



**IN THE HIGH COURT OF SOUTH AFRICA  
NORTH WEST DIVISION, MAHIKENG**

**Not reportable**

Case no:1844/2021

In the matter between:

**EDUARDO LORENZO  
MUSSOHO**

**PLAINTIFF**

**and**

**MINISTER OF POLICE**

**DEFENDANT**

**Coram:** Wessels AJ

**Heard:** 28 July, 17 to 19 December 2025

**Delivered:** This judgment was handed down electronically, circulated to the parties' representatives via email, uploaded to CaseLines, and released to SAFLII. The date and time for the handing down of the judgment are deemed to be 16h00 on 22 June 2026.

Summary: Arrest — Warrantless arrest — s 40(1)(b) of the Criminal Procedure Act 51 of 1977 — Reasonable suspicion — Police personally observing suspect vehicles on several occasions prior to robbery — Same vehicles tracked via stolen cellphone coordinates — Passenger fleeing on arrest — First arrest held lawful. Detention — Lawfulness — s 35(1)(d) of the Constitution — s 50(1) of the CPA — 48-hour period expiring outside court hours on Friday evening — Obligation to bring arrestee before court by end of first court day after expiry — Obligation met — Detention held lawful — No damages.

Arrest — Second warrantless arrest — Arresting officer not testifying — Only witness being docket witness with no personal knowledge — Onus not discharged — Second arrest and overnight detention held unlawful.

Assault — Onus on plaintiff — Injuries of alleged severity not consistent with failure to seek hospital treatment — No J88 — No contemporaneous medical records — Sparse interview statement — Assault not proved on balance of probabilities — Sequelae falling away.

Damages — Quantum — Unlawful second arrest and overnight detention — R 50 000 awarded.

Costs — Divided success — Two mirroring cost orders would be impractical — Each party ordered to pay own costs.

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## JUDGMENT

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## **Wessels AJ**

### **Introduction**

[1] The plaintiff, Eduardo Lorenzo Mussoho, a Mozambican national residing at Sunrise Park, Boitekong, claims damages against the Minister of Police arising from two arrests without a warrant on 31 July 2019 and 5 August 2019, and from an alleged assault during his first arrest. He claims R 720 000 for unlawful arrest and detention and R 2 080 000 for assault and its sequelae. The defendant denies that either arrest was unlawful and denies any assault. Two special pleas were raised and withdrawn at the commencement of the trial. The matter proceeded on merits and quantum.

[2] This matter was finalised on 19 December 2025 and stood down for the filing of the written closing argument. Before the deadline for the filing of the plaintiff's written closing argument, plaintiff's counsel requested an extension (to 4 February 2026) for the filing of his closing argument due to illness. Still, plaintiff's closing argument was not forthcoming, prompting the Court to make enquiries about the whereabouts of plaintiff's written closing argument with the Registrar. Plaintiff's written closing argument was provided to the Judge's Secretary on 23 March 2026 by plaintiff's attorney. It should be noted that the court stamp appended to the plaintiff's written closing argument indicates that his heads of argument were indeed filed with the Registrar on 4 February 2026, but were not brought to the attention of the Court. Judgment was accordingly reserved on 23 March 2026.

## **The facts**

[3] On the afternoon of 31 July 2019, a Wednesday, a police patrol crew ('the patrol crew') consisting of Constables Ramatlhodi, Segone and Mokgantshang as well as Sergeant Mosethle, conducted crime-prevention patrols in and around the town of Koster in the North West Province. During the course of the afternoon on 31 July 2019, the patrol crew passed a bridge on the outskirts of Koster on several occasions and observed, each time, a white Toyota Fortuner vehicle ('the Fortuner') and a silver BMW vehicle ('the BMW') parked under the bridge. The vehicles remained parked there throughout the patrol, with occupants either standing outside or seated in the vehicles. The patrol crew recorded the vehicles' registration numbers.

[4] At approximately 18h30, the patrol crew received a report that a group of armed men had just robbed the Choppies Supermarket in Koster. Because the perpetrators' faces were concealed, no eyewitness identification of the suspects was possible. On arrival at Choppies Supermarket, community members informed the crew that the getaway vehicles were a white Toyota Fortuner and a silver BMW, matching both vehicles the patrol crew had observed under the bridge earlier in the afternoon. The patrol crew obtained location coordinates from a cellphone stolen from Choppies during the robbery and followed them in the direction of Rustenburg. Near Sunrise Park Secondary School, in the Rustenburg area, they intercepted the vehicle. As the vehicle was brought to a stop, one of its passengers fled on foot. The plaintiff and his friend, Antonio Marime ('Mr Marime'), who remained in the Fortuner, were arrested. A search revealed cash in mixed denominations on both men. The patrol crew then proceeded to Koster, where two further suspects were apprehended with the BMW.

[5] The plaintiff's version is that he spent the afternoon of 31 July 2019 at home with Mr Marime. Between 18h00 and 19h00, they drove towards Extension 13 Sunrise Park to collect a taxi belonging to Mr Marime. The plaintiff was at the time engaged in the business of transporting mine workers to and from their shifts and derived a monthly income from that activity. On the way to Extension 13, they gave a hitchhiker a lift. Shortly after dropping off the hitchhiker near a clinic, they were surrounded by police vehicles with blue lights and sirens, ordered out of the Fortuner, made to lie on the ground, and arrested. The plaintiff denies that he was in Koster on 31 July 2019.

[6] The plaintiff was arrested and detained at Boitekong Police Station from the evening of 31 July 2019. On Monday, 5 August 2019, the plaintiff was taken to the Koster Magistrate's Court. He did not appear before a judicial officer. Immediately upon his release at the court gate on 5 August 2019, the Phokeng SAPS arrested the plaintiff in connection with a separate armed robbery at Boshhoek on 30 July 2019, which also implicated a white Fortuner. He was detained overnight at Phokeng Police Station and released the following day without charge or court appearance.

[7] The plaintiff testified personally and called one witness on his behalf, namely Mr Marime. Warrant Officer Schutte, Sergeant Badirwang and Constables Ramathodi, Segone and Mokgantshang testified on behalf of the defendant.

## The first arrest

[8] The jurisdictional grounds in case of a warrantless arrest, which have their origins in s 40(1)(b) of the Criminal Procedure Act<sup>1</sup> ('CPA'), have been articulated by the Supreme Court of Appeal ('SCA') in *Minister of Safety and Security v Sekhoto and Another*<sup>2</sup> as follows:

'The four express jurisdictional facts for a defence based on s 40(1)(b) have been set out earlier but to repeat the salient wording 'a peace officer may without warrant arrest any person whom he reasonably suspects of having committed an offence referred to in Schedule 1'.

[9] Armed robbery is a Schedule 1 offence and the defendant bears the onus to justify the arrest<sup>3</sup>. A peace officer may arrest, without warrant, any person whom the officer reasonably suspects of having committed a Schedule 1 offence. Importantly, the arresting officer's suspicion must be reasonable. The plaintiff's arrest brings the reasonableness of the arresting officers in this matter into sharp focus. To that extent, it is necessary to refer to the definition of a reasonable suspicion as found in *Mabona and Another v Minister of Law and Order and Others*<sup>4</sup> which reads:

'Would a reasonable man in the second defendant's position and possessed of the same information have considered that there were good and sufficient grounds for suspecting that the plaintiffs were guilty of conspiracy to commit robbery or possession of stolen property knowing it to have been stolen? It seems to me that in evaluating his information a reasonable man would bear in mind that the section authorises drastic police action. It authorises an arrest on the strength of a suspicion and without the need to swear out a warrant, i.e., something that would otherwise be an invasion of private rights and personal liberty. The reasonable man will

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<sup>1</sup> Criminal Procedure Act 51 of 1977.

<sup>2</sup> *Minister of Safety and Security v Sekhoto and Another* [2010] ZASCA 141; 2011 (5) SA 367 (SCA).

<sup>3</sup> *Minister of Law and Order and Others v Hurley and Another* 1986 (3) SA 568 (A).

<sup>4</sup> *Mabona and Another v Minister of Law and Order and Others* 1988 (2) SA 654 (SE) at 658 E to H.

therefore analyse and assess the quality of the information at his disposal critically, and he will not accept it lightly or without checking it where it can be checked. It is only after an examination of this kind that he will allow himself to entertain a suspicion which will justify an arrest. This is not to say that the information at his disposal must be of sufficiently high quality and cogency to engender in him a conviction that the suspect is in fact guilty. The section requires suspicion but not certainty. However, the suspicion must be based upon solid grounds. Otherwise, it will be flighty or arbitrary, and not a reasonable suspicion.’

[10] The reasonable suspicion formed by the arresting officers was based on a number of facts. The arresting officers had personally and repeatedly observed the vehicle parked under the bridge on the outskirts of Koster during their patrol. After the robbery, community members confirmed that the getaway vehicles matched those the patrol crew had observed under the bridge outside Koster. The location coordinates from a cellphone stolen during the robbery led the police directly to the Fortuner, from which one occupant fled when it was stopped. Cash in mixed denominations was found on both the plaintiff and Mr Marime. The plaintiff’s version does not satisfactorily account for the fleeing passenger. On his own evidence, the hitchhiker had already been dropped off before the police stopped the Fortuner. If so, the passenger who fled is entirely unexplained. A person fleeing from a vehicle stopped by police in such circumstances is normally a compelling indicator of guilty association. This improbability in the plaintiff’s version underscores the reasonableness of the police’s suspicion at the moment of arrest. The fact that the perpetrators concealed their faces and could not be identified by eyewitnesses does not assist the plaintiff. It explains why the police had to rely on vehicle description and tracking data rather than personal identification. That reliance was reasonable in the circumstances.

[11] I am satisfied that the jurisdictional requirements of s 40(1)(b) of the CPA were met and that the discretion to arrest was properly exercised. A reasonable

officer in those circumstances would have suspected that the plaintiff had committed armed robbery. In the result I find that the first arrest was lawful.

### **The first detention**

[12] In terms of s 50(1) of the CPA and s 35(1)(d) of the Constitution of the Republic of South Africa, an arrested person must be brought before a court as soon as reasonably possible, but no later than 48 hours after the arrest. In terms of s 50(1)(d)(i) of the CPA, if the mandatory 48-hour period for bringing an arrested person before a court expires outside ordinary court hours, the timeframe is extended to accommodate the unavailability of the courts. In such instances, the arrestee must be brought before a lower court not later than the end of the first court day following the expiry of that 48-hour period.

[13] In this case, the 48-hour period expired on the evening of Friday 2 August 2019, outside court hours. The plaintiff could not have been brought before a court at that point, as Saturday and Sunday are not ordinary court days. The statutory mandate that rested on the police was therefore to bring the plaintiff before the court by the end of the first court day after expiry of the 48-hour period, being Monday, 5 August 2019, which they fulfilled. That obligation was met and the detention from 31 July to 5 August 2019, though spanning five calendar days, was therefore lawful in its entirety. I conclude that the first detention was lawful and, on that basis, gives rise to no claim for damages.

### **The second arrest and detention**

[14] Warrant Officer Makinta arrested the plaintiff, without a warrant, immediately upon his release from the Koster Magistrate's Court on 5 August 2019, in connection with the Phokeng docket. Warrant Officer Makinta has since

left the police service and was not called to testify. The only evidence regarding this arrest came from Sergeant Badirwang, who succeeded Warrant Officer Makinta as the investigating officer in the Phokeng docket (a robbery in Boshhoek wherein a similar Fortuner had been used) and had no personal knowledge of the facts leading up to the arrest. Warrant Officer Makinta's entire basis for the arrest seemed to have been the information he received that a suspect in the Phokeng docket investigation had been arrested at Koster in connection with the Choppies robbery. On that basis, he proceeded to Koster and arrested the plaintiff. I could not ascertain whether an independent investigation by Inspector Makinta led to the arrest. The defendant did not call Inspector Makinta or any witness with direct knowledge of what Inspector Makinta knew or suspected at the time of the arrest. The defendant has not discharged the onus of proving the lawfulness of the second arrest. Resultantly, I find that it was unlawful. It follows that the overnight detention at the Phokeng Police Station that followed was unlawful.

### **The assault**

[15] The plaintiff bears the onus of proving the assault on a balance of probabilities. He alleges that while being transported to Koster in the police vehicle, he was shocked with an electric baton on his lower abdomen, throttled, and suffocated with a bag placed over his head for approximately 30 minutes. He claims permanent voice damage, erectile dysfunction, psychological harm, and the breakdown of a long-term romantic relationship as sequelae.

[16] The assault claim faces several difficulties which, if taken together, are fatal. Firstly, the injuries described are severe, including electrocution burns, haematuria (blood in urine), inability to swallow, and permanent voice damage. If those injuries were of that severity, the expected response of the plaintiff on his release was to attend a hospital or casualty unit, where the injuries would have

been clinically recorded and a J88 report completed. The plaintiff did not go to the hospital. He consulted a traditional healer only two days after his release and subsequently obtained medication from a pharmacy. He only saw a urologist approximately six months after the incident, in the context of this litigation. The traditional healer is an unidentified person who left no record of any treatment, no prescription of any kind, and no corroboration that any treatment was administered to the plaintiff. The traditional healer's consultation, like the pharmacy visit, produced no documentary trail whatsoever. The plaintiff's conduct in seeking medical treatment post-arrest is irreconcilable with injuries of the severity the plaintiff alleged to have suffered.

[17] Secondly, the plaintiff was interviewed by the investigating officer on the third day of his detention. That was the natural occasion to make a formal complaint about the assault and have it recorded contemporaneously. The interview statement records only marks on the plaintiff's stomach. These marks are not described. The plaintiff's urologist's report and accompanying photograph record what appears to be a surgical scar on the plaintiff's stomach area. There was nothing in the plaintiff's evidence to differentiate this surgical scar from any other marks recorded on the plaintiff's stomach. The interview statement contains no allegation of electrocution, throttling or suffocation. This omission is not explained.

[18] Thirdly, there is no J88 report, no hospital records, and no independent clinical findings from the period of detention. The urologist's report, compiled six months after the incident, records what the plaintiff told the doctor and is not corroborated by any contemporaneous medical evidence.

[19] The interview statement records marks on the plaintiff's stomach, and Mr Marime testified that the plaintiff appeared unwell on his return from Koster.

Some degree of rough handling during the arrest is probable, notwithstanding the denials by the arresting officers. Even if rough handling occurred at the time of arrest, it falls far short of the sustained assault described in evidence. The plaintiff has not discharged the onus on a balance of probabilities. The assault claim is dismissed and the claimed sequelae naturally fall away with it.

[20] The plaintiff was not an entirely reliable witness. His explanation of his conduct after release, his failure to visit a hospital, his belated visit to a traditional healer, and his unexplained resort to a pharmacy are inconsistent with the severity of the injuries he described in Court. The plaintiff furthermore gave contradictory evidence on how the Fortuner came to a stop. In one part of his evidence, he indicated that he stopped voluntarily. When cross-examined, he said he stopped because he heard gunshots and then heard someone call out for him to stop, adding that he would not have known it was addressed to him because the windows of the Fortuner were closed. These two versions are irreconcilable and were put to him directly in cross-examination without a satisfactory explanation. The plaintiff testified that he was the sole owner of the Fortuner, but changed his version to joint or family ownership under cross-examination. The plaintiff testified that the police retained the Fortuner for approximately 10 to 11 months after his arrest and that the bank repossessed it due to arrears. He further testified that the bank manager contacted him directly regarding the outstanding instalments on the Fortuner. When it was put to him in cross-examination that this was inconsistent with his position that the Fortuner was registered in his brother's name, his answer was confused and evasive. He could not reasonably explain why a bank would contact him rather than the registered owner about arrears on a Fortuner he claimed not to own. This is not consistent with a witness who has been candid about the facts before the Court.

[21] The arresting officers were not wholly satisfactory witnesses either. There were inconsistencies between them regarding the number of people seen under the bridge at Koster and the tracking method of the stolen cell phone. These points affect their credibility but only slightly and do not displace the core of their evidence that they personally and repeatedly observed the Fortuner and the BMW before the robbery and followed a chain of information that led them to both vehicles. On the assault, where the plaintiff bore the onus, his lack of credibility is a decisive factor.

### **Quantum**

[22] There is no fixed formula for assessing damages for unlawful deprivation of liberty. The correct approach is to have regard to all the facts and to determine a quantum commensurate with the injury, reflecting the importance of the right to liberty while being subject to restraint, as was the approach followed by the SCA in *Minister of Safety and Security v Tyulu*<sup>5</sup>. The plaintiff is a person of modest means who derived a monthly income from transporting mine workers. No evidence was led on the plaintiff's particular standing, reputation or community prominence. The first arrest and the entire first period of detention were lawful. The assault claim has been dismissed. The only compensation the plaintiff is entitled to is for the unlawful second arrest and overnight detention at Phokeng on 5 to 6 August 2019.

[23] The second arrest came immediately after the plaintiff had been released following five days in custody, when he was arrested at the court gate, suggesting he was specifically targeted. The arrest lacked any independent justification, and the subsequent overnight detention violated his dignity. Before turning to the

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<sup>5</sup> *Minister of Safety and Security v Tyulu* [2009] ZASCA 55; 2009 (5) SA 85 (SCA) para 26.

quantum of each head of damage, it is necessary to address the plaintiff's expert evidence. The plaintiff provided the evidence of Dr Mokoshoa, a urologist, and Mr Faku, a clinical psychologist, by affidavit pursuant to the agreement of the parties to allow the Court to consider the expert evidence in terms of Rule 38(2). Dr Moshokoa documented erectile dysfunction, moderate lower urinary tract symptoms, and a recommended surgical intervention. Mr Faku diagnosed the plaintiff with Post-Traumatic Stress Disorder and Major Depressive Disorder of moderate to severe intensity, with significant functional impairment across social, occupational and relational domains.

[24] The difficulty, however, is causation. The plaintiff attributes his physical and psychiatric sequelae to the totality of the arrest, the alleged shock by taser, the alleged suffocation, and the detention. It is worth mentioning that the physical injuries, in particular the haematuria, the erectile dysfunction, and the urinary symptoms, are not expressly linked to the alleged assault by Dr Mokoshoa. As I have found above, the assault was not proved. As a result, the causal link upon which the urological and psychiatric damages are claimed cannot be sustained. It follows that no award can be made for the cost of cystoscopy and optic urethrotomy, ongoing urological consultations, erectile dysfunction medication, psychotherapy, or psychiatric treatment, as these flow from injuries whose cause the plaintiff failed to establish.

[25] I am careful, however, not to discard the expert evidence entirely. Mr Faku's assessment does highlight the general psychological impact that an experience of unlawful arrest and detention had upon the plaintiff. To that limited extent, I take the psychiatric evidence into account in assessing the general damages for the unlawful second period of detention as part of the broader picture of who the plaintiff is and how the proved wrongs affected him. The second arrest stands entirely on its own. It was brief and no assault accompanied it.

[26] Taking into account all the circumstances, including the plaintiff's personal circumstances, the absence of evidence of special status, the brevity of the detention, I award R 50 000.

### **Costs**

[27] The normal rule is that costs follow the result. The bulk of the trial was devoted to the lawfulness of the first arrest and first detention, and to the assault claim and its sequelae. The plaintiff failed on all of those issues. He succeeded only on the issue of the second arrest and overnight detention. In those circumstances, it would be unfair to saddle the defendant with the full costs of the trial. The plaintiff succeeded on the second arrest claim and would ordinarily be entitled to his costs on that issue. The plaintiff, however, failed on the first arrest, the first detention, and the assault claim with its sequelae, and would ordinarily have costs go against him on those issues. Two mirroring cost orders would, in practice, cancel each other out and serve no purpose other than to create unnecessary complexity in taxation. It is therefore more practical and just to order that each party pay its own costs. To that extent, each party is ordered to pay its own costs.

### **Order**

1. The defendant is ordered to pay the plaintiff R 50 000.
2. Interest on that amount runs at the prescribed rate from the date of this judgment to the date of payment.
3. Each party is ordered to pay its own costs.



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M WESSELS  
ACTING JUDGE OF THE HIGH COURT  
NORTH WEST DIVISION

**Appearances:**

For the plaintiff:	Adv M H Masilo
Instructed by:	Mogau Attorneys, Rustenburg c/o Molefakgotla Attorneys Inc, Mahikeng
For the defendant:	Adv O Y Dibetso-Bodibe
Instructed by:	Office of the State Attorney, Mahikeng