

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE**

MAGISTRATE COURT CASE NO: 211/2019

CIVIL APPEAL CASE NO: HCA 27/2025

(1)	<u>REPORTABLE: YES/NO</u>
(2)	<u>OF INTEREST TO THE JUDGES: YES/NO</u>
(3)	<u>REVISED.</u>
.....	
.....	
DATE <u>11/08/2026</u>	SIGNATURE <u>[REDACTED]</u>

In the matter between:

PATRICK PHADISHI MASHILA

Appellant

and

MINISTER OF POLICE

First Respondent

MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT Second Respondent

JUDGMENT

LB MAPHELELA AJ

Introduction

- 1] This is an appeal against the whole judgment and order of the Magistrates' Court, Mankweng, delivered on 12 June 2024, in terms of which the appellant's action for damages arising from alleged unlawful arrest and unlawful detention was dismissed.
- [2] The respondents initially defended the action in the court a quo. The appeal, however, proceeded without opposing heads of argument having been filed on behalf of the respondents. This Court is nevertheless obliged to determine the appeal on its merits and on the basis of the record before it.
- [3] The appeal concerns the correctness of the magistrate's findings that:
- (a) the arrest of the appellant was lawful in terms of section 40(1)(b) of the Criminal Procedure Act 51 of 1977 ("the CPA"); and

(b) the appellant's continued detention following his first court appearance was lawful.

Factual Background

- [4] The appellant instituted action against the respondents claiming damages arising from his arrest and subsequent detention relating to allegations of robbery with aggravating circumstances and assault with intent to do grievous bodily harm.
- [5] At the pre-trial conference the parties agreed that:
- (a) the defendants bore the duty to begin and the onus of proof;
 - (b) the plaintiff had complied with the Institution of Legal Proceedings Against Certain Organs of State Act 40 of 2002;
 - (c) the plaintiff had been arrested and detained; and
 - (d) the only dispute concerned the lawfulness of the arrest and detention.
- [6] It is accordingly common cause that the appellant was arrested, detained, appeared in court on 26 September 2017, remained in custody following a postponement, and was later admitted to bail.

Evidence Before the Trial Court

The Appellant

- [7] The appellant testified that on 22 September 2017 he was approached by police officers who enquired about a person named Patrick Phadishi Mashila. He informed them that he was the person they sought. He was informed that he was being arrested in connection with allegations of assault and robbery.
- [8] According to the appellant, he denied involvement in the offences and informed the police that he had already left the tavern when the incident occurred. He further directed the police to a bar attendant who was able to confirm his version.
- [9] The appellant testified that he was taken to Mankweng Police Station, charged and thereafter released on warning because of the long weekend. He was instructed to return on 26 September 2017.
- [10] He complied with that instruction and voluntarily presented himself at the police station on 26 September 2017. On that occasion he was processed, brought before court and detained for a further seven days following a postponement for profiling purposes.

Constable Manamela

- [11] Constable Kgabo Simon Manamela was the investigating officer. He testified that he received the docket on 22 September 2017, interviewed witnesses and investigated the complaint.
- [12] According to his evidence, the complainant and witnesses implicated the appellant as one of the perpetrators. The complainant identified the appellant by name.
- [13] During examination-in-chief he testified that he found the appellant at his homestead, arrested him, brought him to the police station, charged him and brought him to court.
- [14] During cross-examination, however, significant concessions were made.
- [15] He accepted that the charge sheet reflected: (a) the date of arrest as 22 September 2017; and (b) the date of first appearance as 26 September 2017.
- [16] He further accepted that the information reflected on the charge sheet originated from the docket.
- [17] Most importantly, he conceded that the appellant presented himself at the police station on the morning of 26 September 2017.

- [18] When it was put to him that the chronology reflected in the charge sheet was explained by the appellant's version that he had been arrested on 22 September 2017 and instructed to return on 26 September 2017, he answered: "That is correct."
- [19] Constable Manamela also conceded that he failed to inform the prosecutor: (a) that the appellant voluntarily presented himself at the police station; (b) that the appellant was not a flight risk; and (c) that bail could appropriately be considered.

Warrant Officer Mokgolo

- [20] Warrant Officer Letiah Mokgolo testified that she assisted in the investigation and in obtaining witness statements.
- [21] Under cross-examination she conceded that: (a) she was not present when the appellant was arrested; (b) she did not know where he was arrested; (c) she had no personal knowledge of the circumstances surrounding the arrest; and (d) she was not present when the appellant was detained.
- [22] Her evidence therefore contributed little towards establishing the lawfulness of either the arrest or the detention.

Applicable Legal Principles

Arrest

- [23] Section 40(1)(b) of the CPA empowers a peace officer to arrest without a warrant any person whom he reasonably suspects of having committed a Schedule 1 offence.
- [24] The jurisdictional facts were authoritatively stated in *Duncan v Minister of Law and Order* 1986 (2) SA 805 (A) as: (a) the arrestor must be a peace officer; (b) the arrestor must entertain a suspicion; (c) the suspicion must relate to a Schedule 1 offence; and (d) the suspicion must rest on reasonable grounds.
- [25] However, the existence of those jurisdictional facts does not oblige an officer to arrest.
- [26] In *Minister of Safety and Security v Sekhoto and Another* 2011 (1) SACR 315 (SCA), the Supreme Court of Appeal made it clear that the power to arrest remains discretionary and that the discretion must be exercised lawfully, rationally and for the purpose contemplated by the statute.
- [27] In *Mabona and Another v Minister of Law and Order and Others* 1988 (2) SA 654 (SE), it was held that a reasonable police officer should critically analyse information before depriving a citizen of liberty.

- [28] More recently, the Constitutional Court in *Groves NO v Minister of Police and Another* 2024 (1) SACR 286 (CC) reiterated that police officers must properly evaluate available information and justify the exercise of the discretion to arrest.

Detention

- [29] It is trite that arrest and detention constitute an infringement of the constitutional right to freedom and security of the person.
- [30] In *Minister of Law and Order v Hurley and Another* 1986 (3) SA 568 (A), the Appellate Division held that once an arrest and detention are proved, the burden shifts to the defendant to justify them.
- [31] The Constitutional Court reaffirmed this principle in *Zealand v Minister for Justice and Constitutional Development* 2008 (4) SA 458 (CC).
- [32] In *Mvu v Minister of Safety and Security and Another* 2009 (6) SA 82 (GSJ), the Court emphasised that arrest and detention are separate juristic acts requiring separate justification.
- [33] In *Woji v Minister of Police* 2015 (1) SACR 409 (SCA), the Supreme Court of Appeal held that police officers have a constitutional duty to place all relevant and available information before prosecutors and judicial officers when liberty is at stake.

Evaluation

The Arrest

- [34] The magistrate correctly accepted that the complainant and witnesses implicated the appellant in a Schedule 1 offence. The existence of a reasonable suspicion was therefore not the end of the enquiry.
- [35] The court *a quo*, however, failed to undertake the further enquiry required by Sekhoto, namely whether the discretion to arrest was properly exercised.
- [36] The appellant presented an exculpatory version from the outset and directed the police to a person capable of verifying that version. There is no evidence that this information was meaningfully investigated or evaluated.
- [37] No evidence was presented explaining why arrest was necessary rather than less invasive measures contemplated by the CPA.
- [38] The appellant subsequently demonstrated his willingness to cooperate by voluntarily presenting himself at the police station on 26 September 2017.
- [39] In my view, the respondents failed to discharge the onus of establishing that the discretion to arrest was lawfully exercised.

The Date of Arrest

- [40] I am further satisfied that the magistrate materially misdirected herself in finding that the appellant was arrested and appeared in court on the same day.
- [41] The charge sheet reflected arrest on 22 September 2017 and first appearance on 26 September 2017.
- [42] Constable Manamela accepted that those dates appeared on the charge sheet and that the information originated from the docket.
- [43] He further conceded that the appellant presented himself to the police station on 26 September 2017 and agreed that this chronology supported the appellant's version.
- [44] The documentary evidence and concessions made under cross-examination overwhelmingly support the appellant's version that he was arrested on 22 September 2017 and instructed to return on 26 September 2017.

The Detention

- [45] The magistrate concluded that there was no evidence suggesting that South African Police Services (SAPS) contributed to the appellant's continued detention.
- [46] Respectfully, that conclusion cannot be sustained on the evidence.

- [47] Constable Manamela admitted that he failed to inform the prosecutor that: (a) the appellant voluntarily presented himself at the police station; (b) the appellant was not a flight risk; and (c) he should be considered for release on bail.
- [48] Those facts were plainly relevant to the question whether detention was necessary.
- [49] No prosecutor was called by the respondents to explain the decision to seek a seven-day postponement or to justify the continued detention of the appellant.
- [50] In circumstances where the respondents bore the onus, the absence of evidence justifying the detention is fatal.
- [51] The facts of this matter closely resemble those considered by the Supreme Court of Appeal in *Minister of Safety and Security v Ndlovu* 2013 (1) SACR 339 (SCA), where the failure to properly evaluate available information concerning an accused person's liberty proved decisive.

Conclusion

- [52] Applying the principles in *Hurley*, *Zealand*, *Mvu* and *Woji*, I am satisfied that the respondents failed to justify the continued detention of the appellant from 26 September 2017 until 3 October 2017. The investigating officer conceded that he failed to place material information before the prosecutor, namely that the appellant

had voluntarily presented himself at the police station, was not a flight risk and was a suitable candidate for release on bail. Those omissions directly affected the consideration of the appellant's liberty and cannot be disregarded.

- [53] In *De Klerk v Minister of Police* 2020 (1) SACR 1 (CC), the Constitutional Court confirmed that liability for unlawful deprivation of liberty does not necessarily end upon a detainee's first court appearance. Where the conduct of police officials is sufficiently closely linked to the subsequent detention, and where such detention is reasonably foreseeable, the Minister of Police may be held liable for damages flowing from that continued detention. The enquiry is one of legal causation and constitutional accountability.
- [54] In the present matter, the investigating officer's failure to disclose material information relevant to bail and continued detention created a sufficiently close causal connection between the conduct of the police and the appellant's continued incarceration after his first appearance. The ensuing detention was a foreseeable consequence of those omissions. The respondents have therefore failed to establish a lawful basis for the appellant's continued detention.
- [55] The court *a quo* accordingly materially misdirected itself in its assessment of both the facts and the applicable legal principles. The respondents failed to discharge the onus resting upon them to justify either the arrest of the appellant or his continued detention. The appeal must therefore succeed.

Order

[56] The following order is made:

1. The appeal is upheld.
2. The First Respondent is ordered to pay costs on party and party scale B.
3. The matter is remitted back to the Mankweng Magistrates Court for determination of quantum.



L.B. MAPHELELA

ACTING JUDGE OF THE HIGH COURT

I AGREE



J.T. NGOBENI

JUDGE OF THE HIGH COURT

APPEARANCES:

For the appellant: Adv. Rakgogo with Adv. Nkoana

Instructed by: Phuti Lefoka Attorneys Inc

For the respondent: Office of the State Attorney, Polokwane

Date heard: 06 February 2026

Date of delivery: 11 August 2026