



**IN THE HIGH COURT OF SOUTH AFRICA  
NORTH WEST DIVISION – MAHIKENG**

Case No: 871 / 2024

In the matter between:

**TEBOGO EDWARD MONCHOJANG**

**PLAINTIFF**

**And**

**MINISTER OF POLICE**

**1<sup>st</sup> DEFENDANT**

**NATIONAL COMMISSIONER OF POLICE**

**2<sup>nd</sup> DEFENDANT**

**PROVINCIAL COMMISSIONER OF POLICE**

**3<sup>rd</sup> DEFENDANT**

**NATIONAL DIRECTOR OF PUBLIC**

**PROSECUTIONS**

**4<sup>th</sup> DEFENDANT**

**CORAM: MAODI AJ**

**Date judgment reserved: 13 February 2026**

*Judgment is handed down electronically by distribution to the parties' legal representatives by e-mail. The date that the judgment is deemed to be handed down is 20 February 2026 at 10h00.*

## **ORDER**

1. The first and fourth defendants are, jointly and severally, the one paying the other to be absolved, held liable and ordered to pay the plaintiff an amount of R 350 000, 00 with interest at the rate of 7,5% from 5 March 2024 to date of final payment.
2. The first and fourth defendants are, jointly and severally, the one paying the other to be absolved, held liable and ordered to pay the plaintiff's costs on scale B.

## **JUDGMENT**

### **MAODI AJ**

#### **Introduction**

- [1] This is a claim for unlawful arrest, detention and malicious prosecution of the plaintiff by members of the defendants acting within the course and scope of their employment with the defendants. The matter was defended. Although action was instituted against four defendants, the second and third defendants were absolved from further proceeding in the matter and no order is being sought against them. The matter only proceeded against the first and fourth defendants to whom I shall refer as defendants.

#### **The particulars of claim**

- [2] The plaintiff pleads that on or about 18 August 2022 five male and one female police officers whose names and details are unknown to him, arrived at his home and arrested him, allegedly for having raped a minor child in the community. The said police officers transported plaintiff to Mmabatho Police Station where he was detained and charged with the crime of rape under CAS 203808/2022 by Constable Tshegetso. On or about 22 August 2022 the plaintiff was taken to Mahikeng Magistrates Court where he appeared and the matter was postponed to 26 August 2022 at the instance of members of the National Prosecuting Authority whilst he remained in custody.
- [3] On or about 26 August 2022 the plaintiff was again taken to Mahikeng Magistrates Court where he successfully applied for bail, which was

granted in the amount of R 1 000, 00. The bail amount was paid on even date, but plaintiff was not released and he was taken back to the Mmabatho Police Station where he was further detained until 27 August 2023 when he was taken to his alternative address in Lekoko Village, Mahikeng where he was released at around 18:00. The matter was postponed on a number of occasions until the charges were officially withdrawn against the plaintiff on 31 January 2023.

- [4] The plaintiff did not receive food or water on the day of his arrest and detention. The plaintiff denied any wrongdoing on his part, he requested to be released on warning for court instead of arrest, but was denied same. The arrest and detention were unlawful as the arresting officers did not take into account the plaintiff's rights in terms of s 12 and 35(1)(d) of the Constitution. The plaintiff was arbitrarily and without good cause deprived of his freedom. The arresting officers had no grounds to interfere with the plaintiff's constitutional rights. Alternatively, the arresting officers had no prima facie case and/or reasonable grounds to arrest and detain the plaintiff. Further alternatively, the arrest and detention was unlawful due to the fact that the arresting officers did not exercise their discretion or did not exercise same properly.

### **The plea**

- [5] The defendants plead that the plaintiff was arrested without a warrant 18 August 2022 as the arrest and detention was lawful in terms of s 40(1)(b) of the Criminal Procedure Act, 51 of 1977 ("the CPA"). The arresting officer, Constable Itumeleng Tshegetso, was a peace officer as defined in the CPA. The plaintiff appeared for the first time at the Mahikeng Magistrates Court on 22 August 2022 when the matter was postponed to

26 August 2022 for bail application and for police to confirm his physical address.

- [6] The defendants deny that the bail money was paid on 26 August 2022 but that it was paid on 27 August 2022 whereafter plaintiff was released. The matter was postponed five times for bail, further investigations and transfer to regional court until it was withdrawn. The detention of the plaintiff was lawful in that it followed upon arrest. The plaintiff was arrested on a reasonable suspicion of having committed the offence of rape of a minor child, the offence of which is a schedule 1 and 5 offence and called for the arrest of the plaintiff.

### **The evidence**

- [7] The plaintiff was the only witness in his own case. He testified that on 18 August 2022 at around 12:00 afternoon he was at home when he heard the sound of a police vehicle, and asked himself who it was after or chasing, not knowing that it was coming for him. Two gentlemen came in a white Nissan NP 200 van and said they were camera men. They asked him what he did, to which he replied that he did nothing. Whilst explaining to them, two others came in another NP 200 whilst others came in a private car. They said he had slept with a minor child. When he asked them which child, they told him to get into the yard. It seemed to him that the said people thought he was a criminal and would run away. One of them had a gun ready.
- [8] He went into his bedroom with them where they searched and took photographs. They went to the house of the child mentioned. He was in handcuffs. They did not show him a warrant of arrest and did not read him his rights upon arrest. He stood at the gate with one police officer while the others went into the yard and took statements. The police officer told him to

explain why he had sexual intercourse with the child. He told the police officer he did not have sexual intercourse with the child but the police officer did not listen and kept asking him in a bullying manner. After they had written what they wanted, they put him in the car and took him to the police station. Along the way the police officers were threatening him saying he had raped a child. He kept repeating that he did not rape the child as the child was very young and small. The female police officer said he had raped a child in women's month and that he is very naughty.

[9] At the police station they put him in the cells. It was the first time he went into the cells and was scared. He was treated like a dog and made to clean the floors. They took his food and he saw things he is not used to. He did not eat or bath.

[10] On 22 August 2022 he attended court and was told to go back as he had to make an application for bail. On 26 August 2022 he was granted bail and given terms and conditions that he must stay away from the child. He had to go stay at Masutlhe so that he is not close to or in contact with the child. Although he was given bail he was only released on the second Saturday from the day he was arrested. He does not know why he was released on that day. The bail was paid on the court day but he was released the next day. His case was postponed a few times but he does not know the reasons for the postponements.

[11] After his arrest and when he was at the cells one police officer came with a device, asked him to open his mouth, started poking with something like a wire, put it in plastic wrap and told him to go back to the cells. The arrest hurt him deeply that he nearly committed suicide. When he comes across the mentioned child he changes routes so that he does not meet her. The

child's friends call him a rapist as they say he had raped the child. This gets his emotions worked up, but he controls himself. He no longer has dignity because of all this and he feels like just a thing in the community.

[12] He could not look for a job as he was incarcerated. The arrest and prosecution made him stagnant. Before the arrest and prosecution he worked on contract for Pick and Pay. The company moved to Johannesburg. He could not move with the company as he had to sign every Friday at the police station.

[13] Under cross examination he testified that he was given food but other people in the cells would take the food from him. He did not sleep comfortably as he was always told that it was not his home. He knew the minor child before the incident and considers her as a child he had raised. He has never slept with the child and knows nothing about the change in behaviour of the child as observed by her mother. He denied that the police read him his constitutional rights upon arrest.

Case for plaintiff.

[14] The first witness for defendants was Mogotsi John Makekeng (Makekeng) who testified that he is a Sergeant with the South African Police Services (SAPS). In 2022 his rank was Constable. He has been a police officer for 14 years and is the one who took down a statement from Motshidisi Mogorosi on 14 August 2022. He was based at Mmabatho Police Station. He wrote down the statement himself but got the information from the complainant.

[15] On the day in question he was on duty at CSC when the complainant arrived and asked for assistance to open a rape case. He moved from CSC into another room called friendly room as there was a lot of complaints. The

complainant was in the company of a minor child. The child's name is Kgothatso Mogorosi who was reported to him as the victim. He informed the mother that the case cannot be opened in the name of the child as she was a minor. The mother reported to him that on 11 August 2022 she left home and went to the child's school after noticing changes in the child's behaviour. She went to see the school principal. He took down the statement and read it back to the complainant who confirmed and signed same. The case gets captured on the system and waits for an investigating officer to be allocated to it. His role ends there.

[16] The second witness for defendants was Itumeleng Boikhutso Tshegetso (Tshegetso) who testified that he is a Constable with SAPS stationed at Mmabatho Family Violence, Child Protection and Sexual Offences Unit (FCS). It is his seventh year. Eight years as a police officer. On the day in question he was on duty with the victim and her mother who took them to where they said the incident took place. He was on standby when the case was opened at police station. When a case is opened the system automatically allocates the matter to police via CAS which is Crime Administration System. There is a matter allocated to FCS. They went to the police station to get the case. It had a statement of the complainant inside.

[17] After receipt of the docket he read the statement, checked the number of complainant and called her. He was with Sergeant Mokgalagadi. They took a statement from the child and called forensic at LCRC. When there is evidential material at the scene forensics are the ones to be involved. The forensics came and they visited the scene. They were in two motor vehicles. Upon arrival they found a male person and the victim pointed to him as the person who victimised her. They introduced themselves to the person and

informed him that a case had been opened against him. The LCRC were there to take evidential material or pictures.

[18] They searched the scene and found nothing. As the person stays near the victim and he had threatened the victim, he was arrested. He is the one who arrested the person. He read him his rights from his pocket book. There was no other way of bringing the person to court as he stays near the victim and had threatened her. He was afraid that the person would continue with the threats. He does not remember opposing bail.

[19] Under cross examination he stated that he was both the arresting officer and the investigating officer of the matter. There was no DNA as the child informed her mother after 72 hours. He effected the arrest as there was a statement by the mother and victim together with a document from the doctor in the docket. At the time the case was withdrawn it had been allocated to Captain Simunza, as such he does not know why it was withdrawn. However, he was told that the mother of the child who was the witness refused for the child to testify. He did investigate as they went to hospital to get a doctor's report and the case had been reported 72 hours before. He can't remember if it was Simunza or him who did not oppose bail.

[20] He knows the purpose for arrested very well and that it is for the suspect to appear in court. There are less drastic measures, but for the person's rights to be trampled upon is because he had committed an offence. The plaintiff was arrested as he had threatened the victim and he knew there was a case against him. He admitted that Captain Simunza had informed the Magistrate Court that the plaintiff was not a flight risk, not dangerous and had co-operated with them. Case for the defendants

### **The authorities and reasons for judgment**

- [21] It is not in dispute, in fact there is no version or evidence before me disputing that the plaintiff was arrested without a warrant. Therefore, I accept that the plaintiff was arrested without a warrant of arrest. There is nothing prohibiting a peace officer to arrest a person without a warrant. However, such arrest must be within the confines of the law and the *onus* rests upon the arresting officer to prove the lawfulness thereof. Arrest without warrant is governed by the provisions of sections 39 to 42 of the Criminal Procedure Act 51 of 1977 (the Act). For our purposes the specific sections relevant are sections 40 and 41 of the Act.
- [22] The authorities are clear that arrest has always been premised on the need to ensure attendance of an accused person to trial, and not as punishment. Even where arrest is justified, it should be utilised after careful consideration of the surrounding circumstances of the case. The police need to do more in ensuring that arrest is justified. The arresting officer relied on alleged threats which threats were not stipulated. There is no evidence that an admonition was performed when the statements were taken from the minor child both by the mother and the police. Whether the minor child was carefully made to understand the difference between telling the truth, being fanciful or telling lies, was not properly canvassed to assist the arresting officer of the value of the information he relied on. More so since the case was reported 72 hours prior to the arrest.
- [23] The question whether the suspicion was based on reasonable grounds or not has been dealt with in the case of *Mabona and Another v Minister of Law and Order and Others 1988 (2) SA 654 (SE)* at 658E-H where Jones J held as follows:

“The test of whether a suspicion is reasonably entertained within the meaning of s 40(1) (b) is objective (S v Nel and Another 1980 (4) SA 28 E at 33E-H). Would a reasonable man in the second defendant’s position and possessed of the same information have considered that there were good and sufficient grounds for suspecting that the plaintiff was guilty of conspiracy to commit robbery or possession of stolen property knowing it to have been stolen? It seems to me that in evaluating his information a reasonable man would bear in mind that the section authorises drastic police action. It authorises an arrest on the strength of a suspicion and without the need to swear out a warrant, i.e. something which otherwise would be an invasion of private rights and personal liberty. The reasonable man will therefore analyse and assess the quality of the information at his disposal critically, and he will not accept it lightly or without checking it where it can be checked. It is only after an examination of this kind that he will allow himself to entertain a suspicion which will justify an arrest. This is not to say that the information at his disposal must be of sufficiently high quality and cogency to engender in him a conviction that the suspect is in fact guilty. The section requires suspicion but not certainty. However, the suspicion must be based upon solid grounds. Otherwise, it will be flighty or arbitrary, and not a reasonable suspicion.”

- [24] I do not agree with the pleading by the defendants that detention of the plaintiff was lawful in that it followed upon arrest. Arrest does not automatically make detention lawful. There should be justifiable grounds for detention, which are amongst others, that the plaintiff is a flight risk, plaintiff will interfere with witnesses or any other justifiable reason. Arrest is not in itself a ground for detention. Causation is very important in cases of this nature. What each of the officials did from inception of the arrest to the last day of detention. Each case must be decided on its own merits. Arrest may be unlawful, but detention lawful and vice versa. Causation, whether factual or legal, will assist the court in determination of this.
- [25] The evidence by Makekeng does not assist the case for the defendants and did not take the matter any further.

[26] As to why the plaintiff could not be released on warning or bail on the first appearance which occurred on 22 August 2022 remains a mystery. No evidence has been placed before me to warrant the detention of the plaintiff beyond 22 August 2022. No one from the defendants has testified to provide reasons for such further detention. The only information before me is that the plaintiff's address was to be confirmed. This despite the fact that the plaintiff was arrested at his own home, without resistance and was well-known within the community. Tshegetso does not know or does not remember why bail was not opposed on 26 August 2022 as Captain Simunza had taken over the docket and had provided information that the plaintiff was not a flight risk, was not dangerous and had co-operated with the police. Therefore, the arrest and detention of the plaintiff were unlawful.

[27] Whether unlawful arrest leads to unlawful detention and thus attracts liability, depends on the circumstances of each case, but causation is of importance. The law was settled in the case of *De Klerk v Minister of Police 2021 (4) SA 585 (CC)* where Theron J held as follows:

*“Introduction*

[1] This is an application for leave to appeal against a decision of the Supreme Court of Appeal. The main issue for determination is whether the Minister of Police (the respondent) is liable to compensate Mr de Klerk (the applicant) for the entire period of his detention following his unlawful arrest, including the period following his first appearance in court. Related questions are whether the unlawful detention of the applicant ceased when the Magistrate ordered his further detention and whether the Magistrate's order rendered the subsequent harm caused by his detention too remote (for the purposes of legal causation) from the unlawful arrest.

*Background*

[2] The facts are common cause. Around 11 December 2012, Mr Rael Lasarow lodged a complaint of assault against the applicant. He alleged that the applicant (his employee at the time) had pushed him into a glass picture frame hanging on a wall. As a result, the glass broke and injured Mr Lasarow.

[3] On 20 December 2012, at around 08h00, the applicant reported to the Sandton police station after receiving a voice message requesting him to do so. He was arrested without a warrant by Detective Constable Ndala on a charge of assault with intent to do grievous bodily harm. He was transported to the Randburg Magistrates' Court, placed in holding cells and appeared in Court at around 10h00.

[4] It was recorded in the docket that Constable Ndala had recommended bail in the amount of R1 000. However, the applicant was not afforded the opportunity to apply for bail at this first appearance. The matter was routinely postponed, without the question of bail arising or being addressed. Instead, the Magistrate informed the applicant without more that he would be remanded in custody at the Johannesburg prison. The applicant was released from prison on 28 December 2012 after Mr Lasarow withdrew his complaint against the applicant.

[5] The applicant instituted a delictual claim against the respondent in the High Court of South Africa, Gauteng Division, Pretoria (High Court) for damages flowing from his arrest and detention. The High Court accepted that the arresting officer believed that the applicant had committed an offence in terms of Schedule 1 and had exercised her discretion to arrest him in order to secure his attendance in Court. It held that the arrest and subsequent detention were lawful and dismissed the claim.

[6] Aggrieved by this outcome, the applicant appealed to the Supreme Court of Appeal, with leave granted by that Court. All five Judges agreed that the applicant's arrest was unlawful and that he was entitled to damages in compensation for it. The Judges differed only on whether the respondent should be held liable for the applicant's unlawful detention after his first appearance in court.

[7] The majority held that the respondent cannot be liable for the applicant's detention after his first court appearance. As they put it: "what happened in court and thereafter cannot be placed before the doorstep of the respondent". The majority relied on an analysis of the Supreme Court of Appeal's judgment in *Sekhoto* to find that once an accused is brought to trial, it is the presiding officer's responsibility to ensure that the accused's fair trial rights under section 35(1)(e)-(f) are not undermined. The majority reasoned that the arresting peace officer accordingly cannot be held liable for an unlawful detention after a court hearing where the presiding officer fails to fulfil their responsibilities regarding the further detention of the arrested person. The majority judgment held that the respondent was liable to compensate the applicant for his unlawful detention only up and until his appearance in Court (for a period of approximately two hours) and awarded him R30 000 in damages, plus costs.

[8] The minority held that the respondent should be liable for the entire period of detention on the basis that the lawfulness of the detention after his first court appearance is not essential for establishing liability. The minority reasoned that what matters is whether the police can be said to

have caused (both factually and legally) the detention after the first hearing as a result of their unlawful conduct (the arrest). The minority found that factual and legal causation for the applicant's injury had been established and awarded him R300 000 in non-patrimonial damages. The minority held that because the Magistrate had not exercised any considered discretion regarding bail, her conduct was not a break in the causation between arrest and the detention after the applicant's first court appearance.

[47] These questions probe the role of the lawfulness of the subsequent detention in assessing the police's liability for an unlawful arrest. For the reasons that appear from an analysis of the contradictory case law below, the liability of the police for detention after court appearance should not be determined solely on the basis of whether the further detention was lawful, although that is a relevant consideration. Instead, liability should be determined in accordance with the principles of legal causation, including constitutionally infused considerations of public policy.

[49] ... The practice of using "reception courts" abrogates the duty of judicial officers to consider bail during the first appearance of an arrested person...

[62] The principles emerging from our jurisprudence can then be summarised as follows. The deprivation of liberty, through arrest and detention, is per se prima facie unlawful. Every deprivation of liberty must not only be effected in a procedurally fair manner but must also be substantively justified by acceptable reasons. Since *Zealand*, a remand order by a Magistrate does not necessarily render subsequent detention lawful. What matters is whether, substantively, there was just cause for the later deprivation of liberty. In determining whether the deprivation of liberty pursuant to a remand order is lawful, regard can be had to the manner in which the remand order was made.

[63] In cases like this, the liability of the police for detention post-court appearance should be determined on an application of the principles of legal causation, having regard to the applicable tests and policy considerations. This may include a consideration of whether the post-appearance detention was lawful. It is these public policy considerations that will serve as a measure of control to ensure that liability is not extended too far. The conduct of the police after an unlawful arrest, especially if the police acted unlawfully after the unlawful arrest of the plaintiff, is to be evaluated and considered in determining legal causation. In addition, every matter must be determined on its own facts – there is no general rule that can be applied dogmatically in order to determine liability.

[74] ...In any event, and this point must be emphasised, the exercise of a proper judicial discretion should not always be considered sufficient to break the chain of causation, lest the elasticity of legal causation established in *Mokgethi* be compromised...

[79] Professor Burchell is of the view that an intervening event does not necessarily break the causal chain where it was subjectively foreseen, even though it is otherwise considered as abnormal. Burchell explains that “[a]n abnormal event which would otherwise rank as a *novus actus* does not so rank if it was actually foreseen (or was reasonably foreseeable in negligence cases) or planned by the accused”.

[80] Professor Snyman puts it as follows:

“All the . . . rules relating to a *novus actus* are subject to the qualification that if X planned the unusual turn of events or foresaw it, it cannot amount to a *novus actus*. This accords with the rule of the adequate causation test . . . that, in determining whether an act tends to lead to a certain result, one should take into account not only the circumstances ascertainable by the sensible person, but also the additional circumstances known to X.”

[81] As explained, subjective foresight of harm cannot itself necessarily imply that harm is not too remote from conduct. It is, however, a weighty consideration. In the present matter, Constable Ndala subjectively foresaw the precise consequence of her unlawful arrest of the applicant. She knew that the applicant’s further detention after his court appearance would ensue. She reconciled herself to that consequence. What happened in the reception court was not, to Constable Ndala’s knowledge, an unexpected, unconnected and extraneous causative factor – it was the consequence foreseen by her, and one which she reconciled herself to. In determining causation, we are entitled to take into account the circumstances known to Constable Ndala. These circumstances imply that it would be reasonable, fair, and just to hold the respondent liable for the harm suffered by the applicant that was factually caused by his wrongful arrest. For these reasons, and in the circumstances of this matter, the court appearance and the remand order issued by the Magistrate do not amount to a fresh causative event breaking the causal chain.

[87] Public policy considerations, based on the norms and values of our Constitution, and the principles emerging from *Zealand*, point to the respondent being liable for the entire period of the detention. To impose liability on the respondent for the entire period of the detention, in the circumstances of this matter, would not be exceeding the bounds of reasonableness, fairness and justice. On the contrary, following this line of reasoning, it would be fair and just to impute liability to the respondent.

[88] At the same time, and this point must be underscored, holding the Minister of Police liable does not mean that a Magistrate, as an officer of the court, cannot and should not in egregious cases be held accountable for dereliction of constitutional duties. For the reasons given, the duty of Magistrates to apply their minds to the question of bail is of the utmost constitutional significance. Failure to discharge this duty must result in consequences for the presiding officer

involved. Moreover, in the ordinary course, members of the police will not be liable for derelictions of duty by members of the Magistracy. On the facts of this case, the Magistrate concerned should not be exclusively liable for the subsequent detention, given the original delict by the arresting officer and her subjective foresight of the subsequent detention and the harm associated therewith.”

[28] It is common cause that the decision to prosecute rests with the fourth defendant. That decision must be exercised as soon as the members of the first defendant put the docket in front of members of the fourth defendant. The plaintiff was arrested on 18 August 2022, he appeared in court on 22 August 2022 with about five subsequent postponements until the matter was withdrawn on 31 January 2023. The chronology of the postponements, as per defendants’ plea is as follows:

- 22 August 2022 first appearance.
- 26 August 2022, application for bail which was not opposed and was granted in the sum of R 1 000, 00.
- 26 September 2022 postponed for further investigation.
- 8 November 2022 postponed for further investigation.
- 12 December 2022 postponed to be transferred to the regional court.
- 31 January 2023 charges withdrawn.

[29] The fourth defendant did not call any witnesses and as such only the version of the plaintiff has been adduced in respect of malicious prosecution. The reasons for the detention and postponements beyond 22 August 2022 were never placed before me. The reason for withdrawal of the charges was never placed before me. As to why a decision whether to prosecute or decline prosecuting the plaintiff could not be made on 22 August 2022 or 26 August 2022 remains a mystery. The prosecution was without basis and therefore malicious.

[30] The fourth defendant is jointly and severally liable with the first defendant. This issue was discussed and applied in the *De Klerk* case supra at paragraphs 82 to 85 as follows:

*“Apportionment of damages and concurrent wrongdoers*

[82] The applicant did have alternative avenues of recourse regarding his unlawful detention after the remand order beyond only pursuing a claim against the respondent. There appears to have been multiple, concurrent wrongdoers in this matter. They all contributed to a systemic failure that led to the applicant being unlawfully detained for seven days. These parties were not joined and are not before us and we are thus unable to pronounce definitively on their liability.

[83] The Minister of Justice and Director of Public Prosecutions might be jointly and severally liable with the Minister of Police, but it is sufficient for one of them to be sued for their proven delict for the applicant to succeed. A plaintiff may elect to sue only one person whose delict caused her harm, even if another person’s independent delict also caused that same harm. It is not obligatory that *all* joint wrongdoers be sued in the same action. Where all joint wrongdoers have not been sued, a court is not barred from determining the liability, if any, of the party or parties before it. This happened in *Carmichel* (and *K* and *F*), where the plaintiff sued only the state officials for their delict, and not the party who had actually assaulted her.

[84] This matter is similar. There are potential concurrent wrongdoers: the Minister of Justice, the Minister of Police and the relevant Director of Public Prosecutions. Each of these actors may have committed independent delicts resulting in harm to the applicant. This would render them jointly and severally liable. So, while Mr de Klerk may successfully sue only one wrongdoer, it does not follow that the others did not commit a delict.

[85] The Apportionment of Damages Act then provides that where a plaintiff successfully sues only one of the concurrent wrongdoers, then that wrongdoer can bring a claim of contribution against the other wrongdoers that were not sued by the plaintiff. It is open then to the Minister of Police to bring a claim of contribution against the Minister of Justice or Director of Public Prosecutions if the requirements for

concurrent wrongdoing are met. These latter actors are absolved of liability as against the applicant, because the Minister of Police will foot the bill, but they may still be liable for contribution claims at the instance of the Minister.”

- [31] The law is settled that in cases involving deprivation of liberty, a trial court must do its best on the evidence before it to assess the quantum of damages and come up with a just finding on the award to be made. This is by taking the relevant circumstances of each case without following precedent slavishly. In arriving at a just award for compensation, one has to look at, amongst others, the alleged charge of which the plaintiff was accused, the reason proffered for the arrest, the conditions experienced by the plaintiff from the time of arrest, during detention until release, the period of detention, the status of the plaintiff in society, the impact of the arrest and detention on the plaintiff’s mental, physical, emotional and financial well-being.
- [32] In the case of *Van der Nest NO v Minister of Police (154/2024) [2025] ZASCA 42 (10 April 2025)* a plaintiff was awarded an amount of R 50 000, 00 for a detention of over 20 hours where there was no further detention. In *De Klerk* supra, an amount of R 300 000, 00 was allowed where the plaintiff was incarcerated for nine (9) days.
- [33] The plaintiff is 35 years old as per the notice in terms of section 3 of Act 40 of 2002. At the time of the incident he was 31 years old and well known within the community. He was arrested from the comfort of his own home, handcuffed and made to go to the alleged victim’s house. He was arrested and detained from 18 August 2022 until his release on bail on 27 August 2022 which is ten (10) days in the cells. It was the first time he had been in the police cells and was scared. During his incarceration he was treated bad

by other people he found in the cells. His food was taken away from him. He was made to clean the cells and could not use a blanket allocated to him as it was taken by others. Since his release, people in the community refer to him as a rapist due to this incident. He considers himself not valuable in society as he sees himself as nothing due to this incident. Given the circumstances stated in this case, an amount of R 350 000, 00 is reasonable.

[34] I see no reason why costs should not follow the suit.

### **Order**

[35] I therefore make an order as follows:

1. The first and fourth defendants are, jointly and severally, the one paying the other to be absolved, held liable and ordered to pay the plaintiff an amount of R 350 000, 00 with interest at the rate of 7,5% from 5 March 2024 to date of final payment.
2. The first and fourth defendants are, jointly and severally, the one paying the other to be absolved, held liable and ordered to pay the plaintiff's costs on scale B.

A black rectangular box redacting the signature of the judge.

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**J. T. MAODI**

**ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA,  
NORTH WEST DIVISION, MAHIKENG**

## **APPEARANCES**

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Date judgment reserved:

13 February 2026

Date of Judgment:

20 February 2026