



**IN THE HIGH COURT OF SOUTH AFRICA, MPUMALANGA DIVISION,
(MBOMBELA MAIN SEAT)**

Case No.: 1166/2021

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED YES/NO

DATE 20 February 2026

SIGNATURE

In the matter between:

NOAH MATHEBULA NKAVDZI

PLAINTIFF

And

MINISTER OF POLICE

1ST DEFENDANT

NATIONAL DIRECTOR OF PROSECUTION

2ND DEFENDANT

JUDGMENT

NGWENYA AJ

INTRODUCTION

[1] The Plaintiff is suing the Minister of Police and the NDPP. His claim consists of the following:

[1.1] Unlawful arrest and detention. In this regard, he's claiming R700 000.00 for unlawful arrest and detention; emotional shock and psychological stress R200 000.00; and future medical expenses R100 000.00.

[1.2] Malicious prosecution. In this regard, he is claiming R300 000.00.

[1.3] Loss of earnings. In this regard, he is claiming R100 000.00 for past loss of earnings and R2 000 000.00 for future loss of earnings.

[2] At the beginning of the trial, Counsel for the Plaintiff abandoned the malicious prosecution claim.

[3] Only the Plaintiff testified in support of his claim. The Minister and the NDPP did not call any witnesses.

Plaintiff's testimony

[4] The Plaintiff testified that he received a call from the Police ("SAPS") to come to the Thulamahashe Police Station on the 20th of March 2020.

[5] The SAPS officer who called him was Ms Mathebula. The latter informed him of a criminal case against him, but was never provided with the particulars of the case.

[6] When he reached the Police station, he was informed that there was a complaint against him for a case of rape. Soon thereafter, the SAPS charged him and informed him that the complainants were R[...] N[...] and I[...] N[...].

[7] He testified that he did not know the complainants.

[8] After he was charged, he was taken to the Calcutta Police Station because the police cells in Thulamahashe were full.

[9] On the 24th of March 2020, he made his first appearance in Court. The matter was postponed to the 30th of March 2020, and he was taken back to Calcutta Police Station.

[10] On the 30th of March 2020, he was transferred to the Nelspruit Correctional Services Centre.

[11] He further testified that, prior to the arrest, he was employed as a driver, earning R5000.00 per month. His duties were to drive kids to school.

[12] As a result of the arrest and detention, he lost his job because his employer hired a new driver.

[13] He sought employment, but the pending case was an impediment. He went to the SAPS on multiple occasions to have the record cleared. The record was eventually removed around early 2025.

[14] He testified that the arrest adversely affected him by causing him to lose his employment and by eroding community trust in him. His health was also affected because the cells were not in good condition. He was never taken for counselling.

[15] He was cross-examined, but nothing really turned on the cross-examination. All that was put to him was that the SAPS has the right to arrest on the basis of the charges reported. He was further asked whether he had previously encountered the arresting officer and whether there was any animosity between them. I suspect this was intended to suggest why the police would arrest him without cause.

[16] In Minister of Safety and Security v Sekhoto and Another 2011 (5) SA 367 SCA, at paragraphs 28 and 29, the SCA stated that:

“[28] Once the jurisdictional facts for an arrest, whether in terms of any paragraph of s 40(1) or in terms of s 43, are present, a discretion arises. The question whether there are any constraints on the exercise of discretionary powers is essentially a matter of construction of the empowering statute in a manner that is consistent with the Constitution. In other words, once the required jurisdictional facts are present the discretion whether or not to arrest arises. The officer, it should be emphasised, is not obliged to effect an arrest. This was made clear by this court in relation to s 43 in Groenewald v Minister of Justice.

[29] As far as s 40(1)(b) is concerned, H J O van Heerden JA said the following in Duncan (at 818H-J):

‘If the jurisdictional requirements are satisfied, the peace officer may invoke the power conferred by the subsection, ie, he may arrest the suspect. In other words, he then has a discretion as to whether or not to exercise that power (cf Holgate-Mohammed v Duke [1984] 1 All E R 1054 (HL) at 1057). No doubt the discretion must be properly exercised. But the grounds on which the exercise of such a discretion can be questioned are narrowly circumscribed. Whether every improper application of a discretion conferred by the subsection will render an arrest unlawful, need not be considered because it does not arise in this case.’

[17] From the above, it is trite that an officer is not obliged to arrest merely because the jurisdictional facts of section 40(1) of the Criminal Procedure Act have been established. In addition, the officer must exercise discretion as to whether to effect the arrest.

[18] In this case, the Minister of Police has not called the officer who effected the arrest to explain the factors considered in effecting the arrest.

[19] Given that the Plaintiff was released without prosecution, it follows that the arrest was unwarranted and therefore unlawful.

Quantum on arrest and detention

[20] In *Minister of Safety and Security v Tyulu* 2009 (5) SA 85 (SCA) at paragraphs 26 and 27, where it was held that:

“[26] In the assessment of damages for unlawful arrest and detention, it is important to bear in mind that the primary purpose is not to enrich the aggrieved party but to offer him or her some much-needed solatium for his or her injured feelings. It is therefore crucial that serious attempts be made to ensure that the damages awarded are commensurate with the injury inflicted. However our courts should be astute to ensure that the awards they make for such infractions reflect the importance of the right to personal liberty and the seriousness with which any arbitrary deprivation of personal liberty is viewed in our law. I readily concede that it is impossible to determine an award of damages for this kind of injuria with any kind of mathematical accuracy. Although it is always helpful to have regard to awards made in previous cases to serve as a guide, such an approach if slavishly followed can prove to be treacherous. The correct approach is to have regard to all the facts of the particular case and to determine the quantum of damages on such facts (Minister of Safety and Security v Seymour 2006 (6) SA 320 (SCA) 325 para 17; Rudolph & others v Minister of Safety and Security & others (380/2008) [2009] ZASCA 39 (31 March 2009) (paras 26-29).

[27] Having given careful consideration to all relevant facts, including the age of the respondent, the circumstances of his arrest, its nature and short duration, his social and professional standing, the fact that he was arrested for an improper motive and awards made in comparable cases, I am of the view that a fair and appropriate award of damages for the respondent’s unlawful arrest and detention is an amount of R15 000.”

[21]The Plaintiff seeks R30 000.00 for each day he was in custody. I find that this is a fair amount, considering the latest case of Amaojuyi v Minister of Police (536/2023) [2025] ZANWHC 77 (2025), in which the North West High Court, Mahikeng, awarded R150 000.00 for 5 days in custody.

Quantum on loss of earnings

[22]It is correct that the arrest caused the Plaintiff to lose his employment; however, I question whether, during the COVID-19 pandemic, when there was a hard lockdown between March and the end of 2020, the Plaintiff was truly employed at that time. The Defendant did not raise this point or challenge the Plaintiff's assertion that he was employed during that time.

[23]I have studied the reports from the Industrial Psychologist and the Actuary. The Industrial Psychologist states that the Plaintiff's earnings were at the midpoint between the lower quartile and the median of skilled workers. On the other hand, the Actuary says that the Plaintiff was in the upper quartile for semi-skilled workers. I prefer the findings of the Industrial Psychologist to those of the actuary. In any event, the findings of the Actuary must be premised on the report of the Industrial Psychologist.

[24]I do not agree that the Plaintiff suffered future loss of income, as the arrest did not affect his ability to work or obtain future employment. All that the arrest did was to interrupt his employment; therefore, I find that he suffered only the past loss of income.

[25]His prior loss of income is the 2-year period during which he was not employed. In that regard, I will award the amount claimed in the particulars of claim, i.e. R100 000.00 for past loss of earnings.

[26]In the premises, I make the following order:

1. The first Defendant is ordered to pay the Plaintiff the sum of R1 560 009.00, together with interest for unlawful arrest and detention at the prescribed rate from the date of summons..
2. The First Defendant is ordered to pay the Plaintiff the sum of R100 000.00 for past loss of income with interest at the prescribed rate from date of summons;
3. The First Defendant is ordered to pay cost of experts;
4. The First Defendant is ordered to pay the costs of litigation on a party-to-party basis on the High Court scale C.

NGWENYA AJ
JUDGE OF HIGH COURT, MPUMALANGA DIVISION,
MBOMBELA (MAIN SEAT)

Appearances:

Date of hearing:

18 June 2025

Date of judgment:

20 February 2026

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