

Reportable:	NO
Circulate to Judges:	NO
Circulate to Magistrates:	NO
Circulate to Regional Magistrates:	NO



IN THE NORTH WEST HIGH COURT, MAHIKENG

CASE NO: CIV APP RC01/2024

In the matter between:

KEOAGILE MOSEKI

Appellant

AND

MINISTER OF POLICE

1st Respondent

**PROVINCIAL COMMISSIONER OF
POLICE, NORTH WEST**

2nd Respondent

DATE OF HEARING

: 20 February 2026

DATE OF JUDGMENT

: 25 March 2026

FOR THE APPELLANT

: Adv. Mothsane

FOR THE RESPONDENT

: No Appearance

Corum: HENDRICKS JP & MORGAN AJ

JUDGMENT

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives *via* email. The date and time for hand-down is deemed to be 10h00 on 25 March 2026.

ORDER

Resultantly, the following order is made:

- (i) The appeal against the refusal of default judgment is upheld.
- (ii) The order of the Regional Magistrate in the court *a quo* is set aside and is substituted by the following:
 - “(a) Default judgment is granted against the 1st and 2nd defendants.
 - (b) The 1st and 2nd defendants are ordered to pay an amount of R200,000.00 as damages for the unlawful arrest and detention of the plaintiff, jointly and severally, the one paying the other to be absolved.
 - (c) The 1st and 2nd respondents are ordered to pay interest on the amount of R200,000.00 from the date of summons until date of final payment at the applicable prescribe rate, jointly and severally, the one paying the other to be absolved.”
- (iii) There will be no order as to costs of the appeal

JUDGMENT

Summary

Unlawful arrest and detention - arrest without a warrant of arrest in contravention of Stock Theft Act – default judgment - appeal against the judgment of the Regional Magistrate who refused to grant default judgment in favor of the appellant (plaintiff). Award of damages.

HENDRICKS JP

- [1] The appellant issued summons out of the Regional Court for the Regional Division of the North West Province, held at Madikwe, for unlawful arrest and detention for the period 13 December 2021 to 17 December 2021 (five (5) days) claiming R400,000.00 as damages. Although a notice to defend the action was filed, no plea was filed. The defendants were therefore *ipso facto* barred and the matter was set down for default judgment. An affidavit with regard to the damages suffered was served and filed. The Regional Magistrate directed that oral evidence be presented in terms of Rule 12 (7) of the Magistrate Court Rules¹. Evidence of the appellant as plaintiff was heard on 11 March 2023 and judgment was reserved. On 18 March 2023 the judgment was handed down in terms of which

¹ Rule 12 (7) of the Magistrate Court Rules states:

- (7) The registrar or clerk of the court may refer to the court any request for judgment and the court may thereupon—
- (a) if a default judgment be sought, call upon the plaintiff to produce such evidence either in writing or oral in support of his or her claim as it may deem necessary;
 - (b) if a judgment by consent be sought, call upon the plaintiff to produce evidence to satisfy the court that the consent has been signed by the defendant and is a consent to the judgment sought;
 - (c) give judgment in terms of plaintiff's request or for so much of the claim as has been established to its satisfaction;
 - (d) give judgment in terms of defendant's consent;
 - (e) refuse judgment; or
 - (f) make such other order as it may deem fit.
- (7A) When the registrar or clerk of the court refers a request for judgment to the court, it shall be recorded, dated and signed by the registrar or clerk of the court on the cover of the court file.

default judgement was refused. This appeal is against this order and judgment of the Regional Magistrate.

- [2] The evidence presented by the appellant as plaintiff can be succinctly summarized as follows:

On 13 December 2021 the appellant was asked by Karabo Moses Mapaletsebe (Karabo) to transport a carcass of a cow to his (Karabo's) parental homestead. He obliged. A transportation letter was filed in and submitted to the appellant, who also endorsed it with his details. The appellant, in the company of Karabo and another man transported the carcass in a van belonging to the appellants' wife. They were stopped *en route* by the police officers and they were arrested. They first appeared in court on 17 December 2021 when they were admitted to bail. On 19 May 2022 the matter against the appellant was withdrawn by the State and Karabo, who was accused 1 in the trial court, paid an admission of guilt fine in the some of R4 000.00. The appellant alleged that his arrest and subsequent detention was unlawful. Hence, summons to that effect was issued against the defendants.

- [3] Being placed under bar *ipso facto*, the defendants did not further oppose the action and the appellant proceeded on an unopposed basis and prayed for default judgment. The onus rests on the defendants to prove that the arrest without a warrant was lawful². Section 40 (g) of the Criminal Procedure Act³ empowers a police

² See: Selebogo v Minister of Police (1047/14) [2017] ZANWHC 9 (10 February 2017)

³ Act 51 of 1977

officer to effect an arrest without a warrant of arrest of any person who is reasonably suspected of being or having been in unlawful possession of stock or produce as defined in any law relating to the theft of stock or produce⁴.

- [4] It is quite apparent from the record that the Regional Magistrate took issue with the fact that the appellant should have ensured that the transportation letter (permit) is filled in correctly and that it should have been signed by a person with the necessary authority that grants permission that the carcass be transported. Whilst it is permissible in terms of section 40 (g) read with section 9 (2) of the Stock Theft Act⁵ that an arrest may be effected without a warrant of arrest when a police officer stop a motor vehicle and find that stock (i.e. cow carcass) is transported suspected of being stolen, each case must be decided on its own merits. The fact that stock is transported should not automatically lead to the arrest of a person transporting the stock and therefore imply that the police officer does not have to exercise a discretion whether to effect the arrest or not. This discretion is not eroded simply because the aforementioned acts empowers an a arrest without a warrant of arrest.

- [5] The uncontested and uncontroverted evidence of the appellant was that the cow carcass belongs to Karabo, who was accused number 1 in the criminal trial. Karabo was arrested with the appellant and he later on admitted guilt by paying an admission of guilt fine. There is

⁴ The Minister of Safety and Security v Sekhotho and Another 2011 (1) SACR 315 (SCA).

⁵ Act 57 of 1959.

no onus on the appellant to prove his case. The onus remained on the State to prove its case against the appellant⁶. Absent any evidence of the lawfulness of the arrest the onus on the State is not discharged. The Regional Magistrate quite correctly stated that in terms of section 9 (2) of the Stock Theft Act, the arrestor must suspect that the stock in the motor vehicle is stolen and may effect an arrest without a warrant.

- [6] Furthermore, that the word “may” gives the arrestor an option whether to exercise the discretion to arrest or not. However, the Regional Magistrate then concluded ‘*I can find no evidence that the discretion was exercised unreasonably;*’ and further ‘*Plaintiff [appellant] should blame himself for failing to exercise due diligence in this matter. He allowed himself to be misled by Mr. Mapaletse.*’ This is what due respect to the Regional Magistrate a misdirection. At first there was no evidence led by the respondents that a

⁶ Minister of Law and Order v Hurley and Another 1986 (3) SA 568 (A) at 569 E-F.

See also:

- Mhaga v Minister of Safety and Security [2001] 2 ALL SA 534 (TK);
- Manalaza v MEC for Safety and Security Eastern Cape [2001] 3 ALL SA 255 (TK);
- Ralekwa v Minister of Safety and Security 2004 (1) SACR 131 (TPD) paragraph [9] at 124 H;
- C F Cele v Minister of Safety and Security [2007] 3 ALL SA 365(0);
- Zealand v Minister of Justice and Constitutional Development 2008 (2) SACR 1 (CC) paragraph [24] at 11;
- De Koker v Minister of Safety and Security 2010 (2) SACR 595 (KZD) paragraph [24] at 600 H;
- Minister of Safety and Security v Sekhato 2011 (1) SACR 315 (SCA) paragraph [7] at 321 C;
- Botha v Minister of Safety and Security and others and January v Minister of Safety and Security and Others 2012 (1) SACR 305 (ECP) paragraph [29] at 316 C to D;
- Minister of Safety and Security v Swart 2012 (2) SACR 226 (SCA) paragraph [19] at 232 B to C;
- Minister of Safety and Security v Ndlovu 2013 (1) SACR 339 (SCA) paragraph [9] and [10] at 342 H to 343 B;
- Minister of Police v Du Plessis 2014 (1) SACR 217 (SCA) paragraphs [13] and [16] at 342 H to J;
- Botha v Minister of Police 2014 (2) SACR 601 (GP) paragraph [30] at 608 D;
- Van Heerden v Minister van Veiligheid en Sekuriteit 2014 (2) SASV 346 (NCK) paragraph [124] at 374 F;
- Mawu v Minister of Police 2015 (2) SACR 14 (WCC) paragraph [24] at 21 B to F; and
- Scheepers v Minister of Safety and Security 2015 (1) SACR 284 (ECG) paragraph [2] at 287 C.

discretion was exercised by the arresting police officer, whether to arrest or not. Secondly, the Regional Magistrate placed an onus on the appellant (plaintiff) by stating that he should blame himself for failing to exercise due diligence in this matter with regard to the transportation letter (permit).

- [7] The Regional Magistrate should have found that absent any evidence that the arresting police officer exercised his discretion to arrest, the State did not discharge the onus on it, and consequently the arrest was unlawful⁷. Furthermore, there is also no evidence presented that the subsequent detention of the appellant was lawful.
- [8] The appellant claims an amount of R400,000.00 as damages for unlawful arrest and detention. In the founding affidavit filed in the court *a quo* with regard to damages, the appellant state:-

“7.

I was detained with other inmates unknown to me in the police cells and there were no beds to sleep on, as the lights were on the whole night, I could not sleep. I was even afraid to sleep as most prisoners steal new arrivals belongings. At the Police Station, as an awaiting prisoner, the situation became worse, the gang members were fighting and I was also asked to help otherwise I would be assaulted and there was nowhere to run to. I was bullied and forced to join gangsters, and I was afraid to report those incidents to the police as I was warned that I should not report or I will be killed. I was beaten and assaulted on several occasions for no apparent reason, my food was also taken by

⁷ See: Minister of Law and Order and Others v Hurley and Another 1986 (3) SA 568 (A) at page 589 E-F.

other inmates and sometimes I would sleep without eating anything. I confirm that I was traumatised as a result of my unlawful arrest and detention as I did not see my family. Due to lack of finance, I could not go to a private specialist to have a report as evidence of what I went through during my detention.

8.

8.1 I suffered Contumelia, inhuman treatment and emotional shock,

8.2 My rights to liberty and freedom, trauma or good name, privacy, dignity, bodily and psychological integrity and environment which is detrimental to my health or well-being was also infringed.

9.

The members of SAPS arrested me in public and after my release, community started to view me as a criminal, as a result my dignity was impaired. I felt humiliated by utterances from other quarters in the community that I cannot be trusted any longer as I was perceived criminal.”

[9] Reliance was placed on case of **Motlhadile vs Minister of Police**⁸ in which it was found that an amount of R200,000.00 would be fair and reasonable for unlawful arrest and detention spanning over four (4) days. I am of the view that following **Motlhadile**, *supra*, an amount of R200,000.00 will be fair and reasonable.

[10] Insofar as the costs of the appeal are concerned, the respondents did not oppose the appeal. Therefore, it will be fair and just to make no order as to the costs of the appeal.

⁸ 2023 (2) SACR 274 (SCA).

Order

[11] Resultantly, the following order is made:

- (i) The appeal against the refusal of default judgment is upheld.
- (ii) The order of the Regional Magistrate in the court *a quo* is set aside and is substituted by the following:

“(a) Default judgment is granted against the 1st and 2nd defendants.

(b) The 1st and 2nd defendants are ordered to pay an amount of R200,000.00 as damages for the unlawful arrest and detention of the plaintiff, jointly and severally, the one paying the other to be absolved.

(c) The 1st and 2nd respondents are ordered to pay interest on the amount of R200,000.00 from the date of summons until date of final payment at the applicable prescribe rate, jointly and severally, the one paying the other to be absolved.”

- (iii) There will be no order as to costs of the appeal



**R D HENDRICKS
JUDGE PRESIDENT OF THE HIGH COURT,
NORTH WEST DIVISION, MAHIKENG**

I agree





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