

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

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

Date: **15 December 2025** Signature: _____

A handwritten signature in black ink, which appears to be "S. J. Dlamini", is written over a black rectangular redaction box.

Case no. **2016/ 28805**

In the matter between:

MPUMELELO SIBANDA

PLAINTIFF

And

MINISTER OF POLICE

1ST DEFENDANT

THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

2ND DEFENDANT

Coram: **Dlamini J**

Date of hearing: 03, 04, 05, 06 March 2025 & 03 December 2025.

Delivered: 15 December 2025 – This judgment was handed down electronically by circulation to the parties' representatives *via* email, by being uploaded to *CaseLines*, and by release to SAFLII. The date and time for the hand-down is deemed to be 10:30 on 15 December 2025.

JUDGMENT

DLAMINI J

INTRODUCTION

- [1] This is a claim for damages brought by the plaintiff against the defendants for malicious arrest, detention, and prosecution that he allegedly suffered at the hands of police officers during an incident on 20 June 2011.
- [2] The plaintiff was arrested on 20 June 2011, on various charges. It is common cause that the arrest was carried out by members of the South African Police Service ("SAPS") without a warrant. He appeared in court. After several appearances, it appears he was granted bail. Following several appearances, the charges against Mr Sibanda were withdrawn on the grounds that no witnesses were available.
- [3] It was after the charges were withdrawn that the plaintiff instituted this action against the defendants for unlawful arrest, detention, and malicious prosecution.
- [4] The plaintiff is claiming damages from the defendant as follows:-
- a) Unlawful arrest; payment of R 50 000.00.
 - b) Unlawful detention; payment R 2 450 000.00.
 - c) Malicious prosecution; R 300 000.00.
- [5] The defendants are opposing the claim and contend in their defence that the arrest, detention, and prosecution of the plaintiff were justified under the provisions of section 40 (1) of the Criminal Procedure Act¹

¹ Act 51 of 1977.

[6] The plaintiff testified, and Mr. Choice Magadi testified on his behalf.

[7] The defendants called the following witnesses to testify on their behalf: Kabelo Josiah Moerane, Andries Gotso Lesutha, Ezekial Mabe, Thomas Moloto, and Bathabile Rapopo.

PLAINTIFF'S CASE

CHOICE MAGADI

[8] I must point out that Mr Magadi was not present at the plaintiff's arrest; therefore, his evidence offered no assistance to this court in determining the dispute that arose before herein.

[9] Mr. Magadi was married to the plaintiff's late sister. He testified that he introduced the plaintiff to a certain Mr. Bezedenhout, at whose house the plaintiff was arrested. More about this below.

[10] Nothing significant came out of the cross-examination of this witness.

MPUMELELO SIBANDA ("The Plaintiff").

[11] The plaintiff testified that he was born in Zimbabwe in 1986. He completed an apprenticeship with Delta Transport Service and received a certificate for truck repair. In early May 2011, he started working as a mechanic for Mr. Bezednhout. He then faced issues with Mr. Bezednhout, who apparently refused to pay his salary. On one of those days, when he came to collect his unpaid wages, he was arrested. While at Bezednhout's house, police arrived and entered the premises. When confronted by the police, he told them he was there to collect the salary owed to him by Bezednhout. The police did not accept his explanation. The plaintiff and two others were arrested and taken to Randburg police station. Regarding his arrest, the plaintiff states that Bezedenhout told him that the police said the cars in the yard were stolen.

- [12] He appeared in court on 23 June 2011. Thereafter, he appeared on numerous occasions until he was released on bail in December 2012. Charges against him were withdrawn in April 2016.
- [13] He denies the theft allegations and claims he was unaware of anything related to the drug charges.
- [14] The plaintiff denied any involvement in drug manufacturing or the theft of motor vehicles.
- [15] Under cross-examination, the plaintiff conceded that at the time of his arrest, he did not have a passport and was illegally in the country. He also conceded that, on certain occasions, the accused were not ready to proceed, resulting in postponements and delays in the trial.
- [16] The plaintiff then closed his case.

DEFENDANT'S CASE

KABELO JOSIAH MOERANE

- [17] Warrant Officer Moerane testified that he has been a member of the South African Police Service since 1992 and has been stationed at the Crime Intelligence Division, Honeydew Police Station.
- [18] He testified that his team received information indicating drug manufacturing activities at a certain property. On 20 June 2011, His team proceeded to the said address. Upon arrival, they discovered a drug laboratory at the back of the house. He also noticed white substance, powders, and gloves at the scene. There were drums inside the premises, which contained, according to him, substances used for manufacturing drugs. The yard had vehicles that his operational team inspected and suspected of being stolen.

[19] During cross-examination, the witness admitted he made no statement contained in the docket. He also acknowledged that he personally did not verify the status of the alleged stolen vehicles.

[20] The witness insisted that the police considered everyone a suspect; therefore, they arrested the plaintiff despite the plaintiff's explanation.

ANDRIES GOTSO LESUTHA

[21] Mr. Lesutha confirmed he was a member of SAPS as a Warrant Officer until his resignation in 2023.

[22] The witness stated that at the time of the incident, he was a member of the West Rand-based Directorate for Priority Crimes Investigation. He said he took over the case from W/O Moloto, the original investigating officer who had resigned. When he assumed responsibility for the case, the investigation was already complete, and his role was to present the case in court.

[23] According to him, the docket was complete and contained fingerprints, forensic reports, photographs, statements, and warning statements.

[24] Mr. Lesutha confirmed that the case appeared in court several times and was finally withdrawn in 2016 due to the unavailability of witnesses.

EZEKIEL RAMOTEL MABE

[25] The witness confirmed that he was part of the TRT team that raided the house on the day of the incident. During June 2011, he was based in Honeydew TRT. He is now stationed with the TRT West Rand.

[26] He testified that when his team arrived at the house, he saw three men in the yard who, upon seeing the police, two of the men ran inside.

[27] Mr. Mabe confirms that he approached the plaintiff and questioned him about why he was in the house. Mr. Mabe testified that the plaintiff told him he was a mechanic and was employed by the owner of the house, Mr. Bezedenhout, to fix cars.

[28] The witness confirms that he arrested the plaintiff after reading him his rights.

[29] Mr. Mabe admitted during cross-examination that he would have arrested the plaintiff regardless of the plaintiff's explanation.

THOMAS MOLOTO

[30] The witness testified that he was assigned as the Investigating Officer in this case. Around June 2011, he was a police officer stationed at Honeydew Organised Crime until 2015.

[31] Mr. Moloto confirmed that he opposed the plaintiff's bail application because there was incomplete information about the plaintiff's status in the country and a lack of proof of residence. He stated that the plaintiff did not have a passport and was undocumented. The SAP 69 was also unhelpful because the system did not have the plaintiff's fingerprints on file.

[32] The witnesses maintained that until he left the police force, the docket was complete and the case was ready for trial.

[33] Nothing significant emerged from the cross-examination of this witness.

PROSECUTOR BATHABILE RAPOPO

[34] The witness currently works in Pretoria for the Commercial Crimes Unit and is employed by the second defendant as a prosecutor.

[35] Mrs. Rapopo testified that the docket was complete and contained all the information necessary to proceed with the trial against the plaintiff.

- [36] The main point of Mrs. Rapopo's testimony is that she withdrew the charges against the plaintiff and his co-accused in April 2016 because, although subpoenas were issued, no witnesses appeared to testify at the trial.

ISSUE FOR DISCUSSION

- [37] The issues for determination concern whether the plaintiff's arrest and detention by the officers of the first defendant were unlawful. Tied to this is the question of whether the subsequent prosecution of the plaintiff by the second defendant was unlawful. Additionally, if a finding is made in favour of the plaintiff, the determination of the appropriate damages to be awarded to Mr. Sibanda.

UNLAWFUL ARREST

- [38] Once the arresting officer had reasonable suspicion that the plaintiff had committed the offence for which he was arrested, the officer had discretion to arrest the suspect. The question that then arises is narrow: whether the arresting officer had any other means of securing the plaintiff's attendance in court other than by arresting Mr. Sibanda.
- [39] In defending a claim of unlawful arrest, four jurisdictional facts set out in Section 40 of the CPA must be pleaded.
- [40] It is trite that the onus rests on the first defendant to allege and prove the existence of justification for the arrest.
- [41] The first defendant submits that the plaintiff, together with the other occupants of the house, refused to open the gate after the police announced their presence and ordered the occupants to do so. There were pitbulls at the gate, and the police could not gain entry and had to resort to using stun grenades to gain entry.

- [42] The first defendant maintains that the plaintiff never informed the arresting officer that he was there to collect his unpaid salary from Mr. Bezedenhout; instead, he told the officer that he worked there as a mechanic.
- [43] According to the first defendant, the police officer verified that the vehicles on the premises were stolen and therefore argues that reasonable suspicion has been established and that the plaintiff was charged with a serious offence. Accordingly, the first defendant contends that the arresting officer had a reasonable belief that the plaintiff committed the offence for which he was charged.
- [44] The high point of the plaintiff's submission is that whilst Mr. Mabe conceded that he carried out the arrest of the plaintiff, he was not the person who made the decision to arrest the plaintiff. Mr. Mabe indicated that the decision to arrest the plaintiff was made by Captain Van der Westhuizen, who was never called to testify at trial, and no explanation was provided for his failure to be called.
- [45] Generally, issuing a summons to secure an accused person's attendance in court is preferable over making an arrest. However, there are circumstances in which an arrest is lawful. If the circumstances indicate that an arrest is unnecessary, then issuing a summons is appropriate.
- [46] It has been noted that the information at the disposal of the arresting officer need not be of sufficiently high quality and cogency to endanger him in a conviction that the suspect is guilty. The section in the act requires suspicion, not certainty. However, the suspicion must be based on solid grounds. Once the jurisdictional facts are satisfied, then a discretion must be exercised rationally.
- [47] It is a well-established principle of our law that the onus rests on the arresting officer to prove the lawfulness of the arrest and detention. *In Bernard v Minister of Police*² at [25], the court held that a police officer should

² 2019 (2) SACR (ECG)

investigate an exculpatory statement offered by a suspect before forming a reasonable suspicion for the purpose of a lawful arrest.

- [48] In ***Sandile Biyela v Minister of Police***,³ the SCA held that *“the arresting officer is not obliged to arrest based on a reasonable suspicion because he or she has a discretion. The discretion to arrest must be exercised properly. Our legal system sets great store by the liberty of an individual and, therefore, the discretion must be exercised after taking all the prevailing circumstances into consideration”*.
- [49] The following objective facts, which do not depend on the credibility of any witness, should be considered. There is no doubt that the scene at the house on the day of the arrest was chaotic. Acting on information, they arrived at the house, identified themselves as police officers, and asked the occupants to open the gate. The occupants of the house, including the plaintiff, who was standing in the yard and clearly saw the police officer, refused to open the gate. There were also dogs in the yard that prevented the officers from entering the premises.
- [50] It was on this basis that the police officers used stun grenades to scare the dogs and forced open the gate to gain entry into the yard.
- [51] Two of the three occupants who had been standing in the yard ran inside the house when they saw the police officers at the gate.
- [52] Upon entry in the yard, the police found drums containing substances used for drug manufacturing, thus confirming the information that the police had obtained about the house being a drug manufacturing house.
- [53] Upon further investigation, the police officers discovered that the vehicles on the premises were, in fact, stolen, including the car the plaintiff was working on.

³ [2022] ZASCA 36 (1 April 2022)

- [54] In my view, the plaintiff's explanation that he was present at the house to collect his outstanding wages from the owner, Mr Bezedenhout, is insufficient. This is because the owner was not present at the time to confirm and corroborate the plaintiff's explanation. The owner arrived at the scene much later, after the plaintiff had already been arrested and placed in the police vehicle.
- [55] In any event, taking into account the events at the scene, the police had to force their entry; they had to use stun grenades, and some of the occupants ran into the house. The police also found drug manufacturing equipment and alleged stolen vehicles on the premises. In my view, the plaintiff's explanation was insufficient, and thus his arrest was lawful.
- [56] It is also worth mentioning that at the scene, the police arrested all the suspects in the house, including the plaintiff. There was no evidence to suggest that the plaintiff was only detained for possession of alleged stolen vehicles. The evidence presented before this court indicates that the arrested persons were detained for alleged drug manufacturing and stolen vehicles.
- [57] It is common cause that the arrestor was a police official. Having regard to the circumstances that I have outlined above, I am satisfied that the police officer had a reasonable suspicion that the plaintiff had committed the offence for which he was arrested. In my view, there was no other means available but to arrest the plaintiff to secure his attendance in court. This is because the plaintiff was in the country illegally. He had no passport and no legal documents in his possession.
- [58] Considering all the circumstances mentioned above, I find that the plaintiff's arrest was lawful.

DETENTION

- [59] It is trite that the onus rests on the defendants to prove that the plaintiff's detention was lawful.
- [60] According to the first defendant, the plaintiff did not have a permanent address and was staying with a friend at the time of his arrest. The first defendant avers that the plaintiff had no fixed employment and did not possess any travel documents, which made him an undocumented immigrant in the country.
- [61] The defendant argues that, although the plaintiff testified he was granted bail, the defendant does not know the amount of bail set or who posted it for him.
- [62] The defendant maintains that the police acted on information from an informer, and based on that information, the police discovered that a drug laboratory was indeed operating in the house. The plaintiff has not disputed this fact.
- [63] Consequently, the defendants submit that, considering the circumstances of this matter, no liability should be imposed on the defendants as doing so would exceed the bounds of reasonableness, fairness, and justice. For this proposition, the defendant relies on ***Reynold & Another v Minister of Safety and Security***.⁴ ***Minister of Safety and Security v Sekhoto and Mahlangu v Minister of Police***.⁵
- [64] Mr. Sibanda contends that the Investigating Officer did not provide the prosecutor with an honest and fair account of the matter. He maintains that the police have confirmed and verified his place of residence.
- [65] The plaintiff contends that the case against him was weak; Mr. Sibanda argues that this is supported by the magistrate's comment that the case was weak. Additionally, the charge of possessing suspected stolen vehicles was, at best, tenuous.

⁴ 2011 (1) SACR 594 (WCC).

⁵ (CCT 88/20).

- [66] The plaintiff's submission in this regard is merileless. This is because, according to his own version, the plaintiff was in the country illegally. It is not even known when he entered the country or for what purpose.
- [67] Having a known address is of no moment. Mr. Sibinda has no official documents, no passport, nothing. If he hadn't been arrested, no one would have known he was in the country. The state has no record of his identity or fingerprints.
- [68] The plaintiff had no fixed employment, hence no salary and no banking information.
- [69] Mr. Sibinda does not know when his bail was set, how much it was, or who paid it.
- [70] Considering all of the above, the fact that the plaintiff was an undocumented immigrant and was arrested at the house where drug manufacturing equipment was found, including alleged stolen vehicles, made his continued detention under these circumstances justified and lawful.
- [71] Therefore, the plaintiff's claim under this heading must be dismissed.

MALICIOUS PROSECUTION

- [72] The question that arises is whether, in deciding to prosecute the plaintiff, the second respondent had reasonable and probable cause to believe that the plaintiff was guilty of the offence with which he had been charged, and that the prosecution of Mr. Sibanda was not malicious. If a finding is made that the prosecution was malicious, then the determination of the amount of damages to be awarded to the plaintiff.

- [73] The second defendant argues that the police acted on information provided by an informant, and based on that information, a drug laboratory was indeed operating in the house, a fact the plaintiff has not disputed.
- [74] Mr. Sibanda submits that he was arrested for, and should have been charged with, unlawful possession of stolen vehicles. The plaintiff argues that the defendants presented no evidence to sustain this charge. The plaintiff also asserts that the facts do not suggest he was involved in any of the drug charges.
- [75] The principles of what constitutes malicious prosecution are now well settled. The plaintiff must allege and prove that the defendant set the law in motion and instituted the proceedings. It is also necessary that the claimant prove that the defendant acted without reasonable and probable cause. The determination hinges on whether the defendant acted with malice. Lastly, the prosecution failed.⁶
- [76] A prosecutor is expected to exercise his discretion based on the information before him. The court in **State v Lubaxa**⁷ had this to say: *"Clearly a person ought not to be prosecuted in the absence of evidence upon which he might be convicted, merely in the expectation that at some stage he might incriminate himself. That is recognized by the common law principle that there should be 'reasonable and probable cause to believe that the accused is guilty of an offence before a prosecution is initiated...and the constitutional protection afforded to dignity and personal freedom seems to reinforce it. It ought to follow that if a prosecution is not to be commenced without that minimum of evidence, so too should it cease when the evidence falls below that threshold'".*

⁶ See *Minister of Justice and Constitutional Development v Moleko*, [2008] 3 All SA 47 (SCA), See also *Rudolph v Minister of Safety and Security* 2009 (5) SA 94 (SCA)

⁷ 2001 (2) SACR 703 (SCA)

- [77] It is common cause that the second defendant instituted the prosecution and charged the plaintiff. Evidence placed before this court indicates that drug manufacturing equipment and stolen vehicles were found at the house where the plaintiff was arrested. Undoubtedly, the plaintiff had a case to answer for being at the house.
- [78] The state prosecutor, Mrs. Rapopo, testified and confirmed that the docket contained all the necessary information to charge the plaintiff. It is indeed correct that charges were withdrawn against the plaintiff. The withdrawal of charges itself does not constitute unlawful prosecution. However, the charges against the plaintiff were not withdrawn due to lack of evidence; they were withdrawn because the state witnesses' non-appearance, despite being duly subpoenaed on several occasions, and their failure to attend court.
- [79] Mrs. Rapapo's evidence that the docket was complete and ready for trial was corroborated by W/O Lesutha and the investigating officer, Moloto, who testified that the docket was complete. He insisted and confirmed that the charges against the plaintiff were withdrawn due to the unavailability of the witnesses.
- [80] Significantly, although there was no charge sheet, there is no evidence before this court indicating that the plaintiff was arrested or charged solely for the alleged possession of stolen motor vehicles, separate from his co-accused.
- [81] It is my finding that the prosecution of the plaintiff was neither malicious nor unlawful.
- [82] Therefore, I conclude that the second defendant's decision to prosecute the plaintiff was based on lawful and probable grounds.
- [83] Considering all the circumstances mentioned above, the plaintiff's claim is dismissed.

COSTS

[84] I find no reason not to make an order that costs must follow the event.

[85] I therefore make the following order.

ORDER

1. The plaintiff's claim against the first and second defendants is dismissed.
2. The plaintiff is ordered to pay the defendants' costs.

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J DLAMINI

*Judge of the High Court
Gauteng Division, Johannesburg*

PLAINTIFF'S COUNSEL:

Adv. JM van Rooyen

adv.johan.vanrooyen@outlook.com

PLAINTIFF'S ATTORNEY:

Mr. K Ncube

N NDEBELE ATTORNEYS INC

thembi@nndebeleinc.co.za

DEFENDANTS' COUNSEL:

Adv. N Makopo

nmakopo33@gmail.com

DEFENDANT'S ATTORNEYS:

Mr. B Mbomvu

STATE ATTORNEY, JOHANNESBURG

e-mail: BMbomvu@justice.gov.za

Cell: 073 589 2040