



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

CASE NUMBER: 1278/2018

In the matter between:-

GABUREKWE JAMES ABUTI

Plaintiff

and

MINISTER OF POLICE

Defendant

This judgment is handed down electronically. The date that the judgment is deemed to have been handed down is 26 March 2026.

JUDGMENT: QUANTUM

FMM REID J (WAS SNYMAN):

Introduction:

[1] The plaintiff sues the defendant, the Minister of Police, for damages arising from an unlawful arrest and detention.

[2] The merits of the matter have already been determined in the plaintiff's favour.

- [3] The remaining issue is the *quantum* of damages. The plaintiff claims R130,000 as a fair and reasonable *solatium* for the infringement of his rights to liberty and dignity. The defendant contends for a materially lower amount.

Common-cause Facts

- [4] The evidence established that the plaintiff was detained in police custody from 27 February 2018 to 1 March 2018, when he was released on bail of R1,000.
- [5] His deprivation of liberty endured for approximately two days and two nights.

Circumstances of the Detention

- [6] The plaintiff described being held in a cell of approximately 4m x 4m at SAPS Madikwe, which contained no beds and had an open toilet without a door. The cell had a foul smell so severe that he was initially unable to eat. These degrading conditions directly aggravate the infringement of dignity and the nature of the deprivation.
- [7] The plaintiff testified that since the arrest, he harbours a fear of and distrust towards the police. This subjective experience of humiliation

and injury to his feelings is relevant to the award of *solatium* under the *actio iniuriarum*.

Legal Principles

- [8] Damages for unlawful arrest and detention are awarded as *solatium* for injured feelings and the infringement of personality interests, particularly liberty. The award is not intended to enrich the plaintiff but to provide solace and to reflect the seriousness with which arbitrary deprivation of liberty is viewed. See *Minister of Safety and Security v Tyulu* 2009 (5) SA 85 (SCA).
- [9] In *Motladile v Minister of Police* 2023 (2) SACR 274 (SCA), the Supreme Court of Appeal emphasised that the assessment is not a mechanical process determined solely by duration. A court must consider a range of factors, including the circumstances of the detention, the conduct of the police, the nature of the deprivation, comparable awards, and any invasion of other rights.
- [10] Comparable awards serve as a guideline to promote consistency but do not create a fixed tariff. The inquiry remains one of fairness, equity, and proportionality.

Evaluation and Comparable Awards

- [11] The plaintiff's evidence establishes a meaningful deprivation of liberty, aggravated by degrading conditions. The absence of aggravating factors such as a public spectacle, media publicity, or physical assault does not diminish the indignity suffered.
- [12] In *Motladile*, the SCA awarded R200,000 for five days and four nights of detention. In *De Klerk v Minister of Police* 2021 (4) SA 585 (CC), the Constitutional Court awarded R300,000 for approximately seven days of unlawful detention. These cases provide upper benchmarks.
- [13] Of particular relevance is a recent judgment from this Division in *O'Riley v Minister of Police* (947/2019) 2025 ZANWHC 156 (18 August 2025). In that matter, the plaintiff was detained for a similar duration (6-8 December 2016) under comparable conditions: a cell of the same size, with a strong odour and a lack of bedding. The court awarded an amount of R80,000.
- [14] Weighing the factors holistically, I find the circumstances *in casu* to be substantially similar to those in *O'Riley*. The combination of a cramped cell, lack of bedding, absence of ablution privacy, and the severe unhygienic conditions, together with the plaintiff's subjective

experience of fear, justifies an award consistent with that precedent.

- [15] An award of R80,000 is fair and reasonable in my view. It is commensurate with the injury suffered, reflects the seriousness of the arbitrary deprivation of liberty, and is consistent with comparable awards.

Costs

- [16] The general principle is that costs follow the result.

- [17] There is no reason to deviate from this principle.

- [18] The general scale of costs are costs on a party and party scale. There are no factors that would justify a deviation of the scale. The scale of costs for counsel should be scale B, being the median scale of litigation in the High Court.

Order

- (i) The defendant is ordered to pay the plaintiff R80,000.00 as damages for unlawful arrest and detention.
- (ii) Interest shall run on the aforesaid amount at the prescribed rate from date of this judgment to date of final payment.

- (iii) The defendant is ordered to pay the costs of the plaintiff, on a scale as between party and party scale B.



FMM REID
JUDGE OF THE HIGH COURT
NORTH WEST DIVISION MAHIKENG

DATE JUDGMENT RESERVED: 2026-01-05

DATE OF JUDGMENT: 2026-03-26

APPEARANCES

FOR PLAINTIFF

COUNSEL: MR LABUSCHAGNE

INSTRUCTED BY: LABUSCHAGNE ATTORNEYS
REF: GGL/melanie/GW0939

FOR DEFENDANT

COUNSEL: ADV WILLIAMS

INSTRUCTED BY: STATE ATTORNEY
MMABATHO