



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

Not reportable

Case no:6630/2023

In the matter between

MATHIE LETTIA MOFOKENG

PLAINTIFF

and

MINISTER OF POLICE

DEFENDANT

Neutral citation: *Mofokeng v Minister of Police* (6630/2023) [2026] ZAFSHC 428 (7 September 2026)

Coram: DANISO J

Heard: 24 February 2026 and 5 March 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 11h00 on 07 September 2026.

Summary: Delict – unlawful arrest and detention – arrest without warrant under s 40(1)(b) of the Criminal Procedure Act 51 of 1977 – reasonable suspicion not proved – credibility and reliability of arresting officer's evidence – R600 000 awarded with interest from date of judgment.

ORDER

- 1 Judgment is granted in favour of the plaintiff for unlawful arrest and detention.
- 2 The defendant is ordered to pay damages to the plaintiff in the sum of R600 000 (six hundred thousand rand) plus interest at the prescribed rate per annum calculated from date of judgment to the date of payment.
- 3 The defendant shall pay the costs of suit including the costs of counsel on Scale B.

JUDGMENT

Daniso J

[1] The plaintiff's claim against the defendant is for payment of an amount of R600 000.00 as damages for unlawful arrest and detention.

[2] In the particulars of claim, the plaintiff alleges that on 11 March 2021, she was arrested without a warrant by members of the South African Police Service, there and then, acting within the course and scope of their employment with the defendant. The arrest took place at the Tumahole Police Station where she had gone to lay assault and contravention of a protection order charges against her former partner, Mr Bafana Zondi. She was only released on 15 March 2021 without having appeared in court.

[3] The arrest and the subsequent detention is not in dispute. Liability is disputed on the grounds that the arrest and the detention were lawful as they were carried out in terms of ss 40(1)(b) and 50 of the Criminal Procedure Act 51 of 1977 (CPA) which permits an arrest without a warrant where the arresting officer had a reasonable suspicion that the plaintiff had committed a schedule 1 offence, namely malicious injury to property.

[4] By agreement between the parties, the duty to begin and the onus of proving the lawfulness of said arrest and detention was on the defendant whereas the plaintiff carried the burden of proving the quantum she has claimed.

[5] The defendant's version was narrated by officer Sarah Mabuya, a female sergeant stationed at Tumahole Police Station since August 2025, the plaintiff also testified in support of her claim.

[6] Sergeant Mabuya testified that on the day of the incident, she was on duty at the charge office performing crime prevention duties and also attending to complaints when she observed Mr Zondi being assisted by a colleague to open a case. The colleague informed her that Mr Zondi was there to open a case of malicious injury to property. When the colleague was done opening the docket, sergeant Mabuya, Mr Zondi and her colleague went to Mr Zondi's house where he indicated how the wooden door had been wrenched away from its frame and its butler door pulled from its frame. Pages 27 to 29 of Exhibit 'A' are photographs depicting the damage. He told sergeant Mabuya that it was his partner, the plaintiff, who had caused the damage. He was asked to accompany them to her residence The plaintiff was not found.

[7] Upon returning to the police station, they found the plaintiff standing at the front door of the charge office. When sergeant Mabuya asked the plaintiff whether she needed assistance, Mr Zondi pointed at the plaintiff as the person who damaged his property. The plaintiff admitted that she damaged Mr Zondi's door. She explained that she damaged it because Mr Zondi had refused to open for her. Sergeant Mabuya then arrested the plaintiff. It was after 12pm when she detained her. Mr Zondi was also arrested for assaulting the plaintiff.

[8] Sergeant Mabuya told the court that she could not remember the name of her colleague who assisted Mr Zondi to open the docket and also accompanied her to investigate Mr Zondo's allegations.

[9] Under cross-examination, it was sergeant Mabuya's testimony that the officer who assisted Mr Zondi to open the docket was her commander, sergeant Magudu. She conceded that she did not take a statement from the plaintiff regarding her admission of the offence. She said she forgot to take the statement. She confirmed that when she detained the plaintiff, she had visible bruises on her back and on the knees.

[10] The cross-examination also revealed that the plaintiff was interviewed about the offence by constable Mathikha and the Warning Statement in that regard was also taken down by constable Mathikha at 17h01.

[11] Sergeant Mabuya also testified that she arrested the plaintiff at Mr Zondi's residence after inspecting the damage. She denied the plaintiff's version that she (the plaintiff) was arrested by six males. She could not dispute that the plaintiff was actually at the police station the day before to open the assault case against Mr Zondi and that she was sent to hospital to obtain a J88 medical report (J88). On the day of the incident, she was at the hospital when she was called back to the police station by constable Mathikha. In re-examination, Sergeant Mabuya stated that the plaintiff was detained at 16h30. Apparently, the case was not proceeded with as the plaintiff and Mr Zondi agreed to withdraw the cases they lodged against each other.

[12] The plaintiff testified that at the time of the incident, Mr Zondi was her partner. Their relationship soured when she discovered that he was cheating on her. On 10 March 2021, Mr Zondi came to her house to ask her to rekindle their relationship when she refused, he demanded that she give back everything that he had bought for her during their relationship. She also demanded that he must also return what she bought for him. He agreed and they went to his house for her to collect her belongings, but when they got to his house, he assaulted her and threw her cellphone against the wall. As a result of the assault, she sustained back, left leg and eye injuries. Neighbours intervened and called her sister who took her to the police station to lay charges. At the police station she was given a J88 and told to take it to a medical practitioner to complete it. On the next day, she was at the hospital when she was called by constable Mathikha. He instructed her to return to the police station. It was around 16h00 when she arrived at the police station. She submitted the J88 and was about to leave when a male officer, Mokoena and his crew told her that she was being arrested for malicious injury to property, a charge which she did not understand. She requested an explanation of the charge and also sought an opportunity to make arrangements for someone to look after her two children, then aged six and 14 years old. This was refused. She was simply told that the children would be taken to an orphanage.

[13] The plaintiff was adamant that she was not arrested by sergeant Mabuya, as she

knows her from Parys. She was able to identify the arresting officer because his name was on his name tag. The only time she had an encounter with a female officer was after she was arrested and the female officer instructed her to hand over her cellphone, remove her shoelaces and to sign the notification of rights document as provided for in s 35 of the Constitution.

[14] Following the arrest, she was detained at Parys where she was kept in a dirty cell with no toilet; she had to relieve herself in a bucket. The blankets were also dirty. She could not even eat and only managed to do so a couple of days later when her family brought her some food. All the time she was incarcerated, she did not know the whereabouts of her children. The entire incident traumatized her to the extent that she had to go for counselling. It was only after four days, on 15 March 2021, that she was taken out of the cells and told to go home. However, this was not the end of her ordeal. When constable Mathikha found out that she had instituted these proceedings, he harassed her by demanding that she withdraws the action. He even went to her workplace and told her boss that he had arrested her. Her legal representatives intervened and wrote a letter to him to stop harassing her.

[15] During cross-examination, the plaintiff stated that the reason she went to the police station was to open a case for assault. She only obtained the protection later, therefore, her particulars of claim are incorrect where they state that she had also gone to open a case for the contravention of a protection order. Upon being presented with the original photographs of the door and butler, the plaintiff confirmed that the wooden door and butler depicted on the photographs was Mr Zondi's. She, however, denied that she was responsible for causing any damage to Mr Zondi's property.

[16] This was, in short, the summary of the evidence relayed by the parties. In addition to *viva voce* evidence, documentary evidence was handed in by concurrence of both parties as Exhibit 'A' being the photographs of Mr Zondi's damaged wooden door and butler.

[17] After all the evidence had been proffered, the issues which remained to be determined were whether the plaintiff's arrest without a warrant was justified as pleaded by the defendant, therefore lawful, and if the court finds that it was not justified, a further

question revolves around the amount of damages to be awarded to the plaintiff as compensatory damages for the degradation of her rights.

[18] The onus is on the defendant to adduce evidence which proves on a preponderance of probabilities that the arrest was justified.¹

[19] The provisions of s 40(1)(b) of the CPA permit a police officer to arrest a suspect who is reasonably suspected of committing an offence referred to in Schedule 1 of the CPA, other than the offence of escaping from lawful custody. The right to arrest without a warrant under this section is therefore limited to Schedule 1 offences which include malicious damage to property.

[20] On the available evidence, there are contradictory versions regarding the identity of the arresting officer and the circumstances under which the plaintiff was arrested.

[21] As it was pointed out in *Stellenbosch Farmers' Winery Group Ltd & Another v Martell Et Cie & Others*² the technique to be adopted by a court to resolve factual disputes is as follows:

'To come to a conclusion on the disputed issues a court must make findings on (a) the credibility of the various factual witnesses; (b) their reliability; and (c) the probabilities. As to (a), the court's finding on the credibility of a particular witness will depend on its impression about the veracity of the witness. That in turn will depend on a variety of subsidiary factors, not necessarily in order of importance, such as (i) the witness' candour and demeanour in the witness-box, (ii) his bias, latent and blatant, (iii) internal contradictions in his evidence, (iv) external contradictions with what was pleaded or put on his behalf, or with established fact or with his own extracurial statements or actions, (v) the probability or improbability of particular aspects of his version, (vi) the calibre and cogency of his performance compared to that of other witnesses testifying about the same incident or events. As to (b), a witness' reliability will depend, apart from the factors mentioned under (a) (ii), (iv) above, on (i) the opportunities he had to experience or observe the event in question and (ii) the quality, integrity and independence of his recall thereof. As to (c), this necessitates an analysis and evaluation of the probability or improbability of each party's version on each of the disputed issues. In the light of its assessment of (a), (b) and (c) the court will then,

¹ *Minister of Law and Order and Others v Hurley and Another* [1986] ZASCA 53; [1986] 2 All SA 428 (A) at 589E-F.

² *Stellenbosch Farmers' Winery Group Ltd and Another v Martell Et Cie and Others* [2002] ZASCA 98; 2003 (1) SA 11 (SCA).

as a final step, determine whether the party burdened with the onus of proof has succeeded in discharging it. The hard case, which will doubtless be the rare one, occurs when a court's credibility findings compel it in one direction and its evaluation of the general probabilities in another. The more convincing the former, the less convincing will be the latter. But when all factors are equipoised probabilities prevail.³

[22] Applying this technique to the germane facts, the defendant's witness, sergeant Mabuya rendered an unconvincing version regarding the circumstances under which the plaintiff was arrested. Her direct evidence contradicted the version she proffered while under cross-examination and re-examination regarding the details of the colleague who assisted Mr Zondi to open the docket. At first, she testified that she could not remember the colleague's details then later she said it was her commander, sergeant Magudu. There are also inconsistencies in her evidence regarding the place where the plaintiff was arrested and the time of her detention. Despite having testified that she arrested the plaintiff at the police station, her other version was that she arrested the plaintiff at Mr. Zondi's residence after the plaintiff was shown the damage and she admitted to the offence. The time of detention vacillated from after 12pm to 16h30. The contradictions are material for the determination of whether sergeant Mabuya was the arrestor contemplated in s 40(1)(b). The discrepancies in her testimony affected her credibility, I cannot rely on her testimony on this disputed aspect.

[23] On the other side, the plaintiff's version on this aspect was concise and convincing in that, her evidence that she knew sergeant Mabuya before the day of the incident was undisputed. The fact that there is a male officer by the surname Mokoena was also not disputed by evidence to the contrary. I have found no reason why the plaintiff would deny being arrested by sergeant Mabuya if that was the case.

[24] It follows too that as sergeant Mabuya was not the arrestor, she was not privy into the essential elements of the offence complained about to qualify the suspicion as reasonable. On her own version, Mr Zondi was assisted by another colleague to open the docket implicating the plaintiff in the offence of malicious injury to his property.

[25] The fact that the plaintiff was ultimately released from custody without having

³ Ibid para 5.

appeared in court also puts paid to the defendant's contention that the arrest was lawful. A person arrested with or without warrant shall either be released on bail if the circumstances permit and be brought before a lower court as soon as reasonably possible but not later than 48 hours after arrest.⁴ An arrest can only be lawful if it is intended to bring the arrestee before court.

[26] Based on all the reasons that I have set out above, I am not persuaded that the defendant has discharged the onus of proving on a balance of probabilities that the arrest of the plaintiff was justified. It follows too that the subsequent detention was also unlawful.

[27] As regards quantum, in the particulars of claim a sum of R600 000.00 is claimed as damages for the plaintiff's deprivation of liberty. An arrest without a warrant constitutes an infringement of a person's right to dignity and the right not to be deprived of one's freedom without just cause.⁵

[28] There is no fixed formula in terms of which awards of this nature are made. The awards are assessed *ex aequo et bono* (according to what is right and fair) taking into consideration amongst other factors, the personal particulars of a plaintiff, the circumstances of the arrest, the manner in which it was carried out, the status and standing of the plaintiff, the presence or absence of an apology or satisfactory explanation of the events by the defendant, awards in comparable cases, the fact that the plaintiff was the author of her own misfortune, the period of the detention and any harsh treatment or malice by the police.⁶

[29] In this matter, in addition to the usual degradation which comes with being arrested and detained, the plaintiff was detained in an uninhabitable and unhygienic police cell. She was also subjected to detention for four days without appearing in court in contravention of her constitutional right not to be detained without trial,⁷ humiliated by having to relieve herself in a bucket and worst, she was kept in custody despite being injured and was refused an opportunity to make arrangements for the care of her minor

⁴ Section 50(1)(a) and (c) of the CPA.

⁵ Sections 10 and 12(1)(a) of the Constitution.

⁶ *Minister of Safety and Security v Tyulu* [2009] ZASCA 55; 2009 (5) SA 85 (SCA) para 26; *Brits v Minister of Police and Another* (759/2020) [2021] ZASCA 161 (23 November 2021); *Motladile v Minister of Police* [2023] ZASCA 94; 2023 (2) SACR 274 (SCA) para 17.

⁷ Section 12(b) of the Constitution.

children. The plaintiff was treated very badly by the police; there is evidence of the continuation of the degradation post-release from custody. She was subjected to harassment by sergeant Mathikha who demanded that she withdraws the claim.

[30] In assessing damages, the court must bear in mind that damages are not meant to enrich a plaintiff at the expense of a defendant but to offer her solatium for the injury caused to her dignity. Taking into consideration the above-mentioned factors and the circumstances of this case, I am of the view that the amount of R600 000 is indeed commensurate to the injury caused to the plaintiff's dignity.

Costs

[31] The plaintiff is entitled to her costs, however there is an issue that needs to be addressed, and it is in relation to the date of the calculation of interest on the award. The order sought by the plaintiff that the interest be calculated from date of arrest is legally flawed. The calculation of interest in respect of unliquidated damages of this nature must be reckoned from the date of judgment, otherwise, there would be overcompensation in respect of the award.⁸

Order

[32] The following order is made:

- 1 Judgment is granted in favour of the plaintiff for unlawful arrest and detention.
- 2 The defendant is ordered to pay damages to the plaintiff in the sum of R600 000 (six hundred thousand rand) plus interest at the prescribed rate per annum calculated from date of judgment to the date of payment.
- 3 The defendant shall pay the costs of suit including the costs of counsel on scale B.

The Honourable Justice
2026-09-04
N.S. Daniso
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JUDGE OF THE HIGH COURT

⁸ *Minister of Police v Khedama* (CCT 154/25) [2026] ZACC 27 (29 June 2026) para 49 to 56.

Appearances

For the Plaintiff:

K Motselebane

Instructed by:

TSH Radebe INC, Bloemfontein

For the Defendant:

F Bester

Instructed by:

Office of the State Attorney, Bloemfontein