



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

CASE NUMBER: 1553/2018

In the matter between: -

MICHAEL ZAMILE DUMZELA

Plaintiff

and

THE MINISTER OF POLICE

Defendant

CORAM: MFENYANA J

This judgment was handed down electronically by circulation to the parties' representatives *via* email. The date for hand-down is deemed to be **07 April 2026**.

ORDER

- a. The plaintiff's claim is dismissed with costs.

JUDGMENT

Mfenyana J

Introduction

- [1] The plaintiff, Zamil Michael Dumzela (Mr Dumzela), sued out a summons against the defendant for damages allegedly arising from his arrest and detention by the defendant's employees, which occurred on 29 November 2016.

- [2] In the amended particulars of claim, the plaintiff alleges that on 29 November 2016, at Makwassie, in the North West province, he was wrongfully and unlawfully arrested by members of the South African Police Service (SAPS) without a warrant. He was subsequently detained at the Makwassie police station and thereafter at Potchefstroom prison until his release on 27 December 2016.

- [3] The plaintiff avers that as a result of his unlawful arrest and detention, he suffered deprivation of liberty, discomfort and inconvenience, *contumelia* and injury to his dignity.

- [4] He further avers that as a result of his unlawful arrest and detention, his privacy and right to remain silent were invaded and he was treated in a degrading and inhumane manner. He claims an amount of R2 000 000.00 (two million rand).

- [5] The defendant has defended the action and seeks dismissal of the plaintiff's claim.

- [6] In defending the action, the defendant raises two special pleas, which were

not persisted with. For the avoidance of any doubt, on 27 August 2020, Hendricks DJP (as he then was) granted an order condoning the plaintiff's late service of the notice in terms of section 3 of the Institution of Proceedings Against Certain Organs of State Act (the Act)¹. This, disposed of that special plea.

[7] It is common cause that the summons in this matter was issued on 20 August 2018 and served on the defendant on 19 October 2018. Following subsequent amendments to the particulars of claim, service was further effected on 5 and 17 March 2020, respectively.

[8] Consequently, the running of prescription was interrupted by the service of the summons in October 2018. Moreover, the amended particulars of claim did not introduce a new debt, and the cause of action remained materially the same.

[9] In the amended plea over, the defendant contends that the arrest of the plaintiff was lawful as it was effected in terms of section 40(1)(g), alternatively in terms of section 40(1)(b) of the Criminal Procedure Act.

[10] On 23 June 2025, upon application and subsequent agreement between the parties, I granted an order separating the issues of merit from quantum and postponed the issue of quantum *sine die*.

Issue for determination

¹ Act 40 of 2002.

- [11] The sole issue for determination before this court is whether the plaintiff's arrest and subsequent detention were unlawful.

Onus of proof and duty to begin

- [12] The onus of proving the lawfulness of an arrest rests on the defendant. The plaintiff need only prove that an arrest occurred. Once the arrest is admitted, the defendant must adduce evidence justifying the arrest and detention and therefore bears the duty to begin and to present such evidence.

Defendant's case

- [13] Sergeant Aufane Stefans Kgakgane (Sgt Kgakgane) testified on behalf of the defendant. He stated that at the relevant time, he worked as a sergeant in the Stock Theft Unit of the SAPS and served as the investigating officer in the matter.
- [14] He testified that, on 26 November 2016, he received information from his informant that the plaintiff was allegedly involved in stock theft. The informant supplied the registration numbers of the vehicles and trailer implicated. He also engaged the complainant and established the location of the alleged offence. He visited the scene and lifted tyre prints.
- [15] After checking these details on the police vehicle system, Sgt Kgakgane established that one of the vehicles was registered to the plaintiff. The trailer was registered to Mr Smith and was available for hire, while a further vehicle was registered to Mr Sebakeng in Makwassie.

[16] The following day, he proceeded to the plaintiff's residence but was unable to locate him. He then went to the trailer rental business to inquire about the rental of the trailer in question. There, he was informed that the trailer had been rented by Mr Phuthiyagae, who was in possession of the plaintiff's vehicle at the time. He proceeded to Mr Phuthiyagae and while in his presence, he phoned the plaintiff and informed him that he was suspected of stock theft which occurred on 26 November 2016. The plaintiff denied any knowledge of the theft.

[17] Thereafter, he located the plaintiff's vehicle parked at the plaintiff's home, where the keys were also available. He confiscated the vehicle and left a message requesting that the plaintiff meet him at the Makwassie police station.

[18] The plaintiff later arrived at the police station, accompanied by Mr Phuthiyagae. Sgt Kgakgane identified himself to the plaintiff and Mr Phuthiyagae as the investigating officer in the matter. He testified that the plaintiff informed him that he had travelled to Wolmaransstad to rent a trailer to transport a stock of beer. He denied that they had loaded two cows into the vehicle and explained that Mr Phuthiyagae had borrowed Mr Sebakeng's vehicle to go to a funeral. He further denied having gone to Bothaville. At that stage, the investigating officer informed the plaintiff that his explanation was not satisfactory and arrested him and Mr Phuthiyagae for stock theft.

[19] Sergeant Kgakgane testified that when he arrested the plaintiff, he was aware

that he had a discretion whether to arrest him or not, and exercised his discretion based on the objective evidence at his disposal and the fact that the plaintiff did not give a satisfactory explanation to refute the allegations. He further testified that he arrested the plaintiff and Mr Phuthiyagae to secure their appearance in court, and that alternative means of securing the plaintiff's attendance were possible only if the plaintiff's explanation had been satisfactory. He added that he considered that the plaintiff would move the cattle.

[20] During cross-examination, Sgt Kgakgane testified that he visited the scene to follow up on leads. When it was suggested that the plaintiff would testify that he went to Bothaville to hire a trailer and never rented one in Wolmaranstad, Kgakgane responded that the plaintiff's vehicle did, in fact, go to Wolmaranstad to hire a trailer. In response to a question on whether a satisfactory explanation would determine if the plaintiff would be arrested, Kgakgane confirmed that it would.

[21] Sgt Kgakgane further confirmed that he did not recommend releasing the plaintiff on bail because he did not know the whereabouts of the cattle, and investigations were still ongoing. He testified that for serious offences like stock theft, a Schedule 1 offence, he arrests first and investigates afterwards.

[22] When asked whether he was still conducting investigations a month after the arrest, as the plaintiff remained in detention, Sgt Kgakgane stated that the prosecution and the court were responsible for postponing the case. He

further denied acting arbitrarily in arresting and detaining the plaintiff, stating that he was still investigating, even though the prosecutor ultimately decided not to pursue the case. When it was put to Sgt Kgakgane that the plaintiff went to see him at the police station to enquire about the car and not because he was guilty, the witness replied that he was aware that to arrest a person does not mean that a person is guilty.

Plaintiff's case

[23] The plaintiff testified that on 26 November 2016, he and his employee, Oupa Mtshizana (Mr Mtshizana), travelled to Makwassie to meet his friend, Mr Phuthiyagae. He often engaged in business ventures with Mr Phuthiyagae. On this occasion, he was planning a *stockvel* and needed to purchase 200 cases of beer. Mr Phuthiyagae was to provide him with the 200 beer cases. They were driving in his white Isuzu bakkie, which did not have a canopy. He confirmed that the registration number matched the one described by Sgt Kgakgane.

[24] Before heading to Makwassie, they stopped at a trailer rental establishment in Wolmaranstad to borrow a trailer for transporting the beer bottles, as there were too many to fit in the bakkie. However, they were informed that the trailer could only be rented by someone residing in the area, so they were not allowed to rent it. They then went to Mr Phuthiyagae and asked him to rent the trailer on their behalf, which he agreed to do.

[25] The three men returned to Mr Phuthiyagae's house in Makwassie to load the

cases. Afterwards, the plaintiff and Mr Mtshizana drove back to Bothaville, leaving Phuthiyagae at his house. They offloaded the beer bottles at Phuthiyagae's house before heading back to Wolmaranstad to return the trailer. They agreed to meet Phuthiyagae at a filling station so he could retrieve the trailer. When Mr Phuthiyagae arrived at the agreed filling station, he was driving a silver Corsa bakkie, which he had borrowed because he wanted to attend a funeral. After they returned the trailer, Mr Phuthiyagae went back to his house, while the plaintiff and Mr Mtshizana returned to Bothaville.

[26] On Sunday, 27 November 2016, the plaintiff received a phone call from Mr Phuthiyagae, who informed him that he was with Sgt Kgakgane. During their conversation, Sgt Kgakgane informed him that the plaintiff was accused of stealing two cattle, and he should come and hand himself in at the police station, so he could arrest him. The plaintiff denied any involvement and informed Sgt Kgakgane that he would go to the police station the following day, which was a Monday.

[27] The plaintiff further testified that he did not go to the police station the next day as agreed; instead, he attended to his chores. He spoke with Mr Phuthiyagae, who was also a suspect in the matter, and they agreed to seek legal advice the following day.

[28] As planned, on Tuesday, 29 November 2016, they met in Klerksdorp to consult with an attorney. While the plaintiff and Mr Phuthiyagae were still in

consultation, the plaintiff received a call from his nephew, Xolile, who reported that Sgt Kgakgane was at the plaintiff's residence, removing the bakkie, and that the plaintiff was suspected of cattle theft. Xolile added that he was with the plaintiff's two children at the time. Their attorney, Kobus, then spoke with Sgt Kgakgane, asking how he could confiscate the vehicle without any evidence. After the consultation, Kobus advised them to go to the police station to see Sgt Kgakgane, which they did.

[29] He arrived at the police station at approximately 18h00, and after being directed to Sgt Kgakgane's office, he introduced himself to him. Sgt Kgakgane arrested him without a warrant. The plaintiff testified that when he tried to explain that he knew nothing about the stolen cattle, Sgt Kgakgane did not want to listen to him and persisted with the arrest. He informed him of his constitutional rights and arrested him. Mr Phuthiyagae was also arrested.

[30] The following Thursday, they appeared in court, where Kgakgane opposed bail, stating that they would interfere with his investigations and move the cattle as their whereabouts were still unknown. He testified that they appeared in court several more times, until he was released on bail on 27 December 2016. He added that Mr Phuthiyagae was denied bail and remained in custody until the charges were withdrawn.

[31] During cross-examination, the plaintiff testified that after receiving the informant's tip-off, Sgt Kgakgane was obliged to investigate. It was put to the plaintiff that Sgt Kgakgane did not rush to arrest him: he inspected the scene,

examined tyre tracks, obtained information about the plaintiff's Isuzu bakkie, and visited the trailer-hire shop. On this basis, it was argued that Kgakgane was justified in contacting the plaintiff and pursuing further enquiries, as he stated that he had no reason to doubt the informant. The plaintiff replied that as a police officer, Sgt Kgakgane was required to investigate first and could arrest him only once he had evidence.

[32] He conceded that, apart from telling Sgt Kgakgane he knew nothing about the stolen cattle, he gave no further explanation. It was put to the plaintiff that, given the information available, his failure to refute it, and his failure to attend at the police station on Monday, 28 November 2016, as agreed, it was reasonable for Sgt Kgakgane to arrest him. In deciding whether to arrest him, Sgt Kgakgane also considered the substance of his explanation, all of which strengthened his suspicion that the plaintiff may have committed the offence.

[33] The plaintiff disagreed, contending that Sgt Kgakgane could have called him to ask why he had not reported on the agreed Monday.

[34] Sgt Kgakgane's version was further put to the plaintiff, in particular that he understood that guilt is not required for an arrest and that a reasonable suspicion is sufficient; that the informant's information was corroborated by the police system and by tyre tracks at the scene; that this corroboration made it unlikely that the informant had fabricated the registration numbers or the specific details of the vehicles present, including the plaintiff's vehicle, or the detail that the vehicles had at one stage travelled in a convoy of two cars

and a trailer, which the plaintiff confirmed. The information thus proved accurate, and the plaintiff ultimately conceded that the informant had probably observed and recorded these details.

[35] Counsel concluded that Sgt Kgakgane was therefore justified in his suspicion and in arresting the plaintiff, as he believed the cattle could easily be moved or the evidence destroyed. The plaintiff agreed.

[36] It was further pointed out to the plaintiff that he accepted everything the informant said, except for the allegation that he had loaded two cattle onto the trailer. He stated that the trailer was too small to accommodate cattle as it was designed to transport furniture, measuring approximately 2.5m x 1.5m.

[37] When asked why he did not call other witnesses who were present when the events unfolded, the plaintiff stated that he did not call Phuthiyagae because he is often busy, difficult to contact, and, in any event, the plaintiff did not regard his evidence as necessary. He added that Mtshizana had passed away. With regard to his nephew, Xolile, he stated that no one had told him that Xolile was required and that he had not spoken to him for a long time because he had lost his phone.

Legal framework

[38] Section 40(1) of the CPA provides:

(2) A peace officer may without warrant arrest any person-

(a) ...

(b) Whom he reasonably suspects of having committed an offence

referred to in Schedule 1, other than the offence of escaping from lawful custody;

(c) ...; d...; e...; f...;

(g) 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 produce.

[39] For a defence premised on section 40(1)(g), the defendant must prove that the arresting officer reasonably suspected the plaintiff of being in possession of stock (stolen cattle). The suspicion must rest on reasonable grounds.

[40] Likewise, for an arrest in terms of section 40(1)(b) (pleaded by the defendant in the alternative), the defendant must satisfy the court that he entertained a reasonable suspicion that the plaintiff had committed a Schedule 1 offence. In this case, stock theft is an offence listed in Schedule 1.

[41] It was not placed in dispute that Sgt Kgakgane is a peace officer. The issue turns on whether Sg Kgakgane's suspicion, first in suspecting the plaintiff of being in possession of stock (section 40(1)(g)), alternatively, that he committed a Schedule 1 offence (section 40(1)(b)), was reasonable.

[42] The essence of Sgt Kgakgane's evidence in this regard is that he received information from his informant, giving details of the vehicles that were allegedly involved in the stock theft and their registration numbers. He then verified the ownership of the vehicles, including the trailer, from the police records. He established that one of the vehicles belonged to the plaintiff and

the trailer belonged to the trailer hire company. He visited the trailer hire company and obtained details of the person who hired the trailer, being Mr Phuthiyagae.

[43] He thereafter visited Mr Phuthiyagae and contacted the plaintiff, who denied any knowledge of the theft. They agreed that the plaintiff would go to the police station the following day. When the plaintiff failed to arrive at the police station as agreed, the next day, Sgt Kgakgane attended at the plaintiff's residence and confiscated the plaintiff's vehicle alleged to have been involved in the theft. This prompted the plaintiff to go to the police station later that day, at which point Sgt Kgakgane arrested him. According to Sgt Kgakgane, he had no reason not to believe the informant and the plaintiff did not give any cogent explanation to refute the information.

[44] In his testimony, the plaintiff conceded that the informant probably saw the details of the vehicles and the trailer and recorded them. He agreed that the details, as testified by Sgt Kgakgane, were correct, save for the allegation that he had loaded cattle in the trailer, stating that this never happened and the trailer was, in any event, too small to accommodate cattle. He further testified that Kgakgane informed him of his constitutional rights when he arrested him.

[45] It was argued on behalf of the defendant that Sgt Kgakgane did not hastily arrest the plaintiff and only did so after forming a reasonable suspicion, which was supported by his own verifications and corroborating evidence, including

police records, and tyre tracks which matched the informant's detailed report about the vehicles involved, including the plaintiff's car and their convoy formation, including the plaintiff's inability to give a satisfactory explanation.

[46] It was argued on behalf of the plaintiff that he was not found in possession of the cattle or any livestock. In my view, this is immaterial.

[47] In these proceedings, the issue is not whether the plaintiff had committed the alleged offence, but whether a reasonable man in the position of Sgt Kgakgane, possessed at the time of the arrest, Sgt Kgakgane would have considered that there were good and sufficient grounds to suspect the plaintiff of having committed stock theft. The test is objective. The reasonable man will therefore analyse and assess the quality of the information at his disposal critically, and he will not accept it lightly or without checking it where it can be checked. It is only after an examination of this kind that he will allow himself to entertain a suspicion which will justify an arrest. This is not to say that the information at his disposal must be of sufficiently high quality and cogency to engender in him a conviction that the suspect is in fact guilty. The section requires suspicion but not certainty. However, the suspicion must be based upon solid grounds. Otherwise, it will be flighty or arbitrary, and not a reasonable suspicion.²

[48] The plaintiff does not deny being in possession of the trailer described by Sgt Kgakgane on the day the offence is alleged to have been committed. He also does not deny that his vehicle, also implicated in the offence, was part of the

² *Mabona & Another v Minister of Law and Order* at 658 E-H.

transaction. In the face of the objective evidence provided, he could not. What he states is that he did not use his vehicle and the trailer to load cattle as alleged. In his testimony, he explains that the trailer was too small and that he used it to transport beer cases. That may well be. The enquiry is not concerned with the guilt or otherwise of the plaintiff, but whether, as I have stated, the information available to the arresting officer at the time was reasonable and sufficient to ground an arrest.

[49] It was further argued on behalf of the plaintiff that his arrest was arbitrary, as Sgt Kgakgane was obliged to investigate the matter first and could only arrest the plaintiff once he had obtained evidence of the commission of the offence. I do not agree. As the authorities dictate, an arresting officer need not be satisfied of a suspect's guilt to form reasonable suspicion. It is enough that the officer relies on credible information that has, where feasible, been checked or verified.

[50] From the evidence presented, both on behalf of the plaintiff and the defendant, the arrest was not based on a mere 'hunch'. The informant's information was specific and accurate, linking the plaintiff's car to a convoy involved in cattle movement. Sgt Kgakgane verified this information and further sought an explanation from the plaintiff. His duty involved the exercise of a discretion, which required him to balance information from the plaintiff's and the defendant's sides. In the absence of a cogent explanation from the plaintiff, he was entitled to exercise his discretion to arrest.

[51] The plaintiff's submission that section 40(1)(b) and (g) can only be invoked in exceptional circumstances is not entirely accurate. Section 40 authorises a peace officer to effect an arrest without a warrant, provided they meet the specified jurisdictional facts, taking into account that an arrest is a deprivation of a person's right to liberty.

[52] By his own admission, the plaintiff did not provide the full details of the explanation he now presents before the court. He made no effort to refute the information despite conceding that all the other information, as presented by Sgt Kgakgane, was accurate. The defendant highlights the fact that the information relied on turned out to be accurate, which, while not a requirement at the exact moment of arrest, supports the objective reasonableness of Sgt Kgakgane's suspicion.

[53] In *Schoombee v Minister of Police*³, this Division found that in its proper context, section 9 of the Stock Theft Act "simply means that a reasonable suspicion of contravening the Stock Theft Act justifies the arrest without a warrant".⁴

[54] I consider it necessary to address the plaintiff's submissions regarding the source of Sgt Kgakgane's information and the fact that the informant did not testify. Albeit not stated clearly, I understand the contention to be that Sgt Kgakgane relied on hearsay evidence and that his evidence should be rejected.

³ [2023] ZANWHC 5.

⁴ Para 48.

[55] The difficulty with this contention is that upon receiving the information, Sgt Kgakgane made his own inquiries. The outcome of those inquiries was confirmed by the plaintiff. To the extent that it may be considered that Sgt Kgakgane relied on hearsay evidence to effect the arrest, in *Mahlaba v Minister of Police*⁵, the Full Court held that hearsay evidence is admissible in determining whether a reasonable suspicion exists for purposes of section 40(1)(b).

[56] The defendant has discharged the onus of showing that the jurisdictional requirements of both sections 40(1)(g) and 40(1)(b) were met. The suspicion was based on solid, objectively verifiable facts, which the plaintiff himself confirmed.

[57] Consequently, the plaintiff's arrest and subsequent detention were lawful.

Order

[58] In the result, I make the following order:

- a. The plaintiff's claim is dismissed with costs.

⁵ [2026] ZAGPJHC 24.

S MFENYANA
Judge of the High Court
Northwest Division, Mahikeng

APPEARANCES

For the plaintiff
Counsel: O Molefe
Instructed by Makapan Attorneys
c/o Zisiwe Attorneys

For the defendant
Counsel: PJS Smit
Instructed by State Attorney, Mahikeng

Date reserved: 10 November 2025

Date of judgment: 7 April 2026