



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable
Case no: 267/2025

In the matter between:

MZOLISI DENGA

PLAINTIFF

and

MINISTER OF POLICE

DEFENDANT

Neutral citation: *Denga v Minister of Police* (267/2025) [2026] ZAFSHC 323 (2 June 2026)

Coram: DEANE AJ

Heard: 10-11 March 2026; 7 May 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The time and date for hand-down is deemed to be 15h00 on 2 June 2026.

Summary: Unlawful arrest and detention – plaintiff arrested without warrant for possession of suspected stolen property – reasonable suspicion established – arrest and detention lawful – principles restated – claim dismissed.

ORDER

The plaintiff's claim is dismissed with costs.

JUDGMENT

Deane AJ

Introduction and Background

[1] This is an action for damages arising from the arrest and detention of the plaintiff, Mr Mzolisi Denga. The plaintiff alleges that on 7 July 2024, near Rouxville, he was arrested without a warrant by members of the South African Police Service (SAPS) for the alleged offence of possession of suspected stolen property. He contends that the arrest was unlawful, as the information available to the arresting officers was insufficient to found a reasonable suspicion that he had committed an offence.

[2] The plaintiff further alleges that he was detained for a period of eleven days and released on 18 July 2024. He claims damages arising from the alleged deprivation of liberty, impairment of dignity and emotional distress. The trial proceeded on the separated issue of merits only. Quantum stands over for later determination, if necessary.

[3] The defendant is the Minister of Police, cited in his official capacity. It is not in dispute that the arresting officers acted within the course and scope of their employment. The issue is whether their conduct was lawful.

[4] The defendant admits the arrest and detention but pleads that both were lawful. It relies on s 40(1) of the Criminal Procedure Act 51 of 1977 (CPA) and alleges that the arresting officers entertained a reasonable suspicion that the plaintiff had committed a Schedule 1 offence, namely possession of suspected stolen property. The central issue is whether the defendant has discharged the onus of justifying the plaintiff's arrest and detention.

[5] The plaintiff's submissions make reference to malicious prosecution. That is not the cause of action pleaded. This judgment is therefore confined to the plaintiff's claim for unlawful arrest and detention. The subsequent decision not to prosecute is considered only insofar as it bears on the factual matrix and probabilities.

[6] The plaintiff testified and called his spouse, Ms Josephina Denga. The defendant called Constable Excellent Jordaan, Constable Mandilakhe Ntsizakalo and Warrant Officer Itumeleng Masopha. Various documents contained in the police docket were admitted into evidence.

Pleadings and Issues

[7] The plaintiff pleads that he was wrongfully and unlawfully arrested without a warrant on 7 July 2024, and that the arresting officers lacked reasonable grounds to suspect that he had committed an offence. He further pleads that he was detained until 18 July 2024 and that his arrest and detention infringed his constitutional rights.

[8] The defendant admits the arrest and detention but denies unlawfulness. It pleads that the arrest was effected in terms of s 40(1) of the CPA on a reasonable suspicion of possession of suspected stolen property. Although the plea does not specify the subsection, the defendant relied on s 40(1)(b) in argument. The matter falls to be determined on that basis.

[9] The factual basis relied upon by the defendant is that the plaintiff was found in possession of a motor vehicle containing an engine and gearbox, of which could not produce proof of ownership, and that these circumstances gave rise to a reasonable suspicion of possession of stolen property.

[10] The plaintiff contends that these facts were insufficient to justify his arrest. He relies, *inter alia*, on the absence of any report of stolen property, and on the explanation he gave to the police.

[11] Against the factual background set out above, and having regard to the pleadings and the evidence presented, the issues requiring determination by this Court are the following.

- (a) whether the arrest was lawful in terms of s 40(1)(b);
- (b) whether the arresting officers formed a reasonable suspicion on objective

grounds;

- (c) whether the discretion to arrest was properly exercised;
- (d) whether the plaintiff's detention prior to his first court appearance was lawful; and
- (e) whether the defendant is liable for the plaintiff's detention after his first appearance.

Common Cause Facts

[12] I record the following facts as common cause, or as established by the admitted documentary material and not seriously disputed. Where a fact was disputed in the oral evidence, I do not treat it as common cause merely because it appears in one party's submissions.

[13] The plaintiff was arrested without a warrant on 7 July 2024. At the time, he was in control of a motor vehicle containing at least an engine and a gearbox. He was unable to produce a valid driver's licence or proof of ownership of the vehicle or the parts. The vehicle did not display a valid licence disc nor was the vehicle registered in his name.

[14] He was detained until his first court appearance on 10 July 2024 and released on bail on 18 July 2024. A criminal case was opened but the prosecution was subsequently declined.

Preliminary Issue: Late Supplementary Discovery

[15] At the commencement of the trial a preliminary issue arose concerning the admissibility and use of certain documents which were not timeously discovered in accordance with the applicable rules. The material in question had been served shortly before trial, on 5 March 2026, whereas the trial commenced on 10 March 2026. The defendant objected to the plaintiff's reliance on that material.

[16] The objection was not directed only at relevance. The defendant's objection was that the late discovery would cause prejudice. The material was not part of the agreed trial bundle. The defendant submitted that it had not had a proper opportunity to investigate the material, consider its authenticity, consult properly, obtain instructions, or identify and subpoena any witness who might be necessary to deal with it. I noted that the issue concerned alleged cellphone/SMS communication, which the plaintiff wished to rely upon in support of the evidence to be led concerning the

alleged request for money.

[17] Rule 35 of the Uniform Rules of Court regulates discovery, inspection and production of documents and tape recordings. Rule 35(4) provides that a document or tape recording not disclosed as required may not, save with the leave of the court granted on such terms as it deems appropriate, be used for any purpose at trial by the party who was obliged but failed to disclose it. Rule 35(6) similarly provides that a failure to produce a document or recording for inspection may preclude its use at trial, save where the court on good cause shown allows otherwise. The Rules therefore preserve a judicial discretion, but that discretion must be exercised with due regard to fairness, prejudice, the stage of the proceedings, and the interests of justice.

[18] I heard submissions from both parties. The plaintiff submitted, in essence, that the material was relevant and important to his case. The defendant submitted that the late introduction of the material amounted to trial by ambush and would prejudice the defendant's ability to meet the case. The defendant's concern was not merely technical. The material, if admitted, would have required consideration of its source, authenticity, context, and possible witnesses.

[19] I upheld the defendant's objection. I ruled that the supplementary discovery affidavit and the late-discovered material could not be introduced or relied upon at the trial. The reason was that the material was introduced too late, only a few days before trial, and its admission would have prejudiced the defendant's right to a fair trial. The defendant had insufficient time to investigate the veracity and context of the material, to consult on it, and to prepare a proper response. The late introduction of the material would also have risked delaying a trial that was otherwise ready to proceed.

[20] The ruling did not prevent either party from leading admissible oral evidence from witnesses on matters within their personal knowledge. It did, however, mean that the late-discovered documents themselves did not form part of the evidential material before this Court. The trial accordingly proceeded on the basis of the documents properly before Court, including the pleadings, the agreed or admitted merits bundle, the documents marked as exhibits during the trial, and the oral evidence of the witnesses.

The Evidence

[21] I now summarise the evidence led at the trial. This summary is confined to the evidence material to the issues identified above. It is not intended to repeat every question and answer.

[22] The defendant called three witnesses, being the two arresting officers and the investigating officer. The plaintiff, in turn, testified in support of his claim and called one further witness, namely his wife.

Constable Excellent Jordaan

[23] Constable Excellent Jordaan testified for the defendant. He was a member of the SAPS stationed at Goedemoed. He testified that he had approximately nine years' service and that, on 7 July 2024, he was on duty performing patrol functions together with Constable Mandilakhe Ntsizakalo. He confirmed that he was a peace officer.

[24] His evidence was that he and Constable Ntsizakalo were patrolling in the area of the R701/N6 route when they encountered a white vehicle driven by the plaintiff. He testified that the vehicle drew his attention because, according to him, it was travelling slowly, appeared not to be roadworthy, had an irregular or mixed appearance, including a Ford mark or emblem on a Mazda vehicle, and had defective rear lights.

[25] Constable Jordaan testified that the plaintiff was stopped. He approached the plaintiff and asked him where he was coming from and where he was going. According to Constable Jordaan, the plaintiff said that he was from Ezibeleni or Queenstown. His evidence was that the plaintiff gave an explanation which caused him further concern, including that he was travelling to Bloemfontein and that the items in the vehicle were to be taken to a scrapyard or sold. This latter aspect was disputed by the plaintiff.

[26] He testified that the plaintiff could not produce a valid driver's licence. He also testified that the vehicle did not have a valid licence disc. The vehicle was searched. According to Constable Jordaan, the search revealed an engine, a gearbox and a computer box. He asked the plaintiff for documents relating to the vehicle and the items found in it. The plaintiff could not produce such documents at the scene.

[27] Constable Jordaan stated that the plaintiff's explanation was not satisfactory to him. His evidence was that the combination of circumstances, namely the condition

and appearance of the vehicle, the absence of a valid driver's licence, the absence of a valid licence disc, the presence of the engine and gearbox, and the plaintiff's inability to produce documentation, caused him to suspect that the plaintiff was in possession of suspected stolen property.

[28] According to Constable Jordaan, the plaintiff was taken or escorted to the police station. He testified that the plaintiff was thereafter arrested without a warrant. The notice of rights in the merits bundle records 7 July 2024 and reflects a time of 21h25. That document was relied upon during the evidence in relation to the time at which the plaintiff was informed of his rights and placed under custody.

[29] Constable Jordaan testified that the plaintiff's constitutional rights were explained to him. He referred to the notice of rights document signed by the plaintiff. The plaintiff, in his own evidence, did not dispute his signature but disputed that the contents of the document were properly explained to him.

[30] Under cross-examination, Constable Jordaan was questioned extensively on the basis of his suspicion. He was asked whether he had any information, before the arrest, that the vehicle, engine, gearbox or other parts had been reported stolen. He was also questioned on whether the vehicle or parts had been circulated before the plaintiff was arrested. His evidence was that the relevant office or facility for verification was not available at that time, or was closed, and that he could not verify all matters before effecting the arrest.

[31] He was further questioned on whether there is any law requiring a person travelling with a vehicle or vehicle parts always to carry proof of ownership. His evidence was that, while he regarded the absence of documents as suspicious in the circumstances, he accepted in substance that there is no general rule that ownership documents must always be physically carried by a person in such circumstances.

[32] Constable Jordaan denied that the plaintiff gave him his wife's telephone number at the scene for purposes of verifying ownership. He also denied that he or any other police officer demanded money from the plaintiff or his wife for the plaintiff's release. He maintained that the arrest was based on his suspicion that the plaintiff was in possession of suspected stolen property.

[33] He was also questioned on aspects of his written arrest statement. In particular, he was questioned about matters mentioned in his oral evidence which were not recorded, or not recorded in the same way, in his statement. He explained that his statement did not contain every detail of the incident, but maintained the substance of his evidence.

Constable Mandilakhe Ntsizakalo

[34] Constable Mandilakhe Ntsizakalo also testified for the defendant. She was the police officer who accompanied Constable Jordaan on patrol on 7 July 2024. She confirmed that the two officers encountered the plaintiff's vehicle while on patrol and that the vehicle attracted their attention. Her evidence was that the vehicle appeared irregular or 'patch-patch', had different identifying features or logos, and appeared not to be roadworthy. She testified that the vehicle did not have a valid licence disc and that the plaintiff could not produce a valid driver's licence. She also stated that an engine, gearbox and computer box were found in the vehicle.

[35] Constable Ntsizakalo testified that the plaintiff was asked to provide proof of ownership of the items found in the vehicle but could not do so. She further testified that the plaintiff was asked about the destination and purpose of transporting the items. Her evidence was broadly consistent with Constable Jordaan's version that the plaintiff's explanation was not accepted as satisfactory by the police at the scene. She confirmed that the plaintiff was arrested for possession of suspected stolen property. Her written statement, forming part of the merits bundle, records that the plaintiff was held under arrest for possession of suspected stolen property and refers to the engine, gearbox and computer box.

[36] Under cross-examination, Constable Ntsizakalo was questioned on whether any circulation or verification was done before the arrest, who performed it, and what information was obtained. She was also questioned on whether this important detail appeared in her written statement. Her evidence was that an attempt was made to verify or circulate the vehicle or its particulars, but the content, timing and extent of such verification were challenged in cross-examination.

[37] She denied that the plaintiff gave the police his wife's telephone number at the scene. She was confronted with the plaintiff's version that he had given the number so

that ownership could be verified. She maintained that the plaintiff had not done so at the scene.

[38] Constable Ntsizakalo was also questioned on the date on which her statement was made, completed and commissioned. She accepted that the statement was not completed at the scene. She was further questioned about omissions from the statement and about matters that appeared in her oral evidence but were not expressly recorded in the statement.

Warrant Officer Itumeleng Masopha

[39] Warrant Officer Itumeleng Masopha testified as the investigating officer. He was not present at the roadside encounter and did not participate in the arrest. His involvement commenced after the docket had been opened and allocated to him. His evidence was that the docket related to possession of suspected stolen property, namely the vehicle parts found with the plaintiff. He testified that he received or was allocated the docket after the arrest. He made enquiries into the vehicle and the items found in it. He referred to the vehicle information and eNatis material, which reflected that the vehicle was not registered in the plaintiff's name but in the name of Mr Ndlovu.

[40] His evidence was that he attempted to verify the ownership position and to trace Mr Ndlovu. He was unable to obtain confirmation from Mr Ndlovu. He testified that the plaintiff had explained that he had bought or obtained the vehicle from Mr Ndlovu, but that the change of ownership had not yet been effected.

[41] Warrant Officer Masopha also testified that the plaintiff provided information about his residential address. The evidence reflects that the plaintiff was associated with Pretoria, where he resided with his wife, but that Queenstown or Ezibeleni also featured in the information provided to the police. He was questioned on the extent to which any perceived uncertainty regarding the plaintiff's address required verification.

[42] He confirmed that the plaintiff first appeared in court on 10 July 2024. The investigation diary records the further steps considered or required after the first appearance, including the filing of a bail profile, address verification, and enquiries relating to the owner reflected on the vehicle documents.

[43] Warrant Officer Masopha testified that the plaintiff appeared again on 15 July

2024 and that bail was fixed in the amount of R2 000.00. The bail receipt in the admitted bundle records payment of bail on 18 July 2024. The plaintiff was released after bail was paid.

[44] Under cross-examination, Warrant Officer Masopha was questioned on whether there was evidence that the vehicle, engine, gearbox or computer box had in fact been reported stolen. He was also questioned on the time taken to investigate the matter, the decision to oppose or not oppose bail, and the plaintiff's continued detention after the arrest. He confirmed that the plaintiff was not brought before court on Monday 8 July 2024 or Tuesday 9 July 2024. He was questioned on whether there was any reason why the plaintiff could not have been brought before court earlier. No evidence was led through him establishing court availability or non-availability on those days.

[45] The investigation diary later records that the vehicle had never been reported stolen, that the vehicle was registered in the name of Mr Ndlovu, that Mr Ndlovu could not be traced, and that the explanation furnished by the accused would be reasonably possibly true. The diary also records that prosecution was refused on the basis that there were no prospects of success.

[46] Those later entries were canvassed in evidence. They do not, at this stage of the judgment, constitute a finding on the lawfulness of the arrest at the time it was effected. They are recorded here because they formed part of the admitted record and were relied upon by the parties in relation to the investigation, detention and probabilities.

The Plaintiff – Mr Mzolisi Denga

[47] The plaintiff testified in support of his claim. He stated that he resides in Mamelodi, Pretoria, with his wife and family. His evidence was that, on 7 July 2024, he was travelling from Ezibeleni or Queenstown towards Pretoria. He said he had gone to fetch motor vehicle parts, including an engine and gearbox.

[48] According to the plaintiff, his vehicle experienced mechanical difficulty near Aliwal North or in the general area where the police encountered him. He testified that he had stopped or was at the side of the road when the police arrived. This aspect was disputed by the police witnesses, who testified that the vehicle was moving slowly

when they first noticed it.

[49] The plaintiff accepted that he did not have a valid driver's licence with him and that the vehicle did not have a valid licence disc. He also accepted that he did not have ownership documents for the vehicle or the parts physically with him at the scene. The plaintiff's evidence was that the vehicle and parts were not stolen. He testified that the vehicle had been obtained from Mr Ndlovu and that ownership had not yet been transferred. He further testified that the documents relating to the vehicle or parts were with his wife in Pretoria. His written statement in the docket records that he told the police that his wife had the proof relating to the vehicle parts.

[50] The plaintiff testified that he gave the police his wife's telephone number so that the ownership position could be verified. He said the police could have contacted his wife, who had access to the relevant documents. The police witnesses denied that he gave the number at the scene.

[51] The plaintiff denied that he told the police that he was taking the parts to a scrapyards in Bloemfontein to sell them. His evidence was that the parts were being taken to Pretoria, where he intended to deal with them further. The precise purpose for transporting the parts, and whether any later sale was contemplated, were matters canvassed in cross-examination.

[52] The plaintiff testified that he was taken to the police station and detained. He signed documents at the police station, including the notice of rights, but testified that the contents were not properly explained to him. He said he signed because he was under arrest and did not fully understand the document. He confirmed that he was issued with a traffic-related fine or notice arising from the absence of a valid driver's licence. He maintained, however, that the traffic issue did not justify arrest and detention for possession of suspected stolen property.

[53] The plaintiff testified that he first appeared in court on 10 July 2024. He appeared again on 15 July 2024, when bail was fixed. He was unable to secure his release until bail was paid on 18 July 2024. The bail receipt in the merits bundle confirms payment on 18 July 2024.

[54] Under cross-examination, the plaintiff accepted that he was driving without a

valid driver's licence, that the vehicle was unlicensed, and that he did not have the ownership documents with him. He was questioned on why he drove the vehicle in those circumstances and why he had not carried documents relating to the vehicle and parts. He was also cross-examined on whether the vehicle had in fact broken down or was still capable of being driven, on the addresses provided to the police, on the ownership of the vehicle, and on his version that he gave his wife's telephone number to the police. He maintained that he had explained himself to the police and that his explanation could have been verified.

Ms Josephina Denga

[55] Ms Josephina Denga, the plaintiff's wife, testified for the plaintiff. She confirmed that she and the plaintiff reside together in Mamelodi, Pretoria. Her evidence was that the plaintiff had travelled to Ezibeleni or Queenstown and was on his way back when the incident occurred.

[56] She testified that the plaintiff contacted her on the evening of 7 July 2024 and told her that the police had stopped or arrested him. She said she spoke to a police officer. She could not identify the officer by name. She understood from the communication with the police that money was required for the plaintiff to be released. Her evidence was that she did not have the money. The alleged request for money was disputed by the defendant's witnesses.

[57] She also testified about the documents relating to the vehicle or parts. Her evidence was that documents were at home or within her reach, but that she was not able to transmit them immediately. The timing of any request for documents, whether documents were requested on 7 July 2024 or later, and whether she had data to send them electronically, were explored in cross-examination.

[58] Under cross-examination, Ms Denga was questioned on whether the police asked her about ownership documents or only about money; whether the officer who spoke to her was male or female; whether she could identify the officer; why no complaint had been laid about the alleged request for money; and when she obtained or sent any documents.

[59] Her evidence remained that she had spoken to someone from the police, that money was mentioned in relation to the plaintiff's release, and that she did not have

the money. She was unable to identify the officer concerned with certainty.

Legal Principles

[60] I now turn to the legal principles applicable to the pleaded claim for unlawful arrest and detention. The plaintiff's claim is one for unlawful arrest and detention. An arrest without a warrant, followed by detention, constitutes an interference with personal liberty and is prima facie wrongful. Once the arrest and detention are admitted or proved, the defendant bears the onus of justifying the deprivation of liberty. This principle was stated in *Minister of Law and Order and Others v Hurley and Another*,¹ and has been affirmed in later constitutional and appellate authority, including *Zealand v Minister of Justice and Constitutional Development and Another*,² and *Minister of Police v Gqamane*³ (*Gqamane*).

[61] Section 12(1)(a) of the Constitution of the Republic of South Africa guarantees everyone the right to freedom and security of the person, including the right not to be deprived of freedom arbitrarily or without just cause. Section 35(1)(d) provides that every arrested person has the right to be brought before a court as soon as reasonably possible, but not later than 48 hours after the arrest, or the end of the first court day after the expiry of the 48 hours if that period expires outside ordinary court hours or on a day which is not an ordinary court day.

[62] The defendant pleaded that the plaintiff was lawfully arrested in terms of s 40(1) of the CPA, without identifying a specific subsection. In argument, reliance was placed on s 40(1)(b). The matter falls to be determined on that basis, as that is the case which the plaintiff was called upon to meet.

[63] While the factual basis of the arrest concerned possession of property suspected to be stolen, a scenario often associated with s 40(1)(e), the court is confined to the pleaded and argued justification. It is impermissible to uphold an arrest on a statutory basis not relied upon by the defendant, unless that basis was fully canvassed at trial.

¹ *Minister of Law and Order and Others v Hurley and Another* 1986 (3) SA 568 (A); [1986] 2 All SA 428 (A).

² *Zealand v Minister of Justice and Constitutional Development and Another* [2008] ZACC 3; 2008 (4) SA 458 (CC); 2008 (2) SACR 1 (CC); 2008 (6) BCLR 601 (CC).

³ *Minister of Police v Gqamane* [2023] ZASCA 61; 2023 (2) SACR 427 (SCA).

[64] The importance of deciding cases within the bounds of the pleadings was emphasised in *Gqamane*. The present matter must therefore be determined with reference to s 40(1)(b).

[65] The jurisdictional facts for a warrantless arrest under s 40(1)(b) are well settled. In *Duncan v Minister of Law and Order*⁴ (*Duncan*), the Appellate Division held that the arrestor must be a peace officer; the arrestor must entertain a suspicion; the suspicion must be that the arrestee committed an offence referred to in Schedule 1; and the suspicion must rest on reasonable grounds. These requirements have been restated in subsequent authority, including *Biyela v Minister of Police*⁵ (*Biyela*).

[66] The concept of suspicion must not be confused with certainty. Suspicion, in its ordinary meaning, involves conjecture or surmise where proof is lacking. A police officer need not be satisfied that there is sufficient evidence to convict, or even evidence sufficient to establish a prima facie case, before effecting an arrest under s 40(1)(b). Suspicion often arises at or near the starting point of an investigation. The statutory question is whether the suspicion was reasonable, not whether guilt was capable of proof at that stage.

[67] The enquiry has both subjective and objective components. The arresting officer must actually have entertained the suspicion, but that suspicion must also be objectively sustainable. The issue is not whether the information available to the arresting officer would necessarily be admissible in criminal proceedings, but whether the information was sufficient to cause a reasonable person in the position of the arresting officer to suspect that the arrestee had committed the relevant offence.

[68] The threshold is low, but it is not without content. In *Biyela*, the Supreme Court of Appeal (SCA) held that a reasonable suspicion must be more than a hunch or an unparticularised suspicion. It must be based on specific and articulable facts or information. The suspicion must not be fanciful, far-fetched, arbitrary, misguided or patently mistaken. It must rest on credible and trustworthy information, assessed objectively in the context confronting the arresting officer at the time.⁶

⁴ *Duncan v Minister of Law and Order* 1986 (2) SA 805 (A).

⁵ *Biyela v Minister of Police* [2022] ZASCA 36; 2023 (1) SACR 235 (SCA).

⁶ *Ibid* paras 34-35.

[69] The well-known formulation in *Mabona and Another v Minister of Law and Order and Others*⁷ (*Mabona*) remains instructive. A reasonable person, appreciating that s 40 authorises a drastic invasion of liberty, will assess the quality of the information critically and will not accept it lightly where it can reasonably be checked. The suspicion need not amount to certainty, but it must be based on solid grounds.

[70] Whether reasonable suspicion existed must be determined with reference to the facts of each case. The Court must consider the nature of the alleged offence, the elements of that offence, the source and quality of the information relied upon, the facts known to the arresting officer, and the arrestee's explanation, if one was given. An exculpatory explanation does not automatically defeat a reasonable suspicion. However, where such an explanation is specific, plausible and reasonably capable of prompt verification, a failure to consider or verify it may be relevant to whether the suspicion was objectively reasonable. This is particularly so where the suspect furnishes an explanation that is not inherently improbable and which is reasonably capable of prompt verification.

[71] The offence repeatedly referred to in the evidence and documents is possession of suspected stolen property. Section 36 of the General Law Amendment Act 62 of 1955 provides that a person who is found in possession of goods, other than stock or produce, in regard to which there is a reasonable suspicion that they have been stolen, and who is unable to give a satisfactory account of such possession, is guilty of an offence and liable on conviction to the penalties which may be imposed on a conviction of theft.

[72] In the present context, therefore, the facts relevant to the reasonableness of the suspicion include whether the plaintiff was found in possession of the vehicle parts, whether the surrounding circumstances gave rise to a reasonable suspicion that those items were stolen or dishonestly obtained, and whether the plaintiff gave a satisfactory account of his possession of them. The court must consider those matters as they appeared at the time of arrest, and not with the benefit of hindsight.

[73] The plaintiff's inability to produce ownership documents at the roadside is a relevant fact, but it is not decisive on its own. There is no general principle that a

⁷ *Mabona and Another v Minister of Law and Order and Others* 1988 (2) SA 654 (SE).

person who is unable, at the roadside, to produce documents proving ownership of a vehicle or vehicle parts is for that reason alone reasonably suspected of committing a Schedule 1 offence. Conversely, police officers are not required to accept an explanation at face value where the objective circumstances reasonably call for further enquiry.

[74] The traffic-related matters, including the absence of a valid driver's licence and the absence of a valid licence disc, may form part of the surrounding circumstances. They do not, without more, establish a reasonable suspicion that the vehicle, engine or gearbox were stolen. Their relevance lies in whether, together with all other facts known to the arresting officer, they contributed to a suspicion that was objectively sustainable.

[75] The legality of the arrest must therefore be assessed by considering the totality of the information available to the arresting officer at the time, including the condition of the vehicle, the absence of documentation, the presence of the engine and gearbox, the plaintiff's explanation, the ability or inability to verify that explanation, and whether any circulation or enquiry revealed that the vehicle or parts had been reported stolen.

[76] Once the jurisdictional facts for an arrest under s 40(1)(b) are established, the arresting officer has a discretion whether to arrest. In *Minister of Safety and Security v Sekhoto and Another*⁸ (*Sekhoto*), the SCA held that it is not an additional jurisdictional requirement that the arresting officer must first consider whether a summons or written notice would secure the suspect's attendance in court.

[77] That does not mean that the discretion to arrest is unfettered. It remains a public power. It must be exercised rationally, in good faith, for a proper purpose, and with due regard to the facts known to the arresting officer. A court should not interfere merely because, with hindsight, another course may have appeared preferable. The standard is not perfection, nor is it the optimum decision. However, if the discretion is exercised arbitrarily, for an ulterior purpose, or without proper regard to the facts, the arrest may still be unlawful.

⁸ *Minister of Safety and Security v Sekhoto and Another* [2010] ZASCA 141; 2011 (1) SACR 315 (SCA); 2011 (5) SA 367 (SCA); 2011 (2) All SA 157 (SCA).

[78] The distinction between jurisdictional facts and discretion must be maintained. The defendant bears the onus of proving the jurisdictional facts necessary to justify a warrantless arrest. If those facts are established, and the plaintiff contends that the arrest was nevertheless unlawful because the discretion was exercised improperly, irrationally or for an ulterior purpose, that issue must be considered to the extent that it was pleaded or fully canvassed at trial. The pleadings and the issues actually ventilated at trial remain important.

[79] The later refusal to prosecute, withdrawal of charges, acquittal, or issuing of a *nolle prosequi* certificate does not, by itself, retrospectively render an arrest unlawful. The lawfulness of the arrest is determined primarily with reference to the facts known, or reasonably capable of being known, at the time of arrest. The later refusal to prosecute may nevertheless be relevant to the probabilities, the quality of the investigation, and the lawfulness of any continued detention.

[80] The plaintiff's heads of argument contain references to malicious prosecution. The particulars of claim, however, plead unlawful arrest and detention. No amendment extending the cause of action to malicious prosecution is before this Court. This judgment is accordingly confined to the pleaded claim. The refusal to prosecute is considered only insofar as it bears on the lawfulness of the arrest and detention, the investigation, and the probabilities.

[81] The legality of detention must be considered separately from the legality of the arrest. A lawful arrest does not automatically render all subsequent detention lawful. Conversely, if the arrest is unlawful, the detention flowing from it will ordinarily also be unlawful, subject to questions of causation and the effect of any intervening court order.

[82] Section 50(1)(c) of the CPA requires that an arrested person who is not released be brought before a lower court as soon as reasonably possible, but not later than 48 hours after arrest. Section 50(1)(d) provides that, where the 48-hour period expires outside ordinary court hours or on a day which is not an ordinary court day, the arrested person must be brought before court not later than the end of the first court day. Ordinary court hours are 09h00 to 16h00 on a court day.

[83] The phrase 'as soon as reasonably possible' is important. The 48-hour period

is an outer limit. It does not give the police an automatic entitlement to detain a person for the full period if the person can reasonably be brought before court earlier. This was emphasised in *Mashilo and Another v Prinsloo*⁹ (*Mashilo*), where the SCA considered the proper application of s 50 and the obligation to bring an arrested person before court as soon as reasonably possible.

[84] Detention after a first court appearance involves questions of factual and legal causation. In *De Klerk v Minister of Police*¹⁰ (*De Klerk*), the Constitutional Court (CC) held that the Minister may be liable for detention following an unlawful arrest, including detention after first appearance, where the unlawful arrest remains sufficiently connected to the later deprivation of liberty. In *Mahlangu and Another v Minister of Police*¹¹ (*Mahlangu*), the CC confirmed that police conduct may ground liability for post-appearance detention where such conduct materially contributes to the continued deprivation of liberty.

[85] The same approach is consistent with *Minister of Police and Another v Du Plessis*,¹² where the SCA held that justification for detention after arrest and before first appearance continues to rest on the police, and that detention may become unlawful where facts emerge which show that continued detention is no longer justified.

[86] The existence of a court remand order does not automatically immunise the police from liability for post-appearance detention. Equally, it does not automatically render the police liable for the whole period of detention. The Court must consider what caused the continued detention, what information was placed before the prosecutor and court, whether material information was withheld, whether the investigation was conducted reasonably, and whether any intervening court order broke the chain of causation.

[87] Finally, the factual disputes must be resolved by considering the credibility of the witnesses, their reliability, and the probabilities. The correct approach is that stated

⁹ *Mashilo and Another v Prinsloo* [2012] ZASCA 146; 2013 (2) SACR 648 (SCA).

¹⁰ *De Klerk v Minister of Police* [2019] ZACC 32; 2019 (12) BCLR 1425 (CC); 2020 (1) SACR 1 (CC); 2021 (4) SA 585 (CC).

¹¹ *Mahlangu and Another v Minister of Police* [2021] ZACC 10; 2021 (7) BCLR 698 (CC); 2021 (2) SACR 595 (CC).

¹² *Minister of Police and Another v Du Plessis* [2013] ZASCA 119; 2014 (1) SACR 217 (SCA).

in *Stellenbosch Farmers' Winery Group Ltd and Another v Martell et Cie SA and Others*¹³ (*Stellenbosch Farmers' Winery*). The Court must evaluate the witnesses' evidence in context, distinguish material contradictions from immaterial discrepancies, assess reliability by reference to opportunity for observation and recall, and then consider whether the party bearing the onus has discharged it on a balance of probabilities.

[88] In the present matter, the defendant bears the onus of justifying the warrantless arrest and detention. The plaintiff does not bear the onus of proving the absence of reasonable suspicion once arrest and detention are established. The plaintiff's evidence and that of his wife nevertheless remain relevant to the factual disputes, the alleged explanation given at the scene, the alleged opportunity for verification, and the probabilities.

Evaluation of Evidence

[89] I now turn to evaluate the evidence against these principles. The factual disputes must be resolved in accordance with the approach in *Stellenbosch Farmers' Winery*. The Court must consider the credibility of the witnesses, their reliability, and the probabilities. Credibility findings must be made with reference to the evidence as a whole, including internal consistency, external consistency with objective facts, concessions, contradictions, and the probabilities.

[90] In applying that approach, it is important not to lose sight of the onus. The plaintiff was arrested without a warrant. The defendant therefore bears the onus of justifying the arrest. The defendant's case is that the arrest was effected under s 40(1) of the Criminal Procedure Act 51 of 1977 on reasonable suspicion relating to possession of suspected stolen property. The defendant's plea does not identify the subsection of s 40(1), but the defendant's heads rely on s 40(1)(b). The factual basis pleaded and ventilated at trial was, throughout, possession of suspected stolen property.

[91] The jurisdictional facts for a warrantless arrest under s 40(1)(b), as set out in *Duncan*, are that the arrestor must be a peace officer, must entertain a suspicion, the

¹³ *Stellenbosch Farmers' Winery Group Ltd and Another v Martell et Cie SA and Others* 2003 (1) SA 11 (SCA).

suspicion must relate to a Schedule 1 offence, and the suspicion must rest on reasonable grounds. The SCA restated this approach in *Biyela*.

[92] The test is not whether the plaintiff was guilty. It is also not whether, at the time of arrest, the police had sufficient evidence to secure a conviction or even to prove a prima facie case. The question is whether, on the facts known to the arresting officer at the time, viewed objectively, a reasonable person in his position could have suspected that the plaintiff had committed the offence relied upon. Suspicion is not certainty. But it must be based on specific and articulable facts, not on a vague hunch. That is the balance required by the cases of *Mabona* and *Biyela*.

Credibility and reliability of the witnesses

[93] The two material witnesses for the defendant on the arrest were Constable Excellent Jordaan and Constable Mandilakhe Ntsizakalo. Both were subjected to extensive cross-examination. I did not gain the impression that either witness deliberately fabricated the essential circumstances giving rise to the police intervention. Their evidence was consistent on the material features of the encounter: the plaintiff was found in control of a vehicle on a public road; the vehicle appeared irregular or not roadworthy; the plaintiff did not have a valid driver's licence; the vehicle did not display a valid licence disc; an engine and gearbox were found in the vehicle; and the plaintiff could not produce proof of ownership of the vehicle or parts at the scene.

[94] There were discrepancies and omissions in the evidence of the two arresting officers. These included the precise detail of the vehicle's condition, whether and when any circulation or verification was attempted, the reference to a computer box, and aspects of the plaintiff's alleged destination or purpose. Their written statements were also not comprehensive. Those features require caution. They do not, however, in my view, destroy the essential reliability of their evidence on the facts which founded the suspicion.

[95] The material facts on which the defendant relies were not dependent only on the say-so of the police witnesses. The plaintiff himself accepted that he had no valid driver's licence, that the vehicle was not properly licensed, and that he had no ownership documents with him at the scene. The documentary material also confirms

the existence of the traffic-related notice, the notice of rights, the later bail documentation, and the vehicle documentation reflecting that the registered owner was Mr Ndlovu.

[96] I accept the plaintiff's evidence that he had an explanation for his possession of the vehicle and the parts. I also accept that he did not attempt to deny the obvious difficulties in his case. He conceded, properly, that he was driving without a valid driver's licence, that the vehicle was unlicensed, and that he did not have the ownership documents with him. These concessions lend a measure of credibility to his evidence.

[97] The fact that the plaintiff gave an explanation does not, however, answer the legal question. An explanation may be honest and may later prove to be reasonably possibly true, while the arrest at the earlier point remains lawful. The question is not whether the plaintiff's explanation eventually defeated a prosecution. The question is whether, at the time of arrest, the objective facts entitled the arresting officer to form a reasonable suspicion.

[98] The plaintiff's version also contained features which explain why the police did not have to accept his explanation at face value. The vehicle was not registered in his name. He did not have documents at the roadside. He was transporting an engine and gearbox. The vehicle was, on all versions, problematic: at least unlicensed, and on the police version, irregular in appearance. Even on the plaintiff's own evidence, there was uncertainty requiring verification. These features do not prove guilt. They do, however, support the objective reasonableness of the police concern.

[99] I distinguish the plaintiff's evidence from that of his wife, Ms Josephina Denga. I am prepared to accept her evidence only to a limited extent: that she is the plaintiff's wife, that she resided with him in Pretoria, and that there was some communication concerning the plaintiff after he had been stopped or arrested. Beyond that, her evidence was unsatisfactory.

[100] In particular, I do not accept Ms Denga's evidence that a police officer demanded money for the plaintiff's release. She could not identify the police officer. Her evidence was unclear as to whether the police asked for money, documents, or both. Her answers shifted during cross-examination, especially regarding when

documents were requested and whether she had data to send them. There was no independent documentary proof of the alleged demand, no complaint lodged at the time was proved, and the allegation was not necessary to explain the arrest.

[101] I therefore place little reliance on Ms Denga's evidence on the alleged demand for money or on the precise content of any discussion with a police officer. That finding does not mean that the plaintiff's evidence must be rejected in its entirety. It simply means that the wife's evidence does not materially assist the plaintiff on the central question of whether the arresting officer had a reasonable suspicion.

[102] Warrant Officer Masopha, as investigating officer, was not present when the plaintiff was stopped or arrested. His evidence, and the investigation diary, are therefore of limited relevance to the arresting officer's state of mind at the time of arrest. They are relevant to the subsequent investigation and to the later refusal to prosecute. The later entries indicating that the vehicle had not been reported stolen and that the plaintiff's explanation was reasonably possibly true do not retrospectively render the arrest unlawful.

Whether the suspicion was reasonable

[103] I turn then to the legal question. The facts must not be viewed individually and in isolation. The proper approach is cumulative. A defective vehicle alone may not justify an arrest. Driving without a licence alone may not justify an arrest for suspected stolen property. Transporting an engine and gearbox alone may not necessarily justify such an arrest. The absence of documents alone may also be insufficient. But the cumulative effect of these facts may cross the threshold of reasonable suspicion.

[104] In this case the plaintiff was encountered at night on a public road. The vehicle drew the attention of the police because it appeared irregular, including the evidence of mixed or inconsistent identifying features, and appeared not to be roadworthy. The plaintiff had no valid driver's licence. The vehicle had no valid licence disc. The vehicle contained an engine and gearbox. The plaintiff had no documents with him to prove ownership of either the vehicle or the parts.

[105] These were not vague or speculative considerations. They were specific and articulable facts. They provided an objective foundation for the suspicion. This distinguishes the matter from a case where a person is arrested merely because an

officer had a generalised feeling that something was wrong.

[106] The plaintiff's explanation was that the documents were with his wife in Pretoria and that the vehicle and parts were lawfully in his possession. That explanation was relevant and had to be considered. However, at the time of the encounter it was not supported by documents. The police were not required to accept it at face value. The reasonable-suspicion enquiry does not require police officers to complete the whole investigation before an arrest can be lawful.

[107] The subsequent documentary material reflecting that the vehicle was registered in Mr Ndlovu's name is not used to justify the arrest if that information was only obtained after the arrest. The lawfulness of the arrest must be assessed on what was known at the time. The later registration material is relevant only in a limited sense: it confirms that the plaintiff's claim of ownership was a matter which objectively required verification and was not a matter the police were obliged simply to accept.

[108] The plaintiff emphasised that the vehicle, engine and gearbox were never shown to have been stolen. That submission is correct as far as the later investigation is concerned. However, it does not determine the lawfulness of the arrest. The *Biyela* case makes clear that the issue is not ultimate proof, but the existence of a reasonable suspicion at the time. A later failure to prosecute does not, without more, demonstrate that the initial suspicion was unreasonable.

[109] The plaintiff also argued that the police failed to verify his explanation before arresting him. There may be cases where the information is so tenuous, conflicting or readily verifiable that a failure to make further enquiries renders the suspicion unreasonable. This is not such a case. The arresting officers were confronted with an irregular set of facts on the roadside at night, involving an unlicensed driver, an unlicensed vehicle, and major vehicle components being transported without documents. The law did not require them to eliminate all innocent explanations before arrest.

[110] In my view, the facts known to Constable Jordaan at the time were sufficient to cause a reasonable person in his position to suspect that the plaintiff was in possession of suspected stolen property or property dishonestly obtained. That suspicion was not certainty. It was also not proof. But it was a reasonable suspicion

for purposes of s 40.

[111] I, accordingly, find that the defendant established the jurisdictional facts for a warrantless arrest. Constable Jordaan was a peace officer. He entertained a suspicion. The suspicion related to the offence relied upon by the defendant, namely possession of suspected stolen property. The suspicion rested on reasonable grounds.

The exercise of discretion

[112] The next question is whether the arresting officer's discretion was exercised unlawfully. The existence of jurisdictional facts does not mean that the arresting officer was compelled to arrest. The discretion must still be exercised rationally and for a proper purpose. However, *Sekhoto* makes clear that it is not an additional jurisdictional requirement that the officer first consider whether a summons, written notice, or less invasive means would suffice. The SCA held that the purpose of arrest is to bring the suspect before court, and rejected the addition of a 'fifth jurisdictional fact'.¹⁴

[113] The plaintiff's criticism is, in substance, that the police should have accepted his explanation, contacted his wife, or continued verification before arresting him. Those were possible investigative steps. However, the existence of possible further steps does not itself establish that the arresting officer acted irrationally or for an improper purpose.

[114] I do not find that the arrest was effected for an ulterior purpose. I have already declined to accept Ms Denga's evidence about an alleged demand for money. No other credible basis was established for finding that Constable Jordaan arrested the plaintiff maliciously, in bad faith, or for a purpose other than bringing him before the criminal justice process.

[115] On the facts, the arresting officer was faced with a set of circumstances that reasonably suggested possible criminality and required investigation through the criminal process. His decision to arrest fell within the range of rational decisions available to him. A court must guard against imposing a standard of perfection or judging the officer with the benefit of hindsight.

¹⁴ Footnote 8 para 52.

[116] I therefore find that the discretion to arrest was not shown to have been exercised arbitrarily, irrationally, *mala fide* or for an improper purpose.

[117] The plaintiff's eventual explanation, the later inability to trace Mr Ndlovu, and the subsequent refusal to prosecute do not alter the position. The criminal case may have lacked prospects of success once further investigation had been conducted. That does not mean that the suspicion at the time of arrest was unreasonable.

[118] I accordingly find that the plaintiff's arrest on 7 July 2024 was lawful.

Detention before first appearance

[119] A finding that the arrest was lawful does not, without more, dispose of the detention issue. The plaintiff's detention must be considered separately. A lawful arrest may be followed by unlawful detention if the statutory and constitutional safeguards governing detained persons are not complied with.

[120] Section 35(1)(d) of the Constitution and s 50 of the CPA require an arrested person to be brought before court as soon as reasonably possible, but not later than 48 hours after arrest, subject to the statutory extension where the 48-hour period expires outside ordinary court hours or on a day which is not an ordinary court day. In *Mashilo*, the SCA held that the 48-hour period is an outer limit and does not entitle the police, without more, to detain a person for the full period if the person can reasonably be brought before court earlier. The standard remains that the arrested person must be brought before court as soon as reasonably possible.

[121] The starting point is the time of arrest or, at least, the time when the plaintiff was formally placed under custody. The notice of rights forming part of the admitted merits bundle records that the plaintiff was detained on 7 July 2024 for possession of suspected stolen property and reflects the time as 21h25. The arrest documentation and the evidence of Constable Jordaan also place the formal arrest on the evening of Sunday, 7 July 2024.

[122] There were references in the evidence and submissions to earlier evening times, including approximately 18h00, 19h00 and 20h30. I do not consider it necessary to determine the precise minute at which the plaintiff's freedom was first curtailed. Even if one accepts a time earlier than 21h25, the evidence still places the relevant

events on the evening of Sunday, 7 July 2024. On any of the times seriously canvassed, the 48-hour period would have expired after 16h00 on Tuesday, 9 July 2024, that is, outside ordinary court hours.

[123] On that approach, s 50(1)(d) of the Criminal Procedure Act is engaged. The effect is that the plaintiff had to be brought before a lower court not later than the end of the first court day after the expiry of the 48-hour period. That day was Wednesday, 10 July 2024. The charge sheet, docket documentation and the evidence confirm that the plaintiff first appeared in court on 10 July 2024.

[124] The plaintiff's submission that the mandatory 48-hour period had simply lapsed before his first appearance is therefore not correct as a matter of statutory computation. The plaintiff was arrested on a Sunday evening. The 48-hour period expired on Tuesday evening, outside ordinary court hours. His appearance on Wednesday, 10 July 2024, fell within the outer limit contemplated by s 50(1)(d).

[125] That conclusion does not end the enquiry. The Court must still consider whether the plaintiff was brought before court as soon as reasonably possible. In doing so, I do not rely on the defendant's submissions concerning the alleged non-availability of a magistrate or the court arrangements in Smithfield, Rouxville or elsewhere. No evidence was led to establish those arrangements. Submissions from counsel cannot replace evidence.

[126] The evidence that was led shows the following: the plaintiff was arrested late on Sunday evening; the docket was allocated to Warrant Officer Masopha after the arrest; his evidence and the investigation diary show that enquiries were made regarding the vehicle, the engine, the gearbox, the plaintiff's address and the registered owner. Lastly, it is apparent that the investigation was not complete by the time the plaintiff first appeared in court.

[127] This is not a case like *Mashilo*, where the police officer adopted the attitude that he was simply entitled to detain the arrested person for 48 hours and refused to bring him to court earlier despite a request that he do so. There is no evidence of deliberately obstructive conduct by the arresting officers or the investigating officer. Nor is there evidence that the plaintiff was detained for a purpose unrelated to bringing him before court on the charge for which he had been arrested.

[128] The reasonableness of the period must be assessed in context. The plaintiff was arrested late on a Sunday evening on a charge which, as I have found, was supported by reasonable suspicion. The following day the matter required docket allocation and preliminary investigation. The plaintiff's own explanation required verification. The identity of the registered owner, the ownership of the vehicle and parts, and the plaintiff's address were all matters requiring attention. Those matters were not fanciful; they were central to the suspicion and to the bail process.

[129] The defendant bears the onus of justifying this period of detention. On the evidence accepted above, I am satisfied that the defendant discharged that onus. The arrest occurred late on a Sunday evening; the charge concerned suspected stolen property requiring preliminary verification; the plaintiff's own explanation required enquiry into ownership, documentation, address and the registered owner; and the plaintiff was brought before court on the next court day after expiry of the 48-hour period. There is no evidence that the police adopted the view that they were entitled to hold him for the full 48 hours irrespective of circumstances, or that an earlier appearance was practically available and unreasonably withheld.

Detention after first appearance

[130] The next question concerns the plaintiff's detention after his first appearance on 10 July 2024 and until his release on 18 July 2024. This period must be approached with care. A court remand order does not automatically immunise the police from liability in every case. The CC has made clear in *De Klerk v Minister of Police* (and *Mahlangu*) that the question is one of factual and legal causation, and that police conduct may, in appropriate circumstances, ground liability for detention after a first court appearance.

[131] Those cases do not establish that the Minister is liable for every period of detention following an arrest. They require the Court to examine whether the post-appearance detention was caused, in a legally relevant sense, by unlawful police conduct. In *De Klerk*, the starting point was an unlawful arrest. In *Mahlangu*, the police misconduct included the extraction and use of a false confession. The enquiry remains fact-sensitive. In *De Klerk*, the starting point was an unlawful arrest, while in *Mahlangu* the police misconduct included the extraction and use of a false confession. The enquiry remains fact-sensitive, and turns on whether the police conduct materially

contributed to the deprivation of liberty.

[132] In the present matter, I have found that the arrest was lawful. There is also no acceptable evidence that the police placed false information before the prosecutor or the magistrate, withheld material exculpatory information, or acted in bad faith in relation to the plaintiff's first appearance or bail process.

[133] The charge sheet and investigation diary reflect that the plaintiff appeared in court on 10 July 2024 and that the matter was postponed. The investigation diary records outstanding issues relating to bail information, address verification, ownership, the registered owner, and the vehicle and parts. These were legitimate matters arising from the very explanation given by the plaintiff and from the fact that the vehicle was not registered in his name.

[134] Warrant Officer Masopha's evidence was that he was required to verify aspects of the plaintiff's address and the ownership position. The plaintiff was associated with Pretoria, but information relating to Ezibeleni or Queenstown also featured in the matter. I do not find this fatal to the plaintiff's credibility, but it explains why the investigating officer and prosecutor would require verification for purposes of bail and further investigation.

[135] The bail information form and the investigation diary do not establish that the police unlawfully opposed bail or procured a remand on false grounds. Even if the plaintiff was cooperative, and even if the case ultimately lacked prospects of success, that does not render the remand unlawful. The decision to postpone the matter and to remand the plaintiff was taken within the court process. On the evidence in this case, there is no basis to find that the remand was materially caused by unlawful police conduct.

[136] The plaintiff appeared again on 15 July 2024, when bail was fixed in the amount of R2 000.00. The bail receipt in the admitted bundle records payment of bail on 18 July 2024. The plaintiff was released after payment. There is no evidence that the police prevented payment of bail, delayed the plaintiff's release after bail was paid, or were responsible for the plaintiff not securing his release before 18 July 2024. Once bail had been fixed by the court, the plaintiff's continued detention until payment was not shown to have been caused by unlawful conduct of the defendant.

[137] I have already dealt with Ms Denga's evidence concerning an alleged demand for money. I do not accept that evidence as sufficiently reliable to found a finding that a police officer demanded money for the plaintiff's release. In any event, the amount reflected in the objective bail receipt was the bail fixed in the criminal proceedings, namely R2 000.00, paid on 18 July 2024.

[138] The later refusal to prosecute does not alter the conclusion. The investigation diary later records that the vehicle had not been reported stolen, that Mr Ndlovu could not be traced, that the plaintiff's explanation was reasonably possibly true, and that prosecution was refused because there were no prospects of success. Those later entries explain why the criminal case did not proceed. They do not retrospectively render the earlier detention unlawful.

[139] This is also not a case in which the reasonable suspicion had clearly dissipated before the first appearance, or before the remand, and the police nevertheless concealed that fact from the prosecutor or court. The very matters that required verification, ownership, address, the registered owner and the plaintiff's explanation, were still under investigation. The later inability to prove the offence does not mean that the remand was procured unlawfully.

[140] I therefore find that the evidence does not establish that the plaintiff's detention after his first appearance was caused by unlawful conduct on the part of the police. The continued detention followed from the court process, the need for further investigation and bail verification, and thereafter the fact that bail was only paid on 18 July 2024.

Conclusion on detention

[141] The plaintiff's detention from 7 July 2024 until his first appearance on 10 July 2024 complied with the statutory outer limit in s 50 and, on the evidence before this Court, was not shown to have been unreasonable or unlawfully prolonged. The plaintiff's detention after 10 July 2024 followed his appearance in court, the postponement of the matter, the bail process, and the eventual payment of bail on 18 July 2024. The plaintiff has not established, and the evidence does not show, that this period of detention was caused by unlawful conduct on the part of the police.

[142] I accordingly find that the plaintiff's detention was lawful. It follows from the

findings on the arrest and detention that the defendant has discharged the onus of justifying the deprivation of the plaintiff's liberty. The plaintiff's claim on the separated issue of merits must therefore fail.

[143] The ordinary rule is that costs follow the result. The defendant has been successful on the separated issue of merits. There is no reason to depart from the ordinary rule.

Order

[144] In the result the following order is issued:

The plaintiff's claim is dismissed with costs.



T DEANE
ACTING JUDGE OF THE HIGH COURT

Appearances

For the plaintiff:

Instructed by:

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JM Modiba Attorneys.

Pretoria

C/O Phatsoane Henney Attorneys

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F Mzilikazi

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