



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

CASE NO: 819 /2021

Reportable

In the matter between:

NICHOLAS MOAGI MOKOLOBATE

Plaintiff

and

MINISTER OF POLICE

First Defendant

PROVINCIAL COMMISSIONER:

Second Defendant

NORTH WEST PROVINCE

Coram: Reddy J

Heard: 18 February and 24 March 2026

Heads filed: 27 March 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives via e-mail. The date and time for hand-down is deemed to be 10h00 on 03 July 2026.

Summary: Delict – unlawful arrest and detention – defence struck out for non-compliance with Rule 35(6) – effect of strike-out on onus resting on defendant to justify deprivation of liberty – arrest and detention found unlawful – no separate basis pleaded against Second Defendant, claim against her dismissed – quantum of general damages – assessment not a mechanical per *diem* exercise – “going rate” methodology rejected – award of R380 000 made against First Defendant.

JUDGMENT

REDDY J

Introduction

- [1] This is an action for damages instituted by Mr. Nicholas Moagi Mokolobate (Mokolobate) against the Minister of Police arising from his arrest and detention by members of the South African Police Service. The claim, as pleaded, is for R1 500 000, comprising damages for unlawful arrest and detention and for the *contumelia* and emotional shock said to flow therefrom. The Minister’s defence was struck out prior to trial for non-compliance with an order of this Court, the import of which is dealt with more fully below.

Background

- [2] Mokolobate’s case, as pleaded, is that on or about 9 February 2021, and at his place of residence in Molelwane village, Mahikeng, he was arrested without a warrant by two members of the South African Police Service

known to him only as Officers Majava (referred to in the evidence as Majova) and Mmapule. Mokolobate alleges that he was thereafter paraded through the village and at two hardware stores in Mahikeng in view of the community, before being transported to and detained at the Mahikeng police station.

- [3] On 10 February 2021 Mokolobate was, on his version, charged with malicious damage to property. On 11 February 2021 Mokolobate was taken to the Mahikeng Magistrates' Court, where the matter was not enrolled. As a result, Mokolobate was returned to the police station and detained further. On 24 February 2021 Mokolobate was again taken to court, the matter was again not enrolled, and he was thereafter released. On Mokolobate's account, his detention endured for 15 days, that is, from 9 to 24 February 2021.
- [4] In his plea, the Minister admitted that Mokolobate was arrested without a warrant, but disputed that the arrest and ensuing detention were unlawful. In the alternative, it was pleaded that, were the arrest found to be unlawful, it was nonetheless justified and reasonable in the circumstances. This flowed from the conclusion that it was reasonably suspected that Mokolobate had committed an offence of malicious damage to property, an offence falling within the parameters of s 40(1) (b) of the Criminal Procedure Act 51 of 1977, (the CPA).
- [5] During the litigation process an order was granted directing that the Minister and Commissioner comply with Rule 35(6) of the Uniform Rules of Court by making available for inspection the documents and tape recordings disclosed in their discovery affidavit. The Minister and Commissioner did not comply, and their defence was, in consequence,

struck out. The effect of the strike-out is that the Minister was precluded from placing any factual version before this Court, and from leading evidence in substantiation of the justification pleaded in the alternative. What needs to be underscored is that the Minister was not, however, precluded from testing Mokolobate's evidence in cross-examination, which followed.

The trial

- [6] Given the legal position of the Minister and Commissioner, it followed that the trial was constrained to Mokolobate's case. Mokolobate's account of events was, regrettably, unclear in peripheral details. This is best illustrated in the following way. Mokolobate was uncertain of the year of his arrest, placing it in 2023. Moreover, the immediate sequel to the arrest was recounted differently from what had been pleaded. Additionally, Mokolobate testified that he was taken to view the window which he was alleged to have broken, whereas the particulars of claim allege that he was paraded through the village and at two hardware stores. Notably, Mokolobate had difficulty in calling to mind the time of the arrest.
- [7] Notwithstanding the blemishes in Mokolobate's collateral and peripheral evidence the conspectus of his evidence as regards the material facts of his claim remained intact. To this end, Mokolobate's warrantless arrest date, and duration of same are unassailable. Further, it emerged that his chronic medication, for arthritis and for his antiretroviral treatment, was not made available to him during his detention.
- [8] The central findings as regards the salient facts are corroborated by what can be extrapolated from the Minister's own written heads of argument as

part of the factual background. Towards this end, it is conceded that Mokolobate was detained at the Mahikeng Police Station from 9 February 2021 to 24 February 2021, a period of 15 days. In my view, this renders any purported discrepancies academic.

Submissions by Mokolobate

- [9] Advocate Monnahela, for Mokolobate, maintained that once the fact of arrest is established, the onus shifts to the Minister to justify both the arrest and the ensuing detention, and that this onus is not relieved by the Minister's own failure to comply with his discovery obligations. Advocate Monnahela placed reliance on *Tlhone v Minister of Police*¹ (a decision of this Division), and on *July v Minister of Police*², for the proposition that a defence which has been struck out leaves a plaintiff's version effectively unchallenged on the question of liability.
- [10] Advocate Monnahela further contended that the circumstances of the arrest and detention deserve emphasis. Firstly, the public parading of Mokolobate before the community must have been humiliating. Second, the failure to enrol his matter on two occasions notwithstanding which he was returned to custody. Thirdly the withholding of his chronic medication, are collectively aggravating features warranting a substantial award. Advocate Monnahela advanced, with reference to the comparative authorities that an award in the sum of R650 000. would be just and equitable.

Submissions by the Minister

¹ *Tlhone v Minister of Police* [2026] ZANWHC 27.

² *July v Minister of Police* [2024] ZANWHC 99.

- [11] Advocate Pompo, for the Minister, while accepting that no factual version could be placed before the Court in light of the strike-out, averred that Mokolobate was nonetheless a poor and contradictory witness. Advocate Pompo submitted that Mokolobate demonstrated a willingness to adjust his version as he proceeded, and that his evidence ought, on that account, to be approached with considerable circumspection.
- [12] Advocate Pompo posited, in the alternative, that should liability be found against the Minister, the sum of R1 500 000 originally claimed, and the sum of R650 000 contended for in argument, are exorbitant. Advocate Pompo advanced a calculation derived from a series of decisions of this Division, namely *Madueke v Minister of Police*³ (R20 000 per day), *Ngwenya v Minister of Police*⁴ (R15 000 per day), *Kala v Minister of Police*⁵, and *Molefe v Minister of Police*⁶. Grounded on these decisions, Advocate Pompo claimed that a going rate of between R15 000 and R20 000 per day of detention has been established by this Division, and that, applied to Mokolobate's 15 days in custody, a fair and reasonable award would be in the region of R300 000.

The Onus, and the Effect of the Striking Out of the Defence

The burden of proof in claims of this kind

- [13] A claim for unlawful arrest and detention does not operate on a single, undivided onus resting throughout on Mokolobate. Two distinct burdens arise, attaching to two distinct issues. The first is the burden, resting on Mokolobate as in any civil claim, of proving the fact of the interference

³ *Madueke v Minister of Police* [2022] ZANWHC 16.

⁴ *Ngwenya v Minister of Police* [2019] ZANWHC 3.

⁵ *Kala v Minister of Police* [2022] ZANWHC 39; 2022 QOD 245 (NWM).

⁶ *Molefe v Minister of Police* [2020] ZANWHC 63.

with his liberty, that is, that he was arrested and detained, and the manner and duration of that detention. The second is the burden of justifying that interference once it has been established, and that burden rests, not on Mokolobate, but on the Minister.

- [14] It is apposite, at the outset, to place the right to freedom within its proper historical and constitutional perspective. The right to be free from arbitrary deprivation of liberty is not a novel invention of our constitutional epoch. It is one of the oldest and most jealously guarded rights known to law. Its history traces to clause 39 of the Magna Carta of 1215, which postulated that no free man shall be taken, imprisoned, or deprived of his liberty save by the lawful judgment of his peers or by the law of the land. That ancient guarantee found its practical vindication in the writ of *habeas corpus*.
- [15] Roman Dutch law developed a parallel safeguard, the interdict *de homine libero exhibendo*, aimed likewise at the preservation of liberty against the arbitrary exercise of power.⁷ Over centuries of development at common law, both remedies evinced a singular principle, namely that the State bears the burden of justifying any deprivation of liberty before an independent court. A subject's detention will not be countenanced merely on the say-so of the executive or its agents. This history was extant in our own law long before 1994.
- [16] This history was, resultantly, elevated to its proper constitutional stature with the advent of the Constitution of the Republic of South Africa, 1996. Section 12(1) thereof enshrines the right to freedom and security of the

⁷ *Wood and Others v Ondangwa Tribal Authority and Another* 1975 (2) SA 294 (A) at 310G; *National Commissioner of Police v Coetzee* 2013 (1) SACR 358 (SCA). See also Dig 43.29; Voet 43.29; and S Kentridge 'Habeas Corpus Procedure in South Africa' (1962) 79 SALJ 283.

person, including the right not to be deprived of freedom arbitrarily or without just cause. Section 35 extends particular protection to arrested, detained and accused persons. It is against this established historical jurisprudence, from Magna Carta and the interdict *de homine libero exhibendo*, through *habeas corpus*, to its culmination in section 12(1), that the common law rule falls to be understood, namely that an interference with physical liberty is *prima facie* unlawful. This is not a mere technical incident of pleading or evidence. Conclusively, it is the modern expression of a right whose vindication has occupied courts for eight centuries. To this end, this Court is enjoined by section 39(2) of the Constitution to develop that common law, where necessary, so as to promote the spirit, purport and objects of the Bill of Rights.⁸

[17] It is trite that every interference with physical liberty is *prima facie* unlawful. The following was postulated in *Tlhone*⁹:

‘It is trite law that every interference with physical liberty is *prima facie* unlawful. Once a plaintiff establishes the fact of arrest, the onus shifts to the defendant to justify the lawfulness of that arrest...’

[18] The shift described in *Tlhone*¹⁰ is not a mere evidentiary or tactical burden which moves back and forth as the trial unfolds. It is a true onus, in the full sense of that term. It follows that once the fact of an arrest is established; the law presumes the deprivation of liberty to be unlawful. Consequently, the Minister bears both the duty to adduce evidence and the risk of failing to persuade the Court that the deprivation was, in fact, justified.

⁸ *Minister of Law and Order v Hurley* 1986 (3) SA 568 (A) at 589D-F; *Zealand v Minister of Justice and Constitutional Development* 2008 (4) SA 458 (CC) paras 24-25; *De Lange v Smuts NO* 1998 (3) SA 785 (CC) paras 18-22; and *Bernstein v Bester NO* 1996 (2) SA 751 (CC) paras 145-147.

⁹ *Tlhone* Op cit fn 1 para 14.

¹⁰ *Ibid* Op cit fn 1.

[19] It follows axiomatically that a defendant who fails to adduce evidence on the question of justification has, as a matter of law, failed to discharge that onus. What stands out is that the enquiry does not default, in the absence of such evidence, to an assessing of probabilities on Mokolobate's account of events. The pleadings serve a distinct object in our law. It is an invaluable precursor to the trial. An evaluation of the pleadings confirms that it is common cause that Mokolobate was arrested without a warrant. The first onus, accordingly, has been discharged, and the second onus, that of justifying the deprivation, fell upon the Minister.

The effect of the striking out of the defence on the Minister's onus

[20] Before turning to the merits, it is apposite to interrogate the effect of the order striking out the Minister's defence, for that order bears directly on the manner in which this matter falls to be decided. Rule 30A (2) of the Uniform Rules of Court empowers this Court, on the failure of a party to comply with a rule, notice, request, or order, to strike out that party's claim or defence, with or without costs. The remedy exists to enforce compliance with the processes of this Court. What is material to note is that it is not a substantive determination of the merits and its consequences should leave no room for conflation.

[21] A defence struck out under Rule 30A is not the equivalent of a judgment granted in default. For this reason, a clear distinction needs to be made between the granting of a default judgment and the effect of a defence that is struck out. This distinction is effectively leveraged as follows. Where judgment is sought in default, a defendant has elected, or is deemed to have elected, not to participate at all, and the matter proceeds on the plaintiff's papers alone. In the present matter a defence is struck out for non-

compliance with an order, the defendant remains before the Court to the extent that the order permits.

- [22] What deserves accentuation is that the defendant is disqualified from leading evidence in substantiation of a version. Resultantly, Advocate Pompo for the Minister was correctly permitted to, and did, cross-examine Mokolobate so as to test the veracity of his evidence, notwithstanding that the Minister was foreclosed from presenting rebutting evidence. The two procedures, default judgment on the one hand and a struck-out defence on the other, ought not to be elided. To my mind, it is with this clear distinction in mind that the trial was conducted in a manner which demonstrated the existing distinction in our jurisprudence.
- [23] Significantly, the striking out of the Minister's defence did not, of itself, establish Mokolobate's case, nor did it operate as an admission of liability. The order did not relieve Mokolobate of the first onus described above, that of proving, on a balance of probabilities, the facts upon which his cause of action rests. The striking out order had a specific effect. Given that the second onus rests on the Minister and depends entirely on evidence which only the Minister could lead, the foreclosure of that evidence forecloses completely and as a matter of law, any prospect that the Minister could discharge. Simply put, there was nothing the Minister could place before this Court once the right to lead evidence had been removed and an onus which cannot be addressed by evidence cannot, in my view, be discharged.
- [24] The significance of this should not be understated. The contradictions in Mokolobate's evidence canvassed above, being directed to collateral and peripheral detail, are immaterial to the question of justification, for the simple reason that they speak only to the first onus, which was in any event

discharged on facts admitted on the pleadings. They cannot resurrect a justification defence which, by virtue of the strike-out, has no evidentiary foundation whatsoever. Put differently, even the most flawless of plaintiffs could not assist a defendant who is barred from leading evidence on justification and conversely, even a flawed plaintiff's collateral contradictions cannot rescue such a defendant. The two inquiries are analytically distinct and the outcome of the second does not depend upon Mokolobate's credibility on matters going only to the first.

- [25] The Minister sought to plead a justification in the alternative, relying on s 40(1) (b) of the CPA. That defence, however, has been struck out, and with it any prospect that the Minister could discharge the onus resting upon him. Without belabouring the point, the Minister placed no evidence before this Court and could place none, to establish that the arrest was preceded by a reasonable suspicion of the commission of a Schedule 1 offence, or that the further detention of Mokolobate, beyond his first unsuccessful appearance at court, was in any way warranted.
- [26] To this end it was postulated correctly, on behalf of Mokolobate, that the Minister, having been barred from leading evidence, has placed no version before this Court capable of discharging the onus resting on him. Conclusively, therefore, the arrest and detention of Mokolobate from 9 to 24 February 2021 must be found to have been unlawful.
- [27] As a side offering in the interests of completeness, had the defence not been struck out, the plea itself evinces difficulty for the Minister. Malicious damage to property is indeed listed in Schedule 1 to the CPA, meaning that an arrest under s 40(1)(b) is, in principle, available on that charge.

- [28] However, synthesising the papers and evidence properly before this Court, no plausible explanation was provided on several issues. First, there is no explanation why Mokolobate was twice returned to detention after his case could not be enrolled. Second, why he was kept in custody for a further period notwithstanding that no date had been set for his further appearance. Third, why, on his own evidence, members of the police themselves regarded the charge as a minor one not warranting his arrest at all. These are matters peculiarly within the Minister's knowledge and in respect of which he bore the onus. In view of the Minister's legal paralysis, no explanation could be provided.
- [29] A further telling difficulty attends the Minister's position. Where an arrested person is not brought before a court within the prescribed period, or where a matter fails to be enrolled and the person is nonetheless retained in custody, our law requires justification for that continued detention. Such detention must be authorised by a warrant of further detention, Justice Form 7 (J7). That warrant alone renders further detention legally permissible.
- [30] No J7 was pleaded. None was produced. None was even referred to by the Minister at any stage of these proceedings, notwithstanding that Mokolobate was returned to custody on two separate occasions after his matter failed to be enrolled. The absence of a J7 is not a mere evidentiary gap capable of being overlooked. It is the absence of the very instrument our law requires as the police's authority to detain a person further, once the ordinary safeguard of prompt judicial oversight has not been triggered.¹¹ Resultantly, this finding reinforces, rather than stands apart

¹¹ *Minister of Justice and Constitutional Development v Zealand* 2007 (2) SACR 401 (SCA) para 13.

from, the conclusion already reached. The Minister has failed to discharge the onus resting upon him of justifying Mokolobate's continued detention.

[31] A further observation may be made in this regard. In instances where a detainee has appeared before a court and a judicial officer has exercised an independent discretion to postpone that detainee in custody, the resulting detention may, depending on the circumstances, fall to be attributed to the decision of the court rather than to the police who effected the arrest.¹²

[32] In essence this difficulty does not arise in this matter. Mokolobate's matter was, on both occasions he was brought to court, never enrolled at all. In plain language no judicial officer was ever placed in a position to exercise any discretion over his further detention. The entirety of the period from 9 to 24 February 2021 accordingly remains attributable to the police themselves, there having been no intervening judicial act capable of breaking the chain of causation under the *De Klerk*¹³ principle.

[33] Although the Minister's defence has been struck out and Mokolobate testified in support of his claim, the pleadings have not, on that account, become irrelevant. They retain at least three distinct functions. First, the admission in the plea that Mokolobate was arrested without a warrant stands independently of any evidence led at trial; an admission on the pleadings is not undone by a subsequent strike-out of the defence in which it was contained, nor does it require restatement in evidence to remain binding.

¹² *De Klerk v Minister of Police* [2019] ZACC 32; 2019 (12) BCLR 1425; 2020 (1) SACR 1 ; 2021 (4) SA 585; 2020 (8K6) QOD 1 (CC) paras 69-73.

¹³ *Ibid De Klerk v Minister of Police* paras 10, 12-14, 22-24.

- [34] Second, the plea's own internal coherence, or want of it, as canvassed above in relation to the Minister's reliance on s 40(1)(b), was tested without reference to credibility at all; that exercise concerns the pleaded case itself and would yield the same difficulty for the Minister even on a notional, fully defended trial.
- [35] Third, the pleadings continue to mark the outer limit of what may be found and what relief may be granted; matters not pleaded, such as the specific conditions of Mokolobate's detention, cannot be imported into the assessment merely because they emerged, however vividly, in his oral evidence. The pleadings and the evidence accordingly operate on separate planes and neither renders the other redundant.
- [36] In the premises, the striking out of the defence operated, not as an admission of liability, but as a foreclosure of the only route by which liability could have been avoided. Mokolobate having discharged the burden resting upon him of proving the fact, manner and duration of his arrest and detention, and the Minister having been left with no answer once that burden was discharged, the finding of unlawfulness is the product of an evaluation of the evidence actually before this Court and not a mere procedural default.

The Second Defendant

- [37] The particulars of claim cite the Provincial Commissioner: North West Province as second defendant, in her executive capacity over the South African Police Service, North West Province. No allegation in the particulars of claim, nor any submission advanced at trial or in argument,

attributes to the Commissioner any conduct, capacity, or basis of liability distinct from that pleaded against the Minister.

- [38] The delict relied upon throughout is that of Officers Majova and Mmapule, members of the South African Police Service for whose conduct the Minister is vicariously liable as the responsible cabinet member. No separate relief was sought against the Commissioner. Moreover, no evidential or legal basis exists upon which a finding could be made against the Commissioner in this capacity. The claim against the Commissioner accordingly falls to be dismissed, there being no separate costs implication given that the matter proceeded throughout as, in substance, a claim against the Minister independently.

Quantum

- [39] What falls to be assessed, in the premises, is not merely damages for a common law wrong. It is the appropriate monetary vindication of a violation of Mokolobate's right to freedom and security of the person entrenched in section 12(1) of the Constitution, a right whose provenance, as set out above, long predates 1994. In sum, freedom is a precious right which was jealously guarded. The assessment proceeds procedurally within the framework of the law of delict and does not diminish this dual character.

- [40] The assessment of damages for unlawful arrest and detention is not a mechanical exercise referable only to the number of days of detention. The amount of satisfaction falls to be calculated by this Court *ex aequo et bono*, having regard, *inter alia*, to the circumstances under which the deprivation of liberty took place, the presence or absence of improper motive, the

conduct of the Minister, the nature and duration of the deprivation, the status and standing of Mokolobate, and the presence or absence of an apology or satisfactory explanation.¹⁴

[41] In *Minister of Safety and Security v Tyulu*¹⁵ the following was vocalized:

‘...in the assessment of damages for unlawful arrest and detention it is important to bear in mind that the primary purpose is not to enrich the aggrieved party but to offer him or her some much-needed solatium for his or her injured feelings. It is therefore crucial that serious attempts be made to ensure that the damages awarded are commensurate with the injury inflicted.’

[42] A delicate balancing act is called for. This Court must be astute to ensure that its award is fair to both sides; it must compensate Mokolobate justly, but it must not, in the well-known words of *Pitt*, pour out largesse from the horn of plenty at the Minister’s expense.¹⁶

The "going rate" submission

[43] Advocate Pompo claimed a "going rate" of R15 000 to R20 000 per day, derived from *Madueke*¹⁷, *Ngwenya*¹⁸, *Kala*¹⁹ and *Molefe*²⁰, and contended that this rate, applied to 15 days, yields a fair award of approximately R300 000. This submission cannot be accepted as a methodology. The Supreme Court of Appeal has been emphatic that the assessment of damages of this

¹⁴ *Motladile v Minister of Police* [2023] ZASCA 94; 2023 (2) SACR 274 (SCA); *Rahim v Minister of Home Affairs* [2015] ZASCA 92; 2015 (4) SA 433 (SCA) para 27.

¹⁵ *Minister of Safety and Security v Tyulu* [2009] ZASCA 55; 2009 (5) SA 85 (SCA) para 26.

¹⁶ *Pitt v Economic Insurance Co Ltd* 1957 (3) SA 284 (N) at 287 E-F.

¹⁷ *Maduke* op cit fn 3.

¹⁸ *Ngwenya* op cit fn 4.

¹⁹ *Kala* op cit fn 5.

²⁰ *Molefe* op cit fn 6.

kind is not a mechanical exercise referable to the number of days of detention. The following was postulated in *Motladile*²¹:

‘The assessment of the amount of damages to award a plaintiff who was unlawfully arrested and detained is not a mechanical exercise that has regard only to the number of days that a plaintiff had spent in detention. Significantly, the duration of the detention is not the only factor that a court must consider in determining what would be fair and reasonable compensation to award.’

[44] In *Motladile*²² itself, the Supreme Court of Appeal was critical of a *per diem* approach, holding that the High Court’s award, calculated at R15 000 per day, "was not commensurate with the injuries suffered" precisely because the court below "had scant regard to the facts and circumstances of the case." It substituted an award more than three times greater than the *per diem* figure, having regard to the manner in which the police had dealt with the appellant.

[45] The decisions relied upon by the Minister are, at best, a starting point. Resultantly, a "going rate" extracted from them and applied without regard to the aggravating features of this matter, namely the public parading of Mokolobate, the repeated and unexplained extension of his detention notwithstanding the non-enrolment of his case, and the withholding of his chronic medication, would not constitute a principled assessment. As was stated in *Seymour*, previous awards "have no higher value" than a guide.²³ The Minister’s *per diem* methodology is accordingly not adopted.

[46] Equally, the award of R650 000 contended for on behalf of Mokolobate, still less the R1 500 000 originally claimed, is not warranted on the

²¹ *Motladile* op cit fn 11 para 17.

²² *Ibid* op cit fn 11 para 19.

²³ *Minister of Safety and Security v Seymour* 2006 (6) SA 320 (SCA) para 17.

evidence. Mokolobate's own evidence was not free from contradiction, and there is no independent corroboration of the conditions of his detention, this not having been specifically pleaded, nor was any medical or psychological evidence placed before this Court to substantiate lasting harm.

[47] A further word of caution, articulated in *Diljan v Minister of Police*²⁴, is apposite. The Supreme Court deprecated the progressively exorbitant amounts claimed by litigants in comparable matters, and at times awarded just as generously by our courts, and cautioned that legal practitioners ought not to lend credence to the practice of claiming unsubstantiated and excessive amounts in the particulars of claim.

[48] Amounts pleaded should not be "thumb-sucked" without regard to the facts of the particular case; practitioners are taken to know, even at the stage of issuing summons, the reasonable measure of previous awards which serve as a barometer for what may properly be claimed. The same caution applies, with equal force, to submissions advanced on quantum. Whether a figure is presented as the natural escalation of an already exaggerated claim, or as the precise mathematical product of a "going rate" multiplied by days of detention, both approaches create a false dawn of precision where none exists, and neither relieves this Court of its obligation to assess damages on the facts actually proved.

[49] In *Madueke*²⁵, this Division awarded R320 000 for a 16-day detention. In *De Klerk v Minister of Police*²⁶, the Constitutional Court awarded R300

²⁴ *Diljan v Minister of Police* [2022] ZASCA 103 paras 20–21.

²⁵ *Madueke* op cit fn 3.

²⁶ *De Klerk* op cit fn 10 paras 3–4.

000.00 for a detention of seven to eight days, a period roughly half that endured by Mokolobate. Mokolobate's detention, at 15 days, sits close to the duration in *Madueke*²⁷, but his case carries aggravating features not reflected in that award, namely the public parading before the community at his place of residence and at two hardware stores, the repeated and unexplained return to custody after two failed enrolments and the withholding of his chronic medication throughout.

[50] These features warrant an award somewhat above that made in *Madueke*, though tempered by the absence, on this record, of any independent or corroborated evidence of more extensive psychological or physical harm. Having regard to the duration of Mokolobate's detention, the aggravating circumstances of his arrest and continued detention and that absence of corroborated evidence of more extensive harm, a fair and equitable award, ensconced in the totality of the circumstances rather than in any per *diem* formula, is the amount of R380 000.

[51] In the premises, this figure achieves a result that is fair to both parties. It reflects the seriousness of an unjustified, fifteen-day deprivation of liberty attended by public humiliation, while avoiding the unprincipled enrichment that an uncritical acceptance of Mokolobate's figure would entail.

Interest

[52] Mokolobate pleaded entitlement to interest *a tempore morae*, calculated at 7% from date of demand to date of final payment. No evidence was,

²⁷ *Madueke* op cit fn 3.

however, led to establish the date upon which the demand referred to in the particulars of claim was made or received, that being a matter of fact requiring proof like any other. In the absence of a proven date from which interest could reliably be calculated, an order purporting to run interest from "date of demand" would be unenforceable for vagueness. This Court accordingly directs that interest run from the date of this judgment, that being the earliest date capable of certain ascertainment on the record as it stands, at the rate prescribed in terms of the Prescribed Rate of Interest Act 55 of 1975.

- [53] Aside of the evidentiary difficulty articulated above, the conclusion reached accords with the recent and binding pronouncement of the Constitutional Court in *Minister of Police v Khedama*²⁸, in which it was postulated that, although section 2A(2)(a) of the Prescribed Rate of Interest Act ordinarily directs that interest on an unliquidated debt runs from the date of demand or summons, general damages present a distinct case. Such damages are invariably assessed, and expressed, in monetary values prevailing at the date of judgment, and not at the earlier date of the delict, of demand or of summons. To run interest on general damages from that earlier date would confer upon a claimant a windfall unrelated to any loss actually proven, a result the Constitutional Court held could not have been intended by the Legislature. It was accordingly held that section 2A(5) of the Prescribed Rate of Interest Act empowers, and in such circumstances requires, a court to depart from the default position in section 2A(2)(a). The Constitutional Court reasoned and concluded as follows²⁹:

‘[54] The solution to this problem is to be found in section 2A(5) which confers a discretion upon a court to depart from section 2A(2)(a) and dictate the rate at

²⁸ *Minister of Police v Khedama* [2026] ZACC 27 paras 49-56.

²⁹ *Ibid* paras 54-56.

which interest shall accrue and the date from which such interest shall run on an unliquidated debt. I accept that there is no rationale for the finding that interest should run before judgment has been awarded in respect of general damages because at that stage the defendant could not have been expected to know and ascertain what damage its breach had caused. Accordingly, it is fair and reasonable that the court should order a departure from the date of demand or service of summons if it is assessing the general damages at the date of judgment. Consequently, it follows that interest should be ordered to run from the date of judgment, and this would in any event follow from section 2A of the PRI Act.

[55] This approach accords with the purpose of section 2A of the PRI Act. It was enacted to ensure that claimants were not undercompensated in respect of damages (typically pecuniary damages) assessed in monetary values prevailing at some earlier date, typically the date of a contractual breach or delict. It was not enacted to overcompensate claimants by giving them a windfall in the form of interest on an award assessed in monetary terms at the date of the judgment rather than at an earlier date.

Conclusion

[56] I therefore conclude that interest on general damages should run from date of judgment to the date of payment. This of course assumes that the trial court, as I believe is invariably the case, expresses general damages in monetary values it regards as appropriate at the date of judgment.’

- [54] That reasoning applies with equal force to the present matter. Even had Mokolobate proven a date of demand, an order running interest from that date would, on the authority of *Khedama*, have been susceptible to the very objection there identified, given that the award of R380 000 has been assessed at its value as at the date of this judgment and not at any earlier date. In the premises, an order that interest run from date of judgment to date of final payment is not merely the default position dictated by the evidentiary gap referred to in the preceding paragraph, but the outcome

mandated by the correct interpretation of section 2A of the Prescribed Rate of Interest Act 55 of 1975.

Costs

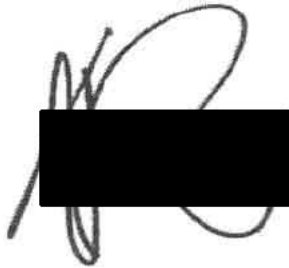
[55] Mokolobate has succeeded in establishing the unlawfulness of his arrest and detention and is entitled to his costs. There is no reason to depart from the ordinary rule that costs follow the result. This matter required this Court to determine the effect of a struck-out defence on the onus of proof, an issue going beyond the routine determination of a single disputed fact and to engage with competing approaches to the assessment of general damages, including the "going rate" methodology advanced by the Minister and a body of comparator authorities drawn from this and other Divisions. That degree of legal complexity warrants an order for costs on Scale B.

Order

[56] In the premises, the following order is made:

1. The First Defendant is liable to the Plaintiff for damages arising from the unlawful arrest and detention of the Plaintiff from 9 February 2021 to 24 February 2021.
2. The First Defendant is directed to pay the Plaintiff the amount of R380 000.
3. Interest on the aforesaid amount shall accrue at the prescribed legal rate from date of judgment to date of final payment.

4. The claim against the Second Defendant is dismissed.
5. The First Defendant shall pay the Plaintiff's costs of suit, such costs to include the costs of counsel on Scale B.



REDDY J

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

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