

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)

Case Number: 11920/2016

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
12/3/2026 DATE	
SIGNATURE	

HAPPY JOHANNES HLOMUKA

PLAINTIFF

AND

THE MINISTER OF POLICE

DEFENDANT

JUDGMENT

1. The Plaintiff, Happy Johannes Hlomuka, is a 50-year-old unemployed general worker. He instituted a damages claim against the Minister of Police for wrongful arrest and detention.

2. It is alleged by the Plaintiff that on or about 5th day of October 2014 at about 19H30, he was in the company of two of his friends, namely Thabang and Sciri. Whilst crossing a street in Rockville, Soweto, he was accosted by a black policeman who searched him, found a box of matches in his possession, and then accused him of being in possession of dagga.
3. He was arrested, taken to Moroka Police Station, where he was locked up from about 20H00 until the following morning at 08H30, he was then taken to Protea Magistrate's Court, where he was released without having appeared in court.
4. He testified further that he does not know the name of the police officer who arrested him. Summons had been issued and served on the Minister in the year 2016. In the plea, the Minister denies the arrest and puts plaintiff to proof thereof. This is despite a document titled Notice of Rights in Terms of the Constitution having been disclosed to the defendant.
5. At the commencement of the hearing in February 2026, the defendant conceded merits and informed the Court that they have not been able to trace the police officer involved in the arrest of the plaintiff, hence they have no version to place before the Court. This then resulted in the plaintiff taking the stand and testified in support of the amount he claims was due to him as a result of the conceded unlawful arrest.
6. The Plaintiff testified that at the time of his arrest he was 40 years old and employed as a general worker at Pascal

Landscaping and Irrigation. He was on crutches as he had been involved in a motor accident where he sustained injuries to his legs in 1998.

7. He did not tell the Court how much he earned as a general worker at Pascal. He attended school at Mafori Mphahlele School in Soweto but did not finish grade 12.
8. He is still single and not married and lives with his sister at their parental home in Rockville, Soweto. He is the father of one child. He did not give the age of his child and whether the child lives with him or not.
9. He was kept in one cell with about 17 other detainees. The toilet was leaking. As a result, the floor was wet. The blankets in the cells were smelly and full of mucus and sperms. The toilet pot itself was full of faeces. He did not sleep and spent the night sitting on a cement bunk in the cell.
10. In answering questions from the Court, he testified that it was not the first time for him to be arrested. He contradicted himself as to his employment and ended up saying that at the time of the arrest, he was not employed.
11. The Plaintiff closed his case. The defendant did not call any witnesses, neither did the defendant put a version before Court, save to argue that the plaintiff is not entitled to the amount claimed in the summons. Plaintiff had testified that he wants to be paid an amount of R450 000.00.
12. Both counsel addressed the Court on the issue of quantum and

submitted heads of argument for which I am indebted to both for their useful submissions.

13. In his particulars of claim and in his evidence, the plaintiff claims payment of the sum of R450 000.00, which he says is for pain, shock, deprivation of liberty and impairment of dignity, self-esteem and *contumelia*. In his heads, his counsel submitted that an amount of R120 000 should be awarded, plus interest at the prescribed rate from date of issue of summons.
14. Horin J in the matter of *Olivier v Minister of Safety and Security and Another* 2009 (3) SA 434 (W) concluded that the awarding of damages for unlawful arrest and detention is discretionary and that previous awards by other Courts serve only as guidelines. There are no hard and fast rules.
15. The Plaintiff testified that at the time of his arrest he was walking in the street with his two friends. He did not call any one of them to corroborate as to what happened at the time of his arrest. There is no evidence that there were other people who witnessed the arrest. There is also no evidence of any harassment by the police.
16. The only evidence in support of the plaintiff's claim based on loss of dignity and shock is the condition of the cells in which he was kept. There is clearly sufficient evidence that he was kept overnight under conditions not consistent with his constitutional rights as provided for in Section 35(2)(e) of the Constitution of the Republic of South Africa.

17. There is evidence placed before me that the cell had 17 other detainees and that they slept cramped like sardines, in a smelly cell with water leaking from a toilet full of faeces.
18. The arrest of the plaintiff was, in my view, arbitrary in that the police officer who effected the arrest did not see to it that he appeared in court with proper documents explaining why he is under arrest. There is also the submission by counsel for the Minister that no docket could be found connecting the plaintiff to any offence.
19. The SCA in the matter of *Rahim v Minister of Home Affairs* 2015 (4) SA 433 (SCA) at 446(f) held as follows;

“In cases involving deprivation of liberty, the amount of satisfaction is calculated by the court *ex aequo et bono*. Inter alia, the following factors are relevant:

- (i) circumstances under which the deprivation of liberty took place;
- (ii) the conduct of the defendants; and -
- (iii) the nature and duration of the deprivation.”

20. The plaintiff was kept in detention for a period of 16 hours, which included an overnight stay in a dirty, stinking cell. It is correct as Nugent JA found in matter of *Minister of Safety and Security v Seymour* 2006 (6) SA 320 that:

“Money can never be more than a crude

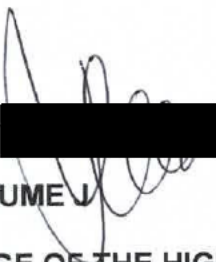
solatium for the deprivation of what in truth can never be restored and there is no empirical measure for the loss."

21. There is nothing exceptional about the plaintiff's standing in the community, which could be said to have affected his dignity and reputation in the eyes of the community, nor his immediate family and friends.
22. There is also no evidence before this Court that the arrest has had long-term effect on the plaintiff's life, like loss of employment. His only concern is that the government must reprimand the police. I agree with the plaintiff in that regard. The image of the police in the public has been seriously dented as a result of how some of them have gone about executing their duties.
23. I have considered all the previous awards, and I have come to the conclusion that a reasonable amount should be the sum of R150 000.00. I have also concluded that because of how the defendant conducted this matter, that costs be on a higher scale, plus interest, to run from the time the summons was issued.
24. I have come to that conclusion because the defendant had no version, not only in their plea, but they had no statement from the policeman who effected the arrest. The plea, which is a bare denial, is, in my view, an abuse of the court process.

25. Interest should run from the date of summons because there was no need to have defended this matter. The matter should have been referred to mediation at the earliest possible time. In the result, I make the following order:

ORDER

1. The defendant is ordered to pay the plaintiff an amount of R150 000 plus interest at the prescribed rate calculated from the date when summons was issued.
2. The defendant is ordered to pay the plaintiff's taxed costs on a party and party scale B, which shall include the cost of counsel where deployed.


MAKUME J.
JUDGE OF THE HIGH COURT
JOHANNESBURG

Appearance

For the Plaintiff:

Adv J Malema

Instructed by:

Madeleine Gowrie Attorneys

For Defendant :

Adv Lebenya

Instructed by:

Office of the State Attorney