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

Not reportable

Case no: 2746/2024

In the matter between:

TSHOANELO MOKAE MOLAHLOE

PLAINTIFF

(Identity number: 8[...])

and

THE MINISTER OF POLICE

DEFENDANT

Neutral citation: *Molahloe v Minister of Police* (2746/2024) [2026] ZAFSHC 420 (3 September 2026)

Coram: ELS AJ

Heard: 2, 3 and 5 June 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 09h30 on 3 September 2026.

Summary: Unlawful arrest and detention – section 40(1)(a) and (b) of the Criminal Procedure Act 51 of 1977 – assault by police officers – claim dismissed with costs.

ORDER

The plaintiff's claim is dismissed with costs.

JUDGMENT

Els AJ

Introduction

[1] The plaintiff instituted action against the defendant for payment of the amount of R2 450 000.00. The plaintiff's claim arises from the alleged unlawful assault and unlawful arrest and detention for which the plaintiff claims the amounts of R950 000.00 and R1 500 000.00 respectively. The action is being defended by the defendant on the grounds as set out in the plea. Furthermore, in the pre-trial minutes it was recorded that the plaintiff accepts the duty to begin.

[2] It is trite that the onus rests on the defendant to justify an arrest. It is equally trite that the onus rests on the plaintiff to prove assault. The issues which need to be considered are therefore whether the plaintiff was assaulted by members of the South African Police Service and whether the arrest of the plaintiff and his subsequent detention were lawful. The matter proceeded on both the merits and quantum.

The plaintiff's pleaded case

[3] The following allegations are contained in the plaintiff's particulars of claim:

- i) On or about 5 December 2021 the plaintiff was wrongfully and unlawfully assaulted by members of the South African Police Service.
- ii) The plaintiff sustained an abrasion on the head and bruises on the right side of his face.
- iii) The plaintiff was unable to work for three weeks and suffered *contumelia*.
- iv) The plaintiff suffered damages in the amount of R950 000.00.
- v) On or about 5 December 2021 the plaintiff was without a warrant of arrest, unlawfully arrested by a member or members of the South African Police Service for drunken driving.
- vi) The plaintiff was thereafter detained after being charged at the instance of the arresting officer without a warrant of detention.

vii) On 6 December 2021 the plaintiff was transported to the Bloemfontein Traffic Court where the public prosecutor ordered the plaintiff to go home without formally appearing before a Magistrate in a Court of Law.

viii) The arrest and detention of the plaintiff was unlawful.

ix) As a result of the unlawful arrest and detention the plaintiff suffered damages in the amount of R1 500 000.00.

The defendant's pleaded case

[4] The following is pleaded in the defendant's special plea and plea:

i) The assault is denied.

ii) The plaintiff drove a motor vehicle whilst he was reasonably suspected to be under the influence of alcohol.

iii) The plaintiff insulted the members of the South African Police Service and refused and/or resisted to be arrested by the police for charges of drunken driving.

iv) The plaintiff armed himself with an axe and attacked the police.

v) The police overcame the plaintiff's resistance through the use of reasonable minimum force and lawfully arrested the plaintiff for three charges namely drunken driving, resisting arrest and *crimen injuria*.

vi) It is denied that the plaintiff was unlawfully arrested.

vii) The plaintiff was lawfully arrested without a warrant of arrest by the police for charges of drunken driving, resisting arrest and *crimen injuria*.

viii) The defendant denies being liable to pay the plaintiff in the amount claimed or any part thereof.

The evidence of the plaintiff

[5] The plaintiff, who was the only witness called in support of his case, testified as follows:

i) On 5 December 2021 at approximately 5h00 he was driving with his girlfriend on Hamilton Road in Bloemfontein.

ii) He noticed a vehicle behind him flashing its lights.

iii) He realised that the vehicle was a police vehicle and subsequently stopped the vehicle he was driving.

- iv) The police vehicle, being a Toyota Quantum, parked next to his vehicle and the driver of the police vehicle approached his window.
- v) The plaintiff greeted the driver of the police vehicle who thereafter grabbed the key of the plaintiff's vehicle.
- vi) The plaintiff opened his door and approached the driver of the police vehicle.
- vii) The door of the Toyota Quantum police vehicle opened and seven officers came out of the vehicle.
- viii) The officers started beating the plaintiff with fists and boots. One officer pressed his boot on the plaintiff's face, one kicked the plaintiff in the stomach and his arm was twisted.
- ix) The police handcuffed the plaintiff and he was put in the back of the police vehicle.
- x) He was taken to Pelonomi Hospital for his injuries.
- xi) He was thereafter taken to Mangaung Police Station to be detained.
- xii) The plaintiff was not under the influence of alcohol.
- xiii) He consumed a tot of Hennessey at 19h00 on the previous night and a dumpy of Corona beer at 4 am on the morning in question.
- xiv) The plaintiff sustained the injuries as depicted in photographs 2, 3, 4 and 5.
- xv) The plaintiff suffered psychological, emotional, physical, financial and mental damages.

The evidence of the defendant

[6] The defendant called one witness on his behalf, being Sergeant Maliehe who testified as follows:

- i) On 5 December 2021 he was a constable in the Crime Prevention Unit.
- ii) At 5h00 on 5 December 2021 he and his fellow officers were busy conducting patrols.
- iii) They were in a Toyota Quantum police vehicle and visited a hotspot in Phola Park.
- iv) They found a black Mercedes Benz motor vehicle parked alongside the pavement.
- v) When they came closer to the vehicle, the Mercedes drove off at a high speed.
- vi) Warrant Officer April was the driver of the police vehicle.

- vii) The police vehicle followed the Mercedes Benz and flashed its headlights.
- viii) The Mercedes Benz did not stop and prevented the police vehicle from overtaking it.
- ix) After some time the Mercedes Benz came to a standstill.
- x) The police vehicle stopped on the righthand side of the Mercedes Benz.
- xi) He opened the door of the police vehicle, alighted from the vehicle and approached the driver side of the Mercedes Benz.
- xii) He knocked on the driver's window whereafter the window was opened halfway.
- xiii) He smelled heavy liquor when the window was opened.
- xiv) He realised that the person is extremely drunk.
- xv) The driver of the Mercedes Benz was insulting as he spoke to him.
- xvi) He informed the driver that he will be detained.
- xvii) The Mercedes was busy idling. He put his hand through the window, switched off the Mercedes Benz and removed the key.
- xviii) The driver opened his door and stepped outside.
- xix) The driver was deeply angered and opened the boot of the Mercedes Benz.
- xx) The driver took out an axe.
- xxi) After some time the driver put the axe back in the boot.
- xxii) They arrested the driver who tried to break loose and resisted arrest.
- xxiii) The police officers had to force the driver to go down whereafter he was handcuffed.
- xxiv) The police officers put the driver in the Quantum and took him to Pelonomi Hospital.
- xxv) At Pelonomi Hospital a doctor drew blood from the plaintiff.
- xxvi) The plaintiff was injured during the arrest.
- xxvii) No one assaulted the plaintiff.

The legal position

Unlawful arrest

[7] Section 40(1)(a) and (b) of the Criminal Procedure Act 51 of 1977 (CPA) provides as follows:

'A peace officer may without warrant arrest any person –

- (a) who commits or attempts to commit any offence in his presence;
- (b) whom he reasonably suspects of having committed an offence referred to in Schedule 1, other than the offence of escaping from lawful custody;'

[8] In order to prove that an arrest is lawful, a defendant has to prove that:

- i) the arresting officer was a peace officer;
- ii) the arresting officer entertained a suspicion;
- iii) the suspect to be arrested committed an offence referred to in Schedule 1;
and
- iv) the suspicion rested on reasonable grounds.¹

[9] In *Biyela v Minister of Police*² the following is stated:

[33] The question whether a peace officer reasonably suspects a person of having committed an offence within the ambit of s 40(1)(b) is objectively justiciable. It must, at the outset, be emphasised that the suspicion need not be based on information that would subsequently be admissible in a court of law.

[34] The standard of a reasonable suspicion is very low. The reasonable suspicion must be more than a hunch; it should not be an unparticularised suspicion. It must be based on specific and articulable facts or information. Whether the suspicion was reasonable, under the prevailing circumstances, is determined objectively.

[35] What is required is that the arresting officer must form a reasonable suspicion that a Schedule 1 offence has been committed based on credible and trustworthy information. Whether that information would later, in a court of law, be found to be inadmissible is neither here nor there for the determination of whether the arresting officer at the time of arrest harboured a reasonable suspicion that the arrested person committed a Schedule 1 offence.

[36] The arresting officer is not obliged to arrest based on a reasonable suspicion because he or she has a discretion. The discretion to arrest must be exercised properly. Our legal system sets great store by the liberty of an individual and, therefore, the discretion must be exercised after taking all the prevailing circumstances into consideration.'

[10] In *Groves NO v Minister of Police*³ the Constitutional Court held that an

¹ *Duncan v Minister of Law and Order* 1986 (2) SA 805 (A) at 818G–H.

² *Biyela v Minister of Police* [2022] ZASCA 36; 2023 (1) SACR 235 (SCA).

arresting officer has to collate facts and exercise his discretion on those facts. The arresting officer must be able to justify the exercising of his discretion on those facts.⁴

[11] In *Minister of Safety and Security v Sekhoto and Another*,⁵ and in dealing with the discretion of peace officers, the following was held:

‘This would mean that peace officers are entitled to exercise their discretion as they see fit, provided that they stay within the bounds of rationality. The standard is not breached because an officer exercises the discretion in a manner other than that deemed optimal by the court. A number of choices may be open to him, all of which may fall within the range of rationality. The standard is not perfection, or even the optimum, judged from the vantage of hindsight – so long as the discretion is exercised within this range, the standard is not breached.’⁶

Evidence

[12] In *Selamolele v Makhado*⁷ the following is stated:

‘Ultimately the question is whether the onus on the party, who asserts a state of facts, has been discharged on a balance of probabilities and this depends not on a mechanical quantitative balancing out of the pans of the scale of probabilities but, firstly, on a qualitative assessment of the truth and/or inherent probabilities of the evidence of the witnesses and, secondly, an ascertainment of which of two versions is the more probable.’⁸

[13] The technique generally employed by courts in resolving factual disputes where there are two irreconcilable versions before it may be summarised as follows: to come to a conclusion on the disputed issues, the court must make findings on (a) the credibility of the various factual witnesses, (b) their reliability, and (c) the probabilities.⁹

[14] In the matter of *Govan v Skidmore*¹⁰ the following is stated:

³ *Groves NO v Minister of Police* [2023] ZACC 36; 2024 (1) SACR 286 (CC).

⁴ *Ibid* para 52

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

⁶ *Ibid* para 39.

⁷ *Selamolele v Makhado* 1988 (2) SA 372 (V).

⁸ *Ibid* at 374J.

⁹ *Stellenbosch Farmers' Winery Group Ltd and Another v Martell et Cie and Others* 2003 (1) SA 11 (SCA) para. 5.

¹⁰ *Govan v Skidmore* 1952 (1) SA 732 (N).

‘..., in finding facts or making inferences in a civil case, it seems to me that one may, as Wigmore conveys in his work on Evidence (3rd ed., para. 32), by balancing probabilities select a conclusion which seems to be the more natural, or plausible, conclusion from amongst several conceivable ones, even though that conclusion be not the only reasonable one.’¹¹

Evaluation of the evidence

[15] It is not in dispute that the plaintiff was arrested, that the arrest was without a warrant and that the arresting officer was a peace officer. There is, however, a dispute as to whether the arrest was lawful and the court is faced with two versions relating to how the arrest occurred.

[16] The adjudication of this matter requires the determination of which version of events is more probable. This necessitates a qualitative assessment of the truth and the inherent probabilities of the evidence, rather than a mechanical balancing of the two accounts. The plaintiff and the defendant’s witness were subjected to cross-examination during which the veracity of their versions in chief were tested. The court also had the opportunity to observe the demeanour of the witnesses whilst they were testifying.

[17] Sergeant Maliehe impressed me as a credible witness. He answered the questions posed to him clearly and without hesitation. I am of the view that the evidence of Sergeant Maliehe was on all material aspects clear and satisfactory. Much of the cross-examination focused on the contrasts between his evidence in court and his statement which was admitted into evidence as an exhibit. The contrasts related to the fact that all the evidence and detail given in court were not included in his statement. When confronted with this during cross-examination Sergeant Maliehe explained that he did not deem it necessary to include all the detail in his statement and that he focused on the portions he deemed important. I cannot fault his explanation; I am of the view that the discrepancies between the statement and the evidence given in Court constitutes a mere lack of detail and not a genuine contradiction. I am of the view that the lack of detail does not render his evidence unreliable.

¹¹ Ibid at 734B-D.

[18] The plaintiff did not leave a good impression on the Court. The plaintiff did not readily make concessions and appeared evasive and sarcastic during cross-examination. Although the demeanour of witnesses is but one of many factors which a Court can take into account in determining the credibility of a witness, I am of the view that the reliability of the evidence of the plaintiff is to be doubted. He has many reasons to twist his version in his favour. Sergeant Maliehe, on the other hand, explained that the last time he saw the plaintiff was on the day of arrest and that he has no reason to testify anything but the truth. Apart from the credibility and reliability, I am also of the view that the probabilities of this matter favour the version of the defendant.

[19] According to the plaintiff, he was driving with his girlfriend when he noticed a vehicle behind him flashing its lights. When he realised that the vehicle was a police vehicle he brought his vehicle to a stop. The plaintiff's vehicle was approached by a police officer who grabbed the key of the plaintiff's vehicle without uttering a word. The plaintiff thereafter opened his door and approached the driver of the police vehicle to retrieve his keys. The plaintiff was thereafter assaulted, handcuffed and placed in the back of police vehicle.

[20] According to Sergeant Maliehe, he and his fellow officers noticed the plaintiff's vehicle parked alongside a pavement at a crime hotspot. When the police vehicle approached the plaintiff's vehicle, the plaintiff drove off at a high speed. The police vehicle followed the plaintiff's vehicle and the plaintiff's vehicle eventually came to a standstill after certain manoeuvres. Sergeant Maliehe approached the plaintiff's vehicle, knocked on the driver's window whereafter the window was opened halfway. He smelled heavy liquor and realised that the plaintiff was extremely drunk. Sergeant Maliehe switched off the plaintiff's vehicle and removed the key as the plaintiff's vehicle was still idling. According to Sergeant Maliehe the plaintiff opened his door, stepped outside and took out an axe. The plaintiff eventually put the axe back into the boot whereafter the plaintiff was arrested. The plaintiff resisted arrest and the police officers had to use force to subdue the plaintiff.

[21] I am of the view that the plaintiff's version of events is highly improbable. Why would a police officer simply grab keys from an ignition without saying any word to the

driver of a vehicle? I am, accordingly, of the view that the version of the defendant is the more probable version of the events which took place at the time of the plaintiff's arrest.

[22] On the plaintiff's own version he drank one beer during the early hours of the morning when he had to drop his girlfriend off. This admission of the use of alcohol lends credence to the version of Sergeant Maliehe that he smelled liquor when the plaintiff opened his car window. The version of Sergeant Maliehe is also strengthened by the medical report which indicated that the plaintiff was moderately under the influence of alcohol and that a faint smell of alcohol was present. I am of the view that the probability of the defendant's version is furthermore strengthened by the fact that the plaintiff confirmed that an axe was present in the boot of his vehicle.

[23] I accordingly accept the defendant's version and find that the arrest occurred in the manner as described by Sergeant Maliehe. Having accepted the version of the defendant, I now turn to deal with the question whether the arrest was lawful.

Lawfulness of arrest

[24] In order to prove that the arrest was lawful, the defendant had to prove that the arresting officer was a peace officer, that the arresting officer entertained a suspicion, that the suspect to be arrested committed an offence referred to in Schedule 1 and that the suspicion rested on reasonable grounds.

[25] It is not in dispute that Sergeant Maliehe was a peace officer. The first requirement has accordingly been proved. According to his evidence, he entertained a suspicion that the plaintiff was driving under the influence of alcohol. This suspicion arose from the smell of heavy liquor when the plaintiff opened his window and when Sergeant Maliehe realised by sight that the plaintiff is extremely drunk. In light of this evidence, I am, therefore, satisfied that the second requirement referred to above has also been satisfied. Thirdly, driving under the influence of alcohol is a Schedule 1 offence under the CPA and the third requirement referred to above has accordingly also been proved by the defendant.

[26] The only remaining requirement is therefore whether the suspicion rested on

reasonable grounds. I am of the view that the suspicion entertained by Sergeant Maliehe rested on reasonable grounds.

[27] In deciding whether the defendant has proved the fourth requirement, it should be taken into account that the standard of a reasonable suspicion is very low. What is required is that the arresting officer must form a reasonable suspicion that a Schedule 1 offence has been committed based on credible and trustworthy information. According to Sergeant Maliehe, he personally smelled the heavy liquor and could plainly see, by looking at the plaintiff, that he was under the influence of alcohol. I am accordingly satisfied that the suspicion rested on reasonable grounds and that the fourth requirement has been proved.

[28] Even though I have found that Sergeant Maliehe entertained a suspicion that the plaintiff committed a Schedule 1 offence and that such suspicion rested on reasonable grounds, it still has to be considered whether Sergeant Maliehe had to arrest the plaintiff. An arresting officer is not obliged to arrest a person based on a reasonable suspicion because he or she has a discretion which discretion to arrest must be exercised properly. According to Sergeant Maliehe he decided to arrest the plaintiff as he, as a police official, feared for the lives of the plaintiff and of the other road users.

[29] I am of the view that Sergeant Maliehe exercised his discretion to arrest properly and that his decision to arrest the plaintiff can therefore not be faulted. I accordingly find that the arrest of the plaintiff was lawful.

Lawfulness of detention

[30] Guidance in respect of detention is to be found in s 39(3) of the CPA which provides that:

‘The effect of an arrest shall be that the person arrested shall be in lawful custody and that he shall be detained in custody until he is lawfully discharged or released from custody.’ What this means is that the immediate consequence of an arrest is detention.

[31] In *Minister of Law and Order, KwaNdebele, and Others v Mathebe and*

*Another*¹² the following is stated at 122C:

'Even though arrest and detention are separate steps there is a strong correlation between the one and the other. If the arrest is tainted by illegality, the detention will be as well.'¹³

Accordingly, in light of the fact that I have already found that the arrest was lawful, I am of the view that the detention of the plaintiff was also lawful.

Assault

[32] The plaintiff alleges that the police officers assaulted him by punching him with fists on the face, by kicking him with booted feet, by pressing his head to the ground, by pressing his abdomen to the ground, by twisting his left arm and by slapping him with open hands in the face. This was denied by Sergeant Maliehe.

[33] Sergeant Maliehe explained that the plaintiff had to be subdued due to the fact that he resisted arrest. He explained that the police officers had to use force to subdue the plaintiff and that he could have sustained the injuries during the process of arrest.

[34] I am of the view that it is probable that the plaintiff sustained the injuries during the arrest. I accordingly find that the plaintiff was not assaulted as alleged by him.

[35] In light of the findings made hereinabove, the plaintiff cannot succeed in his claims for unlawful assault and unlawful arrest and detention.

Order

[36] I accordingly make the following order:

The plaintiff's claim is dismissed with costs.

J ELS

ACTING JUDGE OF THE HIGH COURT

¹² *Minister of Law and Order, KwaNdebele, and Others v Mathebe and Another* 1990 (1) SA 114 (A).

¹³ *Ibid* at 122C-D.

Appearances

For the Plaintiff:	Adv L.R. Bomela
Instructed by:	Mohobo Attorneys Inc Bloemfontein
For the Defendant:	Adv F Dlamini
Instructed by:	The Office of the State Attorney Bloemfontein