



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

**Case No: 587/2024**

In the matter between:

**TSHEPO KENNETH LEBATLE**

Plaintiff

and

**THE MINISTER OF POLICE**

Defendant

**Coram:** Petersen ADJP

**Heard:** 10 March 2026

**Written arguments delivered:** 13 March 2026; 24 March 2026

**Judgment deemed reserved:** 24 March 2026

**Delivered:** This judgment was handed down electronically, circulated to the parties' representatives via email, uploaded to CaseLines, and released to SAFLII. The date and time for the handing down of the judgment are deemed to be 11h30 on 13 May 2026.

**Summary:** Arrest without warrant — Delictual claim for damages arising from alleged unlawful arrest — Section 40(1)(b) of the Criminal Procedure Act 51 of 1977 — Whether arresting officer entertained an objectively reasonable suspicion that plaintiff had committed Schedule 1 offences of malicious damage to property and theft — Jurisdictional facts for lawful arrest — *Duncan v Minister of Law and Order* — Exercise of arrest discretion — *Minister of Safety and Security v Sekhoto and Another* — Plaintiff contended that deficiencies in the police

investigation rendered the suspicion unreasonable and that less invasive measures ought to have been employed — Whether investigative shortcomings negated reasonable suspicion — Proper distinction between proof sufficient for conviction and the lower threshold of reasonable suspicion — Held that complainant’s formal complaint, corroborative witness material, and identification of the plaintiff provided an adequate objective basis for the arresting officer’s suspicion notwithstanding imperfections in the investigation — Defendant discharged the onus of justifying the arrest — Claim dismissed with costs.

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## **JUDGMENT**

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### **PETERSEN ADJP:**

#### **Introduction**

[1] The plaintiff, Mr. Tshepo Kenneth Lebatle (“Lebatle”), instituted an action against the defendant, the Minister of Police, for damages arising from his arrest without warrant on 23 March 2023 at his residence in the Gamanyai Section, Tlaskgameng.

[2] The arrest was effected by Sergeant Kgothatso Kenneth Sebogodi (“Sebogodi”), a member of the South African Police Service, acting in the course and scope of his employment with the defendant. The plaintiff contends that the arrest was unlawful and claims damages for contumelia and impairment of dignity arising therefrom.

[3] It is common cause that the arrest was purportedly effected in terms of s 40(1)(b) of the Criminal Procedure Act 51 of 1977 (“the CPA”), which empowers a peace officer to arrest without warrant any person whom he reasonably suspects of having committed an offence referred to in Schedule 1 to the CPA.

[4] The central issue is whether the arrest was lawful. If it were not, the question of damages would arise.

## **Background**

[5] The plaintiff served notice in terms of s 3 of the Institution of Legal Proceedings Against Certain Organs of State Act 40 of 2002, and thereafter instituted action against the defendant.

[6] The arrest arose from a complaint lodged by one Mr Kgositone relating to an incident alleged to have occurred on 11 December 2022 involving malicious damage to property and theft out of a motor vehicle, specifically a cellphone.

[7] It was common cause that the offences under investigation fall within Schedule 1 to the CPA.

## **Evidence**

### **Defendant's case**

[8] Sebogodi testified that he is a detective attached to Ganyesa SAPS with approximately sixteen years' service. He testified that a docket was allocated to him following a complaint by Mr. Kgositone, who alleged that the plaintiff had damaged his motor vehicle and stolen a cellphone from it. In the course of his investigation, Sebogodi obtained the complainant's statement, a witness statement, and documentation relating to the alleged damage to the motor vehicle. He also consulted with the complainant regarding the incident.

[9] On 23 March 2023, accompanied by a colleague and the complainant, Sebogodi proceeded to the plaintiff's residence. The complainant identified the plaintiff as the person implicated in the complaint. The plaintiff was informed of the purpose of the visit. Sebogodi's evidence was that the interaction was calm and orderly. The plaintiff was not handcuffed, no force was used, and he was permitted to complete personal arrangements at home before accompanying the officers.

[10] The plaintiff was taken to the police station, where the standard administrative procedures were completed, including an explanation of his constitutional rights and the issuance of a written notice to appear in court. He was released the same day and was not detained in a holding cell.

[11] Under cross-examination, Sebogodi conceded certain imperfections in the investigation. He had not personally inspected the damaged vehicle. Independent documentary proof of ownership or existence of the allegedly stolen cellphone had not been obtained. A witness statement did not expressly mention the

cellphone. A quotation relied upon in the docket reflected a date predating the incident.

[12] Sebogodi nevertheless maintained that, at the time of the arrest, he suspected the plaintiff of having committed the offences under investigation and considered the arrest lawful.

### **Plaintiff's case**

[13] The plaintiff testified that he was arrested while bathing at home and while caring for his sick child. He denied any involvement in the offences under investigation. He testified that the arrest caused him embarrassment because it occurred in the presence of neighbours and his child. He stated further that the incident negatively affected his standing in the community and at his workplace.

[14] The plaintiff accepted that he was not assaulted, handcuffed, or detained in a police cell. His complaint was principally directed at the arrest itself, which he contended was unjustified.

### **Parties' submissions**

[15] Counsel for the defendant submitted that the arrest was lawful in terms of s 40(1)(b) of the CPA. It was argued that the jurisdictional facts identified in *Duncan v Minister of Law and Order*<sup>1</sup> were present, namely that Sebogodi was a peace officer; that he entertained a suspicion; that the suspicion related to Schedule 1 offences; and that such suspicion rested on objectively reasonable grounds. Reliance was further placed on *Minister of Safety and Security v Sekhoto and Another*<sup>2</sup> for the proposition that once the jurisdictional facts are present, the discretion to arrest is broad, constrained by legality and rationality, and that the mere existence of less invasive means to secure attendance at court does not render an arrest unlawful.

[16] It was submitted that reasonable suspicion does not require proof sufficient for conviction, nor even a prima facie case. The question is whether a reasonable person in the position of the arresting officer, possessed of the information available at the time, would form the requisite suspicion.

[17] The defendant further submitted that imperfections in the investigation did not render the arrest unlawful, and that the plaintiff's argument impermissibly

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<sup>1</sup> *Duncan v Minister of Law and Order* 1986 (2) SA 805 (A).

<sup>2</sup> *Minister of Safety and Security v Sekhoto and Another* 2011 (1) SACR 315 (SCA).

sought to test the arrest against standards applicable to proof at trial rather than the lower threshold applicable under s 40(1)(b).

[18] Counsel for the plaintiff submitted that the suspicion entertained by Sebogodi was not objectively reasonable. Emphasis was placed on the inadequacies in the investigation, including the failure to inspect the damaged vehicle, the lack of objective corroboration regarding the allegedly stolen cellphone, and the documentary anomaly in the repair quotation. It was argued that a reasonable officer would have investigated further before depriving the plaintiff of his liberty.

[19] Counsel further submitted that even if the jurisdictional facts were technically satisfied, the discretion to arrest was irrationally exercised, regard being had to the plaintiff's fixed residence, employment, cooperation, and the availability of less invasive procedures.

### **Applicable legal principles**

[20] The burden rests upon the defendant to justify the lawfulness of the arrest. Section 40(1)(b) of the CPA provides that a peace officer may without warrant arrest any person whom he reasonably suspects of having committed an offence referred to in Schedule 1. The jurisdictional facts for a lawful arrest under s 40(1)(b) were authoritatively stated in *Duncan v Minister of Law* as follows: (a) the arrestor must be a peace officer; (b) the arrestor must entertain a suspicion; (c) the suspicion must be that the suspect committed a Schedule 1 offence; and (d) the suspicion must rest on reasonable grounds.

[21] The reasonable suspicion requirement is objective. In *Mabona and Another v Minister of Law and Order*, Jones J explained that the reasonable person in the arrestor's position would critically analyse and assess the available information, and would not accept it lightly or without checking where it can reasonably be checked. At the same time, the standard is one of suspicion, not certainty. A peace officer is not required, before arrest, to possess evidence sufficient to prove guilt. Nor is the arrestor required to conduct a trial-level investigation before acting. The enquiry remains whether objectively reasonable grounds for suspicion existed at the time.

[22] In *Minister of Safety and Security v Sekhoto and Another*, the Supreme Court of Appeal reaffirmed that once the jurisdictional facts are present, the power to arrest arises. The exercise of that power remains subject to legality and rationality,

but courts must avoid imposing requirements not found in the statute. *Sekhoto* makes clear that the mere existence of alternative mechanisms, such as summons or written notice, does not by itself render an arrest unlawful. The enquiry is not whether a less invasive means was available, but whether the discretion was exercised lawfully and for the statutory purpose of bringing the suspect before court.

## **Discussion**

[23] The first three jurisdictional facts befit little discussion. Sebogodi was plainly a peace officer as contemplated in the CPA. He subjectively entertained a suspicion that the plaintiff had committed the offences under investigation. The offences of malicious damage to property and theft are Schedule 1 offences. The decisive issue is whether the suspicion rested on objectively reasonable grounds.

[24] In assessing that question, the court must guard against substituting hindsight for the perspective properly required by s 40(1)(b). The enquiry is not whether the investigation was flawless, nor whether the available evidence would ultimately have sustained a prosecution or conviction. The enquiry is whether the information available to the arresting officer at the time was sufficient to found a reasonable suspicion.

[25] At the time of the arrest, Sebogodi had before him a formal complaint implicating the plaintiff in the commission of the offences under investigation. He had also obtained a witness statement which, while not exhaustive in all respects, provided some corroborative support for the complainant's version. Most significantly, the complainant personally identified the plaintiff when the officers attended at his residence. A complainant's identification of an alleged perpetrator is not to be lightly dismissed. While identification evidence may ultimately prove unreliable, the lawfulness of an arrest under s 40(1)(b) is not assessed by reference to eventual proof but by reference to the reasonableness of the suspicion formed at the time. In the absence of evidence demonstrating obvious unreliability, fabrication, or impossibility, an arresting officer is entitled to attach weight to such identification.

[26] The plaintiff relied heavily on shortcomings in the investigation. Some of those criticisms are not without merit. The failure to inspect the vehicle personally, the absence of documentary corroboration regarding the cellphone, and the anomaly relating to the quotation are matters that may weaken the overall case. They do not, however, necessarily destroy the existence of reasonable

suspicion. Section 40(1)(b) does not require a completed investigation or proof of every factual component before arrest. Suspicion may remain reasonable notwithstanding imperfections, provided that the objective foundation remains sufficient.

[27] The omission by the witness to mention the cellphone does not amount to a direct contradiction of the complainant's version. At most, it reflects an evidential incompleteness. Similarly, while the quotation anomaly is unsatisfactory, it does not negate the entirety of the information available to Sebogodi, particularly the direct complaint and identification implicating the plaintiff.

[28] Considered cumulatively, the information available to Sebogodi was sufficient to induce in a reasonable person the suspicion that the plaintiff had committed the offences under investigation. Once that conclusion is reached, the challenge to the exercise of discretion must also fail. The plaintiff's argument that a summons or written notice could have been employed instead cannot, without more, establish unlawfulness. *Sekhoto* is clear that the availability of alternative procedures does not invalidate an otherwise lawful arrest.

[29] There is no evidence that Sebogodi acted for an ulterior purpose, in bad faith, arbitrarily, or for reasons unrelated to the statutory purpose of bringing the plaintiff before court. The plaintiff was treated courteously, no force was used, and the administrative process was completed without undue delay. The fact that the plaintiff was cooperative, employed, and resident at a fixed address does not, in itself, deprive the arresting officer of the statutory power conferred by s 40(1)(b).

## **Conclusion**

[30] Personal liberty is a fundamental constitutional right, and courts must remain vigilant against arbitrary deprivations thereof. At the same time, the statutory power of arrest conferred by s 40(1)(b) of the CPA is a lawful mechanism entrusted to peace officers for the investigation and prosecution of serious offences. Courts must apply the statutory requirements as interpreted by binding authority, and not substitute more exacting standards than the law requires.

[31] On the evidence presented, Sebogodi possessed information which objectively justified a reasonable suspicion that the plaintiff had committed Schedule 1 offences. Although aspects of the investigation were imperfect, the threshold required by s 40(1)(b) was met.

[32] In the result, the defendant has discharged the onus of establishing that the arrest was lawful and the claim for damages cannot succeed.

### **Costs**

[33] Costs ordinarily follow the result. No basis exists to depart from that principle.

### **Order**

[34] The following order is made:

1. The plaintiff's claim is dismissed.
2. The plaintiff is ordered to pay the defendant's costs of suit.



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**AH PETERSEN**  
**ACTING DEPUTY JUDGE PRESIDENT**  
**HIGH COURT OF SOUTH AFRICA**  
**NORTH WEST DIVISION, MAHIKENG**

### **Appearances:**

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|--------------------|--------------------------------|
| For the Plaintiff: | Mr. O K K A Lehabe             |
| Instructed by:     | Lehabe Attorneys Inc, Mmabatho |
| For the Defendant: | Adv Khosi Pama-Sihunu          |
| Instructed by:     | The State Attorney, Mmabatho   |