

THE REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

APPEAL CASE NO: A2025-014154
COURT A QUO CASE NO: 2021-40219

DELETE WHICHEVER IS NOT APPLICABLE

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

....12/12/2025.....
DATE

.....
SIGNATURE

In the matter between:

MINISTER OF POLICE

APPELLANT

and

MAAKGANYE MATRON MATHUNYANE

FIRST RESPONDENT

TIMOTHY SETSHWAHLA MASILELA

SECOND RESPONDENT

JUDGMENT

NKOENYANE AJ:

INTRODUCTION

1. This is an appeal against the quantum of damages only, brought by the Appellant, the Minister of Police. The appeal is directed at the judgment and order of the Honourable Acting Judge Minnaar (the *court a quo*) handed down on the 14th of October 2024, wherein the 1st Respondent was awarded R400,000.00 and the 2nd Respondent was awarded R200,000.00 for unlawful arrest and detention.
2. The Appellant contends that the awards are grossly excessive and seeks their substitution with an award of R90,000.00 for each Respondent. The Respondents oppose the appeal and seek its dismissal with costs on an attorney and client scale.

BACKGROUND

3. The facts, for the purposes of this appeal, are largely common cause. The Respondents were unlawfully arrested at their home on the 21st of May 2021 at approximately 06h00 and were detained for a period of approximately 82 hours (three days and ten hours) until their release on the 24th of May 2021 at about 16h30, without ever appearing in court.
4. The merits of the claim (the lawfulness of the arrest and detention) were conceded by the Appellant at the commencement of the trial in the *court a quo*. The only issue before that court was the quantum of damages.

GROUND OF APPEAL AND SUBMISSIONS

5. The Appellant's grounds of appeal, as detailed in the Notice of Appeal, can be summarised as follows:

- a. The court *a quo* erred in awarding amounts that are grossly excessive for a three-day detention period.
 - b. The court misdirected itself by failing to accord sufficient weight to the absence of certain aggravating factors, such as the use of force, physical injury, proven psychological trauma requiring counselling, or malice on the part of the police.
 - c. The court erred in its assessment of the First Respondent's credibility, particularly by not treating her evidence with sufficient caution due to a contradiction in her testimony regarding a prior arrest.
 - d. The court *a quo* incorrectly introduced a punitive element into the award, misapplying the principles in ***Mahlangu and Another v Minister of Police***¹.
 - e. The court failed to adequately consider the cautionary dicta in ***Minister of Safety and Security v Seymour*** ²regarding the legitimate calls on the public purse and the principle that damages are meant to offer solace, not to enrich.
6. The Respondents, in their Heads of Argument, support the judgment of the court *a quo*. Their core submissions are:
- a. The right to freedom and security in terms of Section 12 of the Constitution³, of the person is a fundamental constitutional right, and its deprivation must be viewed seriously.

¹ *Mahlangu and Another v Minister of Police* 2021 (2) SARC 595 (CC)

² *Minister of Safety and Security v Seymour* 2006 (6) SA 320 (SCA)

³ The Constitution of Republic of South Africa, 1996, Section 12.

- b. The award is not a mathematical calculation but a discretionary exercise to fairly compensate for the infringement of constitutional rights, including dignity in terms of Section 10 and freedom in terms of Section 12⁴.
- c. The learned judge correctly considered the relevant factors from *Rahim v Minister of Home Affairs*⁵: the circumstances of the arrest, the conduct of the defendant, and the nature and duration of the deprivation.
- d. The conditions of detention, as testified to by the Respondents, were deplorable, and the Appellant provided no justification for the eighty-two (82) hours deprivation of liberty.
- e. The awards are consistent with recent comparative jurisprudence, including **Radasi v Minister of Police**⁶, in which the award was Three Hundred Thousand Rands (R300,000,00) for three (3) days, and **Claasens v Nakana and Others**⁷, in which the award was Four Hundred Thousand Rand (R400,000,00) for forty-three (43) hours.

THE LEGAL PRINCIPLES

- 7. The legal principles governing an appeal of this nature are trite. An appellate court will not interfere with a trial court's award of damages merely because it would have awarded a different amount. The power to interfere is limited to instances where the trial court:
 - a. misdirected itself on the facts or the law;
 - b. failed to consider all relevant factors;
 - c. considered irrelevant factors; or

⁴ The Constitution of the Republic of South Africa, 1996.

⁵ *Rahim v Minister of Home Affairs* 2015 (4) SA 433 (SCA) at para 26

⁶ *Radasi v Minister of Police* (5729/2019)[2021] ZAGP JHC 79

⁷ *Claasens v Nakana and Others* (137/2024) [2025] ZASCA 52

- d. where the award is so disproportionate that it can be described as "shocking" or "startlingly inappropriate" or "out of all proportion to the circumstances".
8. The assessment of damages for unlawful arrest and detention is not an exact science. As stated in **Minister of Safety and Security v Seymour**⁸:
- 8.1 "The assessment of awards of general damages with reference to awards made in previous cases is fraught with difficulty. The facts of a particular case need to be looked at as a whole and few cases are directly comparable. They are a useful guide to what other courts have considered to be appropriate, but they have no higher value than that."
9. The relevant factors to consider in making such an assessment were succinctly set out in **Rahim v Minister of Home Affairs**⁹ and include:
- a. The circumstances under which the deprivation of liberty took place;
 - b. The conduct of the defendant; and
 - c. The nature and duration of the deprivation.
10. Crucially, such awards must reflect the value that the Constitution places on the right to liberty. As stated in **Thandani v Minister of Law and Order**¹⁰:
- 10.1 "The liberty of the individual is one of the fundamental rights of a man in a free society which should be jealously guarded at all times and there is a duty on our courts to preserve this right against infringement."

ANALYSIS

⁸ Minister of Safety and Security v Seymour 2006 (6) SA 320 (SCA)

⁹ Rahim V Minister of Home Affairs 2015 (4) SA 433 (SCA)

¹⁰ Thandani V Minister of Law and Order 1991 (1) SA 702

11. I now proceed to consider whether the court *a quo* exercised its discretion judicially or whether there was a misdirection of such a nature as to justify interference with its decision.

12. The Nature of the Infringement: The starting point is the severe nature of the infringement. The Respondents were deprived of their fundamental right to liberty for eighty-two (82) hours. They were arrested at their home in the early morning, in the presence of their children, which constitutes an affront to their dignity. The Appellant provided no justification for this prolonged detention without bringing them before a court. This failure is a significant aggravating factor.

13. Absence of Aggravating Factors: The Appellant correctly points to the absence of extreme aggravating factors such as assault, torture, or proven severe psychological trauma. However, the absence of the most egregious conduct does not render a substantial award inappropriate. The core wrong remains the severe and unjustified deprivation of liberty itself. The court *a quo* was entitled to find that the mere fact of being incarcerated for over three (3) days in poor conditions, without charge or explanation, is a deeply traumatic and dignitary-affecting experience. Further the First Respondent had not offered her right to a phone call or legal services.

14. Credibility of the 1st Respondent: The contradiction in the First Respondent's evidence regarding a prior arrest was a factor for the court *a quo* to weigh. The court *a quo*, which saw and heard the witnesses, was best placed to assess her overall credibility. Its judgment shows it was alive to the evidence, and a single contradiction on a collateral issue does not automatically render a witness's entire testimony unreliable, nor does it constitute a material misdirection justifying appellate interference with the award.

15. The Purposive Role of Damages: The Appellant's argument that the court *a quo* introduced a punitive element is not entirely convincing. While the primary purpose of such damages is compensatory (*solatium*) and not punitive, our courts have consistently held, following **Fose v Minister of Safety and**

Security¹¹ and **Mahlangu and Another v Minister of Police**¹², that in cases involving the violation of constitutional rights by the state, awards must also serve a vindictory and deterrent purpose. They must signal that the rights in the Bill of Rights are real and that their violation will not be trivialised. An award that is too low would fail to reflect the seriousness of the constitutional breach. The *court a quo* reference to **Mahlangu** was to underscore this principle, not to blindly equate the facts.

16. The awards are on the higher end of the scale for a detention of this duration. The award in respect of the First Respondent is in our opinion "shockingly" disproportionate given obvious questions which arise as to the circumstances under which she was detained given that it was dark and that she probably exaggerated the conditions in the cell. That said, the amount awarded to the First Respondent should be higher than the amount proposed by the appellant given the circumstances in which she was transported. The Appellant's proposed figure of Ninety Thousand Rand (R90,000,00) per person appears, in the current legal landscape, to be inordinately low and would not adequately serve the vindictory purpose of such an award.

17. **The Seymour Principle:** The court a quo was obliged to consider the caution in Seymour regarding the public purse. However, this principle is a factor in the balancing exercise, not a trump card. The paramount duty of the court is to award fair compensation for a serious wrong. Balancing the constitutional rights of individuals against the state's financial constraints cannot result in the systemic undervaluation of fundamental freedoms.

¹¹ Fose v Minister of Safety and Security 1997 (3) SA 786 (CC) at para 95

¹² Mahlangu and Another v Minister of Police 2021 (2) SARC 595 (CC)

CONCLUSION

18. Having considered the record, the arguments of both parties, and the relevant authorities, we are persuaded that the court a quo committed a material misdirection in respect of the amount awarded to the First Respondent.

19. Consequently, the appeal partially succeeds.

ORDER

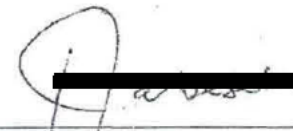
20. In the result, the following order is made:

1. The appeal partially succeeds.
2. The First Respondent quantum is reduced to R250,000.00
3. The Second Respondent quantum is confirmed at R200,000.00
4. No order as to costs.



NKOENYANE AJ
JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION,
JOHANNESBURG

I agree.



MABESELE J
JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION,
JOHANNESBURG

I agree.



VAN NIEUWENHUIZEN AJ
ACTING JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION,
JOHANNESBURG

APPELLANT'S COUNSEL: Adv P Z Mamabolo

APPELLANT'S ATTORNEYS: The State Attorney, Johannesburg

RESPONDENTS' COUNSEL: Adv F J Mamtja

RESPONDENTS' ATTORNEYS: Jean Keyser Attorneys Inc

HEARD ON: 19 NOVEMBER 2025

JUDGMENT DELIVERED ON: 12 DECEMBER 2025