



**THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

Not Reportable

Case No: A301/2025

In the matter between:

CHARMAINE MENTZA

First Appellant

FRANDALL PEKEUR

Second Appellant

MELVIN SILJEUR

Third Appellant

NATASHA MENTZA

Fourth Appellant

TRUDIE JACOBS

Fifth Appellant

And

MINISTER OF POLICE

Respondent

Coram: Da Silva -Salie J et Yake AJ

Heard: 31 July 2026

Delivered: Electronically on 10 September 2026

Summary: Appeal against dismissal of claim for unlawful arrest and detention – principles restated –whether reasonable suspicion exists for purposes of section

40(1)(b) of Criminal Procedure Act 51 of 1977 - arrest and detention lawful.

ORDER

- a) The appeal is dismissed with costs on scale C
-

JUDGMENT

YAKE AJ (DA SILVER - SALIE J concurring)

Introduction

[1] This is an appeal against the whole judgment and order delivered by Magistrate Albertyn (“the court *a quo*”) sitting in Robertson Magistrate Court on 17 September 2025, wherein the appellants’ claims were dismissed. The appellant’s claims were founded upon the allegations of the unlawful arrest and detention.

[2] In addition, the appellants seek this Court to grant the relief set out in their notice of appeal. In their notice of appeal, the appellants advanced several grounds of appeal in support of the contention that the court *a quo* erred and misdirected itself. The respondent opposes the appeal and seeks to uphold the judgment and order of the court *a quo*. The grounds of appeal are succinctly set out below as follows:

(a) The court a quo erred in its findings and conclusions in several material respects:

- (i) In finding that the respondent satisfied the onus to prove the arresting officer had reasonable ground to effect arrest when he relied purely on the contents of the statements, card machine slips and journals in the case docket; but testified that Natasha Mentza (fourth appellant and Jerowin Joseph were arrested purely because the abbreviations of their names proved that they were on duty when the crime was purportedly committed.
- (ii) In not making a finding in respect of each of the appellants individually considering the contents of the case docket the arresting officer relied on.
- (iii) In not considering the fact that the arresting officer disregarded the DPP's direction that each one of the group of employees must be targeted individually when applying to conduct an undercover operation.
- (iv) In finding that the appellants were not threatened or intimidated based on the independent witness Crous's testimony is erroneous because the court disregarded the fact that this witness left the meeting early.
- (v) In finding that the appellants were not credible witnesses because of the inconsistencies in respect of how much money they were asked to pay and for what purpose.
- (vi) In not taking into account that the appellants' concessions on technical points in law i.e. what constitutes arrest, reasonable grounds and reasonable suspicion, are of no consequence.

- (vii) In not taking into account that the arresting officer did not know of the existence of the Standing Order G341 promulgated under the Police Act.
- (viii) In finding that the reason provided by the arresting officer of why he opted to arrest, are legitimate reasons.
- (ix) In finding that the arresting officer's doing that the appellants were incarcerated after their first appearance in light of the officer's testimony that he opposed bail.
- (x) In finding that two of the appellants admitted to committing fraud in allowing the public to draw cash i.e. the so-called cash back transactions.

[3] It is instructive to first summarise the background facts which are either common cause or were accepted by the court *a quo* underlying this appeal.

Factual Matrix

[4] The background facts, which were presented in the court *a quo* and largely common cause on the record, may be summarised as follows. Certain employees of Caltex Garage, Rola Ford petrol station were implicated in fraudulent activities. The appellants were alleged to have been among those employees. The modus operandi employed was that some truck drivers would purchase fuel using their employer's petrol card for a specified amount. It would then be agreed between the truck driver and the employee that a higher amount be recorded than the fuel actually purchased. The difference would thereafter be shared between them.

[5] In other instances, no fuel was purchased at all. Instead, the card would be presented under the pretence of a fuel transaction, while cash was handed back to the cardholder. This practice was colloquially referred to as “cashback.” In further instances, customers’ cards were charged with inflated amounts without their knowledge, thereby unlawfully extracting additional sums.

[6] The fraudulent activities came to the attention of Warrant Officer Davids (“Davids”), now deceased, through information received from his informer. Davids, in turn, reported the matter to Captain Abrahams (“Abrahams”), who thereafter undertook the investigation.

[7] Through the course of his investigation, Abrahams discovered that certain receipts were never entered into the journals, thereby indicating that the monies for particular fuel transactions were not accounted for. Abrahams approached Mr Theodore Willemse (“Willemse”), the manager of Rola Ford, as well as Ms Marianna Hartzenberg (“Hartzenberg”), a shift manager, both of whom implicated the appellants.

[8] Abrahams further obtained video footage depicting some suspicious activities. Having collected this information, he proceeded to conduct a trap operation in terms of section 252A of the Criminal Procedure Act (“CPA”)¹. The operation was carried out on 1 November 2016. A statement was thereafter obtained from Mr Quinn van der Merwe, who executed the trap operation.

[9] As a result of the foregoing investigation, Abrahams formed the view that a reasonable suspicion existed that the appellants were acting as a syndicate, engaged in fraudulent activities. Acting upon that suspicion, he proceeded to arrest and charge the appellants with fraud. Four of the appellants remained in custody, while one was released on bail.

¹ Criminal Procedure Act 51 of 1977

[10] Abrahams testified that he did not consider alternative methods of securing the appellants' attendance in court, as the investigation was not yet finalised. He further explained that, even after the appellants' arrest, two additional fraudulent transactions were perpetrated. His decision was also influenced by the need to protect his witness, Hartzenberg, from possible interference, the existence of other potential suspects still to be apprehended, and the necessity of confirming the appellants' residential addresses.

[11] Pursuant to their arrest, the appellants were brought before the Robertson Magistrates' Court for their first appearance on 11 November 2016. The matter was thereafter postponed for the purpose of verifying their residential addresses. On 17 November 2016, the appellants were released on bail. The proceedings continued until 1 June 2017, when the court struck the matter from the roll.

[12] I pause to observe that the charge sheet included in the record does not reflect the proceedings of 1 June 2017. This Court is therefore unable to ascertain the reasons for the matter having been struck from the roll.

[13] All the appellants admitted that they were employees of Caltex garage. The first appellant, Ms Charmaine Mentza ("Charmaine"), and the fifth appellant, Ms Trudie Jacobs ("Trudie"), were employed as cashiers. The second appellant, Mr Frandall Pekeur ("Frandall"), the third appellant, Mr Melvin Siljeur ("Melvin"), and the fourth appellant, Ms Natasha Mentza ("Natasha"), served as petrol attendants.

[14] Charmaine was implicated by the affidavit of Willemse, video footage as well as documentary evidence. Frandall was implicated by the information of Davids's informer, by Hartzenberg, and by documentary evidence. Melvin was implicated by Davids's informer, Hartzenberg, Willemse, and documentary evidence. Natasha was implicated by documentary evidence alone. Trudie was

implicated by Willemse, Hartzenberg, Mr Quinn van der Merwe, and documentary evidence.

[15] Notwithstanding these allegations, each of the appellants denied any involvement in fraudulent activities and contended that their arrest and detention were unlawful. The respondent, in turn, denied that the appellants' arrest and detention were unlawful. It contended that the arresting officers acted within the scope of the empowering statutory provision.

Proceedings of the court a quo

[16] At the trial, only the arresting officer, Abrahams, gave evidence on behalf of the respondent on the merits. Davids, who was also involved in the matter, has since passed away. In his testimony, Abrahams maintained that the arrest and detention of the appellants were lawful. He contended that he had a reasonable suspicion that the offence of fraud had been committed and in arresting the appellants he acted upon that suspicion.

[17] Conversely, all the appellants testified on their own behalf, and each denied any involvement in the offence. They averred that their arrest and detention were unlawful. The appellants contended that Abrahams did not entertain a reasonable suspicion sufficient to justify their arrest. In the alternative, they argued that, even if such suspicion existed, Abrahams failed to exercise the discretion afforded to him in terms of G341 of the Police Standing Orders.

The findings of the court a quo

[18] On 17 September 2025, the court *a quo* found that the testimony of the appellants was replete with discrepancies and inconsistencies. The court *a quo* found that the respondent had discharged its onus and had established that the arrest and detention of the appellants were lawful. As such the appellants' claim was dismissed.

Issues for determination

[19] The crisp issues to be determined in this appeal are three-fold:

- (a) whether Abrahams had reasonable suspicion to arrest the appellants; if found that he did;
- (b) whether Abrahams exercise his discretion in arresting and detaining the appellants.
- (c) whether the arrest and detention of the appellants were lawful. Put differently, the question is whether the jurisdictional requirements of section 40(1)(b) of the CPA were met.

[20] Having outlined the issues for consideration, it is imperative to set out the legal principles applicable on appeal. I am also mindful of the appellants' stance that, they are challenging both the question of facts and law.

Applicable legal principle

[21] It is settled law that in a matter such as the present, this Court's powers to interfere on appeal with the findings of fact of the trial court are limited in the absence of demonstrable and material misdirection. Where there is no misdirection on the facts, the presumption is that the trial court's findings are

correct, and the appellate court will only interfere with them if it is convinced that those findings are wrong. This principle was reaffirmed by the Supreme Court of Appeal in *Malan and Another v Law Society of the Northern Provinces*² where the following was observed:

‘A court of appeal has limited powers to interfere with a decision of the court of first instance. In relation to the first leg of the inquiry, which is factual, appeals are subject to the general limitation that courts of appeal defer to the factual findings of courts of first instance (R v Dhlumayo 1948 (2) SA 677 (A)).’

[22] However, in *Minister of Safety and Security & others v Craig & others NNO*,³ Navsa JA, observed that although courts of appeal are slow to disturb findings of credibility, they generally have greater liberty to do so where a finding of fact does not essentially depend on the personal impression made by a witness’ demeanour, but predominantly upon inferences and other facts and upon probabilities. In such circumstances, a court of appeal, with the benefit of a full record, may often be in a better position to draw the appropriate inferences.

Submissions by parties

[23] Mr Engelbrecht, appearing for the appellants, contends that the court *a quo* erred on both a question of fact and of law. Addressing the question of fact, counsel submitted that the court *a quo* failed to deal adequately with the material contradictions in Abrahams’s evidence. Instead, the court *a quo* placed undue weight upon the discrepancies in the appellants’ testimony. Counsel further argued that, in reaching its decision, the court *a quo* adopted a blanket approach, rather than analysing the position of each appellant in isolation.

² *Malan and Another v Law Society of the Northern Provinces* [2008] ZASCA 90; 2009 (1) SA 216 (SCA) at para 12

³ *Minister of Safety and Security & Others v Craig & others NNO* 2011 (1) SACR 469 (SCA) at para 58.

[24] Conversely, Mr Wallis Roux, appearing for the respondent, argued that the testimony of the appellants cannot be assessed in isolation, as the offences constituted an organised crime, properly planned and executed by the appellants acting in concert. Counsel contended that the contradictions referred to by the appellants were not material to the central issue, namely whether Abrahams entertained a reasonable suspicion sufficient to justify the arrest and detention of the appellants. Mr Roux further submitted that there was no misdirection in the decision of the court *a quo*, and that the appellants' claim was correctly dismissed.

Evaluation

Did the respondent comply with the four jurisdictional requirements?

[25] It is instructive I first consider the statutory power vested on Abrahams to arrest the appellants. It is trite that the onus rests upon the respondent to establish that the appellants' arrest and subsequent detention were lawful.⁴ In the present matter, it is common cause that the appellants were arrested without the authority of a warrant. The law does not, however, prohibit a police officer from effecting such an arrest. What is required is that the arrest be undertaken strictly within the parameters of legality, and the burden accordingly rests upon the arresting officer to demonstrate its lawfulness.

[26] It is apposite that an arrest without a warrant constitutes a *prima facie* infringement of personal liberty. It is therefore fair and just that the party effecting or causing such arrest should bear the burden of proving that the deprivation of liberty was justified in law.⁵

⁴ *Syce and Another v Minister of Police* 2024 (2) SACR 1 (SCA) at para 40.

⁵ *Minister of Law and Order v Hurley* 1986 (3) SA 568 (A) at 589E-F.

[27] The principle that the respondent bears the burden of justifying the deprivation of liberty is firmly rooted in constitutional and statutory law. Section 12 (1)(a) of the Constitution,⁶ guarantees to every person the right to freedom and security, which includes the right not to be deprived of liberty arbitrarily or without just cause. It follows that any arrest and detention must be supported by lawful authority. In this regard, a police officer is required to apply his mind to the detention of an arrestee and to the circumstances attendant thereto. A failure to exercise such judgment properly renders the detention unlawful.⁷

[28] Accordingly, once the appellants allege that their arrest and detention were unlawful, the onus shifts to the respondent to demonstrate compliance with the jurisdictional requirements of section 40(1)(b) of the CPA. Only by establishing such compliance can the respondent discharge the burden of proving that the interference with liberty was justified in law.

[29] Where a police officer elects to arrest without a warrant, it is imperative that the jurisdictional prerequisites prescribed in section 40(1) of the CPA are satisfied. Section 40(1)(b) of the CPA which deals with the arrest of the suspect without warrant and provides that:

‘A peace officer may without warrant arrest any person –

‘(a)...

(b) whom he reasonably suspects of having committed an offence referred to in schedule 1’.

[30] This section empowers a police officer to arrest, without a warrant, any person reasonably suspected of having committed an offence listed in Schedule

⁶ The Constitution of the Republic of South Africa Act, 1996

⁷ *Minister of Justice and Constitutional Development and Another v Zealand* (387/06) [2007] ZASCA 92; 2007 (2) SACR 401 (SCA)

1, save for the offence of escaping from lawful custody.⁸ The court in *Duncan v Minister of Law and Order*⁹ the court held that there are four elements that must be present for the arrest to comply with the lawful requirements for the police officer to effect the arrest. These jurisdictional facts for a section 40(1)(b) of the CPA defence are that (i) the arrestor must be a peace officer; (ii) the arrestor must entertain a suspicion; (iii) the suspicion must be that the suspect (the arrestee) committed an offence referred to in Schedule 1; and (iv) the suspicion must rest on reasonable grounds.

[31] The first three jurisdictional requirements are readily ascertainable and had been proven. *Firstly*, it was undisputed that Abrahams, who effected the arrest, was a peace officer.¹⁰ *Secondly*, Abrahams entertained a suspicion that the appellants had committed an offence of fraud, and *thirdly*, fraud falls within Schedule 1 of the CPA. These requirements have been proven and are not in dispute.

[32] What remains for determination is the fourth requirement, namely, the suspicion must rest upon reasonable grounds.¹¹ This requirement requires closer scrutiny before a police officer may be clothed with the necessary authority to effect an arrest. Put differently, the question is whether Abrahams entertained a reasonable suspicion sufficient to justify the arrest of the appellants.

[33] Mr Engelbrecht, contends that Abrahams entertained no reasonable suspicion to arrest Frandall and Natasha, as there was nothing linking them to the commission of any offence. He submits that the sole reason for Natasha's arrest was her mere presence at her workplace on 10 October 2016. In support of this contention, reliance was placed on *Minister of Police and Another v*

⁸ Section 40(1)(b) of the Criminal Procedure Act 51 of 1997

⁹ *Duncan v Minister of Law and Order* 1986 (2) SA 805 (A) at 818G-H.

¹⁰ Under s 1 of the Act, peace officers include police officers

¹¹ *Mabona and Another v Minister of Law and Order and Others* 1988 (2) SA 654 (SE) at 658E-H.

Hoogendoorn.¹² Counsel argued that the present matter bears similarities to *Hoogendoorn*, in that both concerned allegations of fraud where the investigating officer sought the opinion of the prosecutor prior to effecting an arrest. In *Hoogendoorn* the court held that a prosecutor is not a peace officer, and that a police officer cannot rely upon the prosecutor's opinion to justify an arrest. It was concluded that the investigating officer had failed to exercise his discretion, with the result that the arrest was unlawful.

[34] Similarly, with regard to Frandall, counsel contends that the only evidence implicating him emanated from an informer. He submits that information from an informer, standing alone, is insufficient to justify an arrest. In this regard, reliance was placed on *Mabona and Another v Minister of Law and Order and Others*¹³ ("*Mabona*"), where the court held that the arrest of the plaintiffs were not justified when, after searching the plaintiffs' home based on information received, the police found nothing incriminating.

[35] The court in *Mabona* went further to hold that a reasonable policeman, upon failing to discover any corroborative evidence, would no longer have good grounds for suspicion and would not have proceeded with an arrest. Instead, such officer would have conducted further investigation. The court accordingly held that the arrest of the plaintiffs was unlawful. On this basis, counsel argued that the arrests of Natasha and Frandall were likewise as in *Mabona*, unlawful.

[36] Conversely, Mr Wallis Roux argued that when dealing with Natasha and Frandall, the court should look at the evidence into totally. The court should consider that this was an organised crime which certain employees of the petrol station worked together to realise their crime. Counsel argued that there was reasonable suspicion that Natasha committed a crime as she was at work when a

¹² *Minister of Police and Another v Hoogendoorn* 2022 (2) SACR 36 GP

¹³ *Mabona* ibid fn 11

certain amount of money appeared on the slip but not on the journal. Counsel further argued that the *Mabona matter* finds no application in Frandall matter, as

Frandall was implicated by journal, receipt and affidavits not by an informant. He argued that Frandall was working with Mervin and they both targeted a green truck, where one will keep a look out while the other will go to the driver. On this basis, counsel argued that there was reasonable suspicion for Abrahams to arrest both Natasha and Frandall as such their arrest was not unlawful.

Reasonable Suspicion

[37] The test for determining whether a suspicion is reasonably entertained is objective. The question is: ‘*Would a reasonable person in the arresting officer’s position, and possessed of the same information, have considered that there were good and sufficient grounds for suspecting that the arrestee was guilty of the offence in question?*’

[38] In *Minister of Safety and Security and Another v Swart*,¹⁴ the Supreme Court of Appeal held that:

‘The question is whether any reasonable person, confronted with the same set of facts’, would draw the same conclusion. The requirement that the police officer acted reasonably will not suffice if their action does not objectively conform to that of a reasonable person. The reasonable person test is to ensure that the actions of the police officer would equate to the actions of a police official that was in his or her position. If it can be said that the police officer’s actions align with that of an officer in their position armed with the same information and that another police officer would have acted the same while being armed with the same information, it could be said that the police officer acted reasonably.’

¹⁴ *Minister of Safety and Security and Another v Swart* 2012 (2) SACR 226 (SCA) at para 20

[39] This principle was reaffirmed in *Biyela v Minister of Police*,¹⁵ where the Supreme Court of Appeal explained the position as follows:

‘[23] The issue is not whether there is evidence admissible in a court available to the arresting officer, but whether there was information available which would cause him to reasonably suspect the suspect of having committed the relevant offence. The reasonableness requirement therefore extends inter alia to the reliability or accuracy of the information upon which an arrest is founded, including the quality and ambit thereof.’

...

“[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.¹⁶ 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.’ (My emphasis)

[40] Applying the above authorities, in the present matter, Abrahams was required to entertain was a reasonable suspicion that a crime had been committed. It bears emphasis that the test is not equivalent to that applied in criminal proceedings, where a reasonable inference must be the only inference to be drawn. In the context of arrest under section 40(1)(b) of the CPA, the threshold is markedly very lower. The arresting officer need only entertain a

¹⁵ *Biyela v Minister of Police* 2023 (1) SACR 235 (SCA).

¹⁶ *Minister of Law and Order and Others v Hurley and Another* 1986 (3) SA 568 (A) at 579H.

reasonable suspicion that an offence has been committed. Suspicion, though it must rest upon objective grounds, does not demand certainty nor exclusivity of inference. It suffices that the suspicion be rationally founded and capable of sustaining the decision to arrest.

[41] In the present matter, the evidence reveals that a crime was indeed committed, and that it constituted an organised scheme which was carefully planned and executed over a period of approximately five years. A number of employees of Rola Ford were implicated in this syndicate.

[42] The modus operandi was that, in these fraudulent transactions, the amounts reflected on the slips would not correspond with the entries in the journal. This discrepancy demonstrates that the scheme was thoroughly conceived and systematically implemented. It bears emphasis that such a scheme could not have been perpetrated by a single individual. The petrol attendants necessarily had to collaborate with the cashiers in order to access and misappropriate funds from the tills. The evidence thus points to a coordinated enterprise involving multiple actors within the organisation.

[43] As correctly submitted by Mr Wallis Roux, the present matter is distinguishable from *Mabona*. In *Mabona*, the arrest was predicated upon information supplied by an informant. By contrast, in the instant case the arrest was grounded in documentary evidence; namely journals and receipts, as well as the affidavit of Ms Hartzenberg, herself an employee of Rola Ford, who personally, witnessed the fraudulent activities.

[44] On 10 October, a fraudulent transaction was perpetrated. On that day, Natasha together with two other employees were present at work when the transaction occurred. A slip was issued without a corresponding entry in the journal, and none of the three employees was prepared to accept responsibility for the irregularity. In these circumstances, any reasonable person would have

entertained suspicion that a crime was being committed. Faced with the refusal of any of the three employees to account for the discrepancy, Abrahams was justified in arresting all three. His suspicion was not only reasonable but objectively grounded in the documentary evidence and the conduct of the employees before him.

[45] In my view, the suggestion advanced by Mr Engelbrecht that Natasha was implicated in this matter purely by virtue of her presence at work is untenable. The evidence demonstrates that her implication arose not merely from her presence, but from her association with a transaction in which a slip was issued without a corresponding journal entry, and in circumstances where none of the employees present accepted responsibility.

[46] Similarly, the contention that Frandall's implication rested solely upon information from an informant is not borne out by the evidence. His implication was grounded in the broader evidentiary matrix, including documentary irregularities and corroborating affidavit of Hartzenberg.

[47] The further suggestion that Abrahams ought not to have arrested them cannot be sustained. To adopt such a position would be to countenance the continuation of criminal activity and to undermine the very purpose of arrest as a lawful mechanism to secure attendance and prevent further offences. In my view, Abrahams' suspicion was thus both reasonable and justified in law.

[48] I do not propose to deal with the question of reasonable suspicion in respect of Charmaine, Melvin and Trudie, as Mr Engelbrecht has properly conceded that there existed reasonable suspicion for their arrest.

[49] In the result, I find that Abrahams' suspicions were reasonable when he arrested all five appellants. This conclusion signifies that the respondent has

succeeded in establishing all four jurisdictional requirements contemplated in section 40(1) (b) of the CPA.

[50] Having determined that Abrahams entertained a reasonable suspicion sufficient to justify the arrest of the appellants, I now turn to the further inquiry: whether Abrahams exercised his of the discretion to arrest the appellants, the existence of a continuing offence, the availability of less restrictive statutory mechanisms.

Did Abrahams exercise his discretion when arresting the appellants?

[51] Once the jurisdictional facts are established, a discretion arises whether to arrest or not.¹⁷ The police officer, is not obliged to effect an arrest, the police have a discretion on the manner to effect arrest. The CPA provides different methods by which the attendance of an accused in court may be secured for purposes of trial. These include, inter alia, arrest, summons, written notice, and indictment, each in accordance with the relevant provisions of the Act.¹⁸

[52] A police officer is vested with a discretion to employ any of the methods provided by the CPA to secure the attendance of an accused in court, having regard to the circumstances of each case. The arresting officer must therefore consider the facts before him and exercise his discretion in light of those facts.¹⁹ The discretion is not unfettered; it must be exercised rationally, reasonably, and in accordance with the constitutional imperative that any deprivation of liberty be justified in law. It is therefore important to determine whether Captain Abrahams appreciated that he possessed such a discretion.

¹⁷ *National Commissioner of Police and Another v Coetzee* 2013 (1) SACR 358 (SCA) para 14.

¹⁸ Section 38 of the CPA

¹⁹ *Groves NO v Minister of Police* 2024 (1) SACR 286 (CC) para 52; *MR v Minister of Safety and Security and Another* 2016 (2) SACR 540 (CC) paras 42-46; *Olivier v Minister of Safety and Security and Another* 2009 (3) SA 434 (W) at 445C-F.

[53] Mr Engelbrecht contends that Abrahams failed to exercise the discretion afforded to him under G341 of the Police Standing Orders. The foundation of this contention is that Abrahams was unfamiliar with the provisions of G341. According to counsel, an officer who does not know the Standing Order cannot meaningfully exercise the discretion vested in him. On this reasoning, it is argued that the arrest and detention of the appellants could not be lawful, as the discretion required by the Standing Orders was not properly invoked or applied.

[54] In contrast, Mr Wallis Roux contends that Abrahams did exercise his discretion by releasing Natasha after considering her circumstances. Counsel submits, if Abrahams did not exercise his discretion, he would not have released Natasha. Moreover, his lack of knowledge of the Standing order, does not make him an incompetent officer.

[55] Abrahams was cross-examined at length during the trial regarding his lack of knowledge of the Standing Order. He was further criticised by Mr Engelbrecht on this issue. I note that Abrahams conceded that he was not aware of the Standing Order. The question that arises is whether, his lack of knowledge of the Standing Order can constitute in him not exercising his discretion.

[56] Abrahams testified that after all the appellants had arrived at the police station, Natasha complained of being in pain as she was pregnant. He consciously made a decision not to arrest her and instead released her on bail. Notwithstanding that Natasha had the same circumstances as the other appellants, and that he could have, as correctly argued by Mr. Engelbrecht, taken her to hospital to seek medical attention, he decided against that. That in my view indicates that he was fully conscious that he had a discretion to arrest or not. This is by no means indicative that there were no grounds for him to arrest. In my view, notwithstanding Abrahams's lack of knowledge of the

Standing Order, he did exercise the discretion vested on him. Moreover, the Standing Order G341 that the appellants are referring to has since been repealed and replaced by National Instruction 11 of 2019. The lawfulness of the arrest cannot therefore depend upon compliance with the Standing Order itself, but on the underlying constitutional premise. This remains the same; that arrest is a coercive mechanism to secure the proper administration of justice, not an end in itself. I therefore reject the submission advanced by the appellant's counsel that Abrahams failed altogether to appreciate the existence of a discretion; the transcript does not support that conclusion.

Were the arrest and detention of the appellants lawful?

[57] The next issue for consideration is whether the arrest and subsequent detention of the appellants were lawful. The record demonstrates that the offences in question constituted an organised scheme, perpetrated over a period of five years, in which employees of the petrol station systematically defrauded both the business and unsuspecting customers. Evidence was adduced that even innocent patrons fell victim to this fraudulent enterprise.

[58] Abrahams testified that he elected not to release the appellants because the investigation remained incomplete, the protection of his witness was paramount, and the appellants' residential addresses required verification. He further indicated that, notwithstanding the appellants' arrest, two additional fraudulent transactions were committed thereafter, underscoring the organised nature of the criminal activity.

[59] Mr Engelbrecht submitted that the arrest of the appellants was unnecessary and actuated by ulterior motives. In support of this contention, counsel relied upon the fact that Natasha was released while the other appellants

remained in custody. In his view, pregnancy does not constitute a lawful ground for release, as arrangements could have been made to ensure that Natasha received appropriate medical care while under arrest. On this basis, Mr Engelbrecht contends that the release of Natasha is indicative of an ulterior motive, as it demonstrates that Abrahams did not possess adequate grounds to sustain the arrest.

[60] Counsel further argues that Abrahams was aware of the appellants' residential addresses, and thus the purported need for verification was unfounded. He maintains that Abrahams ought to have considered the individual circumstances of each appellant, rather than treating them collectively in a holistic manner. By failing to do so, counsel submits, Abrahams acted not for the legitimate purpose of securing the appellants' attendance in court but rather employed the arrest and detention as an investigative tool and as a means of exerting pressure upon the appellants to turn against one another. On this basis, Mr Engelbrecht concludes that the arrest and detention of the appellants were unlawful.

[61] On the contrary, Mr Wallis Roux submitted that the offences constituted organised crime, and that Abrahams could not reasonably have dealt with the appellants on an individualised basis. Counsel argued that there were reasonable grounds to release Natasha, and that her release did not undermine the legitimacy of the arrests effected in respect of the remaining appellants. He further contended that the incompleteness of the investigation could not serve as a decisive factor against arrest. According to Mr Roux, the interrogation of suspects forms an integral part of the investigative process, and there was nothing improper in Abrahams interrogating the appellants. This, he maintained, did not signify that Abrahams had no intention of bringing them before court.

[62] Counsel emphasised that there existed a compelling and strong prima facie case against the four remaining appellants. The respondents relied upon the evidence of Willemse and Hartzenberg, together with corroborating video footage, to demonstrate that the appellants were implicated in the fraudulent scheme. In Mr Roux's submission, this evidence exceeded the threshold of reasonable suspicion and fully warranted their arrest.

[63] It is imperative that, where a peace officer elects to effect an arrest, the decision must be informed by the intention of bringing the arrested person before a court of law to face justice. The authorities are clear that arrest has always been premised upon the need to secure the attendance of an accused person at trial, and never as a form of punishment. Even where arrest is justified, it must be exercised only after careful consideration of the surrounding circumstances of the case. Police officers are accordingly enjoined to ensure that the decision to arrest is properly justified and not undertaken lightly or mechanically.

[64] Each case must be determined on its own merits, with due regard to the constitutional imperative that liberty may not be curtailed arbitrarily or without just cause. The question whether a police officer has a discretion when executing a warrant not to arrest was the subject matter before the Constitutional Court in *Groves N.O. v Minister of Police*,²⁰ where the Court examined the scope and limits of such discretion in light of constitutional safeguards. The apex court

²⁰ *Groves N.O. v Minister of Police* [2023] ZACC 36; 2024 (1) SACR 286 (CC); 2024 (4) BCLR 503 (CC).

clarified the legal uncertainty occasioned by the dictum in *Minister of Safety and*

Security v Sekhoto and Another,²¹. In *Sekhoto*, the Supreme Court of Appeal found:

‘Once the jurisdictional facts for an arrest, whether in terms of any paragraph of s 40(1) or in terms of s 43 are present, a discretion arises. The question whether there are any constraints on the exercise of discretionary powers is essentially a matter of construction of the empowering statute in a manner that is consistent with the Constitution. In other words, once the required jurisdictional facts are present the discretion whether or not to arrest arises. The officer, it should be emphasised, is not obliged to effect an arrest. This was made clear by this Court in relation to s 43 in *Groenewald v Minister of Justice*.²²’

[65] Considering the aforesaid finding, for which reliance was placed on *Groenewald*, the Constitutional Court in *Groves* at para 51 held that the statement in *Groenewald* was an obiter dictum and constitutes an error in law. The Court clarified that *Groenewald* did not decide that a peace officer effecting an arrest on the strength of a warrant possesses a discretion whether or not to arrest. Rather, the case dealt with the discretion of the magistrate or peace officer authorising the warrant of arrest.

[66] It must therefore be emphasised that the offence under consideration constituted organised crime which had been ongoing for a considerable period. If left unchecked, such conduct would inevitably result in further and more damaging consequences. Police officers are accordingly expected to perform their duties diligently in order to put a stop to activities of this nature.

[67] Abrahams was presented with information from an informer through Daniels. Upon receipt thereof, he conducted his own investigation which

²¹ *Minister of Safety and Security v Sekhoto* [2010] ZASCA 141; 2011 (2) SA 157 (SCA) at para 28

²² *Groenewald v Minister van Justisie* 1973 (3) SA 877 (A) at 883G-884B

confirmed that fraudulent activities were indeed taking place. He obtained statements from Hartzenberg and Willemse implicating the appellants and further secured video footage and documentary evidence corroborating their involvement.

[68] In these circumstances, it was to be expected that Abrahams would arrest members of a syndicate which had conducted itself in this manner for several years. In my view, the arrest was justified as a means of curtailing fraudulent activities which persisted even after the appellants had been apprehended.

[69] Moreover, section 40(1)(b) of the CPA does not require certainty that a crime has been committed before an arrest may be effected. The statutory threshold is that the arresting officer must entertain a reasonable suspicion. Put differently, the officer need not be convinced that there exists evidence proving the guilt of the arrestee beyond reasonable doubt; that is not the test at this stage. The court in *Lifa v Minister of Police and Another*,²³ following what had been said in *Biyela*,²⁴ held that it is not a requirement that a thorough investigation be completed before an arrest without a warrant is effected. The need to carry out further investigations prior to exercising the discretion to arrest depends, as the court observed, upon the facts of each particular case.

[70] I note the submissions of Mr Engelbrecht that Natasha could have been kept in detention, as medical care could have been arranged for her. In principle, I agree that such an approach was legally permissible. However, it must equally be recognised that Abrahams was seized with a discretion to determine whether release was appropriate in the circumstances. The mere fact that he elected to release Natasha does not, without more, demonstrate mala fides or negate the existence of a prima facie case against the appellants.

²³ *Lifa v Minister of Police and Another* 2023 (1) All SA 132 GJ at [49].

²⁴ *Ibid* fn15

[71] Considering the foregoing, it was not necessary for the police to have completed their investigation before effecting the arrests. The statutory requirement under section 40(1)(b) is the existence of a reasonable suspicion, not certainty of guilt. In my view, the evidentiary material available to Abrahams; including informer information, corroborating witness statements, and documentary evidence; was sufficient to establish a reasonable suspicion in respect of the appellants. Accordingly, I find that the arrest of the appellants was lawful, being grounded in reasonable suspicion and exercised within the lawful discretion afforded to the arresting officer.

[72] It is trite that the mere fact that an arrest is lawful does not automatically render the ensuing detention lawful. The lawfulness of detention must be assessed independently, with reference to the circumstances prevailing at the time. In this regard, Abrahams testified that the investigation was incomplete, that further suspects remained to be apprehended, and that the appellants' residential addresses required verification. These considerations, in my view, warranted the continued detention of the appellants. Moreover, on the facts, the conclusion cannot be reached that Abrahams misled the court at the bail application by relying on incomplete information, as contended by the appellants. Accordingly, I find that the detention of the appellants was also lawful. This conclusion is dispositive of the appeal, and it is therefore unnecessary to consider the remaining issues in any detail. Suffice it to state that the appellants' submissions regarding the existence of an error of fact, said to constitute a causal nexus between the alleged unlawfulness of the arrest and the continued detention, do not pass muster.

Was the dismissal of the claim founded on factual error?

[73] Mr Engelbrecht argued that the magistrate failed to address contradictions in Abrahams's testimony. Counsel submits, in his evidence-in-chief, Abrahams stated that the investigation had been completed prior to the arrest. Yet, when questioned by the court, he altered his position and indicated that certain affidavits were still outstanding. Counsel further contends that Abrahams denied the existence of a meeting, notwithstanding Crouse's testimony that Abrahams was standing next to her during such meeting.

[74] A further alleged contradiction arises from the interpretation of a statement which was translated to mean that all employees were involved in the fraudulent activities, whereas the original version referred only to certain employees. According to Mr Engelbrecht, these inconsistencies materially affect the factual findings of the magistrate. On this basis, counsel submits that the magistrate's dismissal of their claim was founded upon factual error.

[75] Conversely, Mr Wallis Roux contends that whether Abrahams testified that the investigation was complete or not does not affect the decisive issue, namely whether there existed a reasonable suspicion to arrest the appellants. The lawfulness of the arrest, he submits, turns not on the stage of completion of the investigation, but on whether the jurisdictional requirements of section 40(1)(b) were satisfied. Moreover, Crous clarified that there was never a formal meeting, but rather a gathering of persons present at the time. This, counsel argues, neutralises the alleged contradiction relied upon by the appellants and does not undermine the factual findings of the magistrate.

[76] I note the contradictions raised by the appellants regarding the factual findings of the magistrate. The appellants placed reliance on certain inconsistencies in Abrahams's testimony, notably whether the investigation had been completed prior to arrest, whether Willemse and Crous were present at a particular gathering, and the precise translation of a statement implicating

employees. While these contradictions may be noted, they are peripheral in nature. They do not go to the heart of the jurisdictional enquiry under section 40(1 (b), which is whether the arresting officer entertained a reasonable suspicion that the appellants had committed an offence. The law is clear that immaterial or collateral contradictions, even if present, do not vitiate the factual findings of the trial court where the central issue remains unaffected. In this matter, the contradictions identified do not undermine the existence of reasonable suspicion, nor do they render the arrest or detention unlawful.

[77] In my view, the court *a quo* correctly dismissed the applicants' claim for unlawful arrest and detention. The evidence demonstrates that the arresting officer entertained a reasonable suspicion, supported by informer testimony, corroborating witness statements, and documentary evidence. The subsequent detention was likewise justified by the ongoing investigation and the need to apprehend further suspects. For these reasons, the appeal must fail.

Order

[78] In the results, I would propose the following order:

- a) The appeal is dismissed with costs on scale C.

S YAKE

ACTING JUDGE OF THE HIGH COURT

I agree and it is so ordered.

G DA SILVA-SALIE
JUDGE OF THE HIGH COURT

Appearances

For the Appellant: Advocate Engelbrecht

Instructed by: Hermie Wentzel & Jeanrè Botha Attorneys

For the Applicant: Advocate Wallis Roux

Instructed by: Johan Victor Attorneys & Litigation