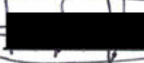


REPUBLIC OF SOUTH AFRICA



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

Case Number: 21947/2020

(1)	REPORTABLE: /NO
(2)	OF INTEREST TO OTHER JUDGES: NO
13/02/2026	
DATE	SIGNATURE

In the matter between:

GEORGE MAMETJE AND OTHERS

PLAINTIFF

and

MINISTER OF POLICE

DEFENDANT

JUDGMENT

MOTHA J

Introduction

- [1] The land question is like a revolver that South Africa keeps playing Russian roulette with. This hot potato leaves South Africans stupefied. Unless the adults in the room

wake up from their slumber and deal decisively with it, it is destined to explode when least expected. As with the atomic bombs in Hiroshima and Nagasaki, I am afraid no one will be spared the catastrophic comeuppance.

- [2] At the peak of COVID-19, on 25 June 2020, twenty-four people were incarcerated for occupying parcels of land and erecting shacks. Twenty-one of them brought an action for damages arising from the alleged unlawful arrest and detention. Mercifully, the parties reached a settlement with respect to seventeen (17) plaintiffs. Regarding Joaquim Pedro Lambo, Easy Mphahlele, Vincent Thenga, and Reginald Maluleke (the four plaintiffs), the Minister of Police (the defendant) denied arresting them. Furthermore, the defendant denied assaulting Lethu Loveman Masoka (Masoka).
- [3] Therefore, before this court, the issues for adjudication are circumscribed to whether the above-mentioned four were, indeed, arrested with the seventeen and whether Masoka was assaulted.
- [4] Since the defendant denied depriving the four plaintiffs of their liberty by either arresting or detaining them, the burden to prove otherwise, on a balance of probabilities,¹ rested with them. Accordingly, the four plaintiffs agreed to commence proceedings.
- [5] In proving their claims, they, together with Masoka, testified, and called two witnesses, Tshepo Ngobeni, one of the seventeen, and Dr. Khan, the medical doctor who examined Masoka upon his release from the cells.
- [6] For the defendant, two witnesses testified, Beauty Van Rooyen (Van Rooyen) and Nthabiseng Moleko (Moleko).

The summary of the evidence
Joaquim Pedro Lambo

¹ Pillay v Krishna 1964 AD 946 at 952.

- [7] First to take the stand was Joaquim Pedro Lambo. In his evidence-in-chief, he informed the court that on 25 June 2020, he left his residence on foot and headed to a nearby veld to cut wood. Whilst walking in the open veld, he noticed that yonder a group of people had gathered, and even police officers were amongst them.
- [8] As he continued walking, a female police officer called him. She instructed him to sit on the ground with others who were already seated. When a police van arrived, they were all transported to De Deur police station. After confiscating their phones and belts, the police recorded their full names and detained them in a single cell.
- [9] Inside that cell, he counted twenty-four people, and two had to share one blanket. The cell, including the toilet, was filthy. For the entire five days of their detention, he did not bathe. On the fifth day, they were driven to court; however, they were released without appearing before a magistrate.
- [10] At the police station, he was informed that he had been arrested for trespassing. A police officer in civilian clothes asked for his name and surname. He gave him the name Joaquim Pedro Lambo. When the police officer asked him to write his name and surname, he revealed that he could neither read nor write. Since the police officer could not write the name, he provided another name and surname, George Nkomo.
- [11] He did not know if he had written it correctly, since he is illiterate. Finally, he testified that he was not shown any court order.

Cross-examination

- [12] Under cross-examination, he confirmed that the notice of rights in terms of the Constitution was shown to him and he signed it. Confronted with his assertion that he could not write, yet he had signed the notice of rights, he said he could not write his name, but he could move a pen. Therefore, his signatures differ across

documents. Responding to a question about why he did not use a thumbprint, he insisted that he could move a pen but could not sign.

[13] In response to a claim that the signature on the document was not his, he stated that it was only slightly similar to the one on his identity document. When asked about the signature on his passport, which was markedly different from the one on the document, he said he had written it because he could not write. When pressed to explain, he gave a tangential response and said that regarding signatures, he knew what to do.

[14] He accepted that he had given the police an incorrect name and surname and added that he did so because neither he nor the police could write his correct name.

[15] When asked about his date of birth, he stated that he could not recall whether he had provided it to the police. Nevertheless, he testified that he was born on 6 February 1982 in Nyambani, Mozambique, and he resided at 5217 Vlakfontein, Lenasia South, at the time of the incident.

[16] Defendant's counsel asked him for an explanation for the contradictions between his particulars and George Nkomo's statements to the police. The contradictions were:

- George Nkomo was born on 25 June 1982. In response to this contradiction, he said the police might have erred.
- George Nkomo was born in Tzaneen. He responded that it could have been a mistake because another George, born in Tzaneen, had been arrested. It is noteworthy that he did not know the surname of the second George.
- George Nkomo resided at 572 Vlakfontein. Confronted with discrepancies in the addresses, he acknowledged that George Nkomo's address was different from his own.

- [17] In response to a question regarding his relationship with the second George, he stated that he met him at the place where they cut wood. He accepted the proposition that the second George was his friend.
- [18] Counsel confronted him with the particulars of the second George (SAP 3M). The second George was born in Limpopo, and his surname is Mametjie. In reply, he simply reiterated that the police erred in stating that he was born in Tzaneen.
- [19] When it was put to him that only two Georges had been arrested on the day in question, he insisted he was George Nkomo.
- [20] Having repeated that he had been arrested for trespassing, counsel showed him the notice of rights, which recorded that George Nkomo had been arrested for contempt of court.
- [21] He testified that he could count because he deals with money. Accordingly, he could determine that 24 people were inside the cell.

Re-examination

- [22] When asked why he chose the name George, he said that in the township, they could not pronounce Joaquim, so they used George instead. The name Pedro in his passport referred to his father's name. He said that all Mozambican passports contain both one's name and one's father's name.
- [23] During his interaction with the court, he was surprised to learn that the surname Lambo was listed among his names on the passport. He stated that his surname was Koma, but it does not appear on his passport. He latched onto his counsel's suggestion that Lambo was his clan name.

Analysis of his evidence.

- [24] His explanation for lying about his name and surname was unsound. If he could not write his name, Joaquim Pedro Lambo, he certainly could not write George Nkomo. A false name would not cure illiteracy. I found him an unreliable witness, given to lying whenever the shoe pinched. He admitted he did not tell the truth. He was ill at ease and hesitant in his answers. It seemed to me that he formulated his version as the case progressed. To me, it was patent that George Nkomo and the plaintiff were two different people, given the incorrect dates of birth, addresses, and places of birth, to name but a few. He was not a credible witness, and his version seemed improbable.

Easy Mphahlele

- [25] Easy Mphahlele testified that on 25 June 2020, he was at home when he received a phone call reporting that police officers and SANDF members were arresting people. He decided to find out what was happening. On his way to the incident, he met Bongani Mkhize, a resident of his street, and hitched a ride in Mkhize's van. Upon arrival at the scene, he was arrested because he could not flee, as there were soldiers. Along with others, he was taken to De Deur police station, where he was detained and his cell phone confiscated.
- [26] It was his testimony that women and children were also arrested; however, they were not brought to the police station. His detention spanned from Thursday to Monday, when he was transported to court. The cell conditions were atrocious, and, to make matters worse, it was during COVID-19. COVID-19 regulations, such as social distancing, were not followed, and they drank water from the toilet tap using a single cup. There was no toilet paper, the sleeping blankets were dusty, and two people had to share a sleeping sponge. They were given a single meal per day.
- [27] During his evidence-in-chief, he testified that he gave the police an incorrect name, Thabo Motaung, because he was angry about being arrested for no reason. When

it came to furnishing his identity number and physical address, he provided the correct details.

Cross examination

- [28] Having conceded that he had lied to the police officers, he acknowledged that the signature on Thabo Motaung's document was not his. When questioned about the signature in the notice of rights, he hesitated to answer and eventually said it was not his signature. He, moreover, stated that he did not remember signing that way.
- [29] Regarding the notice of rights (Exhibit AA), he said the detainee's signature on the document was his. When asked whether that signature was the one he usually used to sign documents, he answered in the negative. He then abruptly changed and denied ever signing the notice of rights.
- [30] Referring to my brother Wright's directive dated 07 June 2023 (exhibit EE), counsel questioned him about his statement. He admitted that the signature on the statement was his. Further, he was compelled to accept that the signature differed markedly from that on the notice of rights and the statement regarding the interview with the suspect, Thabo Motaung.
- [31] He had to be told several times to speak up. He said he was staying at both Vlakfontein and Phumulamqashi. During the incident, he had been in Phumulamqashi since 2018 but did not know his address.
- [32] Referring to the statement the plaintiff gave to his lawyers, counsel confronted him with several contradictions, namely:
- He conceded that his testimony differed from his statement to his lawyers. He wrote that on the day in question, he was at Shoprite, but in court he testified that he was at home.

- In his statement, he said he was with Tshepo Ngobeni and Bongani Mncube and that he went to the location because he owned a plot and his family members had been arrested.
- When asked where his plot was, he said Doornfontein. Upon further questioning, he said he made a mistake; it was in Elandsfontein.
- In his statement, he said he had three meals a day, contrary to the single meal per day he mentioned in his evidence in chief. In his response, he said that they sent the police to buy meals for them outside the police station. Therefore, when he referred to a meal, he meant the one provided by the State.

[33] Finally, it was put to him that the country was at Alert Level 3, which restricted people's movements and caused fear of the police. In response, he said they were not arrested for COVID-19 and that those rules did not apply where he lived.

Analysis of the evidence.

[34] Like Joaquim Pedro Lambo, he offered no credible explanation for giving a false name and surname. Anger is no reason to lie; people tend to tell the truth when angry. It is counterintuitive to go where the police are arresting people. Beyond the differences in names and surnames, the differences between his signature and Thuto Motaung's cannot be ignored. The inconsistencies between his statements to his lawyers and the evidence in court are most concerning. I found his evidence improbable. He was hesitant and lowered his voice when asked probing questions. I found him unreliable.

[35] What happens when Thuto Motaung comes forward and makes claims against the defendant? Would the court pay for two Thutos? It is common cause that 24 people were arrested, and some did not lodge claims.

Reginald Maluleke

- [36] He testified that he left his home to fetch wood. After crossing a nearby bridge, he saw metro police, SAPS and the SANDF approaching. Since he had committed no crime, he continued walking toward the area teeming with law enforcement authorities. He was carrying an axe, with which he cut wood. A police officer called him and ordered him to get inside a police van. He did not flee because he was near the police and could be shot. They were transported to De Deur police station.
- [37] He was never given a reason for his arrest. During this incident, he was walking with others, including his brother-in-law, who managed to run away and evade arrest. When the police recorded their names and surnames at the station, he gave them an incorrect name and surname, Tsunduka Chauke. He did this because he was scared; it was his first time in jail, and he was arrested in a strange manner.
- [38] He could not remember which date of birth he gave to the police. However, he remembered and confirmed that he had signed documents at the police station. The police informed him that he was arrested for trespassing. When his counsel referred him to the signature on the notice of rights and asked whether he had signed the document, he denied any knowledge of the signature and said he did not remember signing it.

Cross-examination

- [39] He conceded that he had lied about his names and added that he had done so because he was frightened, and that it was the only lie he told the police. On 25 June 2020, he said he had been residing at Phumulamqashi for 4 months and did not know the address because it was a new place.
- [40] Counsel put to him that he could not be Tsunduka Chauke because he was born in 1988, whereas the plaintiff was born in 1987. He accepted the differences.

- [41] Furthermore, he conceded that Tsunduka Chauke's address was different from his.
- [42] Having not been in possession of a permit, Counsel put it to him that people could not walk around without a permit during that period; he said he did not remember.
- [43] He acknowledged that the signature on the notice of rights differed from the one on his statement.
- [44] When reminded that, in his evidence in chief, he said he used his correct signature at the police station, he said he could have made a mistake because he did not remember. But he remembered using the name and surname Tsunduka Chauke.
- [45] He conceded that paragraph 2.1 of his statement contradicted his evidence in chief, in that it stated they were on their way to the 4-way stop to look for odd jobs, while he testified that he was going to look for wood. He added that it was his brother-in-law who was seeking odd jobs.
- [46] He could not answer a simple question about whether Vincent Tenga was his brother-in-law. He laughed and shook his head, then said he was. When questioned by the court about his conduct, he said the incident had occurred a long time ago and that his memory had faded.
- [47] Counsel reminded him that he had stated his brother-in-law had run away and was not caught. He said he wanted to explain and put it right. When the police called him, his brother-in-law was behind him. When he arrived at the police station, he found him there because they had not traveled in the same van.
- [48] He conceded that he had said his brother-in-law was not caught. Counsel put it to him that he was lying to the court, just as he had lied to the police. Responding, he said it was his first time in court and that he was trying to calm himself, but he was behind him and he did not look back.
- [49] It was put to him that he was not arrested on the day in question. He insisted that he was put in a van.

Analysis of his testimony

[50] He failed to explain why he gave a false name and surname. His brother-in-law testified that he was walking ahead of him. Accordingly, he should have seen that he never ran away. Furthermore, his brother-in-law testified that they were together when the police told them to demolish shacks. He never mentioned demolishing shacks. He was not a credible witness. His testimony was unreliable and riddled with inconsistencies. In short, it was improbable. Whenever the shoe pinched, his answer gravitated to two responses: either he erred in his testimony, or it was an issue of memory.

Vincent Tenga

[51] On 25 June 2020, he left his house to look for work, accompanied by his brother-in-law, Reginald Maluleke. While on their way and about to cross a bridge, a bakkie and a police vehicle suddenly emerged. The police called them. He tried to run but could not because he was carrying tools, a pick, and a spade. The police ordered them to lie flat on the ground, joining others already on the ground. They were instructed to do push-ups. Later, they were told to demolish shacks on the open land.

[52] Thereafter, they were transported in a police vehicle to De Deur police station. At the police station, he was told that he had been arrested for trespassing. He was detained for four (4) days without appearing in court. The cell was not a good place, and there was only one blanket for many people. Inside the cell, which he said was 6 by 4 feet, there were 22 of them. Throughout his stay, he never bathed.

[53] He stated that Reginald Maluleka was present when they were told to lie down. In the notice of rights, he gave the police the name Fhumulani Tshirhula out of fear. After confirming that the signature on his identity document was his, he stated that

he had signed the notice of rights with an incorrect signature because it was his first arrest and he was scared.

- [54] Regarding meals, he said they did not eat on the first day. On the second day, they were fed soft porridge. When they were taken to court, they did not enter the courtroom.

Cross-examination

- [55] Having confirmed that he was walking with Reginald Maluleka, his brother-in-law, he testified that when the police called them, he walked ahead of Reginald Maluleka and did not attempt to run. Reginald had a panga to chop wood. When the police told them to demolish the shacks, Reginald Maluleka was present. They separated when Reginald went to the higher part of the land to demolish shacks. They did not board the same police car on the way to the police station. The police took Maluleka's panga and his shovel.
- [56] He reiterated that he never ran away. In the cell, he estimated that there were 22 to 23 people. He conceded that he lied to the police by providing an incorrect identity number, name and surname.
- [57] When asked about the meals, he said they were provided with three meals a day, save for the first day. He testified that food from outside the prison was not allowed, and that no one paid them a visit. Even the police did not buy them food.
- [58] He struggled to explain where the toilet was located inside the cell. He said there were two slabs, one on which people sit and another at the corner. There was no door to the toilet. He used the toilet but never took a bath.
- [59] When counsel pointed out that in his statement, he said he had one meal on the first day, he attributed the inconsistency to a memory lapse.

Re-examination

[60] He drew a rough sketch of how the cell was, describing it as consisting of two slabs and a toilet in the middle, which had two walls without a door. The toilet walls were estimated to be two meters high. The bathroom had a tap but no soap, and there was no toilet paper.

Analysis of his testimony

[61] His testimony was at odds with his brother-in-law's testimony. Contrary to his testimony, his brother-in-law testified that he ran away. It is common cause that Tshepo Ngobeni was arrested, yet contrary to Tshepo Ngobeni's testimony that the toilet in the cell was in a corner, he testified that it was in the middle. Contrary to both Tshepo and Masoka's testimony, he testified that they were given three meals a day. Beyond lying about his name and surname, there was an imprint of inconsistencies and contradictions in his evidence, especially when juxtaposed with evidence *aliunde*. He was not a credible witness.

Assault

Tshepo Ngobeni

[62] The next witness to testify was Tshepo Ngobeni (Tshepo), a community leader. He was at home when he received a call that police officers were at the plots. He decided to head to the scene. On his way, he was given a lift in a Toyota bakkie driven by a man who was with Tumelo and heading to the scene. Upon arrival, they parked the car about 4 meters away, and he walked to the scene.

[63] At the scene, there were police officers, members of the SANDF, and white people. A police officer grabbed his right arm and ordered him to sit down. Already seated

were three ladies and some guys. He also mentioned Tumelo, Lethu Masoka, Vincent, and Mkhize.

[64] He said that he was victimized like his friend Lethu Masoka, who was kicked and beaten until an overweight police officer came to his aid. Masoka was kicked and slapped with an open hand whilst asking him why he was taking a video. A lady, the station commander, started off the assault by slapping him, and two male officers joined her.

[65] When asked whether he could describe the four plaintiffs if he saw them, he said that, because several people had been arrested and their minds were not right, he could not describe them, except to say that Mkhize was a dark-skinned bakkie driver and Tumelo was short and looked like a colored person.

[66] In the cell, there were more than twenty people, and he could not remember any of them except his friends.

Cross-examination

[67] He repeated that he saw a lady smacking and kicking Masoka, joined by two guys. They were wearing boots and injured his shin. He saw that Masoka had bruises from the assault.

[68] He said they were fed once a day. On Sunday, a kind-hearted white police officer took pity on him and drove him home to fetch his medication. He estimated the cell's size at 6 x 3 feet.

[69] When questioned by the court, he stated that on Monday, they were driven to a veld and remained there for 30 minutes. Eventually, they were driven to court and released without appearing before a magistrate.

[70] Contrary to what Vincent Tenga told the court, he stated that the shacks were demolished by the police and the SANDF. On the day in question, he met Mkize

near Shoprite when his friend, Masoka, called him. In his area, the COVID-19 lockdown was not observed; people went about their businesses as usual. At the scene, he said there were white people wearing shorts and displaying AWB paraphernalia.

[71] The food rationing was once a day, contradicting the witnesses who said they were fed three meals a day. He never ate that food, and the police, taking pity on them, would bring them bread only at night.

[72] He provided the court with a rough sketch of the cell. In his sketch, the toilet was located at the corner, not in the middle.

[73] Under re-examination, he suddenly could not remember and repeatedly stated that he could not remember, as his testimony was contrary to the plaintiffs'. For example, he testified that the shower had a shower head, which was contrary to what others said.

Analysis of his evidence

[74] His testimony was coherent and logical until he was re-examined. He began to lose his memory during re-examination, especially when he had to explain the differences between what he testified to and what the plaintiffs, particularly Vincent, said. Regarding Masoka's assault, his testimony corroborated him in material respects, and the cross-examination did not shake it. When talking about the assault, he became animated and demonstrative about how it occurred. I found him credible in his narration of the assault.

Loveman Masoka

[75] He was at Vlakfontein when he received a call that the police, JMPD, and soldiers were heading to where they had installed shacks. He went there to check whether

his shack had not been demolished. He called Tshepo to inform him that their shacks were being demolished. Whilst on the way and talking to Tshepo on the phone, a police officer, assisted by a soldier, arrested him, accusing him of being on a video call. He was put inside a police van. After remaining in the car for some time, more people were brought in, and finally, they were driven to De Deur Police Station.

- [76] At the De Deur Police Station, he was confronted by a female officer who accused him of being on a video call. After denying he was on a video call, he asked the police why it would be wrong if they were acting legally. A female police officer slapped him with an open hand and swore at him in Sesotho.
- [77] Another female police officer and male police officers joined in the assault. An overweight police officer opened the cell door for him to enter. He tried to run away, but they continued beating him until he wet his pants and started bleeding.
- [78] The same police officer, who helped him by opening the cell, castigated his colleagues. He requested to talk to the station commander. When he was taken to the station commander, she told him that the police officers were not stationed in De Deur and she could not help him. He was taken back to the cell, which was about 8 by 5 feet.
- [79] The cell, including the toilet with no toilet paper, was dirty. Following Tsepho's suggestion, they took a jacket from one of the detainees and swept the place clean. They were fed twice a day. Early in the morning, they were given tea and bread. At midday, they were given rice with tiny pieces of meat.
- [80] There were blankets and mattresses covered with plastic. Two people shared one blanket.
- [81] He mentioned that besides sustaining a blue eye on his left eye, he also has scars on his shin from the assault.
- [82] He was informed that he had been arrested for trespassing.

[83] Following their release from custody, he visited a medical doctor who treated him with tablets. His left leg still troubles him.

Cross examination

[84] He testified that his assault occurred at De Deur police station. Under cross-examination, he said that six police officers assaulted him. The other detainees witnessed his assault. He was beaten inside by three police officers, and outside the cell they were six. Tshepo testified that he was assaulted by two male officers and one female officer. He said that was a lie. He also denied that he was assaulted by a station commander, contrary to Tshepo's testimony.

[85] He said under his eye he had a black mark and did not bleed. The swelling lasted for two weeks. He was questioned about Tshepo's failure to mention a swelling, even though he mentioned that he saw a bruise on his face.

[86] For the first time, he said that he had been beaten on the body during cross-examination. Again, under cross-examination, he stated that he had hidden his left leg during the assault because it had pre-existing injuries.

[87] His left leg had a fracture from a prior incident. He explained that blood trickled from his shin for five days. He agreed that the scars on the left leg have faded and are faint.

[88] Counsel put it to him that he was not injured; hence, the station commander did not refer him for medical treatment.

[89] When asked why he did not lay criminal charges against the police, he said he returned to the police station after two days, only to be laughed at.

[90] He said it was not allowed for the police to buy food for them, but they did so only at night.

[91] He stated that he visited the doctor once. He said he had known Easy Mphahlele, who was known as Tumelo Mphahlele, since 2015.

Analysis of his testimony

[92] He came across as a self-assured man. He did not exaggerate the extent of his injuries. He took the court into his confidence and volunteered that he had a preexisting injury to his left leg. Dr. Khan's notes showed that he told him the same version he had given to the court. Overall, he was a credible witness and his testimony was not impeached during cross-examination.

Dr. Mohammed Moosa Khan

[93] He testified that he examined Loveman Masoka on 29 June 2020, and his clinical findings included bilateral leg abrasions, that is, bruising on both legs. He also found a swelling on Masoka's left eye, which was from a blunt injury.

Cross-examination

[94] Under cross-examination, he said the wound was not open and there was no bleeding. He stated that the swelling could last three to five days or a week. He could not say how long the swelling had been present at the time of his examination. He accepted that the injuries might have resulted from a fall.

[95] He testified that Masoka told him he had been arrested for trespassing and that his injuries were from being kicked and assaulted by the police officers.

Analysis of his evidence

[96] Dr. Khan's testimony was clear and coherent and was not shaken by the cross-examination.

The first defendant's witness: Beauty Suzan Van Rooyen

[97] In June 2020, she was employed at De Deur Police Station as a Captain. Her duties included serving as an operational commander of *O kae molao*, overseeing crime-prevention operations, and issuing directions.

[98] On 8 June 2020, she was working at the Client Service Centre (CSC) when a gentleman called Clinton came to lodge a complaint about people invading their properties. In addressing the complaint, she drove to the plots in Elandsfontein with the sector commander, Mr. Mayile.

[99] On their arrival, she noticed a shack, at a corner, labelled: "Office". Clinton told them that a certain gentleman, Tshepo, was selling the land to the invaders. She advised him that a court order was necessary for the police to evict the invaders.

[100] Clinton called her repeatedly with the complaint. She decided to visit the place again and found people building half-shacks and fences. She asked why they were there, and they told her Tshepo had sold them the land. She advised them to obtain a court order or a title deed to see who the real owners were.

[101] One weekend, the landowners dug a ditch between the bridge and the plots to prevent the invaders from crossing into the plots, but that very Sunday, the ditch was closed. She said the police went to the place several times.

[102] On 24 June 2020, six landowners, assisted by the MMC Motsamai, obtained a court order. Accompanied by the sector commander and the MMC, she assisted the Sheriff in serving the court order. First, the Sheriff served it to the two people found inside the corner shack, "Office". Second, they went to plots 138, 139 and 154, where people were busy erecting shacks, and gathered them to explain the contents of the court order.

[103] Whilst the Sheriff was busy explaining the court order, in English, seTswana, seSotho, and isiZulu, and handing copies to them, Tshepo Zwane arrived. He told the invaders not to panic because they had title deeds for that land, and some tore up the court orders.

[104] After serving the court order, she returned to De Deur Police Station and drafted an operational plan, as she realized the invaders would not respect it. The operation called *O kae molao* was to be put into effect the following day. She reached out to other police stations for assistance.

[105] The following day, she met the Police, red ants (invited by the sheriff), Afri-guard, SANDF, and JMPD, and paraded at Chris Hannie Stadium in Orange Farm. The country was on COVID-19 alert level three (3).

[106] During the parade, she briefed the members on the court order and instructed them to arrest anyone who violated it. She told them that dockets of trespassing were still being processed. Led by the SANDF, they headed to Elandsfontein plots 138, 139, 163, 158, 142, and 156. There, they arrested 24 invaders who were installing shacks.

[107] After the red ants had demolished the structures, she said they drove to De Deur Police Station. She denied arresting passers-by.

[108] Referring to the occurrence book (OB), she said an injured person would be booked out to the hospital. They took their names down and read them their rights

[109] She was asked about the four whose names were not in SAP10. She mentioned that she never arrested the four plaintiffs.

Cross-examination

[110] She was cross-examined at length, but not about the four plaintiffs. She was asked about the return of service and whether the contempt of court and trespassing were

part of schedule one. She said the Sheriff knows about the return of service, and the two charges were not part of schedule one.

[111] She never gave the police officer copies of the court order. The entire place was not fenced. She did not go inside the shack by the plots.

[112] She conceded that they could have arrested people who were not mentioned in the court order.

[113] She stated that she did not possess a red wig and only had blond and black wigs.

[114] She denied knowledge of any assault.

[115] She confirmed that no noticeboard was erected on the plots.

[116] She stated that there were six cells and that the detainees were placed in different cells; however, she acknowledged that she was not a cell commander and did not see them placed. And she conceded that she did not know about the cell arrangements.

[117] She noticed there were 31 people in the cells and said they were cleaned regularly. She drew a rough sketch of the cell, and the toilet was in the corner.

[118] She estimated the largest cell to be 7 by 4 feet.

[119] She rejected the idea that people were made to sit and lie down while waiting for police vehicles. She reiterated that every law enforcement officer was there.

Analysis of her testimony

[120] She insisted that the four plaintiffs were not arrested. Her testimony was not challenged, as she was never cross-examined on the four plaintiffs. She was challenged regarding the seventeen, which led to the settlement. I have no reason to reject her uncontested version regarding the four plaintiffs.

Nthabiseng Moleko

[121] On 25 June 2020, she was on duty conducting operations *O kae molao*. At a parade, she was amongst those briefed by Captain van Rooyen about a court order. They were expected to assist the sheriff and given instructions to arrest anyone who disobeyed it.

[122] They proceeded to the plot in a convoy. Upon arrival, she saw people erecting poles, and others were adamant that they owned the land. She went to one adult male and had him arrested. She told him he was arrested for trespassing and that his name was Aubrey Machanyela.

[123] As a female police officer, she asked her male colleague to arrest Aubrey. In explanation, she informed the arrestee that he had been arrested for trespassing and asked a male colleague to search him and place him in the police vehicle.

[124] Minutes later, she arrested Felix, who was busy cleaning a plot. She told him he had been arrested for contempt of court and trespassing. He was adamant that he had bought the place.

[125] The suspects were transported to De Deur Police Station. She testified that she did not witness any assault, and it was impossible for a police officer to detain someone with injuries.

Cross examination

[126] She confirmed that she never saw the court order. She asserted that if a crime was committed in her presence, she would effect an arrest. She observed one plot, 154, marked with a number and a sign that read: "Private property, do not enter." However, she did not arrest anyone there.

[127] She conceded that an arrest outside the ambit of the court order would be unlawful.

[128] It was put to her that she did not know the plot numbers nor where they were located.

In answer, she stated that SANDF had cordoned off the area. She insisted that Aubrey was not a passer-by. She testified that she did not observe any noticeboards on the plots.

Analysis of her evidence.

[129] Like her counterpart, she was not challenged on the four plaintiffs.

The law

[130] Arrest is elucidated in s 39 of the Criminal Procedure Act 51 of 1977 (CPA) as follows:

“39 Manner and effect of arrest

- (1) An arrest shall be effected with or without a warrant and, unless the person to be arrested submits to custody, by actually touching his body or, if the circumstances so require, by forcibly confining his body.
- (2) The person effecting an arrest shall, at the time of effecting the arrest or immediately after effecting the arrest, inform the arrested person of the cause of the arrest or, in the case of an arrest effected by virtue of a warrant, upon demand of the person arrested hand him a copy of the warrant.
- (3) The effect of an arrest shall be that the person arrested shall be in lawful custody and that he shall be detained in custody until he is lawfully discharged or released from custody.”

[131] In *casu*, the court is confronted with mutually destructive versions. On the one hand, the four plaintiffs alleged that they were arrested along with the seventeen others. On the other hand, the defendant denies that the four plaintiffs were arrested.

[132] In resolving two irreconcilable versions, the court in *Stellenbosch Farmers' Winery Group Ltd and Another v Martell et Cie and Others*,² held that:

"The technique generally employed by courts in resolving factual disputes of this nature may conveniently be summarised as follows. To come to a conclusion on the disputed issues a court must make findings on (a) the credibility of the various factual witnesses; (b) their reliability; and (c) the probabilities. As to (a), the court's finding on the credibility of a particular witness will depend on its impression about the veracity of the witness. That in turn will depend on a variety of subsidiary factors, not necessarily in order of importance, such as (i) the witness's candour and demeanour in the witness-box, (ii) his bias, latent and blatant, (iii) internal contradictions in his evidence, (iv) external contradictions with what was pleaded or put on his behalf, or with established fact or with his own extracurial statements or actions, (v) the probability or improbability of particular aspects of his version, (vi) the calibre and cogency of his performance compared to that of other witnesses testifying about the same incident or events. As to (b), a witness's reliability will depend, apart from the factors mentioned under (a)(ii), (iv) and (v) above, on (i) the opportunities he had to experience or observe the event in question and (ii) the quality, integrity and independence of his recall thereof. As to (c), this necessitates an analysis and evaluation of the probability or improbability of each party's version on each of the disputed issues. In the light of its assessment of (a), (b) and (c) the court will then, as a final step, determine whether the party burdened with the onus of proof has succeeded in discharging it. The hard case, which will doubtless be the rare one, occurs when a court's credibility findings

² [2002] ZASCA 98; 2003 (1) SA 11 (SCA) (6 September 2002)

compel it in one direction and its evaluation of the general probabilities in another. The more convincing the former, the less convincing will be the latter. But when all factors are equipoised probabilities prevail.”³

Discussion

[133] The conspectus of evidence shows that the four plaintiffs lied to the police in various ways, including providing incorrect signatures, addresses, names, and surnames. Further, there were numerous discrepancies between their evidence and the statements they made to their lawyers. Notably, Tshepo Ngobeni testified that all the detainees witnessed the assault on Masoka and were shouting at the police to stop assaulting him. Yet not one of the four plaintiffs mentioned the assault. Naturally, anyone in the cell would have mentioned such a traumatic incident. Given the abundance of challenges in the four plaintiffs' respective cases, it cannot be said that they have discharged the onus of proving, on the balance of probabilities, that they were indeed arrested. The overwhelming probabilities are that they were never arrested and detained with the other 17 plaintiffs. The four plaintiffs are the authors of their own misfortunes by being mendacious. Consequently, their claims must be dismissed.

[134] Regarding Masoka's saga, there is a groundswell of evidence that indicates that he was assaulted by the police at the police station. His account was corroborated by Dr. Khan in material respects. Tshepo's testimony bolstered his evidence. Even the contradictions noted by counsel for the defendant reinforced the conclusion that he was assaulted. It is of no moment that Tshepo said he sustained a bruise while he testified that he sustained a swelling under his left eye. A courtroom is not an English-spelling-test classroom. It is a place where wheat is separated from the chaff, using brains, not English. IsiZulu can do just as well. In short, these

³ Supra para 5.

contradictions highlighted by the defendant are not material, nor do they affect the probative value of his testimony.

[135] Dr. Mohammed Moosa Khan's testimony was untested and corroborated Masoka's. On the balance of probabilities, Masoka was assaulted and deserves compensation for the assault. The defendant's reliance on *Minister of Safety and Security v Slabbert*⁴ is fallacious, especially if regard is had to para 12, which reads:

"There are, however, circumstances in which a party may be allowed to rely on an issue which was not covered by the pleadings. This occurs where the issue in question has been canvassed fully by both sides at the trial".

In *South British Insurance Co Ltd v Unicorn Shipping Lines (Pty) Ltd*, this court said:

"However, the absence of such an averment in the pleadings would not necessarily be fatal if the point was fully canvassed in evidence. This means fully canvassed by both sides in the sense that the Court was expected to pronounce upon it as an issue".

[136] Masoka's assault was canvassed at great length by both parties. It would be bizarre for the court not to make a ruling. Masoka suffered huge humiliation in front of his friends and strangers when he wet himself. He sustained injuries to his shin and left eye.

[137] Assault is recognized in the law of delict as *actio iniuriarum*. It is defined as an infringement of the right to bodily integrity (physical and psychological). In *Minister of Justice v Hofmeyer*⁵ the court stated:

"One of an individual's absolute rights of personality is his right to bodily integrity. The interest concerned is sometimes described as being one in corpus, but it has several facets. It embraces not merely the right of

⁴ (668/2009) [2009] ZASCA 163; [2010] 2 All SA 474 (SCA) (30 November 2009)

⁵ [1993] ZASCA 40; 1993 (3) SA 131 (A) at 145H-I.

protection against direct or indirect physical aggression or the right against false imprisonment. It comprehends also a mental element.”

[138] Having accepted that Masoka suffered the indignity of assault at the hands of the police officers, the court is alive to what was said in the matter of *Safety & Security v Seymour*⁶, endorsing what was said in *Protea Assurance Co Ltd v Lamb*⁷, namely:

“It is settled law that the trial judge has a large discretion to award what he in the circumstances considers to be a fair and adequate compensation to the injured party for these sequelae of his injuries ...”⁸

[139] The defendant referred the court to a number of cases dealing with damages in assault cases. These are:

- In *EL v Minister of Police and Another*⁹ the court awarded R80 000.00 for assault by police officers which resulted in a fractured 9th rib and hip injury.
- *Gcumisa and Others v Minister of Police*¹⁰ the court awarded R25 000.00 for assault.
- *Jombile v Minister of Police*¹¹ the court found that the plaintiff did not present any evidence that physical injuries sustained were of permanent nature, the court awarded an amount of R50 000.00.

[140] In my opinion, a sum of R50 000.00 is an appropriate compensation for the unlawful assault on Masoka by the police.

⁶ 2006 (6) SA 320 (SCA)

⁷ 1971(1) SA 530

⁸ Seymour para 11

⁹ 2025 ZAGPJHC 148

¹⁰ [2020] JOL 48615 (KZP)

¹¹ [2024] JDR 1126 (GP)

[141] All that remains is the question of costs. It is trite that the costs follow the results, and there is no reason to stray from that well-trodden path. In the result, I make the following order.

Order

- (a) The four plaintiffs' claims are dismissed; and
- (b) The four plaintiffs are ordered to pay costs jointly and severally, the one paying the other to be absolved, on a party and party scale B.
- (c) The defendant is ordered to pay R50 000.00 to Masoka in respect of the unlawful assault by the police and costs on scale B.
- (d) By agreement between the defendant and the seventeen plaintiffs, the defendant is ordered to pay R100 000.00 to the seventeen plaintiffs, including Masoka,
- (e) The defendant shall pay interest at the rate of 7% per annum calculated from the date of the summons to the date of payment.

Dated at Johannesburg on this 13th day of February 2026


M. P. MOTH A
JUDGE OF THE HIGH COURT,
JOHANNESBURG

Date of hearing: 17,18,19,20 and 21 November 2025, and
03 December 2025
Date of judgment: 13 February 2026

APPEARANCES:

For the Plaintiffs: Adv R. Mthembu
instructed by: Attorneys MN Mnkansi Incorporated
For the Defendant: Adv O. Legae
instructed by: State Attorney