



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

Not reportable

Case no:251/2025

In the matter between:

**LETLHOGONOLO HENDRICK
MOSEKI**

Plaintiff

and

THE MINISTER OF POLICE

Defendant

Coram: Wessels AJ

Heard: 26 February 2026

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 19 March 2026.

Summary: Delict — Action for damages — Unlawful arrest and detention — Quantum of damages — Plaintiff a traditional leader (Headman) arrested in presence of family and community members on suspicion of theft — Detained for one night in inadequate conditions — Released without appearing in court after no link to offence established.

Damages — Assessment — Factors to be considered — Deprivation of liberty and contumelia — Impact of arrest on the dignity and standing of a traditional authority figure — Move away from tariff-based or pro-rata approach to quantum — Importance of the status and person of the plaintiff as emphasized in *Motladile v Minister of Police* — Consistency with comparable awards in *Minister of Police v Page*, *Shode v Minister of Police*, and *Lenoke v Minister of Police*.

JUDGMENT

Wessels AJ

Introduction

[1] This is an application for default judgment following a notice of bar served upon the defendant. The plaintiff seeks damages for unlawful arrest and detention.

Facts

[2] The plaintiff testified that on the afternoon of 29 August 2024, while at his residence in Makhubung Village, he was approached by police officers in civilian clothing who informed him that he was a suspect in a theft case. The plaintiff

accompanied the police officers to another stand belonging to him, where a search for the alleged stolen items was conducted, but yielded no results. Despite no incriminating evidence being found, the plaintiff was arrested and taken to Mmabatho Police Station.

[3] According to the plaintiff's evidence, the arrest took place in the presence of his wife, his friend, and a neighbour. He was detained for one night. The plaintiff described the cell as cold and the sleeping arrangements, a thin mattress and a single blanket, as inadequate. The following morning, on 30 August 2024, the plaintiff was released without having been brought before a court. Upon his release, the South African Police Service issued the plaintiff with a notice confirming that there was no link connecting him to the alleged offence.

[4] Crucially, the plaintiff testified that he was a headman in his community. He detailed the humiliation of being treated as a criminal suspect in front of those who look to him for leadership. The personal impact of the event was described as a significant blow to his dignity and his standing as a traditional authority.

Assessment of damages

[5] In assessing quantum for the deprivation of personal liberty, the court must be guided by the principles articulated in *Minister of Safety and Security v Tyulu*¹. In that matter, the Supreme Court of Appeal ('SCA') emphasised that the primary purpose of an award for damages is not to enrich the aggrieved party, but to offer a *solatium* for the injured feelings and the profound infringement of the constitutional right to freedom.

¹ *Minister of Safety and Security v Tyulu* [2009] ZASCA 55; 2009 (5) SA 85 (SCA).

[6] The SCA held that while there is no fixed formula for calculating such damages, and that past awards serve only as a general guide, the determination must always be made in light of the specific facts of the case. By balancing the duration and conditions of the detention against the high value placed on physical integrity in our constitutional era, the court ensures that the award is fair, reasonable, and reflective of the gravity of the interference with the plaintiff's dignity.

[7] In *Mmadu v Minister of Police*², the plaintiff was arrested without a warrant and detained for approximately 4 days. The court noted that the detention occurred under appalling conditions in police cells that were overcrowded, unhygienic, and lacked proper bedding, forcing the plaintiff to sleep on a thin, dirty mattress on the floor. These conditions, coupled with the deprivation of liberty and the resulting *contumelia*, significantly influenced the court's decision to award R140,000 for the unlawful arrest and detention.

[8] The judgment in *Minister of Police v Page*³, a full bench appeal, involved the respondent, who was detained for approximately one day following a warrantless arrest on a charge of arson. During his detention at the Police Station and subsequent holding in awaiting trial cells, the respondent was confined in a small, foul-smelling cell with several other detainees and was forced to sleep on the ground. The court emphasised that the respondent, who had no prior criminal record, found the environment deeply distressing and felt his constitutional rights to dignity and freedom were severely infringed. Although the trial court originally awarded R70,000, the appeal court reduced the quantum to R30,000, finding the

² *Mmadu v Minister of Police* (3058/2019) [2024] ZANWHC 143 (21 June 2024).

³ *Minister of Police v Page* (CA 231/2019) [2021] ZAECGHC 22 (23 February 2021).

lower award strikingly disparate from comparable cases involving a single day of detention.

[9] In *Shode v Minister of Police*⁴ the appellant was arrested and detained for one day. The High Court, on appeal, increased the Magistrate's initial award of R10,000 to R40,000. This adjustment was made to ensure the compensation was fair and reasonable, aligning with established benchmarks for similar infringements of personal liberty and *contumelia* while avoiding over-compensation. The court highlighted that such an award must reflect the importance of the right to liberty in a constitutional democracy.

[10] In *Lenoke v Minister of Police*⁵, the appellant was unlawfully arrested and detained for a period of approximately four hours on a charge of assault. During this time, she was held in a police cell where she was subjected to a cold environment and was provided with only a thin, dirty, and smelly sponge for bedding, which she found distressing. The High Court, on appeal, found the Magistrate's initial award of R15,000 to be disproportionately low, especially considering the *contumelia* suffered by the appellant as a woman being arrested in the presence of her children and the community. Consequently, the court upheld the appeal and increased the quantum for unlawful arrest and detention to R30,000.

[11] In determining the quantum, Mr Lehabe specifically directed this Court's attention to the judgment of the SCA in *Motladile v Minister of Police*⁶. The principles enunciated in *Motladile* are of significant importance to the present

⁴ *Shode v Minister of Police* (CA17/2021) [2022] ZAECMKHC 11 (3 May 2022).

⁵ *Lenoke v Minister of Police* (CIV APP MG 27/2023) [2024] ZANWHC 277 (6 November 2024).

⁶ *Motladile v Minister of Police* (414/2022) [2023] ZASCA 94.

matter, particularly regarding the move away from a ‘tariff-based’ approach to the deprivation of liberty.

[12] In *Motladile*, the SCA considered a case involving a plaintiff who had been detained for 4 days on a charge of stock theft. The High Court had originally awarded R40,000, which the SCA found to be strikingly disparate from what is fair and reasonable. The SCA increased the award to R150,000.

[13] Several key principles from *Motladile* are directly applicable here. The court reiterated that the primary purpose of damages for injuria is to provide solace for the injured feelings of the plaintiff. It emphasised that the right to liberty is a fundamental constitutional right, and its deprivation is a serious infringement. Furthermore, the SCA cautioned against a pro-rata approach to damages that applies a specific daily rate. Instead, the court must consider the unique circumstances of the arrest, the duration of detention, and, most importantly, the plaintiff’s standing and person. Additionally, the SCA emphasised that the circumstances of an arrest, especially if it is public or humiliating, should be heavily weighed in assessing damages.

[14] This reinforces the need to consider the plaintiff’s status as a headman. In the context of a traditional community, a headman is a figure of authority, trust, and moral standing. To be arrested on a suspicion of theft in front of his subjects is a profound injury to his *fama* and *dignitas*.

[15] A pivotal factor in the present matter is the plaintiff’s role as a tribal headman. The arrest of a person in a position of traditional authority in the presence of his community constitutes a heightened infringement of dignity. Such an act undermines the plaintiff’s authority as headman and invites scepticism regarding his character among the members of his community.

Conclusion

[16] Taking into account the duration of the detention (one night), the conditions of the cell, and the specific status of the plaintiff as a headman, I am of the view that an award of R35,000 is just and equitable. This reflects the seriousness of the interference with his liberty while specifically addressing the injury to his dignity as a leader.

[17] Regarding costs, there is no reason to depart from the general rule that costs follow the result.

Order

[18] Resultantly, the following order is made:

1. The defendant is ordered to pay the plaintiff the sum of R35,000 as damages for unlawful arrest and detention.
2. The defendant shall pay interest on the said amount at the prescribed rate from the date of judgment to the date of final payment.
3. The defendant shall pay the plaintiff's costs of suit on Scale A.



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

Appearances

For plaintiff	:Mr OKKA Lehabe
Instructed by	:Lehabe Attorneys
	:Mahikeng