

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

- | | |
|-----|--|
| (1) | REPORTABLE: NO |
| (2) | OF INTEREST TO OTHER JUDGES: [N] |
| (3) | REVISED: [N] |
| (4) | Signature: _____ Date: <u>06/05/2026</u> |

CASE NO.: 50890/2021

In the matter between:

R[...] B[...]

First Plaintiff

P[...] J[...] B[...]

Second Plaintiff

and

MINISTER OF POLICE

Defendant

JUDGMENT

Kumalo J

Introduction

- [1] This matter is a consolidation of two cases arising from the same cause of action involving the members of the South African Police Service and the two plaintiffs.
- [2] The two plaintiffs instituted their civil claims separately under case numbers 50890/2021 and 50889/2021, respectively. The parties agreed to their consolidation as they emanated from the same cause of action. The Plaintiffs made the application for consolidation, and the order was granted.
- [3] The plaintiffs in this matter are suing the Minister of Police mainly for damages arising from unlawful arrest and detention, as well as for alleged defamation, legal fees, and medical expenses allegedly incurred as a result of the unlawful arrest and detention.
- [4] The plaintiffs claim an amount of R500 000.00 each for the alleged unlawful arrest and detention, R50 000.00 each for legal fees, R15 000.00 each for medical expenses, and R1 000 000.00 each for the alleged defamation. The

plaintiffs are also claiming interest *a tempore morae* on all the heads of their claims and costs.

[1] The defendant admitted the arrest and detention but denied that they were unlawful and pleaded that the arrests were effected in terms of section 40(1)(a).

[1] Considering the defendant's admission of the arrest and detention, he had the onus of proving the lawfulness of the conduct of the members of SAPS in effecting the arrests.

[2] In the attempt to discharge the onus upon him, the Defendant led the evidence of three police officers, namely Sergeant Maatlane ("Maatlane") – the arresting officer; Constable Makhubela ("Makhubela") – the crew; and Detective Constable Choshi ("Choshi") – the Investigating Officer (I/O).

[3] Matlaane testified first on behalf of the Defendant. He testified that he is a Police Officer stationed at Kameeldrift SAPS in the Visible Policing (VISPOL) Unit. On 16 May 2021, he was on day shift duty with Constable Makhubela and was assigned driver duties on patrol. They were in uniform and driving a marked police double cab.

- [4] At about 17h00, they were at the police station, and Y[...] came and asked to be escorted to the plot where she was staying with her husband, W[...], to fetch her children's clothes. When they asked her the reason she needed the escort, she informed them it was because she was afraid her husband might be violent towards her.
- [5] They agreed to assist and followed her in her vehicle to the plot, arriving around 17h20. When they entered the plot, he was surprised to see a grey Ford Ranger behind them, with two males and two females. Y[...] introduced the two males as her father, P[...], and her brother, R[...].
- [6] A man came out of the house and stood by the palisade, introducing himself as W[...]. They introduced themselves to him and said they were there to escort Y[...] to fetch her children's clothes, but he said he would not let them in because they had not made an appointment.
- [7] There was shouting, with P[...] threatening to break the door, and he was walking towards the vehicle. Maatlane intervened and told P[...] that he would speak to W[...] to allow Y[...] to take the clothes. He said P[...] seemed to have understood, and he, Maatlane, and Makhubela advanced to speak to W[...].
- [8] Whilst they were talking to W[...] to reason with him, they heard him shout, 'Why are you breaking my lock?' and P[...] responded, saying, 'he will replace

it, it was his house. At the time, they had their backs to P[...]; hence, they did not see him break the lock, but when he turned to look, he held a wheel spanner in one hand and a crowbar in the other. P[...] was walking towards the house when W[...] approached him and told him he could not enter the house.

[9] P[...] started assaulting W[...] by grabbing his shirt, pulling him, and Maatlane was trying to separate them when R[...] came and started punching W[...] with his fists. W[...] fell on the ground, and P[...] and R[...] continued to assault him by kicking and punching him while he was on the ground.

[10] Makhubela came, and they grabbed and restrained both P[...] and R[...], and they did not restrain W[...] because he was not fighting anyone.

[11] Immediately, when W[...] got off the ground, he indicated that he wanted to open a case against both P[...] and R[...] for assaulting him. It was at that point that Maatlane introduced himself to both P[...] and R[...] and showed them his appointment certificate and informed them that they were under arrest for assaulting W[...], and read them their rights, and they told him that they understood.

[12] Maatlane then asked W[...] to allow Y[...] to get the clothes, and he agreed. Y[...] got the clothes and furniture, with help from P[...], R[...], and one of the ladies there.

[13] W[...] insisted that he wanted them arrested and showed Maatlane his injuries, saying they inflicted them. Neither P[...] nor R[...] had cuffs and were allowed to drive their vehicle to the police station because, if they left it there, W[...], who was still angry, might damage it upon his return, and, further, the offense for which they were being arrested might have them released on SAP496.

[14] They drove with W[...] in their vehicle, and when they got to the station, he again asked W[...] if he still wanted to open a case against P[...] and R[...], and W[...] responded affirmatively. He explained that he asked W[...] again because they were his father and brother-in-law. In his experience, people in domestic relationships often change their minds about opening a case against each other.

[15] After W[...] confirmed, he told them again that he was arresting them for assaulting him, read them their rights again, and filled out the Notice of Rights, which they signed, and informed them that he was detaining them. The Notice of Rights was read to them at about 19h25. He wrote his arrest statement, and Makhubela took W[...]’s statement.

[16] He then made an entry in the OB when he detained them, and they were detained at 19h35. He further testified that he arrested the Plaintiffs for common assault. They assaulted W[...] in his presence as a Police Officer, and W[...] insisted on opening a case against them.

[17] He testified further that if W[...] had said he was not going to open a case against the plaintiffs, he would not have opened it on his own as a Police Officer, even though he witnessed the assault. His reasoning in this regard is that when the victim is clearly saying he is not opening a case, he probably would not come to court to testify later

[18] He observed a bruise on W[...]’s left cheek and right cheek and said those injuries were inflicted on him by the Plaintiffs. He also complained of a sore back and mouth. He testified that he arrested them without a warrant because, as a Police Officer, he knows that if a person commits an offense in his presence, he may arrest them without a warrant.

[19] The plaintiffs assaulted W[...] in his presence, and he was allowed to arrest them without a warrant of arrest. Maatlane made the arrest statement regarding the case on the day of the incident

[20] However, at a later stage, the Prosecutor requested that he make an additional statement to explain certain aspects of his initial statement.

[21] Constable Makhubela was the next witness to testify on behalf of the Defendant. He confirmed that on 16 May 2021, he was on day shift duty assigned to the VISPOL Unit with Sergeant Maatlane. His evidence corroborated Sergeant Maatlane's account of why and how they went to the plot and the circumstances of the assault they witnessed.

[22] He confirmed that he took W[...]’s statement that described how he was assaulted by the Plaintiffs and the injuries he sustained as a result of the said assault until the Police intervened. W[...] described the injuries that were inflicted on him by the Plaintiffs and sustained.

[23] Makhubela testified that when complainants state to the Police that they were assaulted, the Police must give such complainants the J88. This is a document that they, as Police Officers, fill out, describing how the complainants say they sustained the injuries and giving the complainants instructions to take to the doctor for assessment.

[24] On the complaint of 16 May 2021, Makhubela filled the J88 and gave it to W[...] to take to the doctor so they could assess him and note the injuries he sustained.

- [25] The following day, on 17 May 2021, he was on his second day of a day shift and had gone out to patrol with Maatlane in the morning. When they returned to the station around 12h00, he was given the J88 by one of the members of the Community Service Center ("the CSC"), who told him a certain male person had brought it.
- [26] When he checked it, it was not filled, but he erroneously wrote 'not collected' instead of 'not completed'. He said it was not completed by the doctor and was supposed to have been taken there by W[...]. He then took the J88 to the Detectives Unit.
- [27] He testified further that on the day of the incident, he did not make a statement because he believed Maatlane's arrest statement was sufficient. However, when the Prosecutor asked him to make the statement, he did so on 12 August 2021. Under cross-examination, he confirmed that he read the Plaintiffs their notice of rights and each paragraph on the SAP14A, and they confirmed that they understood.
- [28] He confirmed in his testimony that he was standing with Sgt Maatlane when the alleged assault took place, and it took place in the palisade gate, where the lock was broken. He saw W[...] before the alleged assault, and he was not injured.

- [29] The last witness for the Defendant was Constable Choshi. He was assigned to the Detective Unit. His duties included investigating cases assigned to him and taking the dockets to court.
- [30] On 16 May 2016, he was the Detective on standby, and at around 19h50, he was called by his Commander, Detective Cloete, who told him that two suspects at the station had been arrested for common assault and needed to be attended to and released with the SAP496.
- [31] He explained the meaning of SAP 496: the suspects will be released because of the nature of the offense they are charged with, not because there is no strong case against them.
- [32] He got to the station at around 20h10 and checked the docket, where he found the A1 statement from the complainant, the A2 statement from the arresting officer, and their signed notices of rights. He saw that in the SAP5, the member who attended to the complainant issued him with the J88, which he was to collect later.
- [33] He interviewed the suspects, who provided him with the information, and he explained the charges against them. They told him they understood and signed. He charged them at about 20h30. They did not give him any of their version and said they would speak in court.

[34] He confirmed that he was indeed the one who released the Plaintiffs on the SAP496 after charging them, as he had the authority to do so from Captain Cloete before even going to the station. He was charging them in the boardroom. He further testified that he released the Plaintiffs at about 21h00. When he released them on SAP496, it did not mean there was no case against them; it only meant that the offense they committed allowed their release.

[35] His view was that there was a strong case against them because of the statement by the complainant showing that he was assaulted by the Plaintiffs and Maatlane's statement showing that the assault happened in the Police's presence. He testified that Maatlane could not have requested the authority to release the Plaintiffs under SAP 496 because that could only be done by the Detective after charging the suspects.

[36] The following day, he got to the station around 09h00 and saw an unknown gentleman in the CSC. One member told him that he was the complainant in his case from the previous night and that he wanted to withdraw the charges he had laid against the Plaintiffs.

[37] He told W[...] that he did not have the power to withdraw the charges and took him to his Commander's office. He never received any instructions to take the

statement withdrawing the case. He testified that they do not have the power to withdraw charges because the Prosecutors at the Cullinan Magistrates' Court require both parties to appear in court for the case to be withdrawn.

[38] He testified that although the Plaintiffs were supposed to be in court on 18 May 2021, their docket did not go to court because he was late to the parade and it was not put with the others. The Prosecutor later called him, and he made a statement, saying he wanted the matter to proceed.

[39] The Prosecutor wanted the statements from Maatlane and Makhubela, which were taken, and has not yet decided how to proceed. He later saw that the J88 was incomplete and called W[...] to come collect it. Although he promised to collect it, he never came.

[40] He conceded under cross-examination that he had not put in the time when he released the Plaintiffs on the form, but had recorded the same in the Occurrence Book. He denied that they were released at 22h00. He had recorded 21h00 in the OB.

[41] The plaintiffs testified on their behalf and called the two other women who allegedly were present during their arrest and detention.

[42] R[...] B[...] was the first witness to testify on behalf of the plaintiffs. He testified that on the day in question, his father asked him to assist his sister, Y[...], in fetching her clothes from her home. Y[...] was asked to call the Police to ensure that there was no problem, and they waited by the side of the road.

[43] When Y[...] came with the police, they followed her, and she opened the gate. It was around 17h00. Y[...] called W[...], and he did not answer. After some time, the Police yelled, and he came out to the Police at the gate. The Police spoke to W[...] about gaining access to the house to retrieve Y[...]’s stuff. The witness alleges that W[...] yelled that they would not be allowed in because they lacked an appointment.

[44] He then confirms, as alleged by the Defendant's witnesses, that his father asked if he could break the lock, and that Y[...] said he could. After seeing that nobody was opening, he took the crowbar and broke the lock. W[...] shouted about breaking the lock. He then alleges that W[...] ran to his father, who blocked him by putting out a hand, placing it on his stomach, and pushing him away.

[45] He testified that the police were standing by the tree, and he did not believe that they would have seen them or what was happening. He went to them, took the crowbar from his father, and took it to the bakkie. He then ran to the second gate where the Police were standing. He went past them, saying something was happening.

- [46] His girlfriend alerted him to something at the door, and a scuffle broke out among his mother, sister, father, and W[...], each grabbing the other.
- [47] He joined the scuffle and stood between his father and W[...], and asked W[...] twice to move away to de-escalate the situation, but W[...] kept swinging at his father's head. He said the Police were probably at the gate, but they did not intervene. He pulled W[...], who fell onto the table and then onto the ground, and stood over him, shouting that he must leave his father alone.
- [48] He then walked back to the bakkie just to calm down. He then saw the Police still standing at the same place they had been standing since they got there.
- [49] He was shocked that they did not move because they were called there for what had just happened, not to happen. Then W[...] went to the Police to talk to them, but he is not sure what he said.
- [50] The witness alleges that they began loading the goods onto the trailer. He did not think they had loaded the fridge because the Police stopped them. Then they saw another police vehicle, and the Police got out and talked to each other, and W[...] went over to talk to them.

- [51] Then one of the new Police Officers said he was going to arrest them for assaulting W[...]. He told them it was the first time he was being arrested and asked if he should get into the van or what, and they said he could go in his vehicle.
- [52] He and his father were taken to the cells at the back. He asked for the police's names, and they told him he would find them in the docket when they were done. They were in the holding cell that had built-in seats and was very small (about 3m), dirty with blood on the wall, and had no lights.
- [53] His father, who had diabetes, asked for his flask and was told to leave it on the counter and would get it later. His girlfriend arranged for a lawyer who arrived two hours later. The lawyer arranged food for them and access to the toilets. for them
- [54] The lawyer talked to them in the Lapa. After 21h00, they were called inside to sign some papers. They read their rights, and no one explained what they were signing, but their lawyer said they could sign, so they did.
- [55] He denied that they were advised of their rights or of bail because he would have paid the bail instead of calling a lawyer. They left the station at 22h01. They went home, appeared in court on 18 May 2021, and were told by their lawyer that the docket never arrived.

[56] Further, they were informed of a new date, and they have since heard nothing about their case.

[57] He concluded by testifying that he was embarrassed to tell his employer and family about the arrest. He incurred legal costs of about R15 000-00, which he paid as a deposit.

[58] He was cross-examined on several issues, including the statement of W[...] that identified him and his father as the persons who assaulted him in front of the police. He denied that they assaulted him.

[59] He was told that Maatlane testified that the arrest and detention were lawful, as he arrested them for the assault of W[...] that took place in their presence as police officers. He was allowed to arrest, but he denied the same.

[60] The next witness for the plaintiffs was P[...]2 J[...] B[...], R[...]s father. He testified that he is a pensioner and is diabetic. Y[...] asked him to help her get her and her children's clothing from the house. On 16 May 2021, they went along to assist Y[...] and asked her to call the Police, which she did, and they came.

[61] He also confirmed what had already been told to the Court about what happened upon their arrival at the premises, i.e., that Y[...] called out to W[...] to open, and he would do so until the police called out, and only then did he come out, but refused to open the gate for them.

[62] At the house, Y[...] called for W[...], and he did not come. The police called him, and he came. He asked if he could break the lock, and Y[...] confirmed he could. Where he differs from the others is that he claimed that the policeman standing on his right said he could break it.

[63] He fetched the crowbar, broke it, and said he would replace it. He then entered the hallway, and W[...] ran to him, and he pushed him with his right hand. He shouted, "Look what he is doing, I want him in jail". He went in, and Y[...] and his wife followed him. At the door, R[...] came and took the crowbar to the vehicle, and W[...] ran to the door and tried to close it.

[64] Y[...] and his wife helped him pull the door open. W[...] realized he could not close the door, jumped out of it, and pulled all the buttons off his shirt. He ducked and dived while W[...] was punching him. R[...] came and pulled W[...] off him and told him, "You don't hit my father." W[...] then shouted, "Look what they are doing to me. I want them arrested and in jail". W[...] then went to the Police and joined them outside.

[65] They started loading into the truck, and while doing so, he saw a second police vehicle coming, with two Police Officers. They went to speak to the officers already there and also to W[...]. Thereafter, one of the 'new' police officers went to them and told him "to offload stuff," and when he asked why, he said they loaded illegally, and he was going to arrest them for assault. He asked for his name, and he said he would get it at the station. They left with the two police vehicles between them.

[66] At the station, they were brought in and put in the cells. They refused him the drink from his flask even though he told them he had diabetes. The Police came and asked for their statements, and he told them that they would wait for their lawyer. The Police ignored their request for food; their lawyer arrived, and food was arranged for them at about 21h30. They ate at the Lapa while talking to their lawyer. The forms were filled in their absence, and they were given those forms to sign without anything being explained to them. They signed the forms just before they were released. They were not read their rights at the plot and at the station. He testified that they left the station at 22h01.

[67] S[...] B[...], the wife of P[...]2 B[...], was also called to testify. She is the wife of P[...]2 and was present on 16 May 2021. Her husband has diabetes. She was in the passage, and W[...] opened the door, and he started swinging at her husband. Her son came running and took W[...] off her husband. The Police

were outside. There were two police vehicles, and when they left, they drove between them.

[68] Anna Swanepoel also testified that she was present on 16 May 2021 and saw what happened. She was sitting next to the trailer when R[...] was returning the crowbar. She saw a scuffle behind the palisades by the door and told R[...] to check. There were two police vehicles because they called for backup.

[69] She was asked during cross-examination where the trailer was parked relative to the purported tree, allegedly where the police were standing, and she responded that the trailer was right by the tree.

[70] Asked if she could see clearly what was happening from where she was sitting by the trailer next to the tree, she said not only could she see clearly, but she could hear clearly because it was not that far from where they were standing.

[71] That summarizes the evidence led by the parties.

[72] In matters that concern unlawful arrest and detention, and where the defendant admits it, the onus rests on the defendant to justify its conduct.

[73] In this case, the defendant had, in his Amended Plea, pleaded reliance on s40(1)(a) and (b) of the Criminal Procedure Act 51 of 1977 (“the CPA”) to justify the arrest and the detention. However, the Defendant had, in his opening address, indicated that he seeks to rely only on s 40(1)(a) of the CPA.

[74] Section 40(1)(a) of the CPA authorizes a peace officer to arrest, without a warrant, any person who commits or attempts to commit any offense in their presence. This provision allows immediate action when a crime is observed, covering offenses ranging from minor violations to serious crimes.

[75] The definition of a Peace Officer includes police officials, magistrates, justices of the peace, and other officials who are not relevant for the present purpose.

[76] For the justification to hold, certain requirements must be present. The crime must be observed by the officer directly while it is being committed or attempted. It would apply to any criminal offense, including statutory offenses and common-law crimes, if it occurs in the officer's presence.

[77] It is common cause that the arresting officer was a police official and is a peace officer.

[78] The evidence indicates that the offense was committed in his presence. The court is very much aware of the fact that the plaintiffs deny that they assaulted W[...]. In fact, the allegation is that the police officer could not have seen what had transpired, as they were allegedly standing under a tree.

[79] This argument is put to rest by their own witness, who testified that she, at the time, was near the trailer, which was not far from the tree where the police were allegedly standing, and could not have seen what had transpired. When asked in cross-examination if she could see what was happening, her response was unequivocal: she not only saw, but also heard everything because it was not that far away.

[80] Whilst the plaintiffs deny that they assaulted the victim, and the defendant's witnesses contradict theirs, this court is of the view that it does not have to make a finding on the credibility of the various witnesses who testified before it. The very description of the plaintiffs of what transpired amounted to an assault on the victim.

[81] R[...] described what he and his father did to the victim in front of the police officer, which is a classic assault.

[82] It may be argued that the arresting officer had discretion whether to effect an arrest or not and whether he ought to have his mind if there was any other

way to secure the plaintiff's attendance in court without an arrest and/or detention.

[83] The evidence of Maatlane suggests that he considered the situation before him. The victim insisted on pressing charges against his assailants even when Maatlane enquired if he was sure, taking into consideration that this was more of a domestic violence issue.

[84] He, in fact, asked the victim twice whether he really wanted to press charges. Upon the victim's confirmation that he intends to press charges, Maatlane exercised his discretion to effect an arrest.

[85] Harms DP in the matter of Minister of Safety and Security v Sekhoto had the following to say when he was dealing with the issue of discretion of an arresting officer -

"...peace officers are entitled to exercise their discretion as they see fit, provided that they stay within the bounds of rationality. The standard is not breached because an officer exercises the discretion in a manner other than deemed optimal by the court. A number of choices may open to him, all of which may fall within the range of rationality. The standard is not perfection, or even the optimum, judged from the vantage of hindsight, and so long as the discretion is exercised within this range, the standard is not breached."

[86] It is evident from Maatlane's testimony that he was aware that the plaintiffs would be entitled to be released under SA496 and, in fact, communicated this to his commanding officer. Chosho confirmed the same when he testified.

[87] The plaintiffs were detained long enough to finalize the process of releasing them under SAP496. This could hardly be regarded as unlawful. Maatlane testified that he did not have the power to release them and that rested with the Investigating Officer.

[88] In the circumstances, this court finds that the arrest and detention were not unlawful.

[89] There is, however, the matter of the plaintiffs' claim for the legal fees of R15 000.00 they allegedly paid to their lawyer. In the light of this Court's finding that the arrest and detention were not unlawful, it stands to reason that their claim in this regard cannot succeed.

[90] Even if I were wrong in this regard, there is no evidence before this court proving this claim.

[91] No collateral is provided, which could have been their attorneys' invoices, etc. The same applies to the claim pertaining to medical expenses. Nothing was provided as evidence in that regard.

[92] Last but not least is the plaintiffs' claim of defamation. Again, no evidence was presented to prove this claim.

[93] In the circumstances, the following order is made:

1. The Plaintiffs' action is dismissed; and
2. The Plaintiffs are to pay the costs of this action.

MP Kumalo

Judge of the High Court, Pretoria

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines.

Appearances:

For the plaintiffs: Adv IS Herbst

Instructed by: Frik van Schalkwyk Attorneys

For the defendant: Adv MN Kgare

Instructed by: State Attorney, Pretoria