IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO. 41295/2019

(1) REPORTABLE: **NO**
(2) OF INTEREST TO OTHER JUDGES: **NO**
(3) REVISED: **NO**

[redacted]
.....
SIGNATURE

5 JUNE 2026
.....
DATE

In the matter between:

MINISTER OF POLICE Applicant

and

RAMOTHOPO RATSHWENE Respondent

In *re:*

RAMOTHOPO RATSHWENE Plaintiff

and

MINISTER OF POLICE Defendant

JUDGMENT

FORD AJ:

Introduction

[1] This is an application for leave to appeal against the quantum of damages awarded to the respondent (plaintiff in the main action) in my judgment handed down on 6 October 2025.

[2] At the hearing of the application, on 31 March 2026, I issued an order in the following terms:

> *2.1. Condonation for the late filing of the application for leave to appeal is granted;*
> *2.2. Leave to appeal is refused with costs;*
> *2.3. Written reasons for the judgment to be issued on or before 30 May 2026;*

[3] I granted condonation, principally because the period of delay was minimal, the explanation for the delay was satisfactory, and it would be the interest of justice to grant condonation.

[4] The completion of the judgment by 30 May 2026 took slightly longer than what I had initially anticipated. I apologise to the parties for any inconvenience this may have caused.

The issue to be determined

[5] The applicant (the defendant in the main action) is not challenging the legal or factual findings in the judgment. Leave to appeal is sought only in respect of the quantum of damages awarded to the respondent.

Analysis of the applicant's grounds of appeal

[6] In his application for leave to appeal, the applicant states that I misdirected myself by placing too much emphasis on the extent of the injuries suffered by the respondent, the assault and his period of detention. In relation to the

respondent's detention, the applicant points out that he was only in custody for one day, following his release on bail.

[7] The awarding of damages is an exercise of judicial discretion, guided by established legal principles[1] on the one hand, and the specific circumstances of each case, on the other.

[8] When a party seeks to challenge the exercise of judicial discretion, on appeal, he is required to demonstrate that the discretion was not exercised judicially. In *Colett v Commission for Conciliation, Mediation & Arbitration & others*[2] the Court confirmed the test adopted in *Mabaso v Law Society, Northern Provinces & another*[3], it said:

> "[29] A court of appeal will not lightly interfere with the exercise of a judicial discretion by a lower court. An appellant who challenges the exercise of a judicial discretion will have to show that such discretion was not exercised judicially. More specifically the appellant will have to show that the court a quo either —
>
> 29.1 failed to bring an unbiased judgment to bear on the matter;
> 29.2 did not act for substantial reasons;
> 29.3 exercised its discretion capriciously or arbitrarily;
> 29.4 exercised its discretion upon wrong principle;
> 29.5 committed a misdirection of such a serious nature and degree as to justify a conclusion that it acted improperly or unreasonably.
>
> [30] The legal position was summarized as follows by the Constitutional Court:
>
> *'It is trite law that a court considering whether or not to grant condonation exercises a discretion. The discretion must, of course be exercised judicially on a consideration of all the facts and "in essence it is a matter of fairness to both sides". It is clear that the SCA may decide an application for condonation without considering the merits of the case, though it does so only where there is a gross and flagrant failure to comply with the rules. Ordinarily, the approach of an Appellate Court to the exercise of such a discretion is that it will not set aside the decision of the lower court "merely because the Court of appeal would itself, on the facts of the matter before the lower court, have come to a different conclusion; it may interfere only when it appears that the lower court had not exercised its discretion judicially, or that it had been influenced by wrong principles or a misdirection on the facts, or that it had*

[1] *Melane v Santam* Insurance Co Ltd 1962 (4) SA 531
[2] (2014) 35 *ILJ* 1948 (LAC)
[3] 2005 (2) *SA* 117 (CC)

reached a decision which in the result could not reasonably have been made by a court properly directing itself to all the relevant facts and principles.'

[9] The applicant continues, stating that I erred in having awarded damages that far exceeds a standard that other courts have upheld in relation to the assessment of damages. In this regard I was referred to the following authorities: *Daniel Malebadi Motladile v Minister of Police, Police [SACR 274(SCA) 12 June 2023, [2023]; Ngwenya v Minister of Police* (924/2016) [2019] 3 ZANWHC 3 (February 7. 2019); *Spannenberg and Another v Minister of Police:* Case Number 2993/2019 (24 February 2022); *Mocumi v Minister of Police and Another, CIVAPP9/2021,* (3 December 2021); *Motladile v Minister of Police (414/2022) [2023] ZASCA 94, 2023 (2) SACR 274 (SCA)* 12 June 2023;*Daniel Malebadi Motladile v Minister of Police, Police [SACR 274(SCA) 12 June 2023, [2023]; Mocumi v Minister of Police and Another CIV APP9/2021 (Dember 2021) (NW), Tobashe v Minister of Police and Another CIV APP MG* 10/2021 (3 Dember 2021) (NW) and *Thandani v Minister of law and order 1991(1) SA 702 at 707A-B,*

[10] I have considered the authorities referred to and will discuss them below. The import of these authorities, the applicant sought to advance, are the following:

10.1. Since the SCA in *Motladile* awarded damages for unlawful arrest and detention in the amount of R260 000 (having substituted that amount with the damages of R60,000.00 awarded by the trial Court), that I should have awarded the respondent an amount in that range;

10.2. the award of damages granted in the present matter far exceeds that standard that other courts have upheld in relation to the assessment of damages, where amounts averaging between R15,000.00 and R18,000.00 were awarded for each day that the person was in custody;

10.3. An amount of R15,000.00 per day is a reasonable amount to be awarded;

10.4. In as much as there are also differences in amounts awarded by the SCA as compensation or *solatium*, there is of late an attempt to strive for similarity of conformity, but that each case must however be decided on its own facts, merits and circumstances;

10.5. The courts have generally awarded R45,000.00 per day for each day that the person was in custody.

[11] For completeness sake, I consider it important to revisit the authorities relied on by the applicant.

[12] *Motladile*, a matter on appeal at the Supreme Court of Appeal, concerned an award of R60 000 granted by the High Court (North-West Division) arising from the plaintiff's unlawful arrest and detention for a period of four days. The court of first instance followed a "mechanical" approach adopted in the division in cases of this nature, and simply awarded R15 000 for each day of the unlawful arrest. The SCA rejected this approach as overly rigid, holding that it failed to consider the full context of each case beyond the duration of detention and, consequently, that the court had not exercised its discretion properly.

[13] The court emphasised that a proper assessment of damages requires consideration of multiple factors, such as the circumstances of the arrest and detention, the presence or absence of malice or improper motive, the conduct of the defendant, the nature of the deprivation of liberty, the plaintiff's status, any apology or explanation offered, comparable awards, publicity surrounding the arrest, concurrent infringements of rights, and any contributory conduct by the plaintiff. Having had regard to these factors, the court found that an award of R200 000, together with interest at 7% per annum from the date of service of summons to the date of payment, was appropriate, and accordingly substituted the order of the court a quo with that amount, including costs.

[14] The facts in *Ngwenya*, were the following. He was arrested, without a warrant by members of the South African Police Service, for alleged malicious injury to property after he cut a fence during a dispute over a stand of land. The fence

was allegedly cut on 5 August 2015. The police interacted with him on 7 August and again on 17 August 2015 but did not affect an arrest on those occasions. On 28 August 2015, while he was erecting a shack on the disputed property, the was arrested. He was detained for four days. The Minister of Police argued that the arrest was lawful under section 40(1)(b) of the Criminal Procedure Act because the police reasonably suspected that the plaintiff committed a Schedule 1 offence.

[15] The Court found Ngwenya's arrest was unlawful and that his subsequent detention was also unlawful. It held the Minister of Police liable for 100% of the plaintiff's proven damages. A later judgment on quantum awarded the plaintiff: R45 000 damages for unlawful arrest and detention and costs on the Magistrates' Court scale.

[16] *Spannenberg* concerned a case of two men who were unlawfully arrested and detained by members of the South African Police Service. The North-West High Court found their arrest and detention to be wrongful, awarding each plaintiff R18,000 in damages plus interest and costs. The Court reaffirmed that police officers must have a lawful basis for arrest under the Criminal Procedure Act, and that the failure to do so rendered both the arrest and detention unlawful, entitling victims to damages. The Court awarded R18,000 each to the plaintiffs, emphasising constitutional protections against arbitrary deprivation of liberty.

[17] In *Mocumi* the facts were the following. On 29 January 2020, Mr. Papakie Frans Mocumi and his colleagues were working at the Mafikeng Mental Hospital rendering landscaping/gardening services, when three marked police vehicles arrived. He and one of his colleagues, Mr. Joseph Tobase Khukwane were accused of having stolen a plasma television set. He was arrested and transported to the Mafikeng Police Station where he was detained for three days. He never appeared in Court. He was later released, and told to *'go home and do not look back'*. Aggrieved by the treatment he received, he decided to take action against the police.

[18] On appeal the High Court, having considered all the facts and circumstances of his case, as well as the personal circumstances of the appellant, awarded an amount of R15 000.00 per day, totaling R45 000.00, as reasonable and appropriate *solatium*.

[19] The facts in *Thandani*, were the following. He was unlawfully arrested by members of the South African Police. Following his arrest, the police handed him over to the Ciskei authorities. He was then detained by the Ciskei police for approximately 59 days without lawful justification. Thandani instituted a damages claim against the Minister of Law and Order, arguing that the unlawful arrest by the South African police ultimately caused the entire period of his detention.

[20] The case of the respondent (plaintiff in the main action) is on the whole distinguishable from the referenced authorities. Those cases are not comparable to what the the plaintiff, in the matter before me, was subjected to. The individuals in the cases cited were not subjected to continuous and sustained physical assault, in handcuffs, in the presence of other police officers, nor were they refused medical treatment.

[21] The applicant correctly cites *Minister of Safety and Security v Seymour* where it was held that -

> "The assessment of awards of general damages with reference to awards made in previous cases is fraught with difficulty. The facts of a particular case to be looked as a whole and few cases are directly comparable. They are useful guide to what courts have considered to be appropriate, but they have no higher value than that" .[4] (Own emphasis)

[22] The applicant also laments the issue of comparable awards as a basis to suggest that I have exercised my discretion on the wrong facts and the law. I disagree. In *Protea Assurance Co. Limited v Lamb*[5] the Court held:

> "The Court may have regard to comparable cases. It should be emphasised, however, that this process of comparison does not take the form of a meticulous examination of awards made in other cases to fix the

[4] (2006) (6) SA 320 (SCA) at para 17. Ibid para 8 Caselines 017 – 21.
[5] (1971) (1) SA 530 (A) at 535H – 536B.

> amount of compensation; nor should the process be allowed so to dominate the enquiry as to become a fetter upon the Court's general discretion in such matters. Comparable cases, when available, should rather be used to afford some guidance, in a general way, towards assisting the Court in arriving at an award which is not substantially out of general accord with previous awards in broadly similar cases, regard being had to all the factors which are considered to be relevant in the assessment of general damages. At the same time, it may be permissible, in an appropriate case, to test any assessment arrived at upon this basis by reference to the general pattern of previous awards in cases where the injuries and their sequelae may have been either more serious or less than those in the case under consideration." (Own emphasis)

[23] When exercising its discretion, a Court is not reduced to engaging in a mechanical exercise, it encompasses a consideration of a number of interrelated factors as confirmed by the SCA in *Motladile,* it stated a t paragraph 17 of that judgment:

> 'The assessment of the amount of damages to award a plaintiff who was unlawfully arrested and detained, is not a mechanical exercise that has regard only to the number of days that a plaintiff had spent in detention. Significantly, the duration of the detention is not the only factor that a court must consider in determining what would be fair and reasonable compensation to award. Other factors that a court must take into account would include (a) the circumstances under which the arrest and detention occurred; (b) the presence or absence of improper motive or malice on the part of the defendant; (c) the conduct of the defendant; (d) the nature of the deprivation; (e) the status and standing of the plaintiff; (f) the presence or absence of an apology or satisfactory explanation of the events by the defendant; (g) awards in comparable cases; (h) publicity given to the arrest; (i) the simultaneous invasion of other personality and constitutional rights; and (j) the contributory action or inaction of the plaintiff.'

[24] In *L A Sefuthi v RAF*[6] the court held that:

> "When considering general damages, a court has a wide discretion to award what it considers to be a fair and adequate compensation for the injured party. In considering the amount to be awarded for general damages it is acceptable to have regard to awards issued in comparative cases, although it is immediately recognized that it is hardly possible to find a case or cases that are on all fours with a particular set of facts.
>
> Ultimately, in determining general damages a broad discretion is exercised by the court based on what it considers fair and adequate compensation. The nature, severity and permanency of the injuries sustained, together

[6] (303/2019) 14 October 2022 FSHC (unreported) at para 35 – 37.

> with pain and suffering, disfigurement, permanent disability and the effect thereof on the person's lifestyle are aspects to be considered".

[25] In *Thandani v Minister of Law and Order* 1991 (1) SA 702 (E) at 707A – B, Van Rensburg J held as follows:

> '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 constitutes a serious inroad into the freedom and the rights of an individual.'

[26] In our modern South Africa, a just award for damages for wrongful arrest and detention should express the importance of the constitutional right to individual freedom. As a country founded on constitutional norms, a person ought to be protected by the police, not harmed. In dealing with what is expected in a modern South Africa, the Court in *Olgar v The Minister of Safety and Security* 2008 JDR 1582 (E) para 16, per Jones J, remarked as follows:

> 'In modern South Africa a just award for damages for wrongful arrest and detention should express the importance of the constitutional right to individual freedom, and it should properly take into account the facts of the case, the personal circumstances of the victim, and the nature, extent and degree of the affront to his dignity and his sense of personal worth. These considerations should be tempered with restraint and a proper regard to the value of money, to avoid the notion of an extravagant distribution of wealth from what Holmes J called the 'horn of plenty', at the expense of the defendant.'

[27] I have carefully considered the circumstances around the respondent's arrest and detention and persist with my conclusion that the basis for the award of damages was sound.

[28] This brings me to the question whether the applicant made out a case for leave to appeal. The test for leave to appeal has been settled in *MEC for Health, Eastern Cape v Mkhitha*[7]. The Court eloquently explained the effect of the amendment of section 17(1)(a) as follows:

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[7] [2016] ZASCA 176 paras 16-18

> "Once again it is necessary to say that leave to appeal, especially to this court, must not be granted unless there is truly a reasonable prospect of success. Section 17(1)(a) of the Superior Courts Act 10 of 2013 makes it clear that leave to appeal may only be given where the judge concerned is of the opinion that the appeal would have a reasonable prospect of success; or there is some other compelling reason why it should be heard. An applicant for leave to appeal must convince the court on proper grounds that there is a reasonable prospect or realistic chance of on appeal. A mere possibility of success, an arguable case or one that is not hopeless, is not enough. There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal. (Own emphasis)

[29] The primary basis for leave to appeal is whether *"a reasonable prospect of success exists".*[8] The test remains whether or not there is a reasonable prospect that another court may come to a different conclusion.

[30] In *S v Smith*[9] the Supreme Court of Appeal further held that:

> "What the test of reasonableness prospect postulates is a dispassionate decision, based on the facts and the law, that a Court of appeal could reasonably arrive at a conclusion different to that of a trial Court. In order to succeed therefore, the defendant must convince this Court on proper grounds that he has prospects of success on appeal and that those prospects are not remote, but have a realistic chance of succeeding. There must in other words be a sound, rationale basis for the conclusion that there are prospects of success on appeal".

[31] I have carefully considered the application for leave to appeal. it fails to establish with any measure of certainty that another Court would differ from the decision I have arrived at.

Conclusion

[32] In summary then. The applicant has failed to prove that I did not exercise my discretion judicially. Accordingly the application for leave to appeal must fail.

[33] In the result, I confirm the following order:

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[8] Section 17(1)(a)(i) of the Act.
[9] South African Criminal Law Reports 2012 (1) at page 576 para 7

Order

1. Condonation for the late filing of the application for leave to appeal is granted;
2. Leave to appeal is refused with costs;
3. Counsel costs to be paid on Scale B.

B. FORD
Acting Judge of the High Court
Gauteng Division of the High Court,
Johannesburg

Delivered: This judgment was prepared and authored by the Judge whose name is reflected on 5 June 2026 and is handed down electronically by circulation to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 5 June 2026.

Date of hearing: 31 March 2026
Date of judgment: 5 June 2026

Appearances:

For the applicants:	Adv. Daniel Selala
Instructed by:	State Attorney
For respondent:	Adv. Modise Shakung
Instructed by:	Ditheko Lebethe Attorneys