REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2016/26965

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO

09/03/2026 ____________________

DATE SIGNATURE

In the matter between:

TSHEPO RASILE Plaintiff

and

MINISTER OF POLICE First Defendant

NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS Second Defendant

JUDGMENT

NTHAMBELENI, AJ

Introduction

[1] The plaintiff (Mr Rasile) brings this application claiming general damages in the amount of R 4 000 000.00 (Four Million Rands) arising from his arrest by members of the first defendant on 2 December 2014. He was released from custody on 3 December 2014 after his bail was fixed at R 1000.00 (One Thousand Rands). He also claims against the second defendant for alleged malicious prosecution.

[2] He instituted this action in the High Court, despite the fact that the arrest lasted only one day, and the quantum claimed falls within the jurisdiction of the regional Magistrate's Court.

Background

[3] The plaintiff alleges that his arrest was unlawful and that the prosecution instituted against him was malicious. The defendants deny these allegations and contend that the arrest was lawful and effected in accordance with the provisions of the Criminal Procedure Act.[1]

[4] The civil trial commenced on 21 October 2025. The plaintiff was called to testify together with witness, Ms Zanele Ntini (Ms Ntini) who was with him during his alleged unlawful arrest. At the close of his case, an application for absolution from the instance was submitted on behalf of the second defendant. The parties were requested to file and submit heads of argument by 23 October 2025. Following submissions made by both counsels, the Court handed down judgement in favour of the second defendant. Captain Phatlane was the only witness called for the first defendant and testified that the plaintiff was arrested pursuant to a lawful entrapment operation. He further testified that Ms Ntini, was allegedly romantically involved with the plaintiff, had been a pupil volunteer at the police station and assisted in the operation. That evidence was not challenged at all during cross-examination.

[1] 51 of 1977 ("the CPA").

Summary of the witnesses' testimony during trial

Tshepo Rasile (plaintiff)

[5] The plaintiff testified that he is a 43 year old male and resides in Lenasia South. He was employed by the first defendant for 12 years prior to his dismissal from service. Though not relevant to these proceedings, the plaintiff testified that after an internal disciplinary hearing, he was dismissed on suspicion of theft (a motor vehicle). He started off in the rank of a Constable and prior to his dismissal, he was detective (investigating officer). He testified that while he was stationed at Lenasia South Police Station, he was allocated a reckless and negligent driving police docket to investigate. The suspect in the case was Mr Leonard Sibanda who collided with a minor child.

[6] The plaintiff testified that he went to obtain the suspect's statement. After securing the statement, he requested the suspect's driver's license. The suspect informed him that his license was missing and suggested that it may have been lost at the scene of the collision. Instead, the suspect provided a copy of his traffic register. The plaintiff further testified that he took a copy of the suspect's traffic register to the Johannesburg Metropolitan Police Department (JMPD) to verify whether the suspect was in possession of a driver's license. The JMPD informed him that he did not appear on their system.

[7] The plaintiff further testified that Mr Sibanda advised him that he and the grandmother of the child with whom he collided with had agreed that he (Mr Sibanda) would assist with medical expenses. The plaintiff stated that he advised Mr Sibanda that, if such an agreement existed, a statement recording its terms should be obtained and placed in the docket.

[8] The plaintiff further testified that he received a phone call from the grandmother of the child, who informed him that Mr Sibanda was swearing at her and stating that Mr Rasile was continuing to investigate the case despite the existence of their private agreement.

[9] He testified that on 2 December 2014 he reported for duty but was instructed to return home as he was scheduled to work the night shift. He thereafter decided

to take his vehicle for re-gassing in town and asked his friend, Ms Ntini, to accompany him. She agreed. While on route to town, Mr Sibanda called him. He then drove past Mr Sibanda's residence with Ms Ntini. Upon their arrival, Mr Sibanda was still engaged in a telephone conversation. He approached the vehicle on the passenger side. He testified he was surprised when Sibanda produced money, began counting it, and attempted to hand it to Ms Ntini. He immediately held Ms Ntini's hand and instructed her not to accept the money. He then informed Mr Sibanda that he did not want the money, particularly as Mr Sibanda had previously had an argument with the grandmother of the child pertaining the settlement of the case and medical expenses. He told Mr Sibanda to take the money where it was supposed to go, namely to the grandmother of the child.

[10] Mr Sibanda thereafter returned to the yard. Ms Ntini indicated she wished to have some water and followed him. That is when money was allegedly forcefully given to Ms Ntini by Sibanda. When Ms Ntini returned to the car, he started the car and drove off slowly, as he still engaged in a phone conversation. He did not say anything to Ms Ntini, and shortly thereafter, their vehicle was blocked by another vehicle. The occupants pointed firearms at them and instructed them to alight from the vehicle. He and the vehicle were searched. He was then asked where "the money" was, to which he responded by asking which money was being referred to. A police officer then approached Ms Ntini and similarly asked her where the money was. The money was found in Ms Ntini's possession. They were placed in separate vehicles and driven to Eldorado Police Station, where he was detained. He testified that he was informed that his detention was the result of an entrapment operation that was conducted.

[11] When questioned by his legal representative regarding entrapment, the plaintiff testified that not all police know how entrapment works. Those who know work at the anti-corruption unit. He stated that it was only explained to him during his criminal trial. He stated that he was informed by the magistrate and during the evidence how entrapment works.

[12] He stated that, according to his understanding, the police official must make a s 252A application and specify to whom the money must be handed to. By way

of illustration, he explained that if “A”, who is a police officer, gives money to “B”, then “B” must in turn hand the money to “C”. However, if “B” gives the money to any person other than “C”, the operation would not proceed as authorised, and the entrapment would, in his view, be rendered unlawful.

[13] He testified further that he had previously been the subject of two entrapments operations, which failed, and he was ultimately found not guilty at the ensuing criminal trial. During cross examination, when asked about the status of his employment with the SAPS, the plaintiff testified that he had been dismissed on charges of, inter alia, possession of a stolen vehicle. Regarding the charge of reckless and negligent driving, it was put to the plaintiff during cross examination that the docket in that matter had received a *nolle prosequi* from the NDPP prior to 2 December 2014, being the date on which he went to Mr Sibanda’s residence. It was suggested that, as a result, there had been no need for any further investigation. Mr Rasile denied the *nolle prosequi* had been issued. He testified he had not taken the docket to the prosecutor and that, as at 2 December 2014, the docket had not been closed.

[14] When asked whether he had taken the statement recording the alleged agreement to assist with medical costs, he testified that he had not done so. He explained that he was unable to obtain such statement because Mr Sibanda and the grandmother were already in conflict, and for that reason no statement was taken. The plaintiff further denied the version put to him that he had demanded an amount of R 3000 from Mr Sibanda in order to make the reckless and negligent case against him “go away”.

[15] When cross examined on the entrapment, he confirmed that he has no knowledge on how entrapments are conducted and that he had never participated in such an operation. When it was put to him that a warrant of arrest is not required to effect an arrest once an application in terms of section 252A has been authorised, he stated that he had no knowledge thereof. He nevertheless questioned whether the operation should proceed in circumstances where the money was not found on the intended target. He confirmed that his knowledge of entrapment was limited to what he heard in court and that

constituted the extent of his understanding. On that point, he stated further that he was not an expert on entrapments.

[16] During cross examination, when asked what the police officials had informed him, he was being arrested for, he contended that he was arrested for "entrapment". It was put to the plaintiff that he had in fact been arrested on an allegation of corruption and that the entrapment was merely the mechanism employed to secure his arrest. If was further put to the plaintiff that it would be disputed that he had been found not guilty on the basis that the magistrate had declared the entrapment unlawful. The plaintiff also testified during cross examination that the basis upon which he contends that his arrest was unlawful is that the money was not found in his possession, but rather on Ms Zanele Ntini.

Zanele Ntini

[17] Ms Ntini testified that she is an educator at St Benedicts in Durban. She came to know the plaintiff when she used to work at the Lenasia South Police Station at the youth desk, where they became friends.

[18] On 2 December 2014 she was at home when the plaintiff called and asked to accompany him to town to have his vehicle serviced. She agreed, as she also intended going to the Department of Home Affairs in town. When the plaintiff fetched her, they drove past a place where there was a workshop and parked on the side of the road. The plaintiff was on the phone with the people who were to service his car. At the workshop, there was a black vehicle and an elderly, dark-complexioned male.

[19] Mr Sibanda came out of the yard and approached their vehicle on the passenger side. He stretched out his hand holding money and said to the plaintiff, "I will see you later for the balance". The plaintiff then said to Mr Sibanda, "You know where the money is supposed to go". Mr Sibanda thereafter returned to the yard. As she was thirsty, Ms Ntini decided to follow Mr Sibanda into the yard to ask for water. She called out to him and requested some water. He responded, "Come in" and she said she was afraid of the dogs. Mr Sibanda then handed her the money forcefully by placing it in her hands and said that he did not understand

why the plaintiff did not want to take it. He gave the money Ms Ntini and again asked her to tell the plaintiff that he would see him later for the balance.

[20] Ms Ntini returned to the vehicle with the money still in her hand. They then drove off before she could inform the plaintiff about being forcefully given the money. While on their way, a red vehicle overtook them and then stopped in front of them and another vehicle stopped behind them. People who identified themselves as police officers emerged from the vehicles with firearms and instructed them to get out of the car. They searched the plaintiff and found no money on him and then proceeded to her side and asked her where the money was. She testified that she still had the money held in her hands and she handed the money to the police officer and the police officer took the money. Thereafter, the police officer who took the money took out an A4 paper, and the officers compared the money on the paper with the money found on her.

[21] The police officers arrested them and drove them to the police station in separate vehicles. Ms Ntini told the police officer driving her that she knew nothing about the money. The officer responded that the plaintiff should admit that Ms Ntini had no knowledge of the money. He further stated that she should admit that it was the plaintiff who sent her into Mr Sibanda's yard to fetch the money. Ms Ntini maintained that she had gone into the yard merely to ask for water and not to collect any money on behalf of the plaintiff.

[22] Ms Ntini further testified that at the police station, while a police officer was taking her statement, he recorded incorrect information, namely that the plaintiff had instructed her to follow Mr Sibanda into the yard. She stated that she pointed out the inaccuracy, whereupon the statement was corrected. It was only after the correction had been made that she signed it. The following day, when she appeared in court, she was informed that she was not being charged and was thereafter released. A few days later, police officers came to her home. They did not enter the premises; instead, she went outside to their vehicle, where they took a further statement from her, as she was now to be a state witness. She testified that she asked the police officers why she has to make another statement because her previous statement has not changed ?. Then the officers then told her that it was on the basis that she is now a state witness.

[23] During cross examination, Ms Ntini confirmed that Mr Sibanda had spoken to the plaintiff and stated that he would see him later for the balance. When asked why she did not drink the water after initially getting out of the vehicle for that purpose, she explained that she was afraid the money would get wet, as she would have had to drink the water with her hand. When further questioned as to why she did not hand the money to the plaintiff through the window. She testified that she had intended to return to drink the water but instead got back into the vehicle and closed the door because the plaintiff was on the phone and she did not wish to disturb him. It was put to her that she did not need to speak to the plaintiff but could simply have gestured for him to roll down the window and handed him the money. She responded that she did not see the need to do so.

Captain Phatlane

[24] Captain Phatlane was called to give evidence on behalf of the first defendant. He is a member of the Serious Corruption Investigation Unit which investigates serious corruption by government officials and private citizens. He has been in the employ of the SAPS for 23 years.

[25] He testified that on 17 November 2014 he was allocated with a complaint of corruption by the commander against a member of the SAPS, being the plaintiff. The complainant was Mr Sibanda. He contacted Mr Sibanda and they arranged to meet at the Engen garage in Zakaria Park. On the same day, he and Officer Jantini met with Mr Sibanda. They interviewed him, and he stated, inter alia, that the investigating officer in his reckless and negligent case was demanding R 3 000 to make the case “go away”, failing which he was threatening to arrest him. Mr Sibanda’s complaint was written down, read back to him, and he proceeded to sign it. An inquiry docket was accordingly opened for investigation.

[26] Captain Phatlane submitted a section 252A application to authorise an entrapment operation. People cited on the application are: the handler, the investigating officer, the target and the agent. He testified that the application must also include the time and place of the entrapment operation. The application was given to the co-ordinator who, at the time, was Captain Erasmus who then handed it to the National Director of Public Prosecutions (NDPP). The

entrapment authorisation was granted on 25 November 2014. Upon receipt of the authorisation, Captain Phatlane applied for money with SAPS Finance. An amount of R 1 500.00 was made available for purposes of the entrapment. Captain Phatlane testified further that copies of the cash notes to be used in the operation were made and certified. He then waited for Mr Sibanda to reach out to him again.

[27] On 2 December 2014, Mr Sibanda contacted him and reported that the plaintiff had called, demanding money. Captain Phatlane advised Mr Sibanda to inform the plaintiff that he only had R 1 500.00 and that he would receive the balance at a later stage, and to ask him to collect it at his residence. Captain Phatlane then assembled Officer Teffo and Officer Taueatswala to assist with the operation. They proceeded to the same Engen garage where they had previously met Mr Sibanda. There, Captain Phatlane searched Mr Sibanda to confirm that he had no money on him, counted the money and handed him the R 1 500. Mr Sibanda then drove to his home, accompanied by Officer Teffo, where he was to meet the plaintiff.

[28] Captain Phatlane confirmed that he was stationed further down the road, near the clinic, and was therefore unable to observe the transaction. He testified that Mr Sibanda called and informed him that the transaction had taken place, whereafter his team proceeded to block the plaintiff's vehicle. The plaintiff was searched, but no money was found on his person. Ms Ntini then handed the money over to Captain Phatlane. He compared the notes with the photocopies of the marked cash and, after confirming that they corresponded, the plaintiff and Ms Ntini were arrested. They were subsequently detained at the Eldorado Police Station.

[29] When questioned whether a warrant of arrest was required once a section 252A authorisation was obtained, he confirmed that such warrant was not needed. He was further questioned on the lawfulness of the entrapment where a third-party intercept the money. He testified that this does not affect the lawfulness of the entrapment. He elaborated further that since the plaintiff was being investigated and eventually charged with corruption, the elements of the crime state that the

benefit can be received direct or indirectly, as such, the fact that the money was given to Ms Ntini did not render the entrapment unlawful.

[30] Captain Phatlane proceeded to state that once a demand for gratification is made, the elements of corruption are satisfied. He denied that the plaintiff was discharged on the basis that the magistrate had found the entrapment to be unlawful. Instead, he stated that the fact that Mr Sibanda had agreed to assist with the victim's medical expenses and had failed to inform the prosecutor of this arrangement, resulted in the state being unable to prove beyond reasonable doubt at the criminal trial.

[31] Captain Phatlane confirmed, with reference to the relevant docket, that the reckless and negligent driving docket received *a nolle prosequi* on 6 November 2014. He testified that there was therefore no reason for the plaintiff to continue with the investigation or to visit Mr Sibanda's home in relation to that matter. According to him, it was the plaintiff's duty to inform Mr Sibanda that the docket would be closed, as the prosecutor had declined to prosecute. He further stated that the plaintiff's failure to disclose this information, coupled with the continued demand for payment of R 3000 to make the case "go away" despite knowing the fate of the docket, suggested that he was engaging in underhanded conduct.

[32] During cross examination, Captain Phatlane was asked whether the complaint was rendered irrelevant in light of the fact that the negligent driving docket had already received *a nolle prosequi.* He responded that the suspect in that matter, Mr Sibanda, was unaware of the prosecutor's decision, and that he himself was also unaware of it at the time of conducting the inquiry. When questioned as to why he had not applied for the interception of telephone call recordings, he explained that such a step requires a court order and that the process can take several months. He further testified that he could not request the reckless and negligent driving docket directly from the plaintiff, as doing so would have alerted him to the investigation.

Legal Authority on Merits

[33] This Court finds itself faced with two mutually destructive versions. To come to a conclusion on disputed facts, a court must make findings on the credibility of the witnesses, their reliability and the probabilities.[2]

[34] The plaintiff bears the overall onus of proving that his or her version is more probable than that of the defendant. This is the general civil standard of proof on a balance of probabilities. The onus remains on the plaintiff throughout the trial, even where the defendant raises a defence or leads evidence in rebuttal.[3]

[35] In the present matter, the first defendant advanced the defence that a warrant of arrest is not required where a s 252A authorisation has been granted by the NDPP. On that basis, it was contended that, notwithstanding the s 252A authorisation, the plaintiff bore the onus of proving that his arrest was unlawful. The effect of this contention is that, once the first defendant adduced evidence through Captain Phatlane that the arrest was effected pursuant to a s 252A authorisation, the evidentiary burden shifted to the plaintiff to establish that the arrest remained unlawful despite such authorisation.

[36] It is trite that the defendant bears the onus of justifying the lawfulness of an arrest. In *Minister of Law and Order v Hurley*[4] it was held:

> "an arrest constitutes an interference with the liberty of the individual concerned, and it therefore seems fair and just to require that the person who arrested or caused the arrest of another person should bear the onus of proving that his action was justified in law".[5]

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[2] *Stellenbosch Farmers' Winery Group Ltd and Another v Martell et Cie SA & Others* [2002] ZASCA 98; 2003 (1) SA (SCA) ("*Stellenbosch Farmers*").

[3] See *National Employers' General Insurance Co Ltd v De Jagers* 2003 (1) SA 11 (SCA) and *Stellenbosch Farmers* above.

[4] 1986 (3) SA 568 (A).

[5] Id at 589E-F.

[37] The jurisdictional facts for an arrest without a warrant are set out in section 40 (1) (b) of the Criminal Procedure Act and were refined thus in *Duncan v Minister of Law and Order*[6] as being:

(a) The arrestor must be a peace office.

(b) The arrestor must entertain a suspicion.

(c) The suspicion must be that the arrestee committed an offence which falls under Schedule 1 of the Act.

(d) The suspicion must rest on reasonable grounds.

[38] It is established law that once the jurisdictional requirements have been satisfied, the arresting officer may invoke the power to arrest the suspect/s. The arrestor's discretion only arises when all the jurisdictional facts have been established.[7]

[39] In the matter of *Shidiack v Union Government*,[8] the court held:

> "now it is settled law that where a matter is left to the discretion or determination of a public officer, and where his discretion has been bona fide exercised or his judgement bona fide expressed the Court will not interfere with the result.… But it would be unable to interfere with a due and honest exercise of discretion, even if it considered the decision inequitable or wrong.[9]

[40] It is accepted that a peace officer is entitled to exercise his or her discretion as they deem appropriate. However, the officer vested with such discretion must exercise it in good faith, rationally, and not arbitrarily. Where a peace officer decides to arrest a suspect for the purpose of bringing that person before court, it is submitted that such discretion will ordinarily have been exercised rationally and in good faith.

[41] The Supreme Court of Appeal in *Sekhoto* held:

> "the standard is not breached because an officer exercises the discretion in a manner other than that deemed optimal by the court. A number of choices may be open to

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[6] 1986] ZASCA 24; [1986] 2 All SA 241 (A) at para 23.

[7] *Minister of Safety and Security v Sekhoto* [2010] ZASCA 141; 2011 (5) SA 367 (SCA) ("*Sekhoto*").

[8] 1912 AD 642.

[9] Id at 651-652.

him, all of which may fall within the range of rationality. The standard is not perfection or even the optimum, judged from the advantage of hindsight - so long as the discretion is exercised within range, the standard is not breached.*"[10]

[42] The eventual conviction of acquittal of a person does not play a role in determining whether the arrest was lawful or not.[11]

Analysis

[43] It is common cause that the plaintiff bears the onus of proving his claim on a balance of probabilities. He contends in the particulars of claim that the arrest conducted by the members of the first defendant was unlawful as it was conducted without a warrant. Captain Phatlane, on behalf of the first defendant, gave evidence which was clear and succinct. He explained fully the procedure to be followed when setting up an entrapment operation to effect an arrest. Most importantly, he testified that a warrant of arrest is not needed in instances where a s 252A authorisation is granted. The plaintiff testified to the fact that he was not an expert on entrapment operations and could not dispute the preposition that a warrant of arrest was not needed for an entrapment. There was no evidence placed before the Court to challenge the evidence of Captain Phatlane in relation to entrapments. Therefore, his evidence on this issue remains undisputed and should be accepted by the Court.

[44] Applying the test set out in *Stellenbosch Winery*, this courts finds that Captain Phatlane was a reliable and credible witness. He works in the anti-corruption unit of the SAPS and has engaged in many entrapment operations. Captain Phatlane did not receive a complaint directly from Mr Sibanda, rather it was allocated to him by his Commander and he fully testified to the chain of command and all the preliminary procedural requirement before entrapment. There is no evidence to suggest that he had ulterior motives for arrest the plaintiff. He testified that, before this operation, he did not know the plaintiff from the bar of soap. His years of experience and expertise dealing with corruption cases make him a credible witness. This courts against any counter evidence suggesting otherwise, accepts

[10] *Sekhoto* above n 7 at para 36.
[11] See *R v Moloy* 1953 (3) SA 659 (T); also *Prinsloo and Another v Newman*s 1975 (1) SA 481 (AD).

that the evidence of Captain Phatlane is probable and the plaintiff's arrest was not unlawful as required in our law. Therefore, the requirements for unlawful arrest have not been satisfied, even on the version of the plaintiff alone.

[45] On the contrary, the plaintiff was a very evasive witness who clearly did not understand what the requirements of lawful or unlawful entrapment was even on his own version. In his evidence in chief, it was clear that he relied on the fact that his case was dismissed and as a result it renders his arrest unlawful. He tried to distance himself from the events of the day in question by being on the phone at critical moments when the exchange of money was happening. The plaintiff evidence is highly improbable.

[46] Furthermore, the plaintiff when probed conceded to lacking knowledge on entrapments., His evidence that he "heard" how entrapments operate during the criminal trial constitutes inadmissible hearsay, as it amounts to information obtained from a third party who was not called to testify. The plaintiff's limited understanding on entrapment falls short of the standard required to discharge the onus resting upon him to prove his claim. He was unable meaningfully to challenge or confirm the propositions put to him in cross examination concerning entrapment, repeatedly indicating that he knowledge thereof. In the circumstances, the allegation that the entrapment was unlawful is meritless and unsubstantiated.

[47] Ms Ntini's testimony on why she re-entered the vehicle and closed the door when she intended to hand the money to the plaintiff and then return to drink water is unreliable. She was unable to provide a satisfactory explanation as to why she did not simply hand the money to the plaintiff through the window and proceed to drink water, which was the purpose for which she had initially alighted from the vehicle. Her evidence does not advance the plaintiff's case. In the circumstances where the plaintiff bears the onus of proving that the alleged entrapment was unlawful, Ms Ntini's unsatisfactory and contradictory testimony fails to discharge that burden. The claim accordingly falls to be dismissed with costs.

[48] Based on the totality of evidence led, it is clear that the plaintiff's claim should be dismissed with costs.

Evidence and the onus of proof

[49] Captain Phatlane, evidence of indicates that all the procedural requirements were met in this case. Further, nothing contrary was put to him regarding the unlawfulness of the entrapment. Therefore, bald allegations by the plaintiff who conceded that he does not know the process and procedural requirement for entrapment under the CPA should be rejected.

[50] It is trite that the onus rests on the plaintiff to prove that the arrest was unlawful. In *Minister of Law and Order v Hurley and Another*,[12] the court held that once it is established that an arrest was made, the onus shifts to the arrestor to justify it. However, in this case, the first defendant has provided credible evidence justifying the arrest.

[51] The evidence of Captain Phatlane established that the arrest was the result of a lawful entrapment operation, conducted in accordance with the CPA. The plaintiff failed to rebut this evidence or to demonstrate that the arresting officers acted without reasonable suspicion or in bad faith.

[52] The plaintiff's reliance on the fact that he was later acquitted or that charges were withdrawn is misplaced. As held in *Minister of Safety and Security v Sekhoto and Another*,[13] the lawfulness of an arrest does not depend on the outcome of the prosecution. An acquittal or withdrawal of charges does not, in itself, render an arrest unlawful.

[53] Regarding the claim for malicious prosecution, the plaintiff bore the onus to prove that the prosecution was instituted without reasonable and probable cause and with malice. No such evidence was adduced. The application for absolution from the instance by the second defendant was correctly granted.

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[12] 1986 (3) SA 568 (A) at 589E-F.
[13] [2010] ZASCA 141; 2011 (5) SA 367 (SCA).

[54] While the admissibility of entrapped evidence is now primarily governed by section 252A of the CPA, that section explicitly states that the evidence is still subject to the exclusionary rule in section 35(5) of the Constitution.

[55] This means that even if a trap complies with the statutory requirements of section 252A, the court retains the constitutional power to exclude the evidence if the manner of its procurement makes the subsequent trial unfair or harms the administration of justice. The court essentially retains a judicial discretion or rather, a constitutional duty triggered by a value judgment - to exclude evidence where the police misconduct is too egregious to be overlooked.

[56] Premised on the evidence presented during trial, the plaintiff failed to produce sufficient evidence on a balance of probability to lawfully justify why the first defendant's conduct, in so far it relates to the entrapment, should fall within section 35(5) of the Constitutional exclusionary rule.

Costs

[57] The plaintiff elected to institute this action in the High Court, even though the arrest lasted only one day, and the quantum claimed falls within the jurisdiction of the regional Magistrate's Court. This Court is of the view that the matter could and should have been instituted in the regional court. The plaintiff's choice of forum was therefore inappropriate and must be reflected in the costs order.

[58] The plaintiff was detained for one day and thereafter released on fixed bail. In the circumstances, no proper justification has been advanced for the quantum of general damages claimed, which appears disproportionately high relative to the duration of the detention.

[59] In the same breath, a plaintiff who unrealistically overestimate their quantum runs the risk of being deprived costs on the High Court scale. The present matter could have been easily dealt with in the Magistrate's Court considering the number of days the plaintiff was detained. It is clear that the plaintiff claim was unrealistic and further failed to prove the claim before this Court.

Order

[60] In the result, the following order is made:

1. The plaintiff's claim against the First and Second Defendants is dismissed.
2. The plaintiff is ordered to pay the costs of the action on party-to-party Scale C.

[redacted]

R.R NTHAMBELENI

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, JOHANNESBURG

APPEARANCES

For the Plaintiff:	Adv Mhlobo Tonyela
Instructed by:	Mudzusi Molobela Attorneys
For the Defendants:	Adv S Kunene
Instructed by:	State Attorneys, Johannesburg

Date of Hearing:	23 October 2025
Date Delivered:	09 March 2026