



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

Not reportable

Case no: 868/2016

In the matter between:

**OUPANYANA THAISE
SIMPHIWE MQONDO
MOJALEFA JOSEPH MOHAPI
THABO LIMO
LEHLONOLO THEOTHELUS SELLO
FANIEDESMOND SEK HARUME
SECHABA APRIL LEEPO
MOHANOE FANIE LEEPO**

**FIRST PLAINTIFF
SECOND PLAINTIFF
THIRD PLAINTIFF
FOURTH PLAINTIFF
FIFTH PLAINTIFF
SIXTH PLAINTIFF
SEVENTH PLAINTIFF
EIGHTH PLAINTIFF**

and

MINISTER OF POLICE

DEFENDANT

Neutral citation: *Thaise and Others v Minister of Police* (868/2016) [2026]
ZAFSHC 436 (11 September 2026)

Coram: MOLITSOANE J

Heard: 28 November 2025

Delivered: 11 September 2026

Summary: Delict – unlawful arrest and detention – jurisdictional facts – reasonable suspicion – eyewitness identification – bail refusal.

ORDER

The claims of all eight plaintiffs are dismissed with costs.

JUDGMENT

Molitsokane J

[1] The eight plaintiffs were arrested without warrants on 24 March 2013 on suspicion of having committed murder, a schedule 1 offence in terms of the Criminal Procedure Act 51 of 1977 (the CPA). The allegations for the arrest emanated from the stabbing to death of one Mpho Motsitsi (the deceased). Following the arrest, the accused made their first appearance in court on 26 March 2013. Their case was remanded and they were kept in custody. Their bail application was launched on 23 April 2013 which was ultimately refused. A trial then ensued and they were all discharged in terms of s 174 of the CPA.

[2] The plaintiffs' thereafter individually instituted civil claims against the defendant for unlawful arrest and detention. Their claims were consolidated to one and were heard as one.

[3] The defendant bears the onus to prove the lawfulness of the arrest and the duty to begin. The defendant called Constable Jerome Matai, a peace officer, as the arresting officer of the fourth plaintiff, Mr Thabo Dimo. He testified that he was not involved on the incident of 24 March 2013; on 2 April 2013 he was on duty. On the said day, he and Constable Ntlati were attending to complaints and patrolling in Meloding, Virginia. Lieutenant Colonel Uys and Warrant Officer Molefe summoned them to the police station. At the police station he was instructed to accompany a witness who was to identify a suspect in the docket of murder of 24 March 2013 in Meloding Cas 123/3/2013. This witness told him that the person who was the subject of their interest was one Scara.

[4] They proceeded to a company called Rocla where the suspect worked. Upon their arrival, they requested the security guard to summon someone known as Scara to the witness. It later turned out that Scara was the fourth plaintiff. He was arrested after the witness identified him as the person who participated in the murder of the deceased. It was his testimony that when he arrested Dimo, the witness had already made a written statement to the police. He, however, confirmed that he was unaware of the contents of the witness statement as he had, at that stage, not read it. He also confirmed that he did not know the particulars of the witness with whom he was and who identified the 4th plaintiff.

[5] Mr Thabo Peter Phadi, a peace officer, arrested the eighth plaintiff, Mr Mohanoe Fannie Leepo (Fannie Leepo). He testified that on 24 March 2013, he was a crew member in a police vehicle driven by Constable Molema, who passed away in 2017. While on patrol, they received a message from radio control as a result of which they went to a certain address in Meloding. Upon arrival at the address, they found a person who appeared to have been murdered. On scene, he met an eyewitness, one Bongani, who informed him that he saw how the incident unfolded. Bongani took him to the place where the person who, according to him, participated in the murder, resided. The house at which they went is the home of Fannie Leepa. Fannie Leepa was asleep at the time. He confirmed that he woke him up and arrested him on suspicion of being involved in the murder of the deceased.

[6] During cross examination, Constable Phadi was confronted with Bongani's statement after it was shown to him. It was pointed to him that in his statement, Bongani never mentioned that he took Constable Phadi to Fannie Leepa's place or even pointed him out as alleged by the constable.

[7] Mr Fannie Alfred Sekgarume (Sekgarume) was arrested by Constable Tladi Matsubukanye. Constable Matsubukanye was stationed at Kroonstad Police Station at the time of the arrest. He testified that on 26 April 2013, he was on duty doing patrols. He received a call from radio control who gave him certain information to the effect that there was a suspect who ran away from Virginia in a docket of murder. It is his case that he went to their home of Sekgarume and upon his arrival, he met his mother and later Sekgarume. He testified that during discussions with Sekgarume he

explained the purpose of his visit, read him his rights and thereafter arrested him. According to him there was nothing that prevented him to exercise his discretion not to arrest him. He confirmed that he booked him in the police holding cells to be taken to wherever he was needed. According to him, had he not received a call from radio control, then in that case he could not have arrested Sekgarume.

[8] During cross-examination, he conceded that he knew nothing about the commission of the offence Sekgarume was arrested for. He further confirmed that whatever evidence was arrayed against any of the people who were arrested in the case involving Sekgarume, was unknown to him. He confirmed that the only reason he went to the house of Sekgarume was as a result of the phone call. He considered that he could not have formulated a reasonable suspicion that there was an offence that had been committed. He further confirmed that did not have a warrant to arrest Mr Sekharume.

[9] The defendant approached the court with an application to lead the hearsay evidence in respect of the second, third, fifth and seventh plaintiffs. These were the statements of Constable Mphanya and Constable Moleme. The statement of Constable Mphanya related to the arrest of the third plaintiff, Mr Mojalefa Mohapi and the fifth plaintiff, Mr Lehlohonolo Sello. According to Constable Mphanya, on 24 March 2013 he was performing patrol duties. He was called to the scene around Leratong Section where there was an incident of murder. Upon his arrival he saw a group of people who started to run away, but he managed to catch a few of them together with his crew. He took the people that he arrested to Meloding Police Station and one Bongani Motsai pointed at Lehlohonolo Sello and Mojalefa Mohapi as suspects in the murder of the deceased

[10] The late Constable Moleme deposed that he was on duty on 24 March 2013. He and his colleagues were called to the scene of the murder at Leratong, Virginia. Upon arrival, they met Bongani Motsitsi who informed them that he witnessed the murder of the deceased. According to him, Bongani identified Simphiwe Mqondo, Thabang Morapedi, Sechaba Leepo and Mojalefa Mohapi as the people responsible for assaulting the deceased to death.

[11] It is necessary to deal with the issue of who Thabang Morapedi is. As can be seen from the citation of the parties, there is no one called Thabang Morapedi. It is prudent to deal with it from the perspective of the first plaintiff. The defendant holds the view that the first plaintiff, upon arrest, gave his name as Thabang Morapedi while the first plaintiff accuses the police of attributing that name to him without his involvement.

[12] Mr Oupa Thaisi is the first plaintiff. He testified that on 24 March 2013 he was at home, asleep. At about midnight, uniformed police officers arrived at his home and took him away without explaining the reason for his arrest. He was taken to the local police station where he was locked up and detained. The following day, he was charged with the offence of murder. He knew nothing about the matter and later appeared before court. At some stage, his case was postponed for a bail application. His subsequent bail application was refused by court. Almost a year later, on 17 March 2024, he was acquitted on a charge of murder, hence this claim for damages.

[13] During the trial it became common cause that his name did not appear in any of the police registers. He also informed the court that he gave the police his full names. It appears that in the police registers there was someone called Thapelo Morapedi, which names the police insist that he gave them as his own when he was being detained. He denies this assertion and contends that it was the police themselves who gave him the names. He also confirmed that he did not know who Morapedi was. When confronted during cross-examination, he alleged that he gave his names, Oupa Thaisi to the police official who booked him into the cells and also to Constable Tlhomedi who charged him the following day.

[14] What is apparent from the testimony, however, is that there is no documentary evidence of the arrest of Oupa Thaisi. He does not appear in the cell registers or the occurrence books of the police. Mysteriously, he is in custody without being booked anywhere. He does not deny that he was arrested and detained on the day of this incident or in the early hours subsequent to the incident. The question one would ask is why the police would attribute his names to a different person. What did they stand to gain by doing so, except that such an act would have made it difficult for them to trace him later, if so required. Curiously, when he is being charged by Warrant Officer

Tlhomedi the next day, Thabang Morapedi suddenly disappears from the police registers and in comes Oupanyana Thaisi, who previously appeared in none of the books. The only logical explanation is that Oupanyana Thaisi gave out his names as Thabang Morapedi when he was arrested after the incident.

[15] The long and short of the testimony of all the plaintiffs is that the arrest was unlawful and all of them deny being on the scene where the deceased was murdered. They all deny involvement in the murder.

[16] The defendant admitted the act of arrest, but pleaded justification based on s 40(1)(b) of the CPA. This provision provides:

'40 Arrest by peace officer without warrant

(1) A peace officer may without a warrant arrest any person-

(a) . . .

(b) whom he reasonably suspects of having committed an offence referred to in schedule 1, other than the offence of escaping from lawful custody;

(c) . . .'

[17] It is common cause that the defendant bears the onus to justify the arrest. In order to justify the arrest in terms of s 40(1)(b) the defendant is expected to establish the jurisdictional facts as set out in *Duncan v Minister of Law and Order*.¹ In terms of this decision, the defendant must prove that the arresting officer was a peace officer; the officer harbored suspicion; the suspicion was that the arrestee had committed an offence listed in Schedule 1 of the CPA; and the suspicion was based on reasonable grounds.

[18] The court in *Mabona and Another v Minister of Law and Order and Another*² stated the test to determine whether or not a suspicion is reasonably entertained within the meaning of s 40(1)(b) as follows:

'Would a reasonable man in the second defendant's position and possessed of the same information have considered that there were good and sufficient grounds for suspecting that the plaintiffs were guilty of conspiracy to commit robbery or possession of student property

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

² *Mabona and Another v Minister of Law and Order and Another* 1988 (2) SA 654 (SE).

knowing it to have been stolen? It seems to me that in evaluating his information a reasonable man would bear in mind that the section authorizes drastic police action. It authorizes an arrest on the strength of suspicion and without the need to swear out a warrant, i.e. something which otherwise would be an invasion of private rights and personal liberty. The reasonable men will therefore analyze and assess the quality of the information at his disposal critically, and he will not accept it lightly or without checking it where it can be checked. It is only after an examination of this kind that he will allow himself to entertain a suspicion which will justify an arrest. This is not to say that the information at his disposal must be of sufficiently high quality and cogency to engender in him a conviction that the suspect is in fact guilty. The section requires suspicion but not certainty. However the suspicion must be based upon solid grounds. Otherwise it will be flighty or arbitrary, and not a reasonable suspicion.³

[19] It is common cause that all the plaintiffs were arrested by peace officers on allegations of having committed a schedule 1 offence. The only dispute is whether the arresting officers harbored a reasonable suspicion when they arrested the plaintiffs. The defendant alleges that save for the fourth and sixth plaintiffs, all other plaintiffs (the first plaintiffs) were arrested on the scene of the alleged incident. Except the fourth and sixth plaintiffs (the second plaintiffs), the remaining ones deny that they were arrested on the scene, and all contend that they were arrested by the police while sleeping in their respective homes. The defendant alleges that the sixth plaintiff was arrested in Kroonstad while the fourth plaintiff was arrested at his workplace.

[20] The question of whether the police had a reasonable suspicion to arrest the plaintiffs has to be determined having regard to the two irreconcilable versions of the parties. One has to bear in mind that 'an arrest constitutes an interference with the liberty of an individual concerned, and it therefore seems to be fair and just to require that the person who arrested or caused the arrest of another person should bear the onus of proving that his action was justified in law.'⁴

[21] The testimony of Constable Phali and the statement of the late Constable Moleme corroborate each other that the first plaintiffs were arrested on the scene. According to Constable Moleme, they were summoned to the scene of the crime and found the body of the deceased. Bongani informed them that the first plaintiffs were

³ Ibid at 658E-G.

⁴ *Minister of Law and Order v Hurley and Another* [1986] 2 All SA at 589E-F.

among the people who assaulted the deceased and caused his death. According to Phali they arrested 12 people at the scene and took them to the local police station. At the police station, the first plaintiffs were processed and detained. Bongani was an eyewitness to the murder; he knew the perpetrators. The evidence reveals that he gave the police the nicknames of some of the perpetrators. Those nicknames were subsequently linked to the plaintiffs during the investigations.

[22] Bongani informed him that he saw the sixth plaintiff at the scene committing the crime. He arrested him at home, based on the information obtained from Bongani. The statement of the late Constable Mphanya indicates that they went to Leratong. According to him they found a group of ma-Rasta who started to run away when they saw the police. They managed to arrest some of them and took them to the local police station where Bongani pointed the third and fifth plaintiffs as the people who assaulted the deceased to death. After explaining their rights, he arrested them. The late Constable Moleme had also deposed to a statement in which he alleged that the deceased was murdered in the presence of Bongani. On that day of the incident, he managed to arrest 12 people at the scene. Bongani also identified the first, second and seventh plaintiffs as some of the perpetrators of this offence.

[23] I accept that in respect of the seventh and eighth plaintiffs, the arresting officers had not seen the statements of eyewitnesses. What, however, cannot be denied is that they effected the arrest as mandated by people who were privy to the statements linking these plaintiffs to the act of murdering the deceased. There were statements available linking the two plaintiffs to the crimes at the time of their arrest. The information given would, objectively assessed, give rise to a reasonable suspicion to any reasonable policeman in the position of the arresting officers to arrest these plaintiffs. In my view the policemen exercised their discretion properly when they arrested these plaintiffs. The arrests were accordingly lawful.

[24] The court in *De Klerk v Minister of Police*⁵ held that the unlawful arrest was the cause of Mr de Klerk's detention after appearance at court. It is common case that the plaintiffs were charged with the offence of murder which was a schedule 6 offence.

⁵ *De Klerk v Minister of Police* [2019] ZACC 32; 2019 (12) BCLR 1425 (CC).

They bore the onus to establish that there were exceptional circumstances which would have entitled the court to release them on bail. The police played an important role of putting certain facts before the prosecution, and ultimately to the court, in order to consider bail. In terms of the statutory regime of bail, the investigation officer has no discretion to release an accused person on bail. After the bail application was refused, the applicants never challenged the refusal of bail. I could find no unlawfulness in the detention of the plaintiffs post their first appearance in court. The National Prosecuting authority weighed the circumstances of the case and decided to prosecute the plaintiffs.

[25] The mere fact that an accused person has been acquitted in a criminal trial does not entitle him, without ado, to compensation for the arrest and detention. I am satisfied that the plaintiffs were lawfully arrested and detained. Their claims must accordingly be dismissed. There is no reason why the costs should not follow the cause.

[26] I accordingly order as follows:

The claims of all eight plaintiffs are dismissed with costs.



P E MOLITSOANE
JUDGE OF THE HIGH COURT

Appearances

For the Plaintiff:

Instructed by:

N Bahlekazi

Mpombole & Ishmael Attorneys

Bloemfontein

For the Defendant:

Instructed by:

JJ Jonase

State Attorney

Bloemfontein