff was allegedly seized, damaged and lost during the incident due to the conduct of the SAPS. The arrest occurred while he was travelling from his residence in Pretoria to his family home in Senekal. The incident took place in Bethlehem. He was arrested for the alleged illegal possession of a hazardous substance without a licence. The substance was apparently silver mercury. On 12 August 2021, he was transported in custody to the Bethlehem Court but released without appearing in court. All charges were withdrawn against the plaintiff by the prosecuting authority.

[2] The plaintiff instituted action against the defendant for the following:

(a) Claim 1: Unlawful arrest and detention.

- (b) Claim 2: Assault.
- (c) Claim 3: Damage to the plaintiff's vehicle and/or alternatively theft or loss of the plaintiff's property.

[3] At the onset of the trial, the defendant formally conceded that silver mercury is not listed as a hazardous substance in terms of the Hazardous Substances Act 15 of 1973 (Hazardous Substances Act). Although the defendant offered only a bare denial regarding the matter of arrest and detention, it was ultimately acknowledged *in curia* that both the arrest and the two-day detention were unlawful. The quantum now lies for adjudication.

[4] The parties agreed to address the quantum of alleged damages to the plaintiff's vehicle and the quantum related to items reported missing from the plaintiff's possession separately. These issues were formally ordered separated in terms of rule 33(4) of the Uniform Rules of Court.

[5] During the argument of the matter, counsel for the plaintiff conceded that the ownership of the Kruger Rand that is alleged to be stolen was not proven by the best evidence available. The plaintiff only had a photo of the coin introduced into evidence, notwithstanding his averment that he had verification of purchase. He did not supply it to his legal team or court and neglected to do so until now. The ownership and existence of said coin have not been proven.

Dispute

[6] In sum, the following issues are in dispute:

- (a) The damages award for plaintiff's claim for unlawful arrest and detention.

- (b) The merits of the assault, and if liability should follow, the damages award for said assault.
- (c) Damage to the vehicle whilst in the care of the defendant and the liability and nature thereof.
- (d) Whether the items claimed by the plaintiff were in the vehicle and lost whilst in the care of the defendant, and whether the defendant carries the liability therefor.

[7] I will first and foremost portray the evidence adduced at trial. The case for the plaintiff consisted of the *viva voce* evidence of the plaintiff, Lesoale Soldaat Kalake (Mr Kalake), Lucky Sizwe (Mr Sizwe), Doctor SZ Molatolisi and one Mrs Malephane. The plaintiff handed in numerous exhibits.¹ The Minister of Police (defendant) called one witness, Tseko Moss Nkomo. The pleadings will be noted and each issue, along with the applicable law, will be addressed individually hereafter.

Summary of the evidence

Plaintiff's case

Mr Lesoale Soldaat Kalaka

[8] Mr Kalake, aged 42 was, at the time of his testimony, employed as a business analyst. Following the completion of grade 12, he earned a BSc degree in Computer

¹ Exhibit A: Cover of the docket (Handed in by agreement between the parties)

Exhibit B: Certificate of registration of the motor vehicle as proof of ownership (Handed in by agreement between the parties)

Exhibit C: Statement by the plaintiff dated and commissioned on 24 December 2024 (Handed in by agreement between the parties)

Exhibit D: Proof of ownership of mercury: receipt of sale. (Handed in by agreement between the parties)

Exhibit E: E1 to E41 photos of property claimed (Handed in by agreement between the parties)

Exhibit F: SAP 13 register.

Exhibit G: Indemnity form for the vehicle.

Exhibit H: J88, Medical – legal examination report.

Exhibit I: Vehicle Seizure Statement

Science and Statistics in 2004. He subsequently obtained an honours degree and a master's degree. At the time of his testimony, Mr Kalake was pursuing a PhD.

[9] The canister with the mercury, that caused the consternation, arrest and this case, was in his possession for the purpose of his PhD studies. He knew and realised that he did not have to have any special authority to possess the mercury and did explain it to the officers on the scene. They claimed that they embarked on the operation because they were looking for illegal drugs and firearms supposedly in the possession of the plaintiff.

[10] The arrest happened on 10 August 2021, whilst the plaintiff was parked at the Sechaba Mall in Bethlehem at around 20h30 in front of the Engen Garage after traveling from his home in Pretoria. He was on his way to visit his parents' house in Senekal. Two passengers accompanied him. The reason for stopping at this location was to drop off the two passengers.

[11] Prior to departing from his home in Pretoria, the plaintiff met with his friend, Mr Lucky Sizwe, who accompanied him on the journey to Vanderbijlpark. After Mr Sizwe disembarked at Vanderbijlpark, the plaintiff continued further and picked up two additional passengers needing a lift to Bethlehem.

[12] At the scene of the arrest, the plaintiff was ordered by the SAPS to get out of his vehicle. When he enquired as to what was happening, a police official opened the plaintiff's door (he was the driver) and forcefully grabbed him and ordered him to lie on the ground. The SAPS member used his knee to press the plaintiff to the ground and he then handcuffed him. The SAPS member pulled the plaintiff into a

standing position; grabbing and using the handcuffs already placed on his wrists to do so. He was violently pushed against his vehicle.

[13] The plaintiff was informed that his vehicle will be searched for firearms and drugs by a Sergeant Mogasi. He commenced the search without the permission of the plaintiff. The container containing silver mercury was located on the backseat. To reiterate, the plaintiff explained that he was allowed to be in possession hereof, without any permit needed, and explained that he bought the mercury for research purposes pertaining to his PhD. The purchase invoice (Exhibit D) was in the plaintiff's pocket.

[14] The search continued and members of the defendant placed some items found in the vehicle on the ground. These items included a drill and a toolbox. When the plaintiff complained about damage caused there and then to his vehicle because of their conduct during the search, he was pushed to the ground again and kicked against his head with the SAPS officers proclaiming that he thinks he is clever. Plaintiff was slapped in his face when he was confronted with his proof of purchase for the mercury stating that it was fake.

[15] One Motlaung arrested the plaintiff, placed him in a police vehicle, and took him to the Bethlehem police station. The plaintiff saw his vehicle and property remained at the garage under control of the SAPS members. At the station, Officer Magesane issued the plaintiff a 'Notice of Rights', indicating that the plaintiff was being detained for possession of mercury in violation of the Hazardous Substances Act.

[16] Mr Kalake's difficulties persisted upon arrival at the police station, where he was 'processed' and placed in a cell. He reported his concerns regarding the treatment received, including an allegation of assault, to the officers on duty; however, they declined to record an assault charge. The plaintiff stated that the cell contained about 19 to 22 inmates during the Covid-19 pandemic. Protective masks were not supplied, toilets were inoperative and a bucket system was implemented. Some inmates had vomited on the floor, there was no access to running water, and the blankets available were unclean and unusable. The buckets became fuller as they had to use it, and it was unbearable. Additionally, the plaintiff was denied the opportunity to phone his legal representative or family. He remained in the cells for two nights prior to being brought before the court.

[17] At court, around 16h00, two days after his arrest, following a decision by the prosecutor, the plaintiff was returned to the police station and then released. At the station, the plaintiff received his wallet and shoelaces. When he asked about his vehicle, he was told it had been taken to the defendant's impound yard in Bloemfontein.

[18] The plaintiff, not feeling well, consulted a doctor the following day and complained of 'scratches and cuts' to his skin, as well as chest and ribcage pains. The attending doctor completed a J88 form (Exhibit H) which plaintiff submitted when opening a case of assault against members of the defendant (Exhibit A and Exhibit C of the Assault Docket). The J88 was also provided to Mr Sefate from the Independent Police Investigative Directorate (IPID). The J88 report confirms some injuries.

[19] Crucial is that the last witness in the case for the plaintiff confirmed the assault on the plaintiff. She testified that the plaintiff was kicked when he was on the ground. She was also slapped. She realised he was assaulted because she heard him ask why they were beating him.

[20] The vehicle was not returned until 16 September 2021 because the defendant refused to release it until the prosecutor had officially withdrawn the charges against the plaintiff (proof of ownership was provided as Exhibit B). The vehicle incurred substantial damage during the period it was in the defendant's possession. This included damage to the bumpers and body panels, side mirror, the battery being replaced with an older one, and the tyres being swapped for older, inferior ones.

[21] The plaintiff's uncontested testimony is that one Captain Mofokeng told him he had to sign a release form (Exhibit G, the indemnity form) before he could view or access his vehicle. The plaintiff referred the Court to photographs taken by him on his cellphone of the damage to the vehicle after said was released to him. These photographs were accepted into evidence as exhibits E1 to E41.

[22] The evidence as to the damage was corroborated by Mr Sizwe. Upon questioning by the Court as to the condition of the plaintiff's vehicle, Mr Sizwe stated that he saw the vehicle 5 to 6 weeks after the incident. He testified that the vehicle was damaged and not in the same condition as when he was a passenger on the day of the arrest. He referred to damage to the bumpers, the mirror, dents and interior damage which were not present on 10 August 2021.

[23] The damage caused to plaintiff's vehicle whilst in possession of defendant was depicted in, specifically, the photographs as per E4, E16 to E38. The plaintiff included the damages and missing items in his report to Captain Essau and Warrant Officer Dhlamini in the case opened against members of the defendant. He described the damage in detail during his *viva voce* testimony. Captain Smith informed the plaintiff that, since there were no cameras monitoring the area where the plaintiff's vehicle was stored in the impound yard, the investigation and case would be closed.

[24] The evidence of the plaintiff shows that the following items were in the plaintiff's vehicle before the search and seizure and were not subsequently returned to the plaintiff:

- (a) A RS Pro 84-piece toolbox and set as depicted on exhibit E1.
- (b) Seven collectors' R200 notes as per exhibits E2 and E3.
- (c) A canister containing mercury.
- (d) A 1965 silver rand coin and a 1965 silver 50 cent coin: Exhibits E8, E40 and E41.
- (e) A Makita Drill HR4002: E9, E10 and E11.
- (f) Case wherein coins and notes were placed.
- (g) A collectors' 1931 3rd tickey cent: E14 and E15.
- (h) A Nokia Cellphone and a memory stick (As recorded in the SAPS 13 register in the case docket).

[25] The plaintiff testified that he planned to store his valuable coin collection, that consisted of some inherited pieces, at his parents' home for safekeeping before traveling to China for his studies. He had hidden the coins and notes in a blue coin

box located next to the driver's seat in his vehicle in the consol. It is important to note here that the only proof he had and the best evidence to ownership is the evidence that he collected the coins and accumulated it by inheritance and exchange with other collectors. His friend that testified later, Lucky Sizwe, confirmed the box with the coins was in the consol in the car. He slept over at the plaintiff's house the evening before departure and helped with the packing of the car. He saw some of the coins and remembered the 'old rand coin', 50 cent coins, an apparent Kruger Rand and small tickey. There were also some R200 notes. They were together when the collection of monies was put in the box by the plaintiff. Sizwe even explained the way the money was individually packaged. The witness had known for many years that the plaintiff collected the 'old money' since he 'loved to tell me about it'.

[26] In summary, the plaintiff's evidence demonstrates that both the claim of property, ownership and the allegation of assault remain unrefuted. The conditions in the cells during the plaintiff's incarceration have not been challenged either. The defendant closed its case without presenting testimony from any relevant officers; those who searched or arrested the plaintiff; those who forced the plaintiff to the ground; those who searched or drove the plaintiff's vehicle to the police station; or those responsible for the impound yard where the vehicle was held for over a month. Before his appearance, the plaintiff ensured that subpoenas were issued to members of IPID who possessed the J88 form and certain witness statements contained within the IPID assault docket. The IPID members attended Court but were only able to produce a partial copy of the docket pertaining to the plaintiff's case against members of the defendant, which included allegations of assault, malicious damage to property, and theft.

Mr Sibolile Lucky Sizwe

[27] Mr Lucky Sizwe, was 38 years old when providing his testimony. At that time, he resided in Kroonstad. He has known the plaintiff for over five years and maintained a strong friendship throughout. On 9 August 2021, he stayed overnight at the plaintiff's residence pursuant to their agreement that he would accompany the plaintiff by car as far as Vanderbijlpark the following morning.

[28] He is thoroughly familiar with the plaintiff's vehicle, which was a gold Toyota Corolla. When questioned about the vehicle's condition, he described it as a 'complete vehicle without any issues'. In response to detailed inquiries from the Court regarding the alleged damage, he maintained that no such damage was present on the day of their departure. In addition, on questioning by the Court as to the condition of plaintiff's vehicle, Mr Sizwe stated that he saw the vehicle 5 to 6 weeks after the incident. He testified that the vehicle was damaged and not in the same condition as when he was a passenger on the day of the arrest. He referred to damage to the bumpers, the mirror, dents and interior damage which were not present on 10 August 2021.

[29] He assisted the plaintiff with loading the toolbox and drill into the vehicle. He stated that he was aware of the blue box containing the collector's coins and notes, as he and the plaintiff had previously reviewed the collection at the plaintiff's residence. He indicated that the plaintiff was an enthusiastic coin collector who frequently discussed his collection. Furthermore, he confirmed that the plaintiff had placed the blue box in his vehicle prior to their departure.

[30] When questioned regarding the incident, Mr Sizwe stated that he was only transported as far as the Vanderbijlpark/Vereeniging offramp and was not present at the time of the arrest. He further indicated that Mr Kalake contacted him some time after the arrest to inform him of the events that had occurred.

Dr SZ Molatolisi

[31] Dr Molatolisi stated that he examined the plaintiff on 13 August 2021 and completed the J88 medical form (Exhibit H). The plaintiff reported experiencing chest pain. Upon examination, Dr Molatolisi observed chest contusions, abrasions, and noted that the plaintiff appeared stressed during the consultation following allegations of assault by members of the SAPS. Dr Molatolisi testified that the examination took place three days after the alleged incident and opined that the injuries would likely have been more pronounced on the day of the assault. He further indicated that the injuries were consistent with blunt force trauma. The testimony provided by Dr Molatolisi was not challenged.

Mrs Malephane

[32] At the time of her testimony, Mrs Malephane was a 66-year-old unemployed woman residing in Klerksdorp. Her acquaintance with the plaintiff is limited to having received transportation from the plaintiff on the day of the incident.

[33] She stated that at around 19h30 on 10 August 2021, she was a passenger in the plaintiff's vehicle, which was parked at a garage in Bethlehem. She was waiting there for someone else to pick her up and continue her journey. While she waited, several police officers approached and instructed everyone in the vehicle to exit and lie face down on the ground. The SAPS officers explained they were

conducting a search for firearms. While she was on the ground, a female officer slapped Mrs Malephane. She also observed a male officer kicking the plaintiff as he lay on the ground, and saw Mr Kalake being slapped after he asked: 'Why are you beating me?'.

[34] She testified that the police searched the vehicle of Mr Kalake, and she noticed certain items being removed from the vehicle, such as a red toolbox, a black cylinder/container, a spare wheel and a blue drill.

[35] Mrs Malephane and the plaintiff were thereafter arrested and taken to the police station. Mrs Malephane later made a statement to IPID confirming the events. She sat at the police station the whole night. In the morning, they were released; that was herself and the other gentleman in her company.

[36] As to the condition of plaintiff's vehicle, she testified that it looked to be 'all right' and she did not notice any damage or dents to the vehicle prior to their arrest. She stated that the vehicle 'looked new'. She was adamant during cross examination that she saw the car when it was parked in Vereeniging. She also saw it when she went to the toilet, and she would have noticed if it was damaged. She would have noticed if the rear bumper was missing. She did not know if the car was new 'but by the look it looked new'. She did not notice any dents.

[37] Mrs Malephane's testimony about the assault, the vehicle's contents, and its condition was, in essence, unchallenged. No alternative account was presented to contest her evidence on any of these points.

Defendant's case

Tseko Moss Nkobo

[38] He is employed at the SAPS in Bethlehem. He has been so employed for 13 years at the time of his testimony and holds the rank of sergeant.

[39] On 10 August 2021 the plaintiff was arrested. The witness was part of the detail that arrested the plaintiff. His colleagues from the DPCI Hawks arrived with information about the sale of firearms and diamonds that are to take place at a mall in town. They requested assistance and described the vehicle to them and where it will be parked. He could not recall the registration number that was supplied.

[40] On arrival they approached the vehicle. The captain that led the operation had a discussion with the person that was driving the car. The people inside the vehicle were requested to come out of said vehicle. It was then explained to the driver that it is requested that the vehicle be searched. 'He said yes, he has no problems'. There were four people in the vehicle: one female and three males.

[41] The plaintiff started using 'uncalled for words and he was shouting'. He alighted and was requested to lie down to be searched. The plaintiff that was the driver, said he has injuries he cannot lie down. Thereafter a colleague assisted him to lie down. It is not true that the plaintiff was pulled and dragged out of the vehicle. The purpose of having him lying down was to keep him under control since he was unknown to them and for him to be searched properly. They were searched.

[42] Thereafter the driver was told to get up. He was told that the vehicle was going to be searched. He stood beside the witness's colleague so he could see how

the vehicle is searched. The plaintiff was there when the vehicle was searched. Mercury was found on the back seat. It was the only item that was found to be suspicious. The plaintiff was asked about it. He confirmed it was his. He explained how he purchased it.

[43] The vehicle was taken to the Bethlehem police station. It was after the suspicious mercury was found that the car was taken to be booked into the so-called SAP 13-store. Regarding the processing of the vehicle, a seizure statement is used (SAP 430a). Each vehicle that is booked into SAP 13 must be with this form. It is to ascertain and establish the condition of the vehicle when it arrives and to note the contents inside. The vehicle was not damaged during the arrest. It was stationary during the search. There was no reason to, or action that could cause damage.

[44] During cross examination the witness emphasised that the plaintiff was not a danger to them but uncooperative and using vulgar language. The witness did not see any assault on the plaintiff. He was not watching the situation with the plaintiff the whole time. It was not possible because he was on the other side of the vehicle with the passengers.

[45] The reason for cuffing the plaintiff was due to the reports of firearms. The witness did not search the vehicle. One of the SAPS members on the scene drove the car to the police station. He estimated that they were at the scene for about 15 minutes. At the station the vehicle was examined in the presence of the plaintiff. The plaintiff refused to sign the form. During cross examination it was put to

Sergeant Nkobo that there are discrepancies about the timeline of his version. The arresting statements indicate that plaintiff was arrested at 20h30 at the garage.

[46] However, the vehicle seizure statement that Sergeant Nkobo completed at the police station also reflects a time of 20h30. The arrest took approximately 20 minutes, and the police station is another 5 minutes away. The seizure statement containing detail of the damage, type of battery, type of tyres etc. would have taken a considerable time to complete. He could not give an estimate of how long it took to inspect plaintiff's vehicle.

[47] When questioned as to why the plaintiff did not sign the seizure statement indicating damage to the vehicle, he testified that people who are not satisfied with the detail in the statement normally refuse to sign. It is the argument of the plaintiff that it is evident that this document could not have been completed at 20h30 on the night of the arrest and was not presented to plaintiff for his signature. Sergeant Nkobo would also have recorded that plaintiff refused to sign if it happened.

[48] The plaintiff correctly concluded and argued on the evidence of the witness that Sergeant Nkobo could not give evidence regarding the plaintiff's assault as he could not see the plaintiff on the ground; he could not give evidence as to what items were in the vehicle as he did not search the vehicle; he did not drive plaintiff's vehicle to the SAPS station, and his time frames regarding the arrest and inspection of plaintiff's vehicle do not accord. The fact that plaintiff's signature is absent from the seizure and inspection form further confirms the improbabilities of the version of Sergeant Nkobo.

[49] It was put to the witness by the plaintiff that the only form that he was forced to sign was the release form. He does not know about the seizure form. The witness denied this and indicated that he cannot testify about the release of the vehicle since he was not present.

The arguments

[50] The pre-existing knee injury of the plaintiff argued by the defendant is not related to the damages claimed for the assault. It was not addressed during the evidence of the plaintiff and with Dr Molatolisi. It does not have any effect on the merits.

[51] The defendant's arguments and evidence regarding reasonable force were unsuccessful. The onus is on the defendant, and they failed to call any of the SAPS officers, mentioned by name, who arrested and allegedly assaulted plaintiff. There was neither a claim nor any proof provided to support the use of 'reasonable' force.

[52] As to the evidence of the damage to the vehicle by Mrs Malephane it remains a reality that her evidence stands uncontested and is corroborated by the plaintiff and Mr Sizwe.

[53] Counsel for the plaintiff is correct in his submission during argument that the plaintiff testified that he was instructed to sign the indemnity release form before he was allowed contact to his vehicle, more specifically before he was allowed to even see his vehicle. The plaintiff's evidence was not challenged. It is not open for defendant to contest the unchallenged evidence in closing argument. The witness for the defendant that was involved here was not called to testify.

[54] The fatal contradiction in the case for the defendant is that the defendant on the one hand argues that the vehicle was returned to plaintiff on 16 September 2021 ‘in good condition’ as per page 102 of the documents bundle (the release form), There were not any defects. On the other hand, however, defendant argues that the vehicle, when seized on 10 August 2021, had extensive damage as recorded on page 88 of the documents bundle (the unsigned seizure statement). This shows the inconsistency of its version and irregularities contained in the docket. As counsel for the plaintiff argued; it is non-sensical to argue that plaintiff vehicle was seized in a damaged state by defendant, but then to argue that when plaintiff’s vehicle was released it was in a good condition.

[55] No evidence was presented by the SAPS officers who drove the plaintiff’s vehicle to the police station, and who were in control of plaintiff’s vehicle at the impound yard where the vehicle was stored for more than a month. This is crucial evidence that could have negated the version of the plaintiff. The evidence of Captain Steyn on the issue was not adduced. The argument that the plaintiff could have damaged his own vehicle is preposterous. The evidence of the battery, tyres and the rest is too detailed.

[56] It was established and substantiated that the plaintiff promptly filed a complaint regarding the alleged assault, the damage to his vehicle, and the items not returned.

[57] The defendant attracted a legal duty of care with regards to the seized items. The defendant breached its legal duty of care entitling plaintiff to the damages sustained because of the breach.²

[58] The plaintiff managed to prove on a balance of probabilities that the items claimed to have been lost was in the vehicle and was his property. His evidence stands unrefuted and was corroborated by Mr Sizwe. The witness for the defendant confirmed that he was not the officer who searched and seized plaintiff's vehicle and other property. He only completed the unsigned seizure form at the police station, and it was shown to be unreliable and uncorroborated.

[59] The only item that lacks proof of ownership is the Kruger Rand, and the concession was correctly made by counsel for the plaintiff.

Conclusion

[60] The evidence for the defendant on all the issues is scanty, and their witness was not of much value given the evidence in the case of the plaintiff that stands corroborated. The case for the plaintiff must be accepted. The veracity cannot be questioned. This brings me to the different claims.

The pleadings

[61] The claims for the plaintiff as per the pleadings are as follows:

(a) Claim 1 – Unlawful arrest and detention: As a result of the unlawful arrest and detention the plaintiff suffered damages in the amount of R250 000.00 for (a)

² *Ndobe v Minister of Police* (14/22926) [2022] ZAGPPHC 845 (21 October 2022) para 1.

deprivation of plaintiff's freedom, (b) *contumelia*, (c) emotional stress and psychological trauma and (d) embarrassment suffered by the plaintiff keeping him in a holding cell and being arrested in front of the public.

(b) Claim 2 – Assault: As a result of the aforesaid assault the plaintiff suffered the following: (a) abrasions to his knees and ribs, (b) swelling and bruising to his ribs and knees and (c) suffered aches and pain and bruises and *contumelia*. Plaintiff is seeking the amount of R100 000.00 for damages.

(c) Claim 3 – Loss and damage to property: It is alleged by the plaintiff that defendant unlawfully and negligently caused the loss of the plaintiff's property, alternatively failed to properly execute the duty of care and damage to the plaintiff's property and more specifically in that they (a) failed to properly execute the duties of care by protecting and taking diligent care of the plaintiff's motor vehicle, (b) failed to prevent anyone at the SAPS 13 holding facility, from removing the plaintiff's tyres, battery and car jack. As a result of the above the plaintiff suffered damages to the motor vehicle in the sum of R16056.09 (The damages to the car were testified about and depicted in the photos handed in during the trial) and R1 850.00. It was further pleaded by the plaintiff in relation to claim 3 that on the same day the following items were in addition stolen from his vehicle:

- (i) '8 Gigs of transparent unique memory sticks for research for the Plaintiff's PHD degrees'.
- (ii) Blue coin box.
- (iii) One slabbed Kruger Rand.
- (iv) One slabbed 50 Cent South African collectors' coin.
- (v) One slabbed R1.00 South African collectors' coin.
- (vi) One 3rd tickey South African collectors' coin.
- (vii) Seven R200 notes signed by Governor Tito Mboweni.

- (viii) One Makita drill HR 4002.
- (ix) One RS Pro 84-piece mechanical box set.
- (x) Two and a half litres of silver mercury.
- (xi) One personal Nokia cell phone.

Decision on the issues

The damages award for plaintiff's claim for unlawful arrest and detention & the merits of the assault, and the damages award for said assault.

[62] The issue of arrest and detention was conceded by the defendant. The discussion of the evidence above shows that the plaintiff established on a balance of probabilities that he was assaulted. The damages award must be determined and on the prevailing law and the specific facts of the case.

[63] Counsel for the plaintiff suggested that the quantum be compounded and to be between R200 000.00 and R250 000.00. Counsel for the defendant maintains the amount of R80 000.00 to be a fair and reasonable award for damages in respect of the arrest and detention. He denied that the assault was proven.

[64] I introduced the plaintiff in the summary of his evidence: Mr Kalake, aged 42 was employed as a business analyst. Following the completion of grade 12, he earned a BSc degree in Computer Science and Statistics in 2004. He subsequently obtained an honours degree and a master's degree. At the time of his testimony, Mr Kalake was pursuing a PhD.

[65] The personal rights that were infringed lies at the heart of the Constitution of the Republic of South Africa, 1996; namely personal liberty and the right to the

protection of physical integrity and property. An award must reflect the seriousness of the infringement in all its facets on the facts of the case. The balance disturbed must be regained. The emphasis is on judicial balance, and this does not suggest that the amount for compensation is to enrich the aggrieved party.³

[66] Counsel for the parties referred to caselaw that contributed to establish the quantum of the award here. I will not reiterate it. There is an exposé in the heads of argument. The Supreme Court of Appeal noted in *Brits v Minister of Police & Another (Brits)*,⁴ that:

‘[33] ... Although awards of damages made in previous decisions may serve as a guide in the consideration of an appropriate amount of damages for the injury resulting from unlawful arrest and detention, such awards are not to be followed slavishly, for every case must be determined on its facts. It must be borne in mind that the primary purpose of an award of damages for unlawful arrest and detention is not to enrich the aggrieved party but to offer him or her some solatium for their injured feelings.

[34] In *Kammies v Minister of Police and Another*, the plaintiff was detained for three days and awarded damages in the sums of R70 000. In *Rahim and Others v Minister of Home Affairs*, this Court awarded damages ranging from R3 000 for four days unlawful detention and R20 000 for 30 days to R25 000 for 35 days’ unlawful detention. In *De Klerk v Minister of Police*, the Constitutional Court considered an amount of R300 000 for approximately seven days’ detention to be fair and reasonable. In *Mahlangu and Another v Minister of Police*, the Constitutional Court awarded damages in the amount of R500 000 for an unlawful detention that lasted eight months and ten days. Having considered all the facts of this case, including the age of the appellant, the

³ *Minister of Safety and Security v Tyula* (327/2008) [2009] ZASCA 55; 2009 (5) SA 85 (SCA); 2009 (2) SACR 282 (SCA); [2009] 4 All SA 38 (SCA) (27 May 2009) para 26; *Minister of Police v Dunjana and Others* (CA 117/2021) [2022] ZAECKMHC 88; [2023] 1 All SA 180 (ECG); 2023 (2) SACR 486 (ECM) (25 October) para 35; *Rudolph and Others v Minister of Safety and Security and Others* (380/2008) [2009] ZASCA 39; 2009 (5) SA 95 (SCA); 2009 (2) SACR 271 (SCA); [2009] 3 All SA 323 (SCA) (31 March 2009) para 27 and *Brits v Minister of Police & Another* (759/2020) [2021] ZASCA 161 (23 November 2021) (*Brits*).

⁴ *Brits*.

circumstances of his arrest, the relatively short duration of the detention, I consider an amount of R70 000 to be an appropriate award of damages for his unlawful arrest and detention.’

[67] The Supreme Court of Appeal in the case above ordered the defendant to pay R70 000.00 to the plaintiff. This was now in 2021. The order of this Court is in 2025. The facts here are different. The plaintiff in *casu* was arrested and detained, unlawfully so, between 20h30 on 10 August 2021 until his release on 12 August 2021 at 16h00. It is about 44 hours. The plaintiff was innocently on his way to his family when the catastrophe occurred.

[68] To reiterate; the plaintiff stated that the police cell was filled to capacity with about 19 to 22 inmates during the Covid-19 pandemic. Protective masks were not supplied, toilets were inoperative and a bucket system was implemented. Some inmates had vomited on the floor, there was no access to running water, and the blankets available were unclean and unusable. The buckets became fuller as they had to use it, and it was unbearable. Additionally, the plaintiff was denied the opportunity to contact his lawyer or family. He remained in the cells for two nights prior to being brought before the court.

[69] The plaintiff was pushed to the ground, handcuffed, dragged to his feet by the handcuffs, kicked and slapped. This was during the arrest that was conceded to be unlawful. The plaintiff reported experiencing chest pain. Upon examination, the physician that testified documented the presence of chest contusions and abrasions, noting that the plaintiff appeared distressed throughout the consultation and assessment following his allegation of assault by members of the SAPS. The

plaintiff suffered from the injuries whilst at the same time being incarcerated in the appalling conditions described above and for almost two days.

[70] In *Maphoto and Others v Minister of Police and Another*,⁵ it was held that:

‘[29] The authors of Visser & Potgieter *Law of Damages* have extracted from South African case law the following factors which can play a role in the assessment of damages:

“In deprivation of liberty the amount of satisfaction is in the discretion of the court and calculated *ex aequo et bono*. Factors which can play a role are the circumstances under which the deprivation of liberty took place; the presence or absence of improper motive or ‘malice’ on the part of the defendant; the harsh conduct of the defendants; the duration and nature (eg solitary confinement or humiliating nature) of the deprivation of liberty; the status, standing, age, health and disability of the plaintiff; the extent of the publicity given to the deprivation of liberty; the presence or absence of an apology or satisfactory explanation of the events by the defendant; awards in previous comparable cases; the fact that in addition to physical freedom, other personality interests such as honour and good name as well as constitutionally protected fundamental rights have been infringed; the high value of the right to physical liberty; the effects of inflation; the fact that the plaintiff contributed to his or her misfortune; the effect an award may have on the public purse; and, according to some, the view that the *actio iniuriarum* also has a punitive function”.

[30] Section 35(2)(e) of the Constitution provides as follows:

“(2) Everyone who is detained, including every sentenced prisoner, has the right – (e) to conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment”.’

⁵ *Maphoto and Others v Minister of Police and Another* (A3172/18) [2019] ZAGPJHC 296 (29 August 2019).

[71] Given the facts, the factors alluded to and the caselaw I was referred to by the parties I deem fair compensation to be a total amount for the arrest, detention and assault as R180 000.00.

Damage to the vehicle & loss of property

[72] The evidence presented clearly showed the nature of the damage to the vehicle and confirmed the loss of certain property. The liability of the defendant stands as per the evidence adduced by the plaintiff during his *viva voce* evidence in the trial. No evidence was provided to rebut the plaintiff's initial proof.

[73] As regards costs, there is no reason to depart from the ordinary rule that costs follow the result.

Order

[74] In the result, the following order is granted:

- 1 The defendant is liable for damages suffered by the plaintiff for unlawful arrest, detention and assault.
- 2 The defendant is ordered to pay the plaintiff an amount of R180 000.00 (one hundred and eighty thousand rand) in respect of the plaintiff's claim for unlawful arrest, detention and assault.
- 3 The defendant is ordered to pay interest on the amount in para 2 at the applicable rate of interest calculated from the date of service of the summons to the date of final payment.
- 4 The defendant is liable to compensate the plaintiff for the loss of the following items:
 - 4.1 A RS Pro 84-piece toolbox and set.

- 4.2 Seven collectors' R200 notes.
- 4.3 A canister containing mercury.
- 4.4 A 1965 silver R1.00 coin and a 1965 silver 50 cent coin.
- 4.5 A Makita Drill HR4002.
- 4.6 A container wherein coins and notes were stored.
- 4.7 A collectors' 1931 3rd 'tickey' coin.
- 4.8 A Nokia Cellphone and a memory stick.

5 The defendant is liable to compensate the plaintiff for the damage caused to his vehicle as proven.

6 The quantum of damage pertaining to paras 4 and 5 is to be proven in due course as separated and the matter is postponed to the Pre-Trial Roll, 23 February 2026 at 14h15.

7 The defendant is to pay the costs of the trial on a party and party scale to be taxed on scale B. Costs to include the drafting of heads of argument. The costs of travelling and accommodation of the plaintiff and his witnesses are referred to the Taxing Master. All costs reserved are unreserved and to be paid by the defendant.



M OPPERMAN
JUDGE OF THE HIGH COURT

Appearances

For the plaintiff:	JC Van Eeden Groenkloof Chambers
Instructed by:	Loubser Van Wyk Incorporated, Pretoria c/o Jacobs Fourie Incorporated Bloemfontein
For the defendant:	P Chaka Bloemfontein
Instructed by:	State Attorney Bloemfontein.