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**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE HIGH COURT, BHISHO)**

CASE NO: 578/2021

In the matter between:

MFUNDO GWEJELA

Plaintiff

and

MINISTER OF POLICE

1st Defendant

NATIONAL DIRECTOR OF PUBLIC

2nd Defendant

PROSECUTION

JUDGMENT

MAKAULA J:

Introduction

[1] On 27 July 2021, the plaintiff issued a summons against the first and second defendants, alleging unlawful detention and malicious prosecution, respectively. The plaintiff alleged that he was unlawfully detained from 27 March 2019, when the Bisho High Court (High Court) acquitted him on various charges, until 10 September 2019, when the Peddie Regional Court (Peddie Court) released him on bail.

[2] After the plaintiff was arrested, he confessed. The confession led to his being charged with the murder of Welile Basin Ndevu (Mr. Ndevu) before the High Court in Bisho, attempted murder before the Zwelitsha Regional Court (Zwelitsha Court), and possession of firearms and ammunition before the Peddie Court. The High Court later ruled the confession inadmissible.

Plaintiff's Case

[3] The plaintiff was arrested at 22h00 on 21 February 2018 in Queenstown on a charge of possession of a suspected stolen motor vehicle. Upon arrest, the police took him to a military base in Queenstown, where they assaulted him with the butts of firearms and questioned him about the firearms he and others used to kill the police officers at Engcobo Police Station. Thereafter, he was taken back into custody. On 23 and 24 February 2018, police from East London booked him out and took him back to the military base, where he was tortured again and questioned about the same issue. He denied knowledge of the firearms. They told him that they knew he had killed a person in Peddie. Due to the assault, he admitted that there were firearms at his home in Peddie. He led the police to his family business in Peddie, where he pointed out two firearms licensed to his late father. He thereafter led the police to his friend's house, where another firearm was retrieved. Further, due to the torture, he made a confession to the police about the murder of Mr. Ndevu. However, what he said in the confession was what the police told him to say.

[4] He remained in police custody until 26 February 2018, when he appeared in the Queenstown Magistrate's Court on a charge of having a motor vehicle that he was suspected of having stolen. His case was postponed. The police took him to Qonce Police Station, where he was charged with possession of firearms, murder, and attempted murder. The following day, he was taken to Peddie Magistrate Court, where he appeared for possession of unlicensed firearms and ammunition that he had pointed out at his and his friend's homes. His case was postponed.

Subsequently, he appeared in the Zwelitsha Court on a charge of attempted murder and in the High Court for the murder of Mr. Ndevu, which was a consequence of the confession.

[5] The trial in respect of murder and possession of firearms was heard in the High Court. His legal representative informed him that the charge of possession of firearms and ammunition was related to the firearms at issue in the Peddie case. The admissibility of the confession was challenged. On 27 March 2019, the court declared the confession inadmissible, resulting in his acquittal. However, he remained in custody due to other matters pending before the Zwelitsha and Peddie Courts. On 10 September 2019, he applied for and was released on bail. The plaintiff contended that he should have been released from custody immediately after his acquittal by the High Court.

[6] The plaintiff submitted that his continued detention was wrongful, unlawful, and malicious. It affected him physically, emotionally, and financially. He continued to pay for his legal fees even though he was not supposed to. The conditions under which he lived as a detainee were appalling. Police officials would randomly assault them with batons, especially if one of them was found with contraband. The police and prison cells they lived in were dirty and full of lice. He contracted tuberculosis (TB) and was sick for two months. But he could not link his contracting of TB with the actions of the defendants because he was not in custody at the time of diagnosis. He stated that while in custody, he lost his cattle and was divorced by his wife. He contended that community members regarded him as a criminal, which affected his business ventures. The plaintiff did not call further evidence.

Defendant's case

[7] The defendant called two witnesses, namely, Adv. Deolin Willemse and Miss Msuthukazi Pango. They were both state prosecutors at the time of the plaintiff's arrest and participated in the plaintiff's cases. Adv. Willemse was a prosecutor dealing with the High Court matter and Miss Pango in the Zwelitsha and Peddie Regional Courts.

Advocate Deolin Willemse

[8] As previously mentioned, before the High Court, the plaintiff faced five counts i.e. namely, count 1: that he conspired with other people to murder Mr. Ndevu; count 2: murder of Mr. Ndevu; count 3: possession of unlicensed firearms unknown to the state; count 4; unlawful possession of ammunition to wit 5,56 X 45mm caliber and 9mm parabellum ammunition; and count 5: unlawful possession of a 5,56 x 45 calibre Vecktor Model R4 automatic light assault rifle with serial number N[...]. Adv. Willemse testified that none of these firearms formed part of the charges before the Peddie Regional Court. In the Peddie Regional Court, he was charged with possession of 1x 9mm semi-automatic pistol and 1 x 12-gauge shotgun with serial number 73285.

[9] Adv. Willemse testified that, among other evidence, he relied on the plaintiff's confession. According to him, the confession related to the murder of Mr. Ndevu, attempted murder, serving before the Zwelitsha Regional Court, and robbery. The plaintiff objected to its admissibility, resulting in a trial within a trial. After he led the police evidence, the plaintiff closed his case without testifying. The court found that the confession was unconstitutionally obtained and therefore inadmissible. Adv. Willemse spent considerable time articulating his dissatisfaction with how the High Court arrived at its finding and with his superiors' failure to take the matter on appeal as he had recommended. I shall not traverse that lengthy portion of his evidence, as it is irrelevant for present purposes.

[10] He stated that it was within the plaintiff's right, especially since he was legally represented, to plead before the Zwelitsha and Peddie Courts that the High Court had acquitted him of the same charges. He testified that pointing out of the firearms in Peddie was not the subject of the confession in the High Court. The events leading to the pointing out merely coincided with the confession, so he testified.

[11] Furthermore, he stated that as the plaintiff was facing Schedule 5 offences, he should have brought a bail application. The onus was on the plaintiff to establish that it was in the interests of justice for him to be released on bail. He mentioned that the prosecutor in the Peddie case did not have the discretion to withdraw the charges simply because the High Court acquitted the plaintiff.

Miss Msuthukazi Pango

[12] Miss. Pango was a Regional Court prosecutor stationed in Zwelitsha Magistrates Court at the time the plaintiff appeared in court on charges of attempted murder, possession of firearms, and ammunition. She testified that according to the charge sheet, the plaintiff's first appearance in Peddie Magistrate's Court was on 20 November 2018. The matter was postponed to 5 December 2018. On the latter date, it was transferred to the Regional Court Peddie for 13 December 2018. In court, she read an extract from the charge sheet which, at the time he appeared in the district court, indicated that the state was opposing his release on bail because he had pending cases in Queenstown court and elsewhere. The plaintiff abandoned his bail application and remained in custody.

[13] Her involvement in the Zwelitsha case began on 16 April 2019. The case was postponed a few times thereafter. The state relied on a confession made by the plaintiff. She was not aware at the time that the confession had been ruled inadmissible by the High Court. However, even if she were aware, she was of the view that the plaintiff was supposed to 'bring an application before the regional court so that the magistrate could make his own ruling.' She only heard about the inadmissibility during the consultation in this matter. The case eventually proceeded, and the plaintiff was found not guilty at the close of the state case on 27 July 2019.

[14] She testified that the plaintiff, at the time, had to apply for bail and adduce evidence that it was in the interests of justice that he be released on bail.

[15] Miss. Pango stated that had she been made aware of the High Court decision, she would not have pursued prosecution of the plaintiff. She was of the view that Adv. Willemse should have shared the outcome of the High Court with her. She would have raised that outcome with her senior and notified the court as well, and probably declined to prosecute if the only evidence would have been the confession. She stated that under those circumstances, she would have asked the court to release the plaintiff due to insufficiency of evidence without expecting him to apply for bail. She testified that normally, prosecutors do share information about cases of this nature to alert each other. The defence did not call further evidence.

Argument

[16] The crux of the argument by the plaintiff is that the police and Adv. Willemse failed to disclose to the magistrates both in Zwelitsha and Peddie courts that the high

court had handed down findings that militated against prosecuting and further detaining him. He argued that the prosecutors had a public duty to conduct their functions in the interests of the public. For this proposition, the plaintiff referred to *Carmichele v Minister of Safety and Security and Another (Centre for Applied Legal Studies Intervening)*¹ (*Carmichele*).

[17] The plaintiff argued that he did not apply for bail because he was deliberately charged in different courts by members of the second defendant. He contended that the prosecution knew that he would not be able to secure bail for that reason. He further argued that the Zwelitsha matter should have been withdrawn immediately after the decision was made by the high court because the only evidence relied upon in that case was that of the confession, which was held to be inadmissible.

[18] In relation to the malicious prosecution, the plaintiff argued that Adv. Willemse knew or ought to reasonably have known of the irregularities in the police investigation; he was blinded by a single-minded desire to see him 'hang.' Both the police and the prosecution failed in their public duty, as previously mentioned, to inform the Judge about the wrongful way the confession was obtained and the Magistrates of the subsequent declaration of its inadmissibility. The plaintiff argued that the prosecutors were complicit in the contravention of his legal rights. He submitted that the first defendant should be held liable for his unlawful detention from the date of his acquittal to the date of his release. Similarly, the second defendant maliciously prosecuted him because there could not ever have been a reasonable prospect of a successful prosecution in the other matters. The finding that the process leading up to the pointing out was tainted with illegality and the infringement of the plaintiff's rights, the charges in the Peddie court relating to the pointing out of the firearms ought to have been withdrawn. But the second defendant persisted with his prosecution despite that knowledge. The plaintiff, therefore, argued that the members of the defendant acted maliciously in prosecuting him.

[19] The defendants argued that the claims should be dismissed on various grounds. They submitted that the plaintiff faced serious offences that were the

¹ [2001] ZACC 22; 2002 (1) SACR 79 (CC) at para 72; *Woji v Minister of Police* [2015] 1 SACR 409 (SCA).

subject of Section 60 (11) of the Criminal Procedure Act² (the CPA). They argued that the onus was on the plaintiff to prove to the various courts that it was in the interest of justice that he be released on bail, as he was facing Schedule 5 offences. The defendants relied heavily on *State v Mabena and Another*³ for this proposition. The defendants argued that the plaintiff abandoned bail in the attempted murder charge before the Zwelitsha court.

[20] The defendants submitted that the firearms which formed the subject matter of the charges before the High Court are different from those which relate to the Peddie court. The defendants contended that the issues that were the subject of the confession did not form part of the charges before the Peddie Court. The argument is that the plaintiff (who was legally represented through all three courts) should have raised the defense of *autrefois acquit* in respect of the attempted murder charge, which was the charge before the Zwelitsha regional court, and brought an application to be released on bail in respect of the Peddie Court charges. The defendants contended that the plaintiff failed to prove the causal link between his detention and the defendants' conduct, thus, the plaintiff's post – court hearing detention could not be attributed to the defendants' conduct.

[21] The argument by the defendants is that at the time Miss. Pango decided to proceed with the charges; she had an honest belief in the plaintiff's guilt, and her conduct was reasonable in those circumstances. She was not actuated by malice, as she was not aware of the outcome of the High Court matter. The defendants submitted that no rule or law requires prosecutors to share information about other matters. Therefore, failure by Adv. Willemse to inform Miss. Pango about the outcome of the High Court matter, established neither malice nor recklessness on his part. Similarly, Adv. Willemse was not actuated by malice nor mala fides, as he genuinely believed that the outcome of the High Court matter had no bearing on other courts. He conducted himself in an objective, reasonable manner, as would have been expected of a reasonable prosecutor in his position.

[22] The defendants argued that the plaintiff failed to show that the prosecutors were aware that their conduct was wrongful or at least that they foresaw the

² 51 of 1977.

³ *S v Mabena and Another* 2007 (1) SACR 482 (SCA).

possibility that what they were doing was wrongful but continued to act, reckless as to the consequences thereof. The submission by the defendants was that the plaintiff failed to discharge the onus of proving the absence of reasonable and probable cause required for his claim of malicious prosecution.

Issues

[23] As aforesaid, the crux of this matter is the alleged unlawful detention of the plaintiff after his acquittal by the High Court on 27 March 2019, and the contention that Adv Willemse owed the plaintiff a public and legal duty to notify the prosecutors in Zwelitsha and Peddie and the respective Magistrates that the confession relied upon had been declared inadmissible. The defendants hold differently. They submitted that the second defendant had no obligation to do so, especially since the plaintiff was legally represented throughout and bore the onus to establish that it was in the interests of justice that he be admitted to bail as he faced a Schedule 5 offence.

Malicious Prosecution

[24] Malicious prosecution is constituted by: “(a) setting the law in motion against a claimant; (b) lack of reasonable and probable cause on the part of the defendant; (c) malice or animus iniuriandi; and (d) termination of criminal proceedings in the claimant’s favour.”⁴ The onus is on the plaintiff to establish these elements.

Setting the law in motion and the results in favour of the plaintiff.

[25] The ‘complainant’ in a murder case is often the state. It is common cause that the defendants set the law in motion by arresting and prosecuting the plaintiff for various crimes, including murder. Further, the plaintiff was acquitted in all three courts. Two elements have been established.

Absence of reasonable and probable cause.

[26] The plaintiff must prove that the proceedings were instituted without reasonable and probable cause. The test for the absence of reasonable and probable cause is both objective and subjective. It is objective in that when it is alleged that a defendant had a reasonable cause for prosecution, it means that it had

⁴ *Mmabasotho Christinah Olesitse v Minister of Police* [2023] ZACC 35 (CC) para 60.

no information that would lead a reasonable man to conclude that the plaintiff had probably been guilty of the offence charged. If, despite his having such information, the defendant is shown not to have believed in the plaintiff's guilt, the subjective element comes into play and disproves the existence of reasonable and probable cause. To prove the absence of reasonable and probable cause, the plaintiff must prove that the defendant either did not honestly believe that the plaintiff was guilty of the offence charged or, if he did have such a belief and even if he held it honestly, that such belief was not based on information which would persuade a person of ordinary discretion and prudence to believe the plaintiff is guilty.⁵

[27] It is trite that prosecutors owe a public duty to place before the court any factor that has a bearing on the administration of justice. Be it a factor that is favourable to the state or to the accused. That duty is grounded on the principle of justice. Prosecutors have always owed a duty to perform their public functions independently and in the interests of the public. The police owe the same duty to the public.⁶ This duty was echoed in *Woji v Minister of Police*⁷ where the court confirmed that:

'a policeman in the employ of the state had a public law duty not to violate Mr Wojji's right to freedom, either by not opposing his bail application, or by placing all relevant and readily available facts before the magistrate.'

[28] The court further held that there can be no reason to depart from the general law of accountability that the state is liable for the failure to perform the duties imposed upon it by the constitution unless there are compelling reasons to deviate from the norm.

[29] As aforementioned, Miss. Pango testified that the charges before the Zwelitsha court were premised on the validity of the confession, which was inadmissible. Her evidence revealed that she was not aware of its inadmissibility at the time she proceeded with the matter. She insisted, as aforesaid, that had she been aware, she would not have continued with the prosecution of the plaintiff. On the other hand, Adv Willemse knew about the High Court decision and the pending

⁵ The Law of South Africa, First Reissue, Volume 15, at page 285 para.452 (LAWSA) and the authorities cited therein.

⁶ *Carmichele* at para. 44 where the court held that the Bill of Rights bind the State and all its organs.

⁷ *Supra* footnote 1 at para 28.

charges in the Zwelitsha court to an extent that he testified that he was approached to take over the prosecution of that matter. He should have alerted Miss. Pango, or the senior prosecutor of the declaration of its inadmissibility. With that knowledge, the prosecution, of which Adv. Willemse was part of should or ought to have known that the declaration of inadmissibility was foundational to whether the state had reasonable and probable cause to believe that the plaintiff would be found guilty of the charges he was facing in both courts. His honest belief in the guilt of the plaintiff in the circumstances is not a factor. What is more relevant is whether a reasonable prosecutor in his position, faced with the same facts, would have declined to prosecute. I find that they would have declined because the only evidence that could have led to a conviction was the inadmissible confession.

[30] Miss. Pango stated that she would have informed the court accordingly for it to make its decision. Further, she would probably not have proceeded with the prosecution. I agree with her sentiments in the circumstances.

Malice

[31] The plaintiff must establish that the defendants had the intention to injure him or *animus iniuriandi*. *Animus iniuriandi* includes not only the intention to injure but also consciousness of wrongfulness and does not include improper motive or malice.⁸ However, the plaintiff in an action for malicious prosecution must still prove malice as an element. *Animus iniurandi* refers to fault, and malice is concerned with the question of wrongfulness.⁹ The defendants would have acted lawfully if they, when proceeding with the prosecution of the plaintiff, had reasonable and probable cause that the plaintiff had committed the offences and proceeding therewith was not actuated by malice. However, a defendant who acts in a grossly negligent and reckless manner and does so in the furtherance of his or her own interests without due regard to the rights of others, and carelessly as to whether he interferes with the liberty of another, will be regarded as having been influenced by improper motives equivalent to malice.¹⁰

⁸ LAWSA para. 443 at page 279.

⁹ *Ibid* at 287 para 455.

¹⁰ LAWSA page 286 para 454.

[32] As aforementioned, what is unique in this case is that no person laid a complaint or instigated the proceedings, i.e., the criminal charges against the plaintiff. The prosecution proceedings were instituted by the state because a human life was lost due to murder. That is how the law was set in motion in these proceedings. I have dealt with the circumstances under which the charges and the prosecution of the plaintiff came about. I have dealt as well with the other requirements. What remains is whether the members of the second defendant were actuated by malice when they decided to continue with the prosecution of the plaintiff despite the finding of the High Court regarding the confession. Coupled with that is whether they acted wrongfully in so doing.

[33] As stated previously, the matter in the Zwelitsha court primarily hinged on the confession, which had been declared inadmissible. Miss. Pango testified that had she been aware of that fact, she would have informed her seniors and the court of that development and would have considered withdrawing the charges because that was the only evidence she relied on. There is no doubt that the members of the second defendant were negligent and reckless in continuing with the prosecution of the plaintiff after he was acquitted by the High Court. It ought to have been clear to them that there was no conceivable way they would have secured a conviction of the plaintiff with the confession having been declared inadmissible. Motive does not have to be established; it may be inferred from the conduct of the defendant. Members of the second defendant acted negligently and recklessly in continuing with the prosecution of the plaintiff in the circumstances. They were not supposed to have withheld the information about the outcome of the High Court from others, and the Magistrates in both the other courts. That the plaintiff had to apply for bail, and he failed to do so, does not detract from the public duty bestowed upon them to disclose the favourable outcome to the plaintiff of the declaration of inadmissibility of the confession.

Unlawful detention

[34] I can safely assume that even the investigating officer(s) were also aware of the outcome of the High Court matter because the evidence and the investigations in all three matters overlapped. The discovery or pointing out of the firearms in Peddie was due to the investigations conducted in Queenstown, presumably by two teams

of investigators involved in investigating the matters. I say so because the plaintiff testified that he was interrogated by the police officers who arrested him and later by others from East London. The only conclusion, therefore, is that they all worked *in tandem*. A reasonable person with these facts would certainly have guarded against the further detention of the plaintiff or continuation of the charges once the High Court made its ruling. They could not have had a reasonable and probable cause to believe that the plaintiff committed the offences and that he should be further detained. As stated, their honest belief in the charges is insufficient. They knew or ought to have known that without the confession, the charges in the Zwelitsha court would not succeed. Similarly, the pointing out of the firearms in Peddie was due to the same actions of the police. Adv. Willemse testified that the evidence of the pointing out formed part of the confession, however, it was not the subject of the trial-within-a-trial. Nevertheless, he made the following concession:

‘It was the process of the pointing out overlapped the process of the evidence presentation during the trial within a trial. But it was never called upon to draw ...[inaudible] to make a determination to make a ruling as the admissibility of the pointing out was ... [inaudible] although the evidence might have been overlapped and the presentation of the evidence because it was over the same weekend it was during the same weekend, it was during the same time ...[inaudible] during the same detention, saw the evidence could overlap, but the court was not called upon to make [?]that ruling and therefore there cannot be a competent [?] ruling ...[inaudible]’ (sic).

[35] The pointing out was because of the actions of the police, which the court found to be unconstitutional. The pointing out is the fruit of the poisonous tree, so to speak. With that in mind, the possession of firearms that were pending before the Peddie Court emanated from the same conduct of the police found to be reprehensible. The team of police officers and the investigator(s) who investigated all the cases knew of the correlation in the cases pending in the Zwelitsha and the Peddie Courts. The probabilities indicate that it should be the case. It was therefore expected of the police to bring the outcome of the High Court matter to the attention of the prosecutors in those courts so that they could make an informed decision whether to continue with the prosecution. The failure by the police not to inform the prosecutors of such an outcome was equally unreasonable in the circumstances.

[36] The fact that the plaintiff had to bring an application for his release on bail as he was facing Schedule 5 offences and failed to do so does not exonerate the defendants from liability. The plaintiff's failure to apply for bail does not justify the conduct of the defendants. Even if he had applied for bail, the possibility is that the application would have been opposed by the state, as it is clear from the submissions made by the defendants.

[37] The defendants relied on the judgment in *State v Mabona and Another*.¹¹ The facts of that case are markedly different from the facts in issue here. In that matter, the judge *mero motu* raised the issue of bail, having considered the lengthy period the accused had been before the court awaiting trial. The matter, amongst other factors, was delayed because one of them was awaiting a referral to a mental institution for observation required by sections 77 and 78 of the CPA. Further, the court was awaiting the referral of the same accused to a neurologist at his request. Neither the state nor the accused had raised the issue of his release on bail. The court, on its own accord, required the parties to address the issue of bail. It conducted an enquiry by engaging counsel on the subject. The state was not allowed to call witnesses despite its application that it be given an opportunity or that a formal inquiry be held. Harms JA reasoned as follows:

'28. But quite apart from the fact that the proceedings were not conducted judicially, they amounted to no enquiry at all as contemplated by the Act. What is called for by the Act is an inquiry that considers and brings into account all circumstances that are material to bail, and particularly those that are listed in the Act to the extent that they are relevant. There was no such enquiry at all. Indeed, the clear inference from the record of the proceedings is that the judge had made up his mind, even before raising the question in open court, and without reference to any of the parties, that bail should be granted, provided only that various queries that he had were answered to his satisfaction, and he acted accordingly. ... In the absence of the inquiry that is required by law, the judge had no legal authority to grant bail, and consequently, the order was a nullity. It is for that reason that we upheld the appeal, set aside the order, and ordered the arrest of the respondents.' (sic)

[38] Based on the facts, I find that the first defendant is liable for the unlawful detention of the plaintiff from 27 March 2019 to 10 September 2019, and the second defendant for the malicious prosecution of the plaintiff.

¹¹ *Supra* fn 3.

Quantum

[39] Various factors are taken into consideration when damages are considered in actions of this nature. These factors are essentially the same and have become trite, though the facts of each case are different. The plaintiff in an action for malicious prosecution may claim *solatium* for infringement of his personality rights, including bodily integrity, reputation, dignity, and liberty, the duration of incarceration, the fact that the plaintiff contributed to his or her misfortune, etc.¹² As previously reflected, the plaintiff testified that, while in custody, he lost his cattle and his marriage ended. He stayed in horrible conditions while in the police cells and in prison. He was incarcerated for 167 days before being released on bail. However, the plaintiff's failure to pursue bail earlier is relevant to the extent of the damages fairly attributable to the defendants' conduct. The infringement of the plaintiff's right to freedom would not have lasted so long had he applied for bail in circumstances where he should have done so.¹³

[40] In assessing damages, a court must strive to strike a fair balance between the injury suffered and an award that is just to both parties. Regard must be had for the personal rights of the plaintiff affected by the infringement, without losing sight of the public purse, where compensation is to be derived. In *Diljan v Minister of Police*,¹⁴ the court held as follows:

'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 the fine balance must be carefully struck, cognizant of the fact that the purpose is not to enrich the aggrieved party.'

[41] I have found that the first defendant acted unlawfully in the further detention of the plaintiff for 167 (one hundred and sixty-seven) days. Further, the second defendant is liable for the malicious prosecution of the plaintiff. The award, therefore, should reflect their respective liabilities.

¹² Visser & Potgieter, Law of Damages, Third edition, 2022 at page 547-548. *Motladile v Minister of Police* (414/2022) [2023] ZASCA 94 (12 June 2023) para17.

¹³ See *Todt v Ipser* 1993 (3) SA 577 (A) at 590H, where court confirmed on appeal that the appellant was 'herself the authoress of her misfortunes.'

¹⁴ (746/2021) [2022] ZASCA 103 (24 June 2022) para17.

[42] Having had regard to these factors and the previous awards,¹⁵ I make the following order.

1. The first defendant is liable to pay the plaintiff R700 000 for unlawful detention.
2. The second defendant is liable to pay the plaintiff R300 000 for malicious prosecution, including the contumelia associated with that prosecution.
3. The defendants are ordered to pay the costs of the suit, one paying the other to be absolved.

M MAKAULA

JUDGE OF THE HIGH COURT

Appearances

For the Plaintiff	:	Adv Maduma & Adv Conjwa
Instructed by	:	MAGQABI SETH ZITA INC.
For the Defendant	:	Adv Mqobi
Instructed by:	:	STATE ATTORNEYS
Date heard	:	28 August 2025
Judgment delivered	:	19 May 2026

¹⁵ *July v Minister of Police* (1172/2018) 2024] ZANWHC 99 (8 April) 2024), *Payi v Minister of Police and Another* (2063/2019) [2024] ZAECQBHC 15 (22 February 2024).