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REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
NORTHWEST DIVISION, MAHIKENG**

Case No:557/2018

Reportable: YES / **NO**

Circulate to Judges: YES / **NO**

Circulate to Magistrates: YES / **NO**

Circulate to Regional Magistrates: YES / **NO**

In the matter between:

DAVID GAONAMONG

Plaintiff

and

MINISTER OF JUSTICE AND CORRECTIONAL SERVICES

Defendant

CORAM: MFENYANA J

This judgment was handed down electronically by circulation to the parties' representatives by email. The date of handing down of the judgment is deemed to be **05 January 2026**.

JUDGMENT

MFENYANA J:

Introduction

[1] The plaintiff instituted action proceedings against the defendant for damages emanating from the plaintiff's alleged unlawful detention from 18 May to 27 May 2015. The case proceeded as a stated case in terms of Rule 33(1) of the Uniform Rules. In terms of Rule 33(2)(a), the parties to a stated case must set forth the facts agreed upon, the question of law in dispute between them and their respective contentions thereon.

[2] On 9 October 2024, I issued an order separating merits and quantum and that the issue of merits would be adjudicated on by way of a stated case. Subsequent thereto, the parties delivered the stated case, followed by their respective heads of argument.

Background facts

[3] The plaintiff was convicted on a charge of robbery with aggravated circumstances and sentenced to 15 years imprisonment. He appealed against his conviction and sentence, and on 18 May 2015, Hendricks J (as he was at the time) upheld the appeal against both conviction and sentence and further ordered the immediate release of the plaintiff from prison.

[4] On 27 May 2015, Djaje J (as she was at the time) issued a warrant of liberation for the plaintiff's immediate release. The record indicates that

the details of the plaintiff's detention and his whereabouts were confirmed by the registrar of this court on the same day. On the same day, the plaintiff was released from prison.

Stated case

[5] In their stated case, the parties record the agreed facts as follows:

[5.1] “The Plaintiff is David Gaonamong an adult male person residing at No 8[...] Gamodisanyane Section, Tlhaagameng Village Ganyisa, North West Province.

[5.2] The Defendant is the Minister of Justice and Correctional Services in his official capacity as Minister of Justice and Correctional Services with his office situated at 1[...] W[...] N[...] Street. Poyntons Building (West Block) Pretoria with address of service at the office of the State Attorney, situate at and care of the State Attorney carrying on business at 1st Floor, East Gallery, Corner S[...] Road & D[...] J[...] M[...] Drive, Mega City, Mmabatho, Nort West Province and who is sued in his capacity as the executive authority responsible for the Department of the Department Correctional Services. (*sic*)

[5.3] The cause of action that gave rise to the Plaintiff's claim against the Defendant falls within the above Honourable Court's jurisdiction.

[5.4] The Plaintiff was imprisoned at Rooigrond Correctional Centre after being found guilty, convicted and sentenced to a period of 15 years on a charge of robbery with aggravating circumstances.

[5.5] Plaintiff brought an appeal against his conviction and sentence, on 8 May 2015 the appeal was heard and judgment reserved. The case number of the appeal being CA5/2015.

[5.6] On 18 May 2015 the judgment was handed down, as indicated on the judgment of the Honourable Hendricks JP. The Plaintiff's conviction and sentence were set aside.

[5.7] Plaintiff was released from Rooigrond on 27 May 2015.

[5.8] The Plaintiff and Defendant further agree to the admissibility and correctness of the following documents and concede thereto as evidence and or proven fact:-

5.8.1. The judgment by the appeal court;

5.8.2. Order by the said court;

5.8.3. The warrant of liberation;

5.8.4. Release list;

5.8.5. Letter from legal aid;"

[6] The question of law in dispute between the parties is stated thus:

[6.1] "Whether the Plaintiff was unlawfully detained, and if so, whether the Defendant is liable for such detention."

Submissions

[7] The plaintiff contends that his continued detention from 18 May to 27 May 2025 was unlawful and that the defendant is liable for damages occasioned by such incarceration.

[8] In support of his contention, the plaintiff states that because the Department of Justice and the Department of Correctional Services at the time fell under the same Minister, the defendant should be held liable, regardless of whether the delay and liability stem from the registrar (Justice) or the correctional services personnel (Correctional Services). The plaintiff relies on ***Zealand***¹ for the argument that the plaintiff was unjustifiably detained in a manner which violated his right not to be deprived of freedom arbitrarily and without just cause.

[9] The defendant, on the other hand, avers that the plaintiff's detention from 18 May to 27 May 2015 was not unlawful, and if it is found to be unlawful,

¹ *Zealand v Minister of Justice and Constitutional Development and Another* 2008 (4) SA 458 (CC).

the defendant is not liable in that the plaintiff was released immediately upon receipt of the warrant of liberation. The defendant points out that the plaintiff's contention that Correctional Services failed to release the plaintiff on 18 May 2015 is baseless, as the record shows that Correctional Services released the plaintiff immediately and in accordance with prescribed procedures and immediately upon receipt of the warrant of liberation.

[10] The defendant further contends that the plaintiff has not made out a case that his detention was unlawful, as the warrant of liberation was issued on 27 May 2015 and bears an entry that there was a telephonic conversation on the same day with the registrar confirming that the plaintiff should be released. The plaintiff was released the same day.

[11] Notably, the defendant avers that within the context of a stated case, the plaintiff's case is against the defendant in his capacity as the executive authority responsible for the Department of Correctional Services, in this case, the correctional facility at Rooigrond. In the particulars of claim, the plaintiff avers that despite the court order, the plaintiff was not released and was further detained by the employees of the defendant, wrongfully and unlawfully, from 18 May 2015 and was only released on 27 May 2015.

[12] The defendant contends further that in the notice in terms of section 3² the plaintiff clearly states that Correctional Services failed to release him in accordance with the court order, and he was thus detained for a further 10 days.

[13] The defendant proceeds to argue that the particulars of claim do not disclose any case against the registrar of this court; that he failed to inform the correctional services facility of the plaintiff's release. No liability on the part of the registrar is pleaded, and as such, the plaintiff has failed to make out a case for the relief sought, the defendant further avers.

[14] The defendant cites a decision of the Free State Division in ***Du Toit obo Diken v Road Accident Fund***³ as quoted in Erasmus⁴ that:

[14.1] "The object of pleading is to define the issues so as to enable the other party to know what case he has to meet. The parties are, therefore, limited to their pleadings: a pleader cannot be allowed direct the attention of the other party to one issue, and then at the trial attempt to canvass another. However, since pleadings are made for the court ... it is the duty of the court to determine what are the real issues between the parties and, **provided no possible prejudice can be caused to either party**, to decide the case on the real issues ... The general principle is that the parties will be held to the issues pleaded unless there has been a full investigation of the matter falling outside the pleadings ..."

- my emphasis

² Section 3 of the Institution of Legal Proceedings Against Certain Organs of State Act 40 of 2002.

³ 2016 (1) SA 367 (FB).

⁴ Superior Court Practice.

[15] The defendant thus avers that there has not been an investigation or evidence placed before this court regarding any aspect which falls outside the particulars of claim, and the plaintiff is therefore bound by his pleading.

[16] In terms of the particulars of claim, no case is pleaded against the registrar, and the correctional services personnel complied with their obligations, the defendant adds. He further argues that it is impermissible for a party to rely on a constitutional complaint that was not pleaded.⁵ Given that the plaintiff's pleaded case is that the correctional services facility failed to release him, the defendant argues that it would be prejudicial to read into the particulars of claim that the plaintiff has made out a case against the registrar, as the details of the claim, as they stand, contain no *facta probanda* in relation to the registrar.

Applicable legal principles

[17] The determination of special cases for adjudication in our jurisdiction is governed by Rule 33 of the Uniform Rules, which allows parties to a dispute to agree on a written statement of facts for the court's adjudication on a point of law, generally referred to as a stated case. In the relevant part, Rule 33 provides:

“ (1) The parties to any dispute may, after the institution of proceedings agree upon a written statement of facts in the form of a special case for the adjudication of the court.

(2) (a) Such a statement shall set forth the facts agreed upon, the questions of law in dispute between the parties and their

⁵ *Fischer and Another v Ramahlele and Others* [2014] ZASCA 88; 2014 (4) SA 614.

contentions thereon....”

- [18] It is an established principle when considering a special case for adjudication that the court is confined to the four corners of the stated case. This approach was confirmed in *Mtokonya*⁶ where the Constitutional Court noted that,

“ A court that is called upon to decide a special case under rule 33 is required to decide the question of law presented to it and has no right to travel outside the four corners of the agreed statement and decide a different question that it wishes the parties had submitted to it to decide but did not or that it may wish the parties had included as one of the questions of law they had submitted to it to decide but did not.”⁷

- [19] When applied to the facts of the present case, the legal question this court is called to decide, as set out by the parties in their stated case, is whether the plaintiff was unlawfully detained and, if so, whether the defendant is liable for such detention.

- [20] While a stated case narrows the focus to specific, agreed-upon facts, it does not exist in a vacuum but is part of the broader legal action initiated by the summons and particulars of claim, which the court must take into account to properly determine the matter. Read with the particulars of claim, the plaintiff contends that despite the court order of 18 May 2015, setting aside his conviction and sentence, he was not released by Correctional Services and was further wrongfully and unlawfully detained by the employees of the defendant until 27 May 2025. This is not correct.

⁶ *Mtokonya v Minister of Police* CCT200/16 [2017] ZACC 33; 2017 (11) BCLR 1443 (CC); 2018 (5) SA 22 (CC) (19 September 2017).

⁷ *Ibid*, para 15.

It is common cause that while the judgment setting aside the plaintiff's conviction and sentence was handed down on 18 May 2015, the order authorising the plaintiff's release, together with the warrant of liberation were issued on 27 May 2015. On the same day, and upon receipt of the warrant of the order and the warrant of liberation, the responsible personnel at Correctional Services released the plaintiff.

[21] The plaintiff's argument that because the departments of Justice and Correctional Services fall under the same minister, who is responsible for both portfolios, it is immaterial whether the delay or negligence emanates from the registrar of the court or the personnel at correctional service, is without merit. No allegation has been made against the defendant in his capacity as the minister responsible for the Department of Justice, under whose command the court administrative personnel fall. As such, no case has been made out whatsoever in respect of the justice component of the defendant's responsibility. These circumstances, in my view, fall squarely within the ambit of the issue contemplated in **Mtokonya**. This court does not have the power to venture outside of the facts agreed on by the parties and decide a question different from that which the parties have set out for themselves.

[22] This court also does not have the right to decide issues falling outside the pleadings, in circumstances where prejudice would occur to one of the parties. In this case, prejudice to the defendant is a certainty, were this court to determine the real issues between the parties outside of the

pleaded facts without a full investigation of the matters falling outside the pleadings. There is thus no factual basis for any finding in respect of the registrar. At the risk of repetition, the issue before this court, as defined in the stated case and the pleadings, that the correctional services facility at Rooigrond failed to timeously act in accordance with the court order, is unfounded. As such, there was no delay stemming from these facts. Consequently, no liability can be attributed to the defendant in this regard.

[23] In the result, I make the following order:

- a. The plaintiff's claim is dismissed with costs.

S MFENYANA
Judge of the High Court
Northwest Division, Mahikeng

Appearances:

For the plaintiff:
Counsel: X Nyoka
Instructed by: Ntsamai Attorneys Inc.

For the defendant:
Counsel: D Smit
Instructed by: State Attorney- Mahikeng

Date reserved: 25 July 2025
Date of judgment: 05 January 2026