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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Case Number: **33235/14**

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
26 MAY 2026	_____
DATE	SIGNATURE

In the matter between:

MONOGRAN MOONIAN

PLAINTIFF

AND

MINISTER OF POLICE

DEFENDANT

This judgment is handed down by electronic communication to the parties' legal representatives. The date that the judgment is deemed to be handed down is 26 May 2026

JUDGMENT

Pretorius AJ.

Introduction

[1] This is an action for damages in the amount of R400 000.00 against the defendant for unlawful arrest and detention of the plaintiff.

- [2] It is common cause that the plaintiff was arrested without a warrant of arrest by a member of the South African Police Service, acting within the course and scope of his employment with the defendant.
- [3] The arrest took place on 10 May 2014 at Lenasia on a charge of theft from a motor vehicle and theft. After the plaintiff's arrest he was detained at Lenasia police station until 12 May 2014 at 06h00. The plaintiff was subsequently taken to Lenasia Court but did not appear before a magistrate. He was released from Lenasia Court Cells at 14h00.
- [4] The defendant pleaded that the Plaintiff was lawfully arrested without a warrant in terms of Section 40(1)(b) of the Criminal Procedure Act 51 of 1977 based on the arresting officer's reasonable suspicion of the plaintiff having committed an offence contemplated in schedule 1 of the Act.
- [5] It is trite that the onus rests on the defendant to justify an arrest to prove the lawfulness of the arrest and to prove lawfulness of the arrest and detention on a balance of probabilities¹. The defendant accepted the duty to begin.
- [6] The issues which require determination are:
- 6.1. Whether the plaintiff was lawfully arrested and detained in terms of s 40(1) (b) of the Criminal Procedure Act ("CPA").
 - 6.2. Whether, on the facts the arresting officer had formed a reasonable suspicion that the plaintiff had committed an offence falling under Schedule 1 of the Act.
 - 6.3. Whether he applied his mind properly in exercising his discretion to arrest the plaintiff.
 - 6.4. If not, then the quantum of plaintiff's damages occasioned by the arrest and detention
 - 6.5. Liability for costs.

Evidence

- [7] The defendant called one witness, Sergeant Eptic Manganyi (“Manganyi”), who testified that at the time of the plaintiff’s arrest he was employed as a Constable in the South African Police Service (“SAPS”).
- [8] Manganyi testified that on 5 March 2014 a criminal docket under CAS 103/03/2014 was opened in relation to the alleged theft of a motor vehicle battery, with one Mr Dlomo recorded as the complainant. He stated that he subsequently received information from an informer, a certain Victor, alleging that the plaintiff could be found at a shack situated adjacent to a RDP house in Lenasia.
- [9] Acting on the aforesaid information, Manganyi proceeded to the identified premises accompanied by another police officer and Victor, who pointed out the plaintiff as the suspect.
- [10] Upon arrival at the premises, Manganyi introduced himself to the plaintiff, placed him in handcuffs, and effected an arrest under the aforementioned case number. He confirmed that neither he nor the accompanying officer was dressed in SAPS uniform and that they were travelling in an unmarked vehicle.
- [11] Manganyi further testified that Victor identified the plaintiff as the individual involved in committing the offence.
- [12] Following the arrest, the plaintiff was transported to the police station where, according to Manganyi, his constitutional rights were explained to him. A Notice of Rights, marked as Exhibit 1 (Caselines 25-4), was completed and signed by the plaintiff under the section headed “Certificate by Detainee”.

- [13] The witness further testified that the plaintiff signed a statement pertaining to an interview conducted with him, which appears as Exhibit 2 (Caselines 25-22 to 25-33). During cross-examination, however, Manganyi conceded that portions of the statement relating to the interview were incomplete and contained no entries. He further conceded that he himself had not signed the relevant certificate.
- [14] During cross-examination, Manganyi was unable to explain why the presence of the accompanying police officer and Victor at the scene was not properly recorded either in his contemporaneous notes or in the docket. He further conceded that, owing to the lapse of time, he could not recall several material aspects of the matter, including the date of the plaintiff's release, whether the plaintiff appeared in court, and the whereabouts of the original statements and the docket itself. He further acknowledged that the evidence he relied on was based on information conveyed to him by Victor.
- [15] When questioned regarding the basis for the arrest, Manganyi testified that he acted on the information received and the identification made by Victor. He further stated that upon arrival at the scene he observed that a vehicle bonnet was open and that a battery was missing. He conceded, however, that this observation was not recorded in a statement or affidavit.
- [16] Manganyi was unable to provide an explanation as to why no search warrant or warrant of arrest had been obtained prior to the arrest of the plaintiff. His explanation was that he believed he would not have been able to obtain a warrant as he did not know the plaintiff's full particulars.
- [17] When questioned as to why he had not obtained the plaintiff's particulars despite allegedly visiting the plaintiff's mother on various occasions prior to the arrest, Manganyi testified that the plaintiff's mother informed him that she did not wish to involve herself in the matter.

- [18] It was put to Manganyi that the plaintiff was arrested inside his mother's residence situated at 8[...] G[...] Avenue, where the plaintiff resided at the time, and that the arrest was unlawful and unsupported by a reasonable suspicion as contemplated in section 40(1)(b) of the Criminal Procedure Act 51 of 1977. Manganyi denied that the arrest was unlawful and maintained that he acted on information provided by witnesses, although he was unable to clearly articulate the objective basis upon which the suspicion against the plaintiff was formed, other than the information from Victor.
- [19] Manganyi further confirmed under cross-examination that the SAP 10 register, being the official register recording detained persons, was not contained in the docket. He was unable to provide an explanation for its absence. He further conceded that certain procedural safeguards, including documentation relating to the plaintiff's legal representation, had not been properly completed.
- [20] In re-examination, Manganyi maintained that a peace officer is empowered in law to effect an arrest without a warrant. He did not, however, provide a basis or evidentiary justification for the exercise of such discretion in the present matter.
- [21] This concluded the evidence for the defendant and counsel for the defendant closed its case without adducing any other evidence or exhibits.
- [22] The plaintiff testified that he was born on 8 July 1985 and was 30 years old at the time of his arrest on 10 May 2014. He resided at his parents' home situated at 8[...] G[...] Street, Extension [...], Lenasia, where he still resides. Prior to his arrest, he earned a living as a hawker selling fruit within the Lenasia community.
- [23] According to the plaintiff, at approximately 14h00 on the day of the arrest, two men arrived at his home. The men, who were dressed in civilian clothing and not in police uniform, entered the house whilst he was seated at the table eating. One of the men informed him that he was under arrest. When he enquired as to

the reason for the arrest, he was told that he “should know”. He was thereafter transported in an unmarked grey vehicle to the Lenasia Police Station where his fingerprints were taken and he was placed in a cell and instructed to sign a white paper, reflected as Exhibit “1”. He stated that he signed it because the police informed him that he should. He requested permission to contact his family to bring him clothes and food, as he had been arrested whilst wearing only track pants and a T-shirt, but was not allowed to phone anyone.

[24] He described the conditions of his detention as terrifying. The cell was occupied by approximately eight or nine men who appeared to be under the influence and who he perceived as gangsters who dominated the cell. He stated that he remained quiet out of fear. The cell smelled of urine and waste, and the toilets inside the cell were blocked and unusable.

[25] He was unable to sleep and spent the night on a concrete bench without blankets. Although blankets were available in the cell, he could not use them as they were infested with red lice. There were no mattresses provided. He did not receive food on the first day of his detention. On the Sunday morning, he was given four slices of dry bread served on a dirty plate and later the day received a small portion of samp. No food was provided on Sunday evening.

[26] On the Monday morning at approximately 06h00 he was transported to the holding cells of Lenasia Court. The detainees in those cells appeared even more dangerous, and one detainee demanded that he remove his T-shirt. He received bread and juice in the holding cells.

[27] He was not brought before court and was released at approximately 14h00 that afternoon.

[28] The plaintiff stated that the arrest and detention caused him embarrassment and shame. He felt he was treated “like an animal”. Members of the community who

knew him observed him in handcuffs, and after his release he became the subject of comments and jokes which negatively affected work as a hawker within the community.

- [29] The only aspects canvassed during cross-examination related to whether the plaintiff had previously seen a document similar to Exhibit “1” and whether he had been arrested before, which he confirmed. No cross-examination was directed to him relating to the place where he was arrested, nor the identities of the people who arrested him or circumstances surrounding the arrest and whether he was a flight risk.

Analysis.

- [30] *Stellenbosch Farmers Winery*² sets out the principles pertaining to the evaluation of evidence, and it is unnecessary to repeat them. Ultimately:

“To come to a conclusion in the disputed issues a court must make findings on (a) the credibility of the various factual witnesses; (b) their reliability and (c) the probabilities”

- [31] The only aspects canvassed during cross-examination related to whether the plaintiff had previously seen a document similar to Exhibit “1” and whether he had been arrested before, which he confirmed. No cross-examination was directed to him relating to the place where he was arrested, nor the identities of the people who arrested him or circumstances surrounding the arrest and whether he was a flight risk.

- [32] The Constitutional Court in *President of the Republic of South Africa and Others v South African Rugby Football Union and Others*³ made the following instructive remarks pertaining to the cross-examination of witnesses:

“[61] The institution of cross-examination not only constitutes a right, it also imposes certain obligations. As a general rule it is essential, when it is intended to suggest that a

witness is not speaking the truth on a particular point, to direct the witness' attention to the fact by questions put in cross-examination showing that the imputation is intended to be made and to afford the witness an opportunity, while still in the witness box, of giving any explanation open to the witness and of defending his or her character. If a point in dispute is left unchallenged in cross-examination, the party calling the witness is entitled to assume that the unchallenged witnesses' testimony is accepted as correct. This rule was enunciated by the House of Lords in Browne v Dunn[(1893) 6 The Reports 67 (HL)] and has been adopted and consistently followed by our courts."

[33] In several material respects, the defendant's pleaded case was not borne out by the evidence adduced at trial. By way of example, the defendant pleaded that the plaintiff was lawfully arrested in terms of section 40(1)(b) of the Criminal Procedure Act 51 of 1977, on the basis that the arresting officer, a peace officer, entertained a reasonable suspicion that the plaintiff had committed a Schedule 1 offence.

[34] It is trite that documents uploaded onto CaseLines do not constitute evidence, unless properly introduced and admitted in accordance with the rules of evidence. Likewise, pleadings and heads of argument do not constitute evidence and cannot serve as a substitute for proof of factual allegations. A litigant is required to discharge the onus by adducing admissible evidence.

[35] In the present matter, save for evidence establishing that Mr Manganyi was a police officer, no evidence was adduced to establish the jurisdictional facts required for a lawful arrest in terms of section 40(1)(b), namely that the arresting officer in fact formed a suspicion, or that any such suspicion was based on reasonable grounds.

[36] These issues were not canvassed during cross-examination.

[37] The plaintiff's version therefore remained unchallenged, and no contrary version was put to him under cross-examination, and in the circumstances the Court is entitled to accept his evidence as credible and uncontroverted.

Legal Position: The Arrest

[38] **Section 40(1)(b)** of the **Criminal Procedure Act 51 of 1977** provides that, "a peace officer may without a warrant arrest any person whom he reasonably suspects of having committed an offence referred to in Schedule 1".

[39] The jurisdictional requirements have come to be stated as follows, that for a lawful arrest:

- (i) the arrestor must be a peace officer;
- (ii) the arrestor must entertain a suspicion;
- (iii) the suspicion must be that the suspect committed an offence referred to in Schedule 1;
- (iv) the suspicion must rest on reasonable grounds.

[40] If the arresting officer succeeds in establishing these jurisdictional factors, the arrest would be lawful, unless the plaintiff establishes that the discretion to arrest him/her was exercised in an unlawful manner. If one or more of the jurisdictional factors is/are not met, the arrest would be unlawful. The relevant enquiry is whether the suspicion was reasonable thereby successfully establishing the jurisdictional factors.

[41] The test to be applied is an objective test.⁴

[42] In *Mabona and Another v Minister of Law and Order and Others*,⁵ Jones J held:

“The test of whether a suspicion is reasonably entertained within the meaning of s 40(1) (b) is objective (S v Nel and Another 1980 (4) SA 28 E at 33E-H). Would a reasonable man in the second defendant’s position and possessed of the same information have considered that there were good and sufficient grounds for suspecting that the plaintiff was guilty of conspiracy to commit robbery or possession of stolen property knowing it to have been stolen? It seems to me that in evaluating his information a reasonable man would bear in mind that the section authorises drastic police action. It authorises an arrest on the strength of a suspicion and without the need to swear out a warrant, i.e. something which otherwise would be an invasion of private rights and personal liberty. 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.”

[43] Considering that the defendant’s pleaded case was not supported by the evidence adduced at trial, and more specifically that no evidence was led to establish that Manganyi, the arresting officer, entertained a reasonable suspicion that the plaintiff had committed an offence contemplated in Schedule 1, coupled with the fact that the plaintiff’s version was not challenged during cross-examination, I conclude that the defendant failed to establish a factual or evidentiary basis justifying the arrest.

[44] The evidence presented does not meet the requisite standard necessary to establish a lawful arrest. Accordingly, I find that the plaintiff’s arrest and subsequent detention were unlawful.

Legal Position: Quantum

[45] In dealing with the purpose of the award for damages the court in the matter of *Strydom v Minister of Safety and Security and Another*⁶ stated as follows:

“[12] In the assessment of damages for unlawful arrest and detention, it is important to bear in mind that the primary purpose is not to enrich the aggrieved party but to offer him

or her some much needed solatium for his or her injured feelings. It is therefore crucial that serious attempts be made to ensure that the damages awarded are commensurate with the injury inflicted. However, our courts should be astute to ensure that the awards they make for such infractions reflect the importance of the right to personal liberty and the seriousness with which any arbitrary deprivation of personal liberty is viewed in our law. It is impossible to determine an award of damages for this kind of injuria with any kind of mathematical accuracy. Although it is always helpful to have regard to awards made in previous cases to serve as a guide, such an approach if slavishly followed can prove to be treacherous. The correct approach is to have regard to all the facts of the particular case and to determine quantum of damages on such facts.”

[46] In *Thandani v Minister of Law and Order*⁷ Van Rensburg J observed:

“In considering quantum, sight must not be lost of the fact that the liberty of the individual is one of the fundamental rights of a man in a free society which should be jealously guarded at all times and there is a duty on our Courts to preserve this right against infringement. Unlawful arrest and detention constitute a serious inroad into the freedom and rights of an individual.”

[47] In *Minister of Safety and Security v Tyulu*⁸Bosielo AJA (as he then was) commented:

“In the assessment of damages for unlawful arrest and detention, it is important to bear in mind that the primary purpose is not to enrich the aggrieved party but to offer him or her some much-needed solatium for his or her injured feelings. It is therefore crucial that serious attempts be made to ensure that damages awarded are commensurate with the injury inflicted. However, our Courts should be astute to ensure that the awards they make for such infractions reflect the importance of the right to personal liberty and the seriousness with which any arbitrary deprivation is viewed in our law. Although it is always helpful to have regard to awards made in previous cases to serve as a guide, such an approach if slavishly followed can prove to be treacherous. The correct approach is to have regard to all the facts of the particular case and to determine the quantum of damages on such facts Minister of Safety and Security v Seymour 2006 (6) SA 320 (SCA) at 325 para 17; Rudolph and Others v Minister of Safety and Security 2009 (5) 94 (SCA) ([2009] ZASCA 39 paras 26-29).”

[48] On the issue of mechanical precision and guidance by previous cases it is important to emphasise what was stated in the matter of *Spannenberg and Another v Minister of Police*⁹ where the following was said:

*“[20] There is a misnomer that the High Court in the **Ngwenya** judgment set as a benchmark an amount of R15 000.00 per day as the norm for unlawful arrest and detention. This is incorrect and misplaced. Each case must be decided in its own*

peculiar facts and circumstances (merits). This cannot be emphasized enough. There is no benchmarking nor is there a one size (or amount) fits all practice that must be followed. This will most definitely erode the judicial discretion of presiding officers. However, there must be a balance of all the competing interests and it can never be that there be poured from the proverbial 'horn of plenty'. A claim for damages is not a get rich quick opportunity but a solatium as compensation for the damages suffered."

[49] In *Minister of Safety and Security v Seymour*¹⁰ at paragraph [20] it was stated that:

"[20] Money can never be more than a crude solatium for the deprivation of what in truth can never be restored and there is no empirical measure for the loss. The awards I have referred to reflect no discernible pattern other than that our courts are not extravagant in compensating the loss. It needs also to be kept in mind when making such awards that there are many legitimate calls upon the public purse to ensure that other rights that are no less important also receive protection."

[50] Previous awards can serve as guidance in determining an appropriate award for damages. In *Diljan v Minister of Police*¹¹ the court held that:

"[17] Thus a balance should be struck between the award and the injury inflicted. Much as the aggrieved party needs to get the required solatium, the defendant (the Minister in this instance) should not be treated as a 'cash-cow' with infinite resources. The compensation must be fair to both parties, and a fine balance must be carefully struck, cognisant of the fact that the purpose is not to enrich the aggrieved party."

[51] The court in *Diljan* awarded an amount of R120 000.00 for three days detention.

[52] In *Motladile v Minister of Police*¹² the Supreme Court of Appeal awarded R200 000.00 for unlawful arrest and detention of four nights. As stated above these cases and awards only serve as a guide but ultimately a balance must be struck between the award and the injury inflicted. Each case should be decided on its own circumstances.

[53] I am also mindful of the decision in *Mvu v Minister of Safety and Security and other*¹³ in which Willis J, by referring to the Supreme Court of Appeal (*Seymour* decision) acknowledged the conservative approach of our Courts and awarded damages in the sum of R30 000 for a day's detention. (See also *Ramakulukusha v The Commander Venda National Force 1989 (2) sa 813 (v)*). All these decisions

however are influenced in the final determination by the specific facts of each case¹⁴

[54] Taking into consideration that the plaintiff was subjected to harsh, unhygienic conditions and provided with little or no food, and having regard to the applicable comparative case law, I am of the view that an award of R150 000 in respect of general damages is fair and appropriate in the circumstances.

Costs

[55] The general principal is that the successful party is entitled to its costs, and I find no reason to deviate from this principal

[56] Where proceedings could and ought to have been instituted in the Magistrates' Court, were instead instituted in the High Court without sufficient justification, an award of costs should be limited to the scale applicable in the lower court.

[57] In *Thusi v Minister of Home Affairs and Another*¹⁵, the Court held:

"There is judicial authority for the proposition that a successful party may be deprived of the costs attendant on having instituted action in the High Court, instead of the Magistrates' Court, where the monetary value of the relief claimed falls within the jurisdiction of the Magistrates' Court."

[58] Similarly, in *Dipico v Dipico*¹⁶ it was confirmed that:

"The High Court has the discretion, where it is of the view that the Magistrates' Court would have been the more appropriate forum, to award costs only on the scale of that court."

[59] In the present case, although the plaintiff was successful in his claim for damages arising from unlawful arrest and detention, the amount of damages

awarded to the plaintiff falls within the jurisdictional limit of the Magistrates' Court.

[60]

In light of the above authorities and the facts of this matter, it is appropriate that costs be awarded on the Magistrates' Court scale.

Order

In the premise, I make the following order:

- a) The defendant is ordered to pay the plaintiff the amount of R150 000.00 in compensation for the unlawful arrest and detention on 10 May 2014;
- b) Interest at the rate of 10,25% on the aforesaid amount from date of judgment until payment in full;
- c) Costs on a party and party scale in the Magistrate's court.

M. Pretorius
Acting Judge of the High Court
Gauteng Division, Johannesburg

Date of Hearing:

Date of Judgment: 26 May 2026

Appearances:
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- ¹ *Minister of Safety and Security v Sekhoto* (131/10) [2010] ZASCA 141. *Minister of Safety and Security v Tyulu* (327/08) [2009] ZAZCA 55 par 21
- ² *Stellenbosch Farmers' Winery Group Ltd and Another v Martell et Cie and Others* 2003(1) (SCA) at par [5]
- ³ *President of the Republic of South Africa and Others v South African Rugby Football Union and Others* 2000 (1) S 1 (CC) at para 61
- ⁴ See *Duncan v Minister of Law and Order* 1986(2) SA 805 (A) at 818 G-H; *Nkambule v Minister of Law and Order* 1993 (1) SACR 434 (T) at 436 A-B; *Mvu v Minister of Safety and Security and Another* 2009 (2) SACR 291 (GSJ) para 9; *Olivier v Minister of Safety and Security and Another* 2009 (3) SA 434 (W) at 440G.
- ⁵ *Mabona and Another v Minister of Law and Order and Others* 1988 (2) SA 654 (SE) at 658E-H
- ⁶ *Strydom v Minister of Safety and Security and Another* [2014] ZAFSHC 73 (28 May 2014)
- ⁷ *Thandani v Minister of Law and Order* 1991 (1) SA 702 (E) at 707B
- ⁸ *Minister of Safety and Security v Tyulu* 2009 (5) SA 85 (SCA) at 93 d
- ⁹ *Spannenberg and Another v Minister of Police* (2993/2019) [2022] ZANWHC 4 (24 February 2022) at par [20]
- ¹⁰ *Minister of Safety and Security v Seymour* 2006 (6) SA 320 (SCA)
- ¹¹ *Diljan v Minister of Police* (Case No. 764/2021) [2022] ZASCA 103 (24 June 2022)
- ¹² *Motladile v Minister of Police* (414/2022) [2023] ZASCA 94; 2023(2) SACR274(SCA) (12 June 2023)
- ¹³ *Mvu v Minister of Safety and Security and other* 2009 (6) SA 82 (GSJ)
- ¹⁴ See also *Ramakulukusha v The Commander Venda National Force* 1989 (2) sa 813 (v). All these decisions however are influenced in the final determination by the specific facts of each case.
- ¹⁵ *Thusi v Minister of Home Affairs and Another* 2011 (2) SA 561 (KZP)
- ¹⁶ *Dipico v Dipico* 2002 (1) SA 504 (W) at 509C–D