



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

Not reportable

CASE NUMBER:992/2019

In the matter between:

**REGOPODITSWE MORETI
KEDIBONE NELLY MOLEFE
DINEO PATRICIA MOTLHOKI**

**FIRST PLAINTIFF
SECOND PLAINTIFF
THIRD PLAINTIFF**

and

MINISTER OF POLICE

DEFENDANT

Coram: WESSELS AJ

Date of hearing

:26 August 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives via email. The date and time for hand-down of the judgment is deemed to be 14h00 on 24 February 2026.

Summary: Arrest — Lawfulness of — Arrest without warrant in terms of s 40(1)(b) of Criminal Procedure Act 51 of 1977 — Jurisdictional facts — Proof of — Reasonable suspicion — Public violence — Arrest during community unrest — Conflicting versions of events — Credibility and probabilities — Onus on defendant to prove lawfulness of arrest and detention — Exercise of discretion — Evaluation of evidence — Claims for damages dismissed.

JUDGMENT

Wessels AJ

Introduction

[1] The plaintiffs instituted an action against the Minister of Police for damages arising from their arrest and subsequent detention between 17 and 19 June 2017. The arrests occurred during a period of community unrest at Makosheng Village, Mabeskraal, Rustenburg, which is within the jurisdiction of this Court.

[2] The plaintiffs contend that members of the Public Order Police Unit of the South African Police Service acted without the requisite legal justification in arresting them, thereby infringing their constitutional rights to freedom and

security of the person. The defendant maintains that the arrests were lawful in terms of s 40(1)(b) of the Criminal Procedure Act 51 of 1977, as the arresting officers entertained a reasonable suspicion that the plaintiffs were participating in public violence.

Background facts

[3] It is common cause that on 17 June 2017, the Mabeskraal area was the scene of a violent protest involving approximately 350 community members. A public road was barricaded with stones and debris, and fires were set to obstruct traffic. Members of the Public Order Police Unit were deployed to restore order. Captain Ramagogodi, the first witness for the defendant, testified that the situation was highly tense and disorderly.

[4] The police officials attempted to resolve the conflict through mediation. When this avenue proved to be unsuccessful, the police officials shot stun grenades and rubber bullets at the crowd.

[5] The crowd barricaded an important public access road ('the road') with, inter alia, branches and rocks. He identified the first plaintiff as an active participant in barricading the access road with various objects. He subsequently effected her arrest to ensure her attendance in court.

[6] Constable Senna testified that he observed the second plaintiff throwing branches into a fire on the road. He pursued her and effected the arrest after the crowd began pelting the police with stones. Captain Tlang (a Warrant Officer at the time of the arrest) testified that he observed the third plaintiff throwing branches into the fire on the blocked road. He focused on the third plaintiff and arrested her.

[7] The accounts of all the arresting officers were that these arrests were targeted interventions aimed at specific individuals who were active perpetrators of crime, as they were observed to be contributing to the public violence.

[8] The plaintiffs' version stands in stark contrast. The second plaintiff, a member of the Community Police Forum, testified that she approached the police to mediate and relay community grievances. She claimed she was arrested while attempting to facilitate this communication.

[9] The first and third plaintiffs testified that they both approached Captain Ramagodi to inquire about the reason for the Second Plaintiff's arrest. They further alleged that he became irritated and stated, *'You yellow bones are irritating; I will show you,* after which Captain Ramagodi arrested both of them. The first and third plaintiffs asserted that they were merely checking on the well-being of the second plaintiff and were arrested without cause.

[10] They claimed they were already arrested and detained inside the police vehicle before the police used force to disperse the crowd, which contradicts the officers' testimony that the arrests occurred as part of the dispersal operation.

Issues to be decided

[11] I am enjoined to determine whether the defendant proved that the jurisdictional facts for a warrantless arrest were present and whether the arresting officers exercised their discretion rationally. Furthermore, I must resolve the conflicting factual versions by evaluating the probabilities inherent in the evidence led.

Applicable legal principles

[12] Depriving someone of liberty is significant, and the defendant has the onus of proof. The following statement, made by the court in *Minister of Law and Order v Hurley*¹, is indicative of the trite approach followed in relation to the onus of proof:

‘I would add that I consider it to be good policy that the law should be as there stated. An arrest constitutes an interference with the liberty of the individual concerned, and it therefore seems to be 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.’

[13] Section 40(1)(b) of the Criminal Procedure Act² (‘CPA’) allows a peace officer to arrest, without a warrant, any person whom they reasonably suspect of having committed a Schedule 1 offence, such as public violence. The CPA provides peace officers with specific powers to maintain public order and safety. More appropriate in relation to the facts of this matter, under Section 40(1)(a), a peace officer may arrest any person who commits any offence in their presence without a warrant.

[14] As established in *Duncan v Minister of Law and Order*³, the defendant must prove the four jurisdictional facts, being: the arrestor was a peace officer; the arrestor entertained a suspicion; the suspicion was that the arrestee

¹ *Minister of Law and Order v Hurley* 1986(3) SA 568 at 589 E-F Cf. *Zeeland v Minister for Justice and Constitutional Development and Another* 2008 (2) SACR (1) CC paras 24 and 25.

² Criminal Procedure Act 51 of 1977.

³ *Duncan v Minister of Law and Order* 1986 (2) SA 805 (A) at 818 G-H.

committed a Schedule 1 offence; and the suspicion was based on reasonable grounds.

[15] The test for a reasonable suspicion, as articulated inter alia in *Mabona and Another v Minister of Law and Order and Others*⁴, is objective. A court must determine whether a reasonable person in the position of the arresting officer, possessed of the same information, would have formed the suspicion. The officer is not required to have evidence sufficient for a conviction but must act on concrete facts. Furthermore, once these facts are established, the officer must exercise his discretion whether to arrest.

[16] In *Minister of Safety and Security v Sekhoto and Another*⁵, the Supreme Court of Appeal stated that discretion must be exercised in good faith, rationally, and not arbitrarily. Peace officers can act as they see fit within rational bounds. The standard is not breached if their choices differ from what the court considers optimal, as long as their actions remain rational. The requirement is not perfection, but reasonable decision-making.

Analysis

[17] The adjudication of this matter requires the determination of which version of events is more probable. This necessitates a qualitative assessment of the truth and the inherent probabilities of the evidence, rather than a

⁴ *Mabona and Another v Minister of Law and Order and Others* 1988 (2) SA 654 at 658 E-H.

⁵ *Minister of Safety and Security v Sekhoto and Another* (131/10) [2010] ZASCA 141; 2011 (1) SACR 315 (SCA); [2011] 2 All SA 157 (SCA); 2011 (5) SA 367 (SCA) (19 November 2010) para 38-39.

mechanical balancing of the two accounts. The test to be applied in these circumstances had been enunciated in *Selamolele v Makhado*⁶ as follows:

‘Ultimately the question is whether the onus on the party, who asserts a state of facts, has been discharged on a balance of probabilities and this depends not on a mechanical quantitative balancing out of the pans of the scale of probabilities but, firstly, on a qualitative assessment of the truth and/or inherent probabilities of the evidence of the witnesses and, secondly, an ascertainment of which of two versions is the more probable.’

[18] When considering the circumstances of a violent protest involving 350 people and widespread barricading, the police’s version is inherently more probable. It is improbable that trained Public Order Police officers, tasked with quelling a violent protest, would randomly arrest three unsuspecting members of the public who were merely attempting to act as mediators or concerned individuals.

[19] In a situation where the police are being pelted with stones and are forced to use stun grenades and rubber bullets, their focus is logically on the individuals who are actively fuelling the disorder. The specific testimony of Captain Ramagogodi, Constable Senna and Captain Tlalang in detailing the observation of the first plaintiff maintaining a barricade and the second and third plaintiffs feeding a fire provides the ‘solid facts’ required for a reasonable suspicion. The suggestion that the police would bypass actual rioters to arrest peaceful bystanders is not consistent with the operational realities of public order policing.

⁶ *Selamolele v Makhado* 1988(2) SA 372 (V) at 374J-375B.

[20] The plaintiffs' version, particularly the allegation that Captain Ramagogodi used a derogatory '*yellow bones*' slur, must be scrutinised. This allegation is found to be improbable and was not proved on a balance of probabilities. Such a comment is fundamentally inconsistent with the disciplined and operationally focused nature of the Public Order Police Unit during a tactical dispersal operation. Given the volatility and the physical evidence of the barricades, the plaintiffs' claim that they were arrested while peacefully inquiring about a detention is unlikely. I find that the suspicion formed by the officers was objective and reasonable, and the decision to arrest was a rational response to the observed public violence.

[21] Regarding the discretion to arrest, once suspicion of public violence arose, the decision to arrest was rational and intended to secure the plaintiffs' attendance in court and to suppress further violence. There is no evidence of mala fides or an ulterior motive. The plaintiffs' subsequent detention was a lawful consequence of the arrest, and they were brought before a court at the first available opportunity. While the plaintiffs' conditions of detention are noted, they do not render the initially lawful arrest and detention unlawful.

Conclusion

[22] The defendant has successfully established that the arrests of the first, second, and third plaintiffs were lawful. The jurisdictional facts required by s 40(1)(b) of the CPA were present, and the officers' suspicion was reasonable and based on direct observation of conduct during the violent protest. The plaintiffs' version is found to be improbable when weighed against the context of the police operation. Consequently, the claim for unlawful arrest and detention must be dismissed.

Order

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

1. The plaintiffs' claims are dismissed.
2. The plaintiffs are ordered to pay the defendant's costs of suit on a party and party Scale A, jointly and severally, the one paying the other to be absolved.




M WESSELS
ACTING JUDGE OF THE HIGH COURT
NORTH WEST DIVISION, MAHIKENG

Appearances

Counsel for plaintiffs	:Adv O Ntsamai
Instructed by	:Malebye & Maleho Attorneys
	:c/o Ntsamai Attorneys
	:Mahikeng
 Counsel for the defendant	 :Adv M Nduli
Instructed by	:State Attorney
	:Mahikeng