**IN THE HIGH COURT OF SOUTH AFRICA**
**EASTERN CAPE DIVISION: MTHATHA**

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| **(1) REPORTABLE: YES/NO** |
| **(2) OF INTEREST TO OTHER JUDGES: YES** |
| **DATE: 09 JUNE 2026** |
| **SIGNATURE:** |

**Case no: 142/2021**

In the matter between:

**SIPHENATHI BHONTI** Plaintiff

**and**

**MINISTER OF POLICE** Defendant

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**Summary:** Unlawful Arrest and detention – sections- 40(1)(b), 50 Criminal Procedure Act 51 of 1977 – section 13 South African Police Act 68 of 1995. Arrest without warrant, reasonable suspicion test, unlawful arrest and detention and damages awarded.

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**JUDGMENT**

**NTLAMA-MAKHANYA AJ**

[1] This is an application for damages arising out of an alleged unlawful arrest and detention against the defendant on the 12th of September 2020. The plaintiff was detained for a period of three (3) days at the Mthatha Central Police Station (Police Station) and was then released without appearing in court after the said days.

[2] Following his release, the plaintiff sues the defendant for R3 000 000.00 (**Three Million Rands**) for damages arising from the alleged unlawful arrest and detention which is opposed by the defendant.

**Factual background**

[3] The plaintiff was arrested at his home by members of the South African Police Service (SAPS) on being suspected of the commission of a crime and murder of Simphiwe Dyani (deceased) at Qweqwe Location, Mthatha on 12 September 2020. He was taken to Mthatha Central Police Station. He was released at 07h30 on the 14th of September 2020 and the charges were withdrawn without appearing in court due to insufficient evidence. Thereafter, he instituted this application for the claim for damages relating to the unlawful arrest, detention and assault without a warrant of arrest.

[4] The parties agreed not to separate the issues of liability and *quantum* which were left for determination by this Court. They further agreed that the plaintiff will lead the case and the defendant to justify the lawfulness of the arrest.

**Issues**

[5] This Court is required to determine:

(i) Correctness of the plaintiff's name;
(ii) Lawfulness of the arrest;
(iii) Justifiable grounds and exercise of proper discretion in carrying out the arrest;
(iv) Consequent result of the arrest and detention of the plaintiff; and
(v) *Quantum* of damages, if any, ought to be awarded to the plaintiff.

[6] Broadly, the main question is to establish whether the conduct of the defendant was justified, and the plaintiff was unlawfully arrested and detained. It is worth that I start with the point *in limine*.

*Point in limine*

[7] The defendant raised a point *in limine* regarding the plaintiff's correct surname whether it is Guntsu. The defendant argued that the plaintiff's incorrect name created an uncertainty over his identity. He submitted that the claim for damages should be dismissed because there was no claimant before the Court. This point was opposed by the plaintiff because for all intents and purposes, there is no other person that is involved or subject of this entire process of litigation except for Bhonti (plaintiff). The defendant has since the inception of this case also dealt with the plaintiff as Bhonti. This point *in limine* was raised in the supplementary affidavit which is dated 02 February 2026 that recorded the plaintiff as Guntsu which is annexed in the plaintiff's release form and the logbook of all detainees. However, this Court, using its discretion considered this inconsistency, established that all the circumstances and facts of this case pointed to the plaintiff as the correctly identified litigant. This Court also established that the death of the deceased was reported by Vuyolwethu "Olwethu" Guntsu as appears in the statement of the file docket. Therefore, there is no reasonable apprehension that the plaintiff is not Bhonti.

**Submissions**

*Case for the Plaintiff*

[8] The plaintiff testified on his own behalf. He submitted that he was at his home with his siblings namely Sakhumzi and Onele Zindlu at Qweqwe Location on the 12th of September 2020 when the defendant arrived at about 21h30 and arrested him. He alleged that the defendant did not introduce himself, and was immediately handcuffed, beaten and put in a quantum which proceeded towards the upper area of Kei Cash Spar to the Police Station where he was detained at 00h45. He further contended that he was not informed of his constitutional rights both at his home and on his arrival at the Police Station. As he alleged, he was assaulted and asked reasons of having murdered Simphiwe (deceased) and according to him, the sole purpose of the question was for him to agree to the murder. He further submitted that on his arrival at the Police Station he was detained in inhuman conditions with dirty blankets and slept on the floor and the toilet was full of sewage and could not eat except for the porridge in the morning. In addition, he submitted that he was then fetched by a well-built Police Officer that assaulted him with an open hand and was put in a Jetta like polo car which proceeded to Mthatha Dam where he was assaulted and had a plastic put over his head. He was then released on the 14th of September 2020 without making a statement alternatively appearing in court. On the 16th of September 2020 which is two days after his release he consulted a Doctor at the Mthatha General Hospital (Hospital). On examination at the Hospital, the clinical records are indicative of the harm suffered that he had “soft tissue injury secondary to assault”.

[9] On cross-examination by the defendant, the plaintiff admitted of his knowledge of the deceased as Simphiwe Dyani and refuted that there were community members during his arrest. He also disputed the reasons that informed the police going to Qweqwe Location and denied that the arrest was lawful. He also did not comment on non-visible injuries and did not accept that the defendant is not liable for any action. On the other hand, on his reply, the plaintiff stated that he is not aware of the law and does not understand the distinction between arrest and detention. In addition, he also does not have personal knowledge or law except for the fact that he was detained.

*Case for the defendant*

[10] The defendant called two witnesses, namely Detective Mzimasi Ngcibi and Seargent Owen Dyani.

[11] Detective Ngcibi testified that he has been a Detective at Mthatha and has 18 years of experience in the police service with two years as a police officer and 16 years as a Detective. He testified that in most of his career he investigated and dealt with serious and violent crimes which include murder and business robberies. He submitted that he investigated a case of murder from Qweqwe Location where two young men were arrested by angry community members because of the crime of murder therein. He stated that the latter community called the Public Order Policing (POP) which is stationed at Group 46 and is entrusted to deal with crowds and violent protests. He testified that he met the plaintiff on the 13th of September 2020 and did not notice any signs of assault because an assaulted person is not detained. He further submitted that the Cell Commander is responsible for arrested and detained person and any person who shows signs of being assaulted would be referred to hospital and the plaintiff could not have been the exception. He also pointed out that an arrested person is put in the holding cells and will be interviewed about the alleged crime and if there is nothing that links the person to crime, he will be released from police

custody. He also testified that the plaintiff denied the allegation of murder of the deceased and was thereafter released without making a statement because there were no established facts that linked him to the commission of the crime.

[12] Detective Ngcibi refuted the claim that the plaintiff was detained in inhuman condition and submitted that the Police Station is not in such state because there are independent companies that are contracted and responsible with cleaning of the cells. He further confirmed that the plaintiff was released on the 14th of September 2020 as appears from the prisoner's register (SAP326) and the release form (SAP328) that indicates his release due to insufficient evidence. However, he disputed the number of days spent by the plaintiff and further submitted that there were no complaints received that could have been reported.

[13] On cross examination, he confirmed his knowledge of the law relating to the role of arresting officers in the execution of authority that is bestowed on them. He also confirmed that he became aware of the plaintiff's arrest on the 13th of September 2020 and before the said day, he did not have a reasonable suspicion that linked the plaintiff to the commission of the crime of murder. He further contended that he was not present when the plaintiff was detained at 00h45 and could not testify about the cell conditions. On further probing about the time of arrest, he highlighted that they may be different because they depend on the distance. He made an example of the driving distance between Qweqwe and Police Station which, as he held may be approximately not more than 30 minutes and from the latter not more than five (5) to the High Court as opposed to a distance from Bizana which may take about 3 hours. He could not comment on the arresting officer who drove the quantum on the day in question and could not further comment on a question relating to the plaintiff's assault because he was not present. He could not affirmatively respond to whether it is justifiable for a person to be arrested at 21h30 and detained only at 00h45 because, as he held, it depends on the circumstances.

[14] The second witness: Seargent Dyani testified that he has 22 years of experience in the Police Service and is working under Mthatha Public Order. His testimony was not distinct from Detective Ngcibi about the arrest of the two young men by angry community members at Qweqwe Location. He was led on his evidence by the defendant's legal representative. Seargent Dyani submitted that on the day in question he was on duty when he received information about the arrest of two young men by community members at Qweqwe Location. He testified that the two young men were suspected of having killed the deceased and one who happened to be Mzimasi Soji was at large. He went to the village and requested that they be released and handed over to the police to avoid any possibility of self-help by community members. He testified that they searched for suspect Soji and gave up on the day in question and at his Maqhinebeni homestead and thus was later arrested. He dismissed the plaintiff's claim of being taken and assaulted at Mthatha Dam.

[15] Seargent Dyani justified the lawfulness of the arrest and detention and submitted that on arrest of a suspect he or she is searched to identify any injuries that may have been suffered during the arrest before being taken to the police cells. In this case, he was not aware and did not see any assault or injuries that could have been suffered by the plaintiff. He also refuted the claim of inhuman and dirty cells because each arrested person at the Police Station is treated with human dignity. In essence, he dismissed any claim of the unlawfulness of the arrest and detention and associated claims of the inhumanity of the holding cells.

[16] On cross-examination relating to the enquiry about his relationship with the deceased he stated that they are only sharing surnames. He further stated that he was not involved in the arrest of the plaintiff. In addition, he also said that it is 100% logical that an investigation may be preceded by the arrest of the person suspected of having committed a crime. He also confirmed that he did not have a reasonable suspicion that could have warranted his immediate response to arrest the plaintiff because he was called by his informer to the scene (Qweqwe). He

did not comment about the plaintiff's younger brothers who were with him at his home and further denied any knowledge of the plaintiff being (i) beaten, (ii) handcuffed, (iii) put into a quantum, (iv) made to lie on his back, (v) beaten on his foot (vi) not knowing of the two (2) suspects being taken to Vidgesville. However, conceded that he (i) did not detain the plaintiff, (ii) visited the cells and (iii) testify about the conditions of detention, (vi) the involvement of a well-built White Police that took the plaintiff to Mthatha Dam and (vii) he never had a conversation with Vuyolwethu Guntshu who reported the death of the deceased.

**Applicable legal principles**

[17] The promulgation of the South African Police Service Act 68 of 1995 (SAPS Act) serves as a regulatory framework regarding the way in which the defendant should exercise the authority that is vested in him. I must state that the arrest of a person who is suspected of having committed a crime is not punitive in nature but serves as a measure of bringing such a person before a court of law as a final determinant of the alleged crime. In this instance, the SAPS Act requires the defendant to:

> '(a) ensure safety and security of all persons in the national territory;
> (b) uphold and safeguard the fundamental rights of every person as guaranteed in Chapter 2 of the Constitution;
> (c) ensure cooperation between the Service and communities it serves in the combating of crime;
> (d) reflect respect for victims of crime and understanding of their needs; and
> (e) ensure effective civilian supervision over the service.'

The Criminal Procedure Act 51 of 1977 (CPA) explicitly identifies the "peace officer" or a "police official" as a person who is entrusted with authority to arrest a person who is suspected of committing a crime. The CPA also provides exceptional circumstances where an arrest may be effected without a warrant of arrest as envisaged in section 40 which stipulates that:

'(1) a peace officer may without warrant arrest any person:

(*a*) who commits or attempts to commit any offence in his presence;

(*b*) whom he reasonably suspects of having committed an offence referred to in Schedule 1, other than the offence of escaping from lawful custody; and

(c …q) …

(2) If a person may be arrested under any law without a warrant and subject to conditions or the existence of circumstances set out in that law, any peace officer may without warrant arrest such person subject to such conditions or circumstances,' (emphasis mine).

[18] In this provision, the use of the word "may" constitutes a "two-pronged" approach which requires the defendant to either exercise the discretion to effect the arrest or refrain from doing so. In respect of the latter, the defendant is still required to provide reasons for not doing so considering what could have been a glaring responsibility at the time. The exercise of the discretion is grounded by the reasonableness of the suspicion that may be evidenced by the unlawful commission of the crime. I believe, although it is difficult to craft the way in which the defendant should exercise his discretion in the circumstances of each case, thus, it serves as the cornerstone of the defendant's functions. It entails an immediate response for the deserved protection of the interest of society. The prompt response is also meant to eliminate any failure to act that may result in defeating the overall purpose of ensuring crime free societies. In essence, there must be the reasonable link between the arrest without a warrant and the alleged commission of the crime. The reasonableness of the suspicion must be based on concrete grounds as a direct response to the well-known test of a reasonable man in the position of the defendant who could have considered whether there were merited grounds in suspecting that the plaintiff committed the offence.

[19] It must be stated that the legal framework gives effect to the context upon which section 12 of the Constitution of the Republic of South Africa, 1996 (Constitution) should be seen to be translated into lived realities of the people and not simply to be done. Therefore, section 12 provides that:

> ‘(1) Everyone has the right to freedom and security of the person, which includes the right:
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> (a) not to be deprived of freedom arbitrarily or without just cause;
> (b) not to be detained without trial;
> (c) to be free from all forms of violence from either public or private sources;
> (d) not to be tortured in any way; and
> (e) not to be treated or punished in a cruel, inhuman or degrading way.’

[20] It is evident that the defendant carries a constitutional obligation and is required to eliminate any forms of injustice and discrimination that may undermine the securing of the arrest of a person suspected of committing a crime. The legal framework which serves as empowering statutes to the Constitution indicate in no uncertain terms that the defendant is required not to arbitrarily arrest a suspect but to ensure fairness and balancing of competing rights within the framework of the right to freedom and security of a person. In these circumstances, the legal framework requires the justification of the defendant’s immediate response to the imminent commission of the crime without flouting the regulatory foundations of resolving the scourge of crime in South Africa. At the strike of the moment, the defendant is required to determine what is permitted and or prohibited by law. I can safely say, the defendant, as envisaged in section 7(2) of the Constitution is required not only to ensure respect, protect, promote but must fulfil all the fundamental freedoms to ensure its contribution to social change. Both sections 7(2) and 12 bear a rational connection to the interpretation

of the overall scheme of the provisions of the CPA and its alignment with the SAPS Act.[1]

[21] The exceptional circumstances and the discretion to be exercised by the defendant are intertwined with the broadened scope of his authority and responsibility as a public organ of state. The contention was contextualised by Mogoeng CJ in *Economic Freedom Fighters v Speaker of the National Assembly*[2] who held that:

> 'One of the crucial elements of our constitutional vision is to make a decisive break from the unchecked abuse of State power and resources [and] … To achieve this goal, we adopted accountability, the rule of law and the supremacy of the Constitution as values of our constitutional democracy. For this reason, public office-bearers ignore their constitutional obligations at their peril. This is so because constitutionalism, accountability and the rule of law constitute the sharp and mighty sword that stands ready to chop the ugly head of impunity off its stiffened neck,'[3] (emphasis mine).

[22] This background framework is essential in determining its application to the facts of this case.

**Analysis**

[23] In applying the law into the facts of this case, Detective Ngcibi and Sergeant Dyani were peace officers, alternatively police officials who are defined and accorded with authority in terms of section 40(1)(b) of the CPA. This Court moves from an affirmative prelude that the defendant is entrusted with public power which requires a well-crafted balance in the execution, interpretation and application of the law. The defendant, as a public organ of state should act within

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[1] See Potterill AJ in Groves v Minister of Police 2024 (4) BCLR 503 (CC) para 46.
[2] Economic Freedom Fighters v Speaker of the National Assembly 2016 (5) BCLR (CC).
[3] *Ibid* para 1 (all footnotes omitted).

the framework of the legal authority that is conferred on him. This contention was well articulated by Ngcobo J in *Affordable Medicines Trust and Others v Minister of Health*[4] who held that:

> 'The exercise of public power must therefore comply with the Constitution, which … entails that both the legislature and the executive are constrained by the principle that they may exercise no power and perform no function beyond that conferred upon them by law,'[5] (emphasis mine).

[24] I wish to express no further view that the exercise of public power is founded on the principles of constitutional democracy. These principles are a vital ingredient and stimulant regarding the way in which the defendant should uphold the authority that is vested in him.

[25] In this application, the defendant does not deny that the plaintiff was arrested and detained by him except for the dismissal of the claim of its unlawfulness. The plaintiff contended that his arrest and detention was unlawful and compromised his freedom and fundamental rights.

[26] In this case, the defendant justified the unlawfulness of the arrest and detention and remained firm that the police acted within the scope of authority that is vested in him. He substantiated his submission and contended that a reasonable suspicion as envisaged in section 40(1)(b) is a jurisdictional factor that serves as a measure that legitimises the exercise of his discretion in effecting the arrest.

[27] The plaintiff on his arguments submitted that the testimonies of Detective Ngcibi and Seargent Dyani were not credible and amounted to hearsay evidence because they did not witness the assault on the plaintiff. Under normal circumstances, hearsay evidence is justifiable if it is contextualized by substantive evidence. In this case, Detective Ngcibi and Seargent Dyani were

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[4] Affordable Medicines Trust v Minister of Health 2005 (6) BCLR 529 (CC).
[5] *Ibid* para 49.

called to the crime scene and could not have held a “reasonable suspicion” that the plaintiff committed the alleged crime of murdering the deceased (Simphiwe Dyani) to effect an arrest without a warrant. At that moment, they did not meet the threshold of section 40(1)(b) and could have held a “reasonable suspicion” that warranted their prompt response in arresting the plaintiff. They usurped the powers that are vested in arresting officers and failed to satisfy the all-encompassing test of “suspicion”.

[28] It is worth that I reiterate the jurisdictional factors as envisaged in section 40(1)(b) in establishing the justification of what could be viewed as a *prima facie* unlawful arrest. These factors are clear in that an arrestor must (i) be a peace officer, (ii) entertain a reasonable suspicion, (iii) suspicion must be that the suspect committed a Schedule 1 offence and (iv) based on reasonable grounds. It is difficult to attribute any justification of the lawfulness of the arrest because the offence was not committed in their presence which required their prompt action. In addition, their contact with the plaintiff was an “after the act” of arrest by community members and could not be contextualized within the framework of section 40(1)(b). The reliability and credibility of their evidence lacked content and tainted the authority that is envisaged in section 40(1)(b) because they conceded that they were not the arresting officers and could not comment on some of the assertions made by the plaintiff. The authenticity of evidence was compromised and raises a question on whether a peace officer who was not privy to the arrest of the plaintiff would testify as a witness and seek to have this Court believe the alleged merited grounds of such an arrest? I do not hold any reasonable belief that Detective Ngcibi and Seargent Dyani could have entertained a justified suspicion of the commission of the Schedule 1 offence. Seargent Dyani further stated in his affirmation of the alleged justified arrest, “he requested the handing over of the plaintiff to the police to avoid self-help”. It is my view that the request was not an exercise of the discretion to effect an arrest other than a negotiation with the community members for the plaintiff’s release.

[29] Furthermore, Detective Ngcibi and Seargent Dyani could not testify about inhuman nature of the cell conditions, because, as they stated, the plaintiff arrived in the evening. Besides, the service to clean the cells is externally sourced and their role did not go beyond that of the Detective when they handed over the plaintiff on his arrest. I find their rejection of the plaintiff's allegation not credible because as arresting officers, they are not Detention Officers or Detectives where they could have seen the conditions of the cells. This Court is not to dispute the external sourcing of the cleaning service, thus, the question of fundamental importance is whether at the time and night in question the cells were conducive for a healthy and human condition of the detention of a person. They subjected the plaintiff to inhuman conditions by unlawful arrest and detention with the subsequent release with no court appearance.

[30] I am mindful of the scourge of violent crimes which should not be viewed blindly. The arrest of the plaintiff who ended up not even appearing in court is a foresight to the unlawfulness of his arrest. The plaintiff was arrested and detained in circumstances where there was no objective evidence that indicated he had committed the crime of murder except for the deceased who was found lying on his face next to the toilet. Section 40(1)(b) does not put a heavy burden on arresting officers to effect an arrest as the standard or test used is the one of "suspicion" and not "certainty" that the plaintiff could have committed the offence. In this case, the arrest was broadened to the "community" without an identified community member who witnessed the commission of the offence. Despite this glaring fact, the plaintiff was arrested and detained with the consequent result of his release without court appearance due to insufficient evidence. The plaintiff's arrest was a failure of reason and justice in the exercise of discretion relating to effecting an arrest based on "reasonable suspicion". The "cause" and "consequence" could not be interpreted independently of each other. Simply, if it was not for the unlawful arrest, the harm suffered by the plaintiff could not have arisen. However, the greater responsibility is entrusted on the defendant to ensure compliance with the CPA and the Constitution to ensure the fulfilment of

the aspirations of the new constitutional dispensation and uphold the principles of his own accountability and bring the arrested person to justice.[6] I must simply say that the plaintiff's fundamental freedoms were undermined.

[31] I am of the view that the arrest of the plaintiff could have been instantly verified particularly with the arrest that was effected by community members. I am not to put any doubt on the exercise of communal responsibility in assisting the police in curbing the scourge of crime. This power is strictly regulated because the community does not have investigating powers except for the handing over of the suspect to the police who are the final determinants in furthering the investigation for prosecution of the alleged crime. The community does not have authority to seize the authority that is vested in arresting officers. It also does not pass the litmus test of the "reasonableness of the suspicion" of the arrest. It is common knowledge that a communal arrest is at times not effected by all community members but by a select few members. In these circumstances, what constitute a "community"? How far should the concept of a "community" be determined? How are those that are directly involved in arresting the suspect distinct from those that may be bystanders and watching the arrest? How do we draw a distinction between the categories of these people? How is it possible that a "reasonable suspicion" could be attributed to the community? These questions raise difficulty relating to the extent to which the community's reasonable suspicion may be justified.

[32] In the circumstances, the plaintiff was arrested on the 12th of September 2020 and released at 07h30 on the 14th of September 2020. Effectively, without engaging in mathematical exercise, it is evident that the plaintiff spent 33 hours following his arrest and detention by police. Despite what appears at face value not to be an excessive period, this does not distract from the inconvenience, humiliation and stigma that are associated with being accused of committing a crime of murder.

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[6] See Moleleki AJ in Nyarende v Minister of Police [2025] ZAMPMBHC 58 para 18.

[33] On conspectus of evidence, I find the defendant liable for the period of the plaintiff's unlawful arrest and detention.

Q*uantum*

[34] The issue of the award of damages has been the subject of contention. This Court is guided by established principles in restraining itself from awarding the said damages for no simple reason other than the fact that there was an arrest. This case requires this Court to establish justifiable reasons in awarding the *quantum* claimed.

[35] The exorbitant amounts that are claimed against the defendant (state) raise a question regarding the link between the harm suffered *vis-à-vis* the consequent liability. The plaintiff claimed a total amount of R3000 000.00 (**Three Million Rand**) which is structured as follows:

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| (i) | Damages of unlawful arrest: | R500 000.00 |
| (ii) | Damages for unlawful detention: | R1000 000.00 |
| (iii) | Damages for humiliation, degradation, *contumelia,* pain and suffering and loss of income: | R1000 000.00 |
| (iv) | Damages for assault: | R500 000.00 |

[36] The computation and structure of this claim require the application of a test that seeks to balance the deprived liberty *vis-à-vis* liability of the defendant to ensure establishment of whether the amount claimed is justifiable. The justification of the award for damages should be tested against the originality of the claim. This test should serve as a benchmark that is aligned to the *quantum* claimed and not to be viewed as the plaintiff's enrichment.

[37] I now revert to the issue of *quantum.* This Court is guided by replete jurisprudence that the award of damages should not be granted "willy-nilly". The courts and legal practitioners were finger-pointed by Makaula AJA in *Diljan v Minister of Police*[7] who frowned upon the excessive claims of unlawful arrest and detention and held that:

> 'A word has to be said about the progressively exorbitant amounts that are claimed by litigants lately in comparable cases and sometimes awarded lavishly by our courts. Legal practitioners should exercise caution not to lend credence to the incredible practice of claiming unsubstantiated and excessive amounts in the particulars of claim. Amounts in monetary claims in the particulars of claim should not be 'thumb-sucked' without due regard to the facts and circumstances of a particular case. Practitioners ought to know the reasonable measure of previous awards, which serve as a barometer in quantifying their clients' claims even at the stage of the issue of summons. They are aware, or ought to be, of what can reasonably be claimed based on the principles enunciated above.'[8]

Similarly, Bosielo JA in *Minister of Safety and Security v Tyulu*[9] had earlier identified the difficulty that is associated with the "evaluation of the awards of damages for unlawful arrest and detention" and held that "it is impossible to determine it with any kind of mathematical literacy".[10]

[38] In this case, the plaintiff was unemployed and doing only odd jobs and spent 33 hours subsequent to his arrest and detention without appearing in court. I find it odd to comprehend how the original claim of R3 000 000 *vis-à-vis* the proposed offer of R200 000.00 alternatively R250 000.00 could be struck between the "cause" and the "consequent result" of the harm suffered. Simply, to what extent

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[7] *Diljan v Minister of Police* [2022] ZASCA 103.
[8] *Ibid* para 20.
[9] Minister of Safety and Security v Tyulu 2009 (2) SACR 282 (SCA).
[10] *Ibid* para 26.

does the amount claimed justify the award of damages against what could have been attained in the 33 hours of unlawful arrest and detention? This Court is puzzled by the difference in the claimed amount and what is offered and which could be considered as reasonable compensation for the period of arrest. This Court is placed in an invidious position to determine the justification of the *quantum* of damages claimed.

[39] On established facts, the plaintiff could not even justify the *quantum* claim that could have enabled this Court to determine with sufficiency that if it was not for his arrest and detention, he could have qualified or fulfilled the attainment of his aspirations. On the other hand, despite the concern raised regarding *quantum*, a cost order against the defendant will be justifiable for the period of the plaintiff's arrest and detention.

[40] Consequently, it is ordered as follows:

[40.1] Defendant to pay the amount of R50 000.00.

[40.2] Defendant to pay costs of this application on Scale B.

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**N NTLAMA-MAKHANYA**
**ACTING JUDGE OF THE HIGH COURT**
**MTHATHA**

***Delivery:*** *This judgment is issued by the Judge whose name appears herein, and its date of delivery is deemed 09 June 2026*.

**Date Heard:** 02, 03 and 04 February 2026

**Date Delivered:** 09 June 2026

***Appearances***:

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|---|---|
| Applicant: | Advocate Baceni |
| *Instructing Attorneys*: | ZT Gcolotela Incorporated<br>Mthatha |
| *Defendant* | Mr HN Mkhongozeli |
| Instructing Attorneys: | State Attorney<br><br>Mthatha |