

**REPUBLIC OF SOUTH AFRICA**

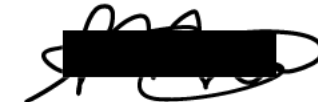


**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG**

(1) REPORTABLE: ~~YES~~/ NO

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/ NO

29/12/2025  
DATE

  
SIGNATURE

**CASE NO:39454/16**

In the matter between:

JOSE CHIVURE

PLAINTIFF

And

MINISTER OF POLICE

FIRST DEFENDANT

NATIONAL PROSECUTING AUTHORITY

SECOND DEFENDANT

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**JUDGMENT**

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*This matter has been heard in open court and is otherwise disposed of in terms of the Directives of the Judge President of this Division. The judgment and order are accordingly published and distributed electronically.*

## **BEFORE THE HONOURABLE JUDGE, MATJELE AJ**

### **INTRODUCTION**

- 1) This is an action for damages arising from the arrest and detention of the plaintiff, Mr. Jose Chivure, by members of the South African Police Service (“SAPS”) on 27 October 2014, and his subsequent prosecution on a charge of unlawful possession of gold material. It is common cause that the plaintiff was arrested without a warrant, was brought before court within 48 hours, and was released on bail on 31 October 2014.
- 2) The plaintiff’s two main claims are:
  - a) for damages based on alleged unlawful arrest and detention; and
  - b) for damages based on alleged malicious prosecution.
- 3) The first defendant admits the fact of the arrest and detention, but denies that they were unlawful. The second defendant admits that the plaintiff was prosecuted and ultimately acquitted, but denies that the prosecution was malicious or without reasonable and probable cause.
- 4) Against that background, the following issues arise:
  - a) Whether the arrest and initial detention of the plaintiff on 27 October 2014 were lawful in terms of s 40(1)(b) of the Criminal Procedure Act 51 of 1977 (“the CPA”).
  - b) Whether the plaintiff’s further detention until his release on bail on 31 October 2014 was unlawful.

- c) Whether the prosecution of the plaintiff was malicious in delictual terms.
- d) If any of the above questions are answered in the plaintiff's favour, what quantum of damages, if any, should be awarded.

## EVIDENCE

- 5) According to the plaintiff, at the time of the events, he was employed as a team leader at shaft 3 of Kloof Mine, and resided in a rented room at 19 Bontjies Street, Glenharvie, Westonaria.
- 6) On 27 October 2014, at about 05h00, after completing his night shift, the plaintiff walked home. As he reached the door of his room, he was approached by three police officers, two in uniform and one in civilian clothes. They searched his person and found nothing incriminating.
- 7) The police then asked to search his room. According to the plaintiff's evidence, he consented. The room was searched for approximately 30 to 45 minutes. A plastic packet containing what he later understood to be gold amalgam was found in his room, allegedly under his bed. When asked about it, he responded that he knew nothing about it.

- 8) The plaintiff was handcuffed and taken to Westonaria Police Station. There, the gold amalgam was weighed and booked as an exhibit at SAP 13. He was subsequently placed in a cell with other detainees. He testified that the conditions of the cell were unpleasant and that the cell was overcrowded, although he also stated that there were only five detainees in the cell.
- 9) The plaintiff maintained that he was not properly informed of the reasons for his arrest and that he was unaware of the precise charge against him at the time. He first appeared in court on 28 October 2014, and was ultimately released on bail on 31 October 2014.
- 10) During cross-examination, the plaintiff was taken to task about an interview document completed by the investigating officer, Sergeant Nyembe, in which he elected not to give a statement and indicated that he wished to speak only to his attorney, hence later represented by Ms. Amanda Nel. The plaintiff accepted that he had signed the document but claimed not to have understood what he was signing. It was also put to him that the notice of rights form, which he signed, recorded the charge and the reason for his arrest.
- 11) The plaintiff persisted in his denial that he admitted transporting the gold amalgam for illegal miners. He further suggested that he had from time to time shared the room with another person, and that the gold might be attributable to that person.
- 12) Constable Mueda testified for the first defendant that on the morning of 27 October 2014 he and Constable Magoro were on patrol in the West Rand area. They were

approached by Sergeant Nyembe of the Organised Crime Unit, who told them he had received information from an informer that an unknown male person at Glenharvie was in possession of gold amalgam without the requisite licence.

13) Acting on this information, they drove to a petrol garage close to Glenharvie to observe the area. After some surveillance, Nyembe directed them to a specific house where the suspect was allegedly residing. On arrival, they went into the main house, introduced themselves to the owner and explained that they were investigating a complaint of unlawful possession of gold amalgam. They also explained that they had no warrant as the time (approximately 05h00) made it impracticable to approach a court without defeating the object of the search, and requested consent to search the back rooms. Consent was granted by the property owner.

14) They proceeded to the back room where the plaintiff rented. They knocked, and a male voice responded "I am coming." The plaintiff opened the door. They introduced themselves as police officers, told him they had information that he was in possession of gold amalgam, and asked for permission to search the room. The plaintiff consented.

15) During the search, Mueda found a black plastic bag in a washing basket. Inside it was gold amalgam. When questioned about the plastic bag, the plaintiff, according to Mueda, admitted that he was assisting illegal miners by transporting the gold amalgam. He was then informed of his rights, arrested, and taken to Westonaria Police Station, where both he and the exhibits were processed.

- 16) Under cross-examination, Mueda rejected the suggestion that the gold amalgam had been planted in the room. He also denied that there was any indication that another person lived there with the plaintiff. He maintained that the plaintiff never told them he was sharing the room with anyone else.
- 17) Sergeant Nyembe, a member of the Organised Crime Unit focusing on illicit gold and diamonds, rhino poaching and environmental offences, corroborated much of Mueda's evidence. He received information from an informer that a male person at Glenharvie was in possession of gold amalgam.
- 18) Because of the early hour and the risk that seeking a warrant would defeat the object of the search, he requested the assistance of constables Mueda and Magoro. The officers first surveilled the area from the petrol station, then went to the identify the house, introduced themselves to the owner, explained the purpose of their visit, and requested consent to search the back rooms. Consent was granted.
- 19) At the plaintiff's room they knocked, the plaintiff responded and opened the door. They informed him of the information received, and requested permission to search his room. The plaintiff consented. Constable Mueda searched the room while Nyembe remained with the plaintiff inside the room. Constable Magoro stood outside guarding.

20)Mueda then found a plastic bag with gold amalgam in the washing basket. When Nyembe questioned the plaintiff, the plaintiff indicated that he was transporting the gold amalgam on behalf of illegal miners. The plaintiff was then advised of his constitutional rights, arrested, and taken to the Westonaria police station. At the station, the exhibits were processed, and Nyembe attempted to interview the plaintiff, but the plaintiff elected not to make a statement but to speak only to his attorney.

21)Nyembe testified that in his view nothing about the small room indicated that more than one person lived there. He denied any language barrier in his conversation with the plaintiff. He confirmed that the plaintiff appeared in court the day following his arrest.

22)During cross-examination, Nyembe denied that the gold amalgam had been planted and denied the suggestion that the plaintiff told the police he shared the room with another person.

23)Ms. Adriana Christina Viljoen, a senior regional court prosecutor, testified for the second defendant. She confirmed that she decided to enrol the matter against the plaintiff and set out the factors she considered in doing so, namely:

- a) the statement of Constable Mueda setting out the informer information, the consent to search, the finding of the gold amalgam in the room occupied by the plaintiff and the plaintiff's alleged admission that he was transporting it for illegal miners;

- b) the statement of Sergeant Nyembe, which corroborated Mueda's statement and confirmed the basis for the warrantless search under s 22 of the CPA; and
- c) the fact that the plaintiff elected not to make any statement or provide an explanation regarding the gold amalgam found in his room, instead indicating that he would speak only to his attorney.

24) On this basis, she formed the view that there was reasonable and probable cause to prosecute, and that there were reasonable prospects of a successful conviction. She emphasised that the subsequent discharge of the plaintiff in terms of s 174 of the CPA did not mean that there had been no case to answer at the time of enrolment.

## EVALUATION

25) On the material aspects, there is not a wide gulf between the parties' versions. The main differences concern:

- a) whether the police approached the plaintiff as he was about to enter his room, or whether he opened the door after they knocked;
- b) precisely where in the room the gold amalgam was found (under the bed, as the plaintiff says, or in a washing basket, as the police say);
- c) whether the plaintiff admitted transporting the gold amalgam for illegal miners, or said he knew nothing about it; and
- d) whether the plaintiff told the police that he shared the room with another person.



26) As to whether the plaintiff was outside the room, as per his version, or he opened from inside is, in my view, immaterial. On either version, the police informed him of the reason for their presence and sought consent to search the room, which he gave. What matters is that gold amalgam was found in that room. Whether under the bed or in a washing basket is neither here nor there as it was found in the plaintiff's presence. He is deliberately trying to distort information for his own gains.

27) More significant is the dispute about the plaintiff's response when confronted with the found gold amalgam. On the police version, he admitted that he transported it for illegal miners. On the plaintiff's version, he simply said he knew nothing about it. Even on the plaintiff's own version, he offered no explanation as to why the gold was in the room, other than to suggest later that someone else had been sharing the room with him, which was disputed by both defendant witnesses.

28) The plaintiff's assertion that he was not informed of the reasons for his arrest is also undermined by the documentary evidence of the written notice of rights, which he signed, as well as the interview document in which he elected to remain silent, but to speak to his lawyer.

29) On the totality of the evidence, the probabilities favour the version of the police in that: that the gold amalgam was found in the room under the plaintiff's exclusive control; and that he provided no exculpatory explanation at the time, but admitted and gave explanation why he possesses the contraband. To the extent that his later version introduced the notion of a possible roommate, it appears to be an ex

post facto attempt to distance himself from the incriminating exhibit, rather than a contemporaneous explanation offered to the police.

30) In addition, the second attempted version is that the police could have planted the contraband. If so, to what end? No reasonable explanation is given as to why the police would run an operation of this magnitude, just to falsely implicate the plaintiff alone, among many workers in the same mine. That also does not make any sense, except for the explanation tendered by Nyembe that there was a tipoff from a police informer, which was ultimately proven to be true. The plaintiff's evidence in important respects was tailored, internally inconsistent and not supported by contemporaneous documents. I accordingly regard his evidence, where it conflicts with that of the police, as unreliable.

## ISSUES

31) Against this factual background, the issues for determination can be summarised as follows:

- a) Whether the arrest of the plaintiff without a warrant on 27 October 2014 was justified in terms of s 40(1)(b) of the CPA.
- b) Whether the plaintiff's detention from the time of his arrest until his release on bail on 31 October 2014 was unlawful.
- c) Whether the institution and continuation of the criminal prosecution constituted malicious prosecution.
- d) If any of the above claims succeeded, the quantum of damages to which the plaintiff would be entitled.

## THE LAW

32) In respect of arrest without a warrant, section 40(1)(b) of the CPA authorises a peace officer to arrest without warrant any person “whom he reasonably suspects of having committed an offence referred to in Schedule 1, other than the offence of escaping from lawful custody”.

33) The well-known decision in *Duncan v Minister of Law and Order*<sup>1</sup> holds that four jurisdictional facts must exist before an arrest under s 40(1)(b) is lawful:

- a) the arrestor must be a peace officer;
- b) the arrestor must entertain a suspicion;
- c) the suspicion must be that the suspect committed a Schedule 1 offence; and
- d) the suspicion must rest on reasonable grounds.

34) In *Minister of Safety and Security v Sekhoto*,<sup>2</sup> the Supreme Court of Appeal held that once the jurisdictional facts are established, the arrest is prima facie lawful and the officer is vested with a discretion to arrest. The Constitution does not add an additional “fifth jurisdictional fact”, but the discretion must nevertheless be exercised in a rational and properly informed manner.

35) The test for “reasonable suspicion” has been articulated in a number of decisions, notably *Mabona and Another v Minister of Law and Order and Others*,<sup>3</sup> which

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<sup>1</sup> *Duncan v Minister of Law and Order* 1986 (2) SA 805 (A).

<sup>2</sup> *Minister of Safety and Security v Sekhoto* 2011 (5) SA 367 (SCA).

<sup>3</sup> *Mabona and Another v Minister of Law and Order and Others* 1988 (2) SA 654 (SE).

emphasised that a reasonable person in the position of the arrestor must critically assess information at his disposal; the suspicion must be based on “solid grounds” and not mere flighty or arbitrary conjecture. I align myself with this view.

36) At the same time, the section requires suspicion, not certainty. The information need not be of a quality that would justify a conviction at trial. The Supreme Court of Appeal in *Biyela v Minister of Police*<sup>4</sup> reiterated that the standard for ‘reasonable suspicion’ is relatively low, but must be assessed objectively and must be based on specific and articulable facts.

37) The general principles governing arrest were also summarised in *Minister of Law and Order v Hurley*,<sup>5</sup> where the Appellate Division affirmed that an arrest constitutes a serious infringement of personal liberty and must be justified by the arrestor; the onus rests on the Minister to prove the lawfulness of the arrest once it is admitted.

## Detention

38) Once a person is arrested, s 50 of the CPA requires that he be brought before a court as soon as reasonably possible, but not later than 48 hours after arrest, or, where the 48 hours expire outside court hours, on the first court day thereafter.

39) Detention prior to first appearance stands on a different footing from detention pursuant to a court order. *The Constitutional Court in De Klerk v Minister of Police*<sup>6</sup>

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<sup>4</sup> *Biyela v Minister of Police* [2022] ZASCA 36.

<sup>5</sup> *Minister of Law and Order v Hurley* 1986 (3) SA 568 (A).

<sup>6</sup> *The Constitutional Court in De Klerk v Minister of Police* 2020 (1) SACR 1 (CC).

held that the police can, in principle, be liable even for post-first-appearance detention if their wrongful conduct factually and legally causes that detention. For example, this would be by misleading the court or deliberately setting in motion a process that foreseeably results in further unjustified detention.

40) However, in the ordinary course, once a magistrate has considered the question of bail and remanded an accused in custody, responsibility for any further detention lies primarily with the court and prosecution. The police will only be liable where their culpable conduct is the factual and legal cause of continued detention. This has been emphasised in cases such as *Woji v Minister of Police*<sup>7</sup> and *Minister of Safety and Security v Tyokwana*,<sup>8</sup> where liability was imposed because the police either gave false evidence or deliberately suppressed exculpatory information in bail proceedings.

#### Malicious prosecution

41) The requirements for an action based on malicious prosecution are well established. A plaintiff must prove:

- a) that the defendant instigated or instituted the prosecution;
- b) that the prosecution was instituted without reasonable and probable cause;
- c) that the defendant acted with malice (*animus iniuriandi*); and
- d) that the prosecution terminated in the plaintiff's favour.

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<sup>7</sup> *Woji v Minister of Police* 2015 (1) SACR 409 (SCA).

<sup>8</sup> *Minister of Safety and Security v Tyokwana* 2015 (1) SACR 597 (SCA).

42) This formulation appears, for example, in *Minister of Justice and Constitutional Development v Moleko*<sup>9</sup> and *Rudolph and Others v Minister of Safety and Security*.<sup>10</sup>

43) “Reasonable and probable cause” involves both a subjective and an objective component: the defendant must have had an honest belief in the plaintiff’s guilt and that belief must be based on reasonable grounds. The classic exposition is that of *Beckenstrater v Rottcher and Theunissen*,<sup>11</sup> which emphasises that an honest belief based on reasonable grounds will shield a defendant from liability even if the prosecution ultimately fails.

44) Malice in this context entails more than negligence or even gross negligence. It requires proof that the defendant used the legal process for an improper purpose, knowing that the prosecution was without reasonable grounds, or being reckless as to that possibility.

#### REASONABLE SUSPICION

45) Applying these principles, the first question is whether, at the moment of arrest, the arresting officers held a reasonable suspicion that the plaintiff had committed a Schedule 1 offence.

46) It is common cause that arrest was effected by peace officers, and that the suspected offence – unlawful possession of unwrought precious metal under the

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<sup>9</sup> *Minister of Justice and Constitutional Development v Moleko* 2008 (3) SA 585 (SCA).

<sup>10</sup> *Rudolph and Others v Minister of Safety and Security* 2009 (5) SA 94 (SCA).

<sup>11</sup> *Beckenstrater v Rottcher and Theunissen* 1955 (1) SA 129 (A).

Precious Metals Act – is a Schedule 1 offence. The dispute centres on whether the suspicion rested on reasonable grounds.

47) The information before the police, objectively assessed, comprised:

- a) specific information from an informer that a male person in Glenharvie was in unlawful possession of gold amalgam and resided at a particular address;
- b) confirmation of that address by surveillance from the nearby petrol garage and contact with the owner of the property;
- c) the fact that, with the plaintiff's consent, the police searched the room he occupied and found a plastic bag containing gold amalgam in that very room;
- d) the plaintiff's failure, even on his own version, to provide any coherent explanation for the presence of the gold in his room, his response being that he "knew nothing about it"; and
- e) on the police version, an admission by the plaintiff that he transported the gold amalgam on behalf of illegal miners.

48) Even if one were to put the alleged admission to one side and rely only on what is common cause: informer information, confirmation of the address, the consent search, and the discovery of the gold amalgam in the plaintiff's room. These facts plainly constitute specific and articulable grounds for suspecting that the plaintiff was in unlawful possession of the gold material.

49) On the plaintiff's own version, his immediate response was to say that he "knew nothing about it" and he thereafter elected not to give any statement to the police,

choosing instead to speak only to his attorney. This afforded the officers no basis on which to discount the inference that he was in possession of the gold amalgam.

50) In *Mabona*,<sup>12</sup> the court stressed that a reasonable officer would critically analyse the information at his disposal and only entertain a suspicion that will justify arrest after such scrutiny. 'In casu', the officers did more than act on a bare tip-off: they obtained consent to search, personally found the incriminating exhibit in the plaintiff's room and confronted him with it. This is precisely the kind of checking and verification contemplated in *Mabona*.

51) The plaintiff's version that he "knows nothing" about the gold material is, if anything, damaging to his case: it underscores that he offered no alternative explanation at the time and that the objective facts pointed towards unlawful possession.

52) In *Biyela*,<sup>13</sup> the SCA again emphasised that while the standard for reasonable suspicion is low, it must be assessed against the constitutional importance of personal liberty, and it must not be an unparticularised hunch. The facts here go well beyond a hunch: they involve specific corroborated information and a physical exhibit found in the plaintiff's room.

53) I therefore find that the first defendant has established that at the time of arrest, the arresting officers held a reasonable suspicion, based on solid grounds, that the

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<sup>12</sup> *Supra*.

<sup>13</sup> *Supra*.



plaintiff had committed a Schedule 1 offence. The jurisdictional facts in Duncan<sup>14</sup> are satisfied.

54) The remaining question under s 40(1)(b) is whether the discretion to arrest, rather than to proceed by way of summons or warning, was properly exercised. In Sekhoto,<sup>15</sup> the SCA warned that courts should not treat alternative methods of securing attendance as additional jurisdictional requirements, but accepted that an arrest may still be unlawful if the discretion is exercised irrationally or for an improper purpose.

55) In the present matter, the officers were dealing with an organised crime investigation into illicit gold. The plaintiff was intercepted in the early hours of the morning, in possession of the gold amalgam in his room, and offered no innocent explanation. In these circumstances, the decision to arrest immediately rather than rely on a warrant of arrest, in my view, rational and proportionate. There is no evidence that the discretion was exercised arbitrarily or capriciously.

## ARREST AND DETENTION

### a) Unlawful arrest

56) Given the conclusion above, I am satisfied that the first defendant has discharged the onus of proving that the arrest of the plaintiff on 27 October 2014 was lawful in terms of s 40(1)(b).

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<sup>14</sup> Supra.

<sup>15</sup> Supra.

57)The plaintiff has not shown that any of the jurisdictional facts were absent, nor that the discretion to arrest was exercised in bad faith or on improper considerations. One cannot fault the arresting officers for acting on an informer tip-off that is later not borne out beyond reasonable doubt at trial, provided the suspicion at the time was objectively reasonable.

58)The claim based on unlawful arrest therefore cannot succeed.

a) Unlawful detention

59)The plaintiff was arrested on 27 October 2014, appeared in court the next day, 28 October, and was released on bail on 31 October 2014.

60)In respect of the period between arrest and first appearance, the lawfulness of the detention flows from the lawfulness of the arrest, provided the time-limits in s 50 of the CPA are respected and there is no unreasonable delay. In this case, the plaintiff was brought before court on the first court day after his arrest, well within the 48-hours limit. There is no evidence of any undue delay or arbitrary refusal to release him earlier.

61)In respect of the period after first appearance until his release on bail, the position is more nuanced. In principle, once a court orders an accused to be remanded in custody, the immediate legal cause of the detention is the court order. The police may nevertheless be liable if their wrongful conduct, such as giving false evidence or suppressing exculpatory facts in the bail proceedings, is the factual and legal

cause of the continued detention, as illustrated in *Woji, Tyokwana, De Klerk*<sup>16</sup> and *Mahlangu and Another v Minister of Police*.<sup>17</sup>

62) In the present matter, there is no evidence that the investigating officer misled the prosecutor or the court, withheld exculpatory information, or otherwise acted in a manner that causally contributed to a longer detention than would otherwise have occurred. On the contrary, the evidence indicates that the plaintiff was brought to court promptly and that ordinary remand and bail procedures followed.

63) The plaintiff bears the onus of proving that his detention was unlawful, beyond the mere fact of detention following arrest. He has not demonstrated that the statutory time limits were exceeded or that his continued detention after first appearance was attributable to wrongful conduct by the police or prosecutors of the kind condemned in *Woji, Tyokwana and De Klerk*.<sup>18</sup>

64) In these circumstances, I find that the plaintiff has failed to prove that his detention, whether prior to or after first appearance, was unlawful. It follows that the claim based on unlawful detention must also fail.

#### MALICIOUS PROSECUTION

65) It is common cause that the plaintiff was prosecuted and that the prosecution terminated in his favour when he was discharged in terms of s 174 of the CPA. The first and fourth requirements of malicious prosecution, i.e. institution of proceedings

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<sup>16</sup> Supra.

<sup>17</sup> *Mahlangu and Another v Minister of Police* 2021 (2) SACR 595 (CC).

<sup>18</sup> Supra.

and termination in favour of the plaintiff, are therefore satisfied. The real issues are whether the prosecution was instituted without reasonable and probable cause and with malice.

66)As to reasonable and probable cause, the senior prosecutor testified that she considered: the statements of Constables Mueda and Magoro; the statement of Sergeant Nyembe; the physical exhibit (gold amalgam) found in the plaintiff's room; and the plaintiff's election not to make any exculpatory statement. On this basis she formed the view that there were reasonable prospects of a successful prosecution.

67)In light of my earlier findings on the credibility of the police witnesses and the objective facts, that view was not irrational. The evidence available to the prosecutor, on any fair reading, linked the plaintiff to possession of the gold material and, at the very least, justified placing the State's case before a criminal court for adjudication.

68)The fact that the plaintiff was acquitted at the close of the State's case does not retrospectively render the decision to prosecute unreasonable. The test is whether, at the time the decision was taken, there were reasonable grounds for an honest belief in the plaintiff's guilt. In *Beckenstrater*<sup>19</sup> it is clear that it is not a requirement that the evidence be sufficient to ensure a conviction. It is enough if a reasonable person in the prosecutor's position would have thought the plaintiff probably guilty, having regard to the information then at hand.

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<sup>19</sup> Supra.

69)I am satisfied that this standard was met. There is no basis on the evidence to conclude that the second defendant, through its officials, lacked reasonable and probable cause in enrolling and pursuing the charges.

70)As to malice, the plaintiff led no evidence of any personal animus or improper motive on the part of the prosecutor or the police. There is no suggestion that the prosecution was used to achieve an ulterior purpose unrelated to the proper administration of justice. On the contrary, the case fits comfortably within the pattern of bona fide enforcement of legislation aimed at curbing illicit dealings in precious metals.

71)In *Moleko*<sup>20</sup> and *Rudolph*,<sup>21</sup> the SCA emphasised that malice requires more than a mistake or even negligence; it demands proof that the defendant either knew there was no reasonable cause to prosecute, or was recklessly indifferent to that possibility, and nevertheless proceeded. No such evidence was presented here.

72)The plaintiff has accordingly failed to discharge the onus of proving either absence of reasonable and probable cause or malice. The claim for malicious prosecution must fail.

## CONCLUSION

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<sup>20</sup> Supra.

<sup>21</sup> Supra.

73)The plaintiff's case rested on the proposition that the police acted on a flimsy suspicion, failed to inform him of his rights, and that both his arrest and prosecution were arbitrary violations of his liberty. The evidence, however, shows otherwise. And, the plaintiff was not a convincing witness and his version, particularly regarding his lack of knowledge of the gold and alleged sharing of the room, appears to be tailored to fit the requirements of a damages claim rather than a candid account of the events.

74)The first defendant has justified the arrest and detention. The second defendant has shown that the prosecution was neither without reasonable and probable cause nor malicious. The plaintiff has accordingly failed to prove his case on a balance of probabilities in respect of all claims.

#### QUANTUM (FOR COMPLETENESS)

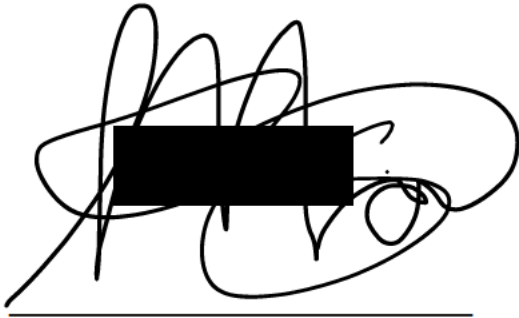
75)Because I find that none of the plaintiff's claims succeed the issue of quantum automatically falls away.

#### ORDER

76)In the result, the following order is made:

- a) The plaintiff's claims for unlawful arrest and detention and for malicious prosecution are dismissed.

- b) The plaintiff is ordered to pay the costs of suit, including the costs of both defendants, such costs to include the costs of counsel where so employed.



**LMA MATJELE**

**ACTING JUDGE OF THE HIGH COURT**

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**Ref:2582/17/P22**

**Date of the Hearing:** 22 September 2025

**Heads of Argument:** 10 October 2025

**Date of Judgment:** 29<sup>th</sup> December 2025