

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Case Number: 18/27561

(1)	REPORTABLE: YES / ☒ NO
(2)	OF INTEREST TO OTHER JUDGES: YES / ☒ NO
(3)	REVISED: YES / ☒ NO
10.9.2026	
DATE	SIGNATURE

In the matter between: -

SIEGHART ERNEST DUVEL

Plaintiff

and

MINISTER OF POLICE

1st Defendant

WARRANT OFFICER BRIJLALL

2nd Defendant

MONICA KHALEMA

3rd Defendant

PAULE MPETE

4th Defendant

**NATIONAL DIRECTOR OF
PUBLIC PROSECUTIONS**

5th Defendant

JUDGMENT

Van Aswegen AJ

INTRODUCTION:

- [1] The Plaintiff instituted claims against the Defendants for his unlawful arrest and detention on *10 February 2016* . The action came before S Kruger AJ who separated the issues of merits and quantum. The trial focused on the merits and ultimately ruled in favour of the Plaintiff concerning Claims A, C, and D.
- [2] The First, Second and Fifth Defendants were held jointly and severally liable for:
- [2.1] claim A - payment of damages resulting from the wrongful and unlawful arrest and detention of the Plaintiff in respect of *contumelia*, deprivation of bodily freedom, liberty and discomfort including damages caused to the Plaintiff's good name, dignity, reputation and standing in community.
- [2.2] claim C - the Plaintiff's past loss of earnings and
- [2.3] claim D - loss of profit suffered by the Plaintiff from loss of income through the restaurant, pub and museum because of the unlawful arrest and detention of the Plaintiff.
- [3] The current case, before me, is solely focused on ascertaining the monetary value associated with these particular claims.
- [4] At the commencement of this trial, the Plaintiff sought leave to amend paragraphs 46 and 49 of its Particulars of Claim. The amendment¹ related to:
- [4.1] deletion of paragraphs 46, substituting it with a new paragraph 46 as well as the quantum claimed, namely *R1 406 594.00* in respect of Claim C and

¹ Case Lines 41-1

[4.2] deletion of paragraph 49 , substituting it with a new paragraph 49 as well as the quantum claimed, namely *R4 500 000.00* in respect of Claim D.

[5] The amendment was not opposed and was granted. The Plaintiff therefore contends that the amounts set out below are reasonable in respect of each claim:

CLAIM A

[5.1] Payment of the amount of *R130 000.00* in respect of damages for l and depravation of bodily freedom, and liberty and discomfort suffered by the Plaintiff and

[5.2] Payment of *R250 000.00* in respect of the damages caused to the Plaintiff's good name, dignity, reputation and standing in the community.

CLAIM C

[5.3] *R1 406 594.00* for past loss of earnings.

CLAIM D

[5.4] *R4 500 000. 00* for future loss of earnings.

FACTUAL MATRIX:

[6] The Plaintiff, is an engineer with a MBA, an elderly person with weakened leg muscles and diabetes, who was arrested on *10 February 2016* between *16h00 and 17h00*.

- [7] Before his arrest, the Plaintiff enjoyed a good reputation and standing in the community and rendered services to charitable organisations. The arrest took place in the presence of patrons of the Plaintiff's museum, restaurant and pub.
- [8] The Plaintiff was detained at the Vanderbijlpark Police Station from approximately 18:00 on 10 February 2016 to 08:30 on 11 February 2016. He described the conditions as humiliating, inhumane and uncomfortable. He was then taken to the Vanderbijlpark Magistrate's Court where he was further detained in the court cells. Bail was granted and he was released on 11 February 2016 at 13:00 after paying the bail amount.
- [9] During the trial on the merits, the Plaintiff called two witnesses: himself and Ms. Callow. The Defendant chose not to call any witnesses and did not challenge the evidence presented by these witnesses or the concessions made by Mr. Mpete and Warrant Officer Brijlall.

EVIDENCE ACCEPTED BY TRIAL COURT ON MERITS

- [10] Acting Justice S Kruger in his judgment based on the merits had accepted the following undisputed evidence, namely that:

PLAINTIFF'S EVIDENCE:

- [10.1] The Plaintiff testified that he was born in *September 1952*. He further testified that he is a civil engineer and holds an MBA from the University of the Witwatersrand.
- [10.2] He conducted business from the premises where he was arrested, namely a Heritage Museum (which takes up some 3000 square metres under roof), a restaurant known as *Urban Vibes*, and a pub known as *Cock & Bull*. The premises were situated on agricultural holdings west of Vanderbijlpark.

- [10.3] Objects of a cultural nature portraying development of household items, fashion, technological aspects, toys and the like were displayed in the museum. The toy section included a display of rare dolls. Many vintage; classic and exotic cars were available for display to the public such as a collection of up to 12 Model T Fords and the like.
- [10.4] The restaurant and pub were located to the left and right side of the museum.
- [10.5] The pub is around 20 meters and the restaurant some 40 meters from an office from where the Plaintiff conducted the businesses. There is a court yard which borders the museum, pub and restaurant where around 60 patrons can sit on benches under a multitude of trees.
- [10.6] The Plaintiff testified that, on *10 February 2016*, he was in his office when Warrant Officer Brijlall arrived at approximately *16:00* and informed him that he intended to arrest him. Warrant Officer Brijlall did not have a warrant at that stage and left to obtain one. He returned at approximately *17:00*, accompanied by other uniformed police officers. The Plaintiff was then arrested. Warrant Officer Brijlall took him by the sleeve and led him through the courtyard to a vehicle parked just outside it. At the time, the courtyard was full of patrons, including Rotarians who were present with visitors from the United States of America. Many were seated on benches under the trees and observed the arrest. On a later occasion, the Plaintiff was shown a text message from a Texan visitor stating that he had witnessed the arrest.
- [10.7] The Plaintiff further testified that he was detained in a police cell with seven other persons. Two indicated that they were detained on assault charges, and another on a fraud charge. He slept on a mattress approximately 50 mm thick and was given two blankets,

one of which he used as a cushion. The other blanket he had used to urinate in frequently. He described the experience as daunting and unpleasant. Ms Callow brought him his medication. The following morning, he was taken to court, where the charges were read to him at approximately 12:00. Bail was granted in the amount of R20 000.00, which he could not afford. It was eventually paid by another person, after which he was released. He was thereafter required to appear in court on five occasions, the last of which was in *November 2016*.

[10.8] The Plaintiff testified that the arrest, detention and prosecution emotionally affected him to the extent that he became despondent and depressed. Prior to his arrest, detention and prosecution he held a positive view of South Africa and its people.

The events disappointed and traumatised him to the extent that he lost faith in the country. He could not understand how such events could occur in South Africa. News of his arrest in front of patrons, his detention and the prosecution spread on social media. The Plaintiff was unjustly stigmatised as being involved in criminal activity. He was prescribed further medication following the trauma he suffered as a result of what he had been subjected to.

[10.9] Mr Duvel further testified that the arrest and detention had a devastating effect on the museum, pub and restaurant, causing him substantial financial stress. The pub and museum had been established around 2000, and the restaurant around 2013. Before the arrest, detention and prosecution, the businesses were financially sound. Although they continued to be operated in the same manner as before, patrons no longer frequented them as they had previously done. The Plaintiff did not recall the Rotarians ever returning to the premises. Owners whose cultural items and other objects were displayed at the premises were also unwilling to continue doing so because of the arrest, detention and prosecution.

[10.10] In an attempt to keep the businesses afloat, various items, including most of the vintage cars, were auctioned or sold to generate income, but without success. The Plaintiff also hosted the annual two-day *Wheels at the Vaal Motor Show* at the premises, which benefited his businesses. Participants were invited to display classic and vintage vehicles, together with other items associated with different eras. Vendors paid a fee to set up stalls and sell their goods to patrons and visitors. Before the Plaintiff's arrest and detention, the event was popular and generated approximately R100 000.00 per show. Thereafter, sponsors lost interest and potential vendors stopped applying for stalls. The 2016 show was the last, as sponsors and vendors could no longer be attracted in sufficient numbers for the event to continue. The Plaintiff became a recluse.

[10.11] The Plaintiff was unaware of any complaint against him and was not consulted before the arrest.

MS CALLOWS EVIDENCE:

[10.12] Ms Callow testified that she had been employed by the Plaintiff for many years in an administrative capacity. Her duties included capturing income and expense data for the businesses and preparing their submissions to the South African Revenue Service. She witnessed the Plaintiff's arrest on 10 February 2016 at his business premises, in the presence of members of the public, particularly patrons of the businesses. She also compiled and prepared the budgets for the Plaintiff's businesses, namely the pub, restaurant and museum. In relation to the *Wheels at the Vaal Motor Show*, she was closely involved in organising the annual event, including securing sponsors and vendors. The event usually took place around September and required approximately six months of preparation.

- [10.13] Ms. Callow further testified that, before the Plaintiff's arrest, the businesses were popular and financially successful. The same applied to the annual motor show held at the business premises. Sponsors and vendors were readily secured for the event, and its popularity was such that vendors often approached the organisers to book stalls. Some vendors even reserved stalls for the following year shortly after participating in the current event. Ms. Callow described the relationship with the vendors as being like family.
- [10.14] Ms Callow testified that the position changed dramatically after the Plaintiff's arrest. Vendors who had already booked stalls cancelled their participation, and sponsors lost interest, with many unwilling to continue their support. Vendors who had participated in previous years also failed to return. Unlike in earlier years, the 2016 motor show was unsuccessful and was the last event to be held.
- [10.15] Ms. Callow testified that the downturn in the businesses was attributable to the Plaintiff's arrest, detention and prosecution. She stated that the arrest created a negative public perception and attached a stigma to the Plaintiff, causing patronage to decline. Even regular patrons stopped supporting the businesses, including the Rotarians who had previously made regular bookings at the premises. According to Ms. Callow, the Plaintiff suffered financial loss as a result of the decline and eventual loss of the businesses. Within approximately six months of the arrest, supporters requested the return of artefacts they had provided for display, and collections exhibited at the museum had to be auctioned. None of the businesses survived. Ms. Callow further testified that she took medication to the Plaintiff during his detention and collected him after his release. She observed marked emotional trauma in him: he became quiet and withdrawn. In her view, the Plaintiff spoke about what had happened to him as a way of trying to deal with the trauma caused by his arrest.

LEGAL PRINCIPLES APPLICABLE TO ASSESSMENT OF DAMAGES FOR UNLAWFUL ARREST

- [11] In South Africa, unlawful arrest and detention represent a grave violation of fundamental constitutional rights. Section 12 of the Constitution safeguards every individual's entitlement to freedom and personal security, encompassing the right to be free from arbitrary deprivation of freedom or without just cause. This safeguard is intrinsically connected to the right to human dignity, as outlined in section 10 of the Constitution.
- [12] In assessing quantum in unlawful arrest and detention cases, it is imperative to strike a delicate balance between the infringement of liberty, dignity, and reputation suffered by the Plaintiff, and the compensation awarded. This balance must ensure that the State is not penalized through excessive compensation, nor is the Plaintiff unjustly enriched.
- [13] The assessment of damages for unlawful arrest and detention is a matter within the court's discretion, guided by established principles.
- [14] In *Minister of Safety and Security v Tyulu* (327/2008) [2009] ZASCA 55 (27 May 2009), the Supreme Court of Appeal held as follows:

'In the assessment of damages for unlawful arrest and detention, it is important to bear in mind that the primary purpose is not to enrich the aggrieved party but to offer him or her some much-needed solatium for his or her injured feelings. It is therefore crucial that serious attempts be made to ensure that the damages awarded are commensurate with the injury inflicted. However, our courts should be astute to ensure that the awards they make for such infractions reflect the importance of the right to personal liberty and the seriousness with which any arbitrary deprivation of personal liberty is viewed in our law. I readily concede that it is impossible to determine an award of damages for this kind of injuria with any kind of mathematical accuracy. Although it is always helpful to have regard to awards made in previous cases to serve as a guide, such an approach, if slavishly followed, can prove to be treacherous. The correct approach is to have

regard to all the facts of the particular case and to determine the quantum of damages on such facts. . . . ' (my emphasis)

[15] The correct approach is to consider all the facts of the particular case. In *Minister of Safety and Security v Seymour*² the Supreme Court of Appeal stated that a trial court must have regard to all the facts of the particular case to determine the quantum of damages on such facts. This case stated that the primary purpose of damages in unlawful arrest and detention claims is not punitive, but rather to provide a solatium for injured feelings and the infringement of constitutional rights.

[16] While the length of detention is indeed a significant factor in evaluating damages, it is not sufficient to calculate the quantum of damages through a simple count of the days spent in custody. A comprehensive assessment must be carried out, encompassing all pertinent factors. These include the method of arrest, the level of humiliation endured, the loss of freedom, the Plaintiff's personal circumstances, and the conditions under which detention occurred.

[17] The Supreme Court of Appeal has repeatedly cautioned against a mechanical approach to assessing damages.

[17.1] In *Motladile v Minister of Police*³, the Supreme Court of Appeal stated:

'The assessment of the amount of damages to award a plaintiff who was unlawfully arrested and detained, is not a mechanical exercise that has regard only to the number of days that a plaintiff had spent in detention. Significantly, the duration of the detention is not the only factor that a court must consider in determining what would be fair and reasonable compensation to award. Other factors that a court must take into account would include (a) the circumstances under which the arrest and detention occurred; (b) the presence or

² SACR 282 (SCA); [2009] 4 All SA 38 (SCA) (27 May 2009) para 26

³ (414/2022) [2023] ZASCA 94; 2023 (2) SACR 274 (SCA) (12 June 2023) para 17.

absence of improper motive or malice on the part of the defendant; (c) the conduct of the defendant; (d) the nature of the deprivation; (e) the status and standing of the plaintiff; (f) the presence or absence of an apology or satisfactory explanation of the events by the defendant; (g) awards in comparable cases; (h) publicity given to the arrest; (i) the simultaneous invasion of other personality and constitutional rights; and (j) the contributory action or inaction of the plaintiff.'

[18] In *Minister of Safety and Security v Seymour* 2006 (6) SA 320 (SCA), a judgment penned by Nugent JA he aptly noted:

"[20] Money can never be more than a crude solatium for the deprivation of what in truth can never be restored. There is no empirical measure for the loss."

[19] This court also acknowledges Carelse J's caution regarding the propensity to overstate damages claims without a solid basis as stated in the case of *Diljan v Minister of Police* (2023) SACR 100 (GJ):

"[23] A word has to be said about the progressively exorbitant amounts that are claimed by litigants lately in comparable cases and sometimes awarded lavishly by our courts. Legal practitioners should exercise caution not to lend credence to the incredible practice of claiming unsubstantiated and excessive amounts in the particulars of claim. Amounts in monetary claims... should not be 'thumb-sucked' without due regard to the facts and circumstances of each case."

FACTORS TO DETERMINE QUANTUM:

[20] The factors set out here in below are taken into account in assessing the quantum of damages:

PLAINTIFF'S AGE

- [21] At the time of the arrest the Plaintiff was a 64-year-old elderly civil engineer with an MBA qualification. The Plaintiff's health was not optimal; he was diabetic, significantly overweight, and had weakened leg muscles which impeded his ability to stand from a prone position without assistance.

POSSIBLE EXTENT OF HARM

- [22] The Plaintiff was detained with seven other arrested individuals all younger than himself. He was detained in a cell with no beds. However, he was provided with a 50 mm mattress and two blankets. There was a toilet in the corner of the cell. After his detention, the Plaintiff experienced psychological issues which needed treatment.

DEGREE OF RISK OF HARM MATERIALISING

- [23] Following the Plaintiff's release, a sense of suspicion arose within the community, associating him with fraudulent activities and money laundering. This led to a wave of gossip that caused individuals to distance themselves, unwilling to be linked with him. The Plaintiff subsequently experienced feelings of despondency and depression. It is evident that the Plaintiff's arrest resulted in detrimental consequences.

PLAINTIFF'S STANDING IN THE COMMUNITY

- [24] Prior to his arrest, the Plaintiff maintained an exemplary standing and a commendable reputation within the community. He was recognized as a reputable businessman who actively contributed to the community, notably by supporting and establishing the Museum. However, following his arrest, the community's perception of him underwent a significant transformation. The public began demanding the restitution of the artefacts displayed in the Museum, prompted by damaging rumors circulating both in the community and on social media platforms. These allegations led to the Plaintiff being portrayed as a fraudster and linked with money laundering

PLACE OF ARREST

- [25] The Plaintiff was arrested on the premises of his business, visible to patrons and members of the Rotarian community who frequented the establishment. The incident occurred during a busy late afternoon when the Rotary Club members were enjoying sundowners with visitors from America. The Plaintiff perceived the arrest as a public spectacle. Uniformed police officers led him through the courtyard, in full view of the patrons, and forced him into the back of a police vehicle. The Plaintiff expressed feelings of shock and humiliation arising from the incident.

HUMILIATION SUFFERED

- [26] The Plaintiff endured considerable embarrassment. As previously detailed, he was labeled a criminal, which subsequently led to his withdrawal from both societal engagement and his professional ventures.

DISTRESS ON PLAINTIFF AND HIS STANDING

- [27] The detention adversely affected the Plaintiff, leading to the development of anxiety and depression. Consequently, he ceased his business activities, and within the community, he was erroneously linked to allegations of fraud and money laundering.

PERIOD OF INCARCERATION

- [28] On *10 February 2016*, the Plaintiff was incarcerated between *18:00 and 08:30* the next day he was transported to the Vanderbijlpark Magistrate's Court and subsequently detained in the court cells. Bail was subsequently granted and the Plaintiff was released at *13:00* on the same day, post-payment of the bail amount. Consequently, the Plaintiff was detained for an overnight period.

PREVIOUS COMPARABLE AWARDS

[29] While it's beneficial to consider prior awards in similar cases, we must remember that their scope is inherently limited. These awards primarily function as guiding principles rather than definitive precedents. Therefore, they should not be applied rigidly without careful analysis.

[30] In *Brits v Minister of Police & Another*,⁴ the Court held:

'Although awards of damages made in previous decisions may serve as a guide in the consideration of an appropriate amount of damages for the injury resulting from unlawful arrest and detention, such awards are not to be followed slavishly, for every case must be determined on its facts. It must be borne in mind that the primary purpose of an award of damages for unlawful arrest and detention is not to enrich the aggrieved party but to offer him or her some solatium for their injured feelings.'

[31] In unlawful arrest cases the following awards were made by courts:

[31.1] In *Motladile v Minister of Police*⁵ the Supreme Court of Appeal awarded R200 000 for a four-day detention. This equates to R50 000.00 per day. In that matter, the court considered several aggravating factors that are not present in the case before me. The Plaintiff in *Motladile* had voluntarily offered to assist the police and was arrested on Christmas Day; he was denied access to his family and legal representation; he was assaulted by fellow inmates in the cells; he suffered humiliation and degradation; and there was evidence of improper motive and malice on the part of the investigating officer.

⁴ [2021] ZASCA 161; 2021 JDR 2998 (SCA) para 33;

⁵ (414/2022) [2023] ZASCA 94; 2023 (2) SACR 274 (SCA); 2022 (8K6) QOD 335 (SCA)(12 June 2023)

- [31.2] The court awarded an amount of *R250 000.00* for unlawful arrest and detention for approximately three days in *Khanyi v Minister of Police*⁶. In *Mhlanza v Minister of Police*⁷ the Plaintiff was awarded *R75 000.00* for detention overnight (from 13:00 on the day of arrest until the morning of the next day after appearance in court).
- [31.3] In *Diljan v Minister of Police*⁸ for the unlawful arrest and detention for four nights, this Court, on appeal, awarded damages in the amount of *R120 000*. In *Minister of Police v Page*⁹ for the unlawful arrest and detention for one night, *R30 000* was awarded as damages.
- [31.4] On appeal the court in *Shode v Minister of Police*¹⁰ awarded *R40 000.00* where the appellant was arrested and detained for one day.
- [31.5] In *Van der Nest NO v Minister of Police*¹¹ the Plaintiff was detained for 20 hours and the Supreme Court of Appeal awarded *R50 000.00* as fair compensation.
- [31.6] In *Mojola v Minister of Police*¹² Reid J had awarded *R40 000.00* as compensation where the Plaintiff was detained for 15 hours, also in view of members of the public, the Plaintiff isolated himself as he was viewed as a criminal, the conditions of the cell were untenable and the Plaintiff perceived his safety to be at risk.

⁶ [2023] ZAGPJHC 434

⁷ (EL1326/2017) [2019] ZAECELLC 32 (26 November 2019)

⁸ [2022] ZASCA 103

⁹ (CA 231/2019) [2021] ZAECHC 22 (23 February 2019).

¹⁰ (CA 17/2021) [2022] ZAECHC 11 (3 May 2022)

¹¹ 2025 (5) SA 152 (SCA)

¹² (2014/40666) [2025] ZAGPJHC 921 (15 September 2025)

[31.7] Similarly, in *Lekalakala v Minister of Police and Another*¹³ the Plaintiff was arrested in the presence of family and community members and was subjected to manhandling by police officers. The court regarded the public nature of the arrest and the humiliating treatment as aggravating factors and awarded damages of R120 000.00. The Plaintiff was detained from 23 August 2019 to 26 August 2019.

[31.8] In *Mmadu v Minister of Police*¹⁴, the Plaintiff was arrested without a warrant and detained for approximately 4 days. The court noted that the detention occurred under appalling conditions in police cells that were overcrowded, unhygienic, and lacked proper bedding, forcing the plaintiff to sleep on a thin, dirty mattress on the floor. These conditions, coupled with the deprivation of liberty and the resulting *contumelia*, significantly influenced the court's decision to award R60 000.00 for the unlawful arrest and detention and R100 000.00 for the assault.

[32] Upon reviewing the aforementioned cases, it is reasonable to infer, without imposing a strict precedent, that the courts have allocated compensatory damages within the range of R30 000.00 to R75 000.00. The awarded sums fluctuate based on the specific circumstances and nuances of each case.

[33] However, in *Van der Berg v Coopers & Lybrand Trust (Pty) Ltd and others* [2000] ZASCA 77; 2001 (2) SA 242 SCA at 260E-H, the court cautioned that:

“... In the nature of things no two cases are likely to be identical or sufficiently similar so that the award in one can be used as an accurate yardstick in the other. Nor will the simple application of an inflationary factor necessarily to an acceptable result. The award in each case must depend upon the facts of the particular case seen against the background of prevailing attitudes in the community. Ultimately a Court must, as best it can, make a realistic assessment of what it considers to be fair and just in all the circumstances. The result

¹³ (1436/2021) [2025] ZANWHC 53 (13 March 2025)

¹⁴ (3058/2019) [2024] ZANWHC 143 (21 June 2024).

represents little more than an enlightened guess. Care must be taken not to award large sums of damages too readily lest doing so inhibits freedom of speech or encourages intolerance to it and thereby fosters litigation. Having said that that does not detract from the fact that a person whose dignity has unlawfully been impugned deserves appropriate financial recompense to assuage his or her wounded feelings."

[34] In the matter before me the Plaintiff was detained overnight from 18:00 to 08:30 the next morning (14.5 hours) when he was taken to the magistrate's court. Subsequently, the Plaintiff was detained in the court cells from approximately 09:00 to 12:00. The latter detention was however, awaiting his appearance in court.

[35] After a comprehensive assessment of the Plaintiff's personal circumstances and the various factors mentioned, it is clear that the individual was a 64-year-old man widely regarded as a respected businessman who actively supported welfare organizations. The arrest occurred at the Plaintiff's business, in front of patrons, particularly the Rotarian community that regularly visited his establishments. While these factors undeniably caused him embarrassment and distress, there is no substantiated evidence indicating any physical maltreatment. The Plaintiff was held for 14.5 hours in a cell alongside seven others, provided with a mattress and two blankets, and had access to a toilet in one corner. Given his diabetic condition, his assistant, Ms. Callow, was allowed to deliver his medication to him. Importantly, the Plaintiff was not subjected to the degrading treatment experienced in cases such as *Motladile* or *Mmadu*, where detainees were confined to overcrowded, unhygienic cells lacking proper bedding.

[36] Considering the tenets elucidated in *Motladile*, and acknowledging the unique facts and circumstances of this case, this court adopts a perspective that compensatory damages for unlawful arrest and detention primarily serve as solatium, rather than punitive enrichment, while still acknowledging the gravity of the liberty infringement. This approach is informed by the precedent set by the case of *Minister of Safety and Security v Tyulu* (2009) 5 SA 85 (SCA). Additionally, the court takes note of *Woji v Minister of Police* (2015) 1 SACR 409

(SCA) and the constitutional orientation of state obligations to respect entrenched rights, viewing this case as a matter involving an unlawful encroachment on constitutional rights, thereby warranting compensation.

- [37] Having regard to the humiliating manner in which the arrest was conducted, at the Plaintiff's business premises under the watchful eyes of patrons, the overnight detention, and the violation of dignity and personal liberty, I believe a fitting compensation for contumelia, deprivation of bodily freedom, liberty, and discomfort would be *R40 000.00*.

PLAINTIFF'S GOOD NAME, DIGNITY AND REPUTATION:

- [38] The manner of arrest is closely linked to the humiliation experienced by the Plaintiff. An unlawful arrest not only infringes upon physical liberty but also significantly impacts an individual's dignity, self-esteem, and reputation.
- [39] The extent of damages awarded to the Plaintiff is often influenced by the gravity of the humiliation they endure, particularly when this humiliation is experienced by individuals who hold esteemed positions in society, are professionals, elderly, or belong to a community of considerable standing. Various factors, including the Plaintiff's age, occupation, social standing, and personal circumstances, are taken into account in order to determine the appropriate level of compensation.
- [40] In the matter of *Motladile*, the court highlighted the importance of considering the impact of detention on the Plaintiff's dignity and standing in society. In *Diljan v Minister of Police*, the Supreme Court of Appeal held that the acceptable method of assessing damages includes consideration of '*the manner of the arrest*' and '*the degree of humiliation*' suffered by the Plaintiff. The court recognised that public embarrassment and degrading treatment intensify the infringement of dignity and justify higher compensation.
- [41] The severity of humiliation escalates particularly when the arrest lacks justification, remains unexplained, or is coupled with damaging allegations against the Plaintiff's character. Courts acknowledge that the societal stigma

associated with such an arrest can endure beyond the immediate release of the Plaintiff.

- [42] In *Masetla v President of South Africa and Another 2008 (1) SA 566 (CC)* the following was stated in connection with the career and reputation of an individual:

“ ... People live not by bread alone; indeed, in the case of career functionaries, reputation and bread are often inseparable.” and at paragraph 82:

“ Reputation and dignity are discrete concepts. Respect for reputation and dignity of others is a requirement of our law with unfortunate consequences for defaulters.”

- [43] Reputational damage to an individual protects a person's right to a good name and reputation. Unlawful arrest affects not only physical liberty but also dignity, self-worth, and reputation.

- [44] It is evident that the Plaintiff faced an embarrassing public arrest at his place of business, witnessed by patrons and community members. This humiliating experience significantly damaged his reputation, weakened his authority within the community, and led to enduring emotional distress.

- [45] The computation of reputational damage is determined on a case-by-case basis by looking at specific aggravating and mitigating factors. It is not determined through a standard mathematical formula or tariff.¹⁵ Rather, courts evaluate the "*quantum*" of damages on a global scale as a form of solatium, which serves as monetary compensation for injured feelings, dignity, and reputation. This assessment is carried out on an individual case basis, taking into consideration specific aggravating and mitigating factors.

¹⁵ *Mbata v Minister of Police 2023 JDR 3015 (NWM)*;

- [46] In assessing the reputational damage I take cognizance of the social standing of the Plaintiff, the manner and location of the arrest, the nature of the alleged committed crime, the publicity of the arrest and the duration of the arrest:
- [46.1] The Plaintiff is an elderly (64 years old at the time of arrest) engineer which served his community via his businesses, the Museum and the yearly vehicle show.
- [46.2] The arrest was executed in full view of the patrons at the Plaintiff's business.
- [46.3] The accusation against the Plaintiff involved highly stigmatized crimes (e.g., fraud, theft and money launderings) which leave a lasting social stain.
- [46.4] The Plaintiff's arrest or the subsequent groundless charges took place in full view of patrons on a busy day and trended on social media.
- [46.5] The Plaintiff was detained for 14.5 hours at the police station before going to court.
- [47] After conducting a comprehensive assessment of all available evidence and considering the aforementioned factors, my professional opinion is that *R50 000.00* is an equitable and fair compensation for the Plaintiff's reputation. This sum aims to find a harmonious balance between the essence of liberty and human dignity, all the while preventing an excessive compensation for the loss of liberty, a principle supported by the judgment of Petersen J in *Mbatha v Minister of Police (CIV APP MG 20/22) [2023] ZANWHC 127 (12 April 2023)*, a decision delivered by a full bench of the court.

- [48] I now proceed to address claims C and D relating to past and future loss of earnings.

CLAIMS C AND D

- [49] The only evidence led in respect of claims C and D was by the Plaintiff.

- [50] The Plaintiff called an expert to testify, namely Mr. Paul T Koski, a chartered accountant, who practises from 22 7th Avenue, Parktown North, Johannesburg. He testified that his objective was to identify the lost turnover as a result of the Plaintiff's unlawful arrest. He further stated that:

- [50.1] He qualified in 1986 as a chartered accountant.
- [50.2] He holds a Bachelor of Accounting Degree.
- [50.3] He is a member of The South African Institute of Chartered Accountants since 1986;
- [50.4] He is a member of the Independent Regulatory Board of Auditors since 1990 (Formerly, PAAB);
- [50.5] He has been in private practice as a Chartered Accountant since 1990;
- [50.6] He has 30 (*thirty*) years litigation support experience.
- [50.7] He gives support and expert testimony as an expert witness in many High Court cases;
- [50.8] In addition he holds a position as an Associate member of the Association of Arbitrators;
- [50.9] He is experienced in all financial, commercial and business-related matters and have had extensive experience in the financial management field, computing many damages claims and valuations. for various dispute matters, matrimonial matters and similar matters which the courts have relied upon.
- [50.10] He is qualified and an expert in the analysis of financial information, auditing and the processes and procedures used in the auditing environment.

[51] Mr. Koski applied the following background information to the Plaintiff's finances:

[51.1] The Plaintiff operated a number of businesses at the premises where he was allegedly unlawfully arrested being a bar and restaurant and a very large annual motoring event.

[51.2] In consequence of the unlawful arrest on *10 February 2016* Mr. Koski was advised that the Plaintiff's good reputation suffered damages and in consequence thereof he suffered financial losses arising from:

[51.2.1] being unable to earn a livelihood,

[51.2.2] unable to recover his loans from his businesses and

[51.2.3] ultimately the closure of the businesses.

[51.3] The Plaintiff suffered three major losses, namely:

[51.3.1] loss of personal remuneration earned from bar revenues;

[51.3.2] loss of personal remuneration from the annual motoring event and

[51.3.3] loss of the ability to recover his loans in the trading companies and entities where he invested and earned remuneration.

[51.4] Shortly after the arrest, the Plaintiff advises that patrons stopped patronising the bar and restaurant, as long as the Plaintiff was in occupation and present on the premises.

[51.5] Although the Plaintiff continued to operate the companies and tried to resurrect his reputation, he was unable to generate any further growth in the businesses in order to satisfy his personal income

needs or be able to repay the loans that he invested in these businesses.

[51.6] The Plaintiff advised that, despite his endeavours to explain to his patrons that the arrest was unlawful, being a small community, operations were significantly curtailed almost immediately and patrons went elsewhere. The Plaintiff further advised that he was not welcomed in other establishments either.

[52] The testimony of Mr. Koski indicates that the Plaintiff's business underwent a substantial and swift expansion post its inception. However, subsequent to the arrest in 2016, a discernible decline in the business's efficiency was noted. This downward trend endured throughout the initial year, ultimately resulting in the business's ultimate collapse.

[53] Mr. Koski indicated that there was no reason for the radical decline of the business. Conservatively, based upon the presumption that the Plaintiff's business was expanding as it grew, a 10% increase was allowed.

[54] Mr. Koski testified that he calculated and determined the Plaintiff's losses sustained as a result of the unlawful arrest utilising the following materials:

[54.1] raw data that originates from VAT 201 submissions made for the period March/April 2014 to January/February 2016 and

[54.2] the annual financial statements of the Sylviavale Heritage and Preservation Trust up to February 2014.

[55] Mr. Koski testified that the Plaintiff suffered losses as specified here in below:

LOSS OF ASSET

A. LOAN TO SYLVI VALE HERITAGE AND PRESERVATION TRUST

- [56] The Plaintiff was unable to recover the loan he made to the *Sylviavale Heritage and Preservation Trust*, which balance as at 28 February 2014 was R1 406 594.00¹⁶ and which remained the same value at the date of the unlawful arrest.

B. LOSS OF RENUMERATION AND BENEFITS ARISING FROM THE REVENUE OF THE MUSEUM

- [57] Mr. Koski conducted an analysis of the financial data pertaining to the Plaintiff, which constituted the primary source of income for the Plaintiff. He testified that, given the nature of the events and activities, it was reasonable to expect that the Plaintiff's operations would persist until at least *February 2027*, representing an operational period of 11 years. It is important to note that Mr. Koski's calculations did not factor in the COVID-19 pandemic, considering it a natural disaster beyond anyone's predictive capacity.
- [58] The Plaintiff's remuneration was derived through *the Sylviavale Heritage & Preservation Trust* of which he was a beneficiary.
- [59] The average annual turnover of the Museum declared for the two years before the arrest amounted to R1 794 539.00 (*during 2014*) and R1 924 392.00 (*during 2015*).
- [60] In the subsequent year following the arrest, the Museum's annual turnover and related activities experienced a significant downturn, resulting in substantial losses. Despite these setbacks, the Plaintiff was actively developing and reinvesting in the Museum, the facilities, as well as in an annual motoring event that had gained considerable patronage and attendance.

¹⁶ Note 7 at Case Lines 09-66;

- [61] The quantum claim was determined by analysing the Museum's past turnovers and extrapolating future turnovers and profits as follows:

Turnover 2013	R 625 514.00
Turnover 2014	R1 320 858.00
Turnover 2015	R 1 794 539.00
Turnover 2016	R1 924 392.00

- [62] Mr. Koski had calculated the projected loss of future revenues over an *11-year* period, starting with an estimated base figure of *R1 700 000.00* per annum, which represents a reasonable income level.

- [63] The museum witnessed a significant surge in growth. Specifically, the growth rates were as follows: over *100%* between 2013 and 2014, *19.18%* between 2014 and 2015, and *8.22%* between 2015 and 2016. Recognizing the need to maintain and escalate these growth rates, Mr. Koski set a target of achieving at least a *10%* annual growth rate. The cost savings generated from these growth initiatives amounted to *R442 997.00* per annum and were projected to grow at a rate of *7%* annually. To evaluate the present value of these future savings, a net present value calculation was performed, discounting the projected amounts at a rate of *15.5%* per annum.

[63.1] Mr. Koski analysed the data - the VAT 201 Output Tax from *March/April 2014* until *January/February 2018* - and tracked the decline of the Museum income over a period of *24 months* from the Plaintiff's date of the arrest.

[63.2] The decline in the revenues was clearly evident ultimately resulting in the closure of the Museum and all its allied activities.

- [64] The Museum and its associated facilities were situated along the banks of the Vaal River, an unusual and advantageous location. The annual motoring event, which spans over a Saturday and a Sunday, draws attendance ranging from

2 000 to 2 500 people. This event generates revenue through gate fees and remuneration earned at the facilities.

[65] According to Mr. Koski's present value calculations, the loss of earnings amounts to *R4 481 866.00*. For simplicity, this figure has been rounded off by him to *R4 500 000.00 (FOUR MILLION FIVE HUNDRED THOUSAND RAND)*.

[66] Mr. Koski determined that the Museum's primary sources of income were derived from its bar and restaurant revenues, the weekly market, and various functions and events, as reported by the Plaintiff. After a thorough analysis of the data presented in paragraph 11 of his report, Mr. Koski reached the following conclusions:

[66.1] The income generated by the Pub and Restaurant decreased from:

[66.1.1] *R1 583 373.00 for May 2015 to April 2016*
(period 1)

to

[66.1.2] *R893 712.00 for the period May 2016 to April 2017*
(period 2),

and to

[66.1.3] *nil for period of May 2017 to April 2018*
(period 3). The Pub and Restaurant had to be closed.¹⁷

[66.2] In respect of the Village & Country Market the income:

[66.2.1] in period (1) was *R48 175.00*

[66.2.2] in period (2) the income reduced to *R12 721.00 and*

¹⁷ Case Lines 09-9

[66.2.3] in period (3) the income declined to *nil*. The market had to be closed down.¹⁸

[66.3] Functions are shown as receiving income which comprised of rent received and services rendered. Events are also shown as receiving income and half is allocated to events and the other half to functions.

[66.4] Mr. Koski's analysis of the total income for periods (1) and (2) revealed that the total income for period (1) from May 2015 to April 2016 is *R1 980 564.00* whilst that for period (2) comes to *R1 107 528.00*.¹⁹

[66.4.1] The difference in total income is *R873 036.00*.

[66.4.2] If the income for period (3) is taken to be *R151 821.00* the difference between period (1) and period (3) exceeds *R1 827 000.00*.

[66.5] Mr. Koski summarised and concluded that the fair and reasonable total losses suffered by the Plaintiff are *R5 906 594.00* calculated as follows:

[66.5.1]	Direct Asset Loss - Loan	<i>R1 406 594.00</i>
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[66.5.2]	Loss of income	<i>R4 500 000.00</i>
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TOTAL LOSS	<u><i>R5 906 594.00</i></u>
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[67] The Plaintiff's expert evidence remained unchallenged as no expert testimony was presented by the Defendant. The Defendant's legal representative engaged in a cross-examination of Mr. Koski, the expert witness.

[68] The Defendant's counsel cross- examination alluded to the following:

[68.1] The loan classified as loss of asset obtained on *28 February 2014* in the sum of *R1 406 594.00* remained unpaid at the time of the

¹⁸ Case Lines 09-9

¹⁹ 09-9

arrest. The counsel argued that the arrest and subsequent detention did not influence the recovery of the loan advanced by the Plaintiff to the Museum (the asset). The Defendant's counsel further posited that the Museum had been operating profitably for two years prior to the Plaintiff's arrest, and no evidence was provided to substantiate the claim that the Plaintiff would have recovered the loan amount before the arrest. The counsel asserted that Mr. Koski's opinion, suggesting that the Plaintiff could have recovered his loan, cannot stand, especially in light of the duration of the arrest.

[68.2] The Defendant's counsel argued that the loan had prior and post the arrest never been repaid. The loan had funded the businesses which ran as going concerns. The statement in respect of the Trust's financial position as at *28 February 2014* reflects the loan of *R1 406 594.00*.²⁰ The loan was not to be re-paid during 2014.

[68.3] Additionally, it was put to Mr. Koski that the assets were dissipated and that the loan was written off. The business had been trading in a trust vehicle. The Defendant's Counsel had asserted that the issue of the arrest had no bearing on the loan.

[69] Mr. Koski testified that the loan account was an asset recoverable over a few years. The close of the businesses ultimately resulted in the loss of an asset being the loan. The Plaintiff had injected capital into the trust to get the Museum going. As a result of the arrest the loan were not repaid.

CLAIM C:

[70] The Plaintiff's Particulars of Claim depicts in bold that claim C is in respect of Past Loss of Earnings.²¹

²⁰ Note 7 at 09-66

²¹ 04-15

[70.1] Paragraph 46 of the Particulars of Claim (after the amendment was granted) reads as follows:

“46. *As a result of the above including the closure and handover the Plaintiff suffered loss of income of **R 1 406 594.00** due to a decline in the businesses, including the restaurant, pub museum, markets and the “Wheels at the Vaal” show.”* (my emphasis)

[71] The Plaintiff's claim C is accordingly contingent upon a Loss of Income amounting to *R1 406 594.00* due to a decline in the businesses.

[72] Mr. Koski's evidence is unequivocal, specifically highlighting *the direct asset loss*, which is quantified as the loan provided to the Sylviavale Heritage and Preservation Trust amounting to *R1 406 594.00*.²²

[73] It is abundantly evident from Mr. Koski's evidence that the Loan is not a Loss of Income, but a Loss of an Asset.

[74] It is trite that every pleading must contain a clear and concise statement of material facts upon which the pleader relies for his or her claim, defence or answer to any pleading, with sufficient particularity to enable the opposite party to reply thereto.

[74.1] In *Trope v South African Reserve Bank*²³ it was held that pleadings must be lucid and logical and in an intelligent form; the cause of action or defence must appear clearly from the factual allegations made. This is a basic requirement of pleading that is designed to enable the opposite party to formulate an adequate response to the claim in the form of a plea.

²² Case Lines 09-9

²³ 1992 (3) SA 208 (T) at 210 G-I

[75] It is imperative to note that the Plaintiff did not, in its Particulars of Claim²⁴ specify that claim C pertains to a Loss of an Asset specifically a Loan. Instead, the Particulars of Claim clearly reflects that claim C relates to Past Loss of Earnings as indicated in bold by its heading.²⁵ Consequently, the Plaintiff's pleading is based on a claim for Loss of Past Earnings.

[76] In *Masibulele Rautini and Passenger Rail Agency of South Africa*²⁶ reliant on the findings of *Minister of Safety and Security v Slabbert*²⁷ the Supreme Court of Appeal stated that a party has a duty to allege in the pleadings the material facts upon which it relies.

"It is impermissible for a Plaintiff, the court held, to plead a particular case and seek to establish a different case at trial. It is equally impermissible, the discussion continued, for the trial court to have a recourse to issues falling outside the pleadings when deciding a case." (my emphasis)

[77] The purpose of pleadings is to define the issues for the other party and the court. A court is called upon to adjudicate the disputes that arise from the pleadings and those disputes alone.

[77.1] In *Minister of Safety and Security v Slabbert* [2010] 2 ALL SA 474 (SCA) and *Notyawa v Makana Municipality and Others* 2020 (2) BCLR 136 (CC); (2020) 41 ILJ 1069 (CC) it was held that courts are bound not to decide issues falling outside the pleadings, without determining issues of fairness and prejudice. It is impermissible for a party to plead a particular case and seek and establish a different case at the trial. At the end of the day, the issues between the parties are defined by and confined to those pleaded.

²⁴ Case Lines 04-5

²⁵ Case Lines 04-15

²⁶ Case no: (853/2020) [2021] ZASCA 158 (8 November 2021)

²⁷ [2010] 2 ALL SA 474 (SCA)

[78] Accordingly, it is impermissible to plead one particular issue and seek to pursue another at the trial. (*Minister of Agriculture and Land Affairs and Another v De Klerk and Others* [2014] 1 All SA 158 (SCA) at para 39; *Gusha v Road Accident Fund* 2012(2) SA 371 (SCA) at para 7; *Imprefed (Pty) Ltd v National Transport Commission* 1993 (3) SA 94 (A) at 107G-H also reported as (1993) 2 ALL SA 179 (A) and *Robinson v Randfontein Estates GM Co Ltd* 1925 AD 173 at 198).

[79] This principle was re-stated in *Home Talk Developments (Pty) Ltd v Ekurhuleni Metropolitan Municipality* (225/2016) [2017] ZASCA 77 (2 June 2017) at paragraphs 28-29 as follows (own emphasis added):

“[28] ...One knows that such address can never be a substitute for pleadings. In any event, it did not serve to forewarn the Respondent of the evidence that would eventually be relied upon. What is important is that the pleadings should clarify the general nature of the pleader's case. They are meant to mark out the parameters of the case sought to be advanced and define the issues between the litigants. In that regard, it is a basic principle that a pleading should be so framed as to enable the other party to fairly and reasonably know the case they are called upon to meet. These requirements in respect of pleadings are the very essence of the adversarial system. The prime function of a judge is to hear evidence in terms of the pleadings, to hear arguments and to give his decision accordingly. In *Imprefed (Pty) Ltd v National Transport Co* 1993 (3) SA 94 (A) at 107G-H, it was stated: 'At the outset, it need hardly be stressed that: “The whole purpose of pleadings is to bring clearly to the notice of the Court and the parties to an action the issues upon which reliance is to be placed. (*Durbach v Fairway Hotel Ltd* 1949(3) SA 1081 (SR) at 1082.) (my emphasis)

[80] The Plaintiff has failed to substantiate and proof the damages pertaining to Claim C, because he has not explicitly pleaded the Loss of an Asset (specifically, the Loan) within their Particulars of Claim. Claim C pertains to Past Loss of Income, which is detailed in paragraph 46 of the Particulars of Claim. Consequently, the Plaintiff has not pleaded a proper case and cannot claim the amount of

R1 406 594.00. I therefore find it unnecessary to address the arguments presented by the Defendant's Counsel concerning the lack of connection between the arrest and the loan, and the potential denial of damages in relation to Claim C.

CLAIM D:

[81] Lastly, I shall deal with the loss of earnings as set out in claim D.

[82] In the testimony provided by Mr. Koski, he quantified that the Plaintiff had incurred losses amounting to *R4 481 866.00* which he rounded off to *R4 500 000.00* in relation to claim D, resulting from the Plaintiff's unlawful arrest.

[83] This court will for fairness work with the exact amount of *R4 481 866.00*.

[84] In accordance with Mr. Koski's methodology, the calculations were predicated upon the assumption that the Plaintiff's events and activities would persist until at least *February 2027*, encompassing a *11-year period*. He determined the loss of future revenue over this 11-year span, initiating from a base rate of *R1 700 000.00* annually. This base rate was established by considering the historical turnovers from *2013 to 2016*. Furthermore, the exponential growth of the Museum was projected into an increase at a minimum rate of *10%*.

[85] Mr. Koski also utilized a Net Present Value (NPV) calculation, applying a discount rate of *15.5%* per annum to determine the net present value.

[86] Having regard to Mr. Koski's report²⁸ it is evident that his calculations did not allow for contingencies.

²⁸ Case Lines 09-3

[87] The court has, nevertheless, required both parties to comment on the following statements:

[87.1] The discount rate of 15.5% applied is distinct from a contingency. The discount rate is the expected rate of return or cost of capital used to convert future cash flows into today's money. It accounts for the time value of money. Whilst a contingency is a potential future event or circumstances that is possible but uncertain.

[87.2] Mr. Koski did not make allowance for contingencies in his calculation.

[88] In reply, Mr. Koski confirmed the Court's characterisation and agreed that the discount rate is distinct from a contingency. The 15.5% per annum discount rate applied (in paragraph 8 of his report) is a net present value calculation: it converts the projected future annual losses - escalated at a minimum of 10% per annum for revenue and 7% per annum for costs - into a present-day capital value as at the date of my calculation. It reflects the time value of money and an appropriate rate of return/cost of capital.

[89] Mr. Koski however clarified that the 15.5% comprises:

[89.1] a base return for the time value of money together with

[89.2] a risk premium.

[90] He explained that the risk premium exists precisely to account for the possibility that the projected cash flows may, or may not, materialise as forecast. In that sense he stated that the discount rate inherently prices in a probability-weighted assessment of risk.

[90.1] The risk is directional and forward-looking in the same way a contingency is, but it operates on the rate of return applied to the

whole cash flow stream, rather than as a standalone deduction from the outcome.

[90.2] The risk captured within the discount rate in his calculation is business risk - the risk inherent in the museum and its related trading activities achieving the growth and income levels projected - as opposed to external or extraneous risk unconnected to the business itself.

[90.2.1] As an example Mr. Koski asserted that the base line risk is a **risk free rate of return** such as a bank interest rate of say 8%, or a government bond at now approximately 8.75%, the increase to 15.5%, takes into account contingencies for business uncertainty. If he were to have no risk of a contingent business event (a risk) taking place, Mr. Koski indicated that he would discount at 8% and not 15.5%.

[91] Mr. Koski elaborated that the risk premium of 7.5% reflects the specific business risks attaching to the projected income stream in this matter, including, in particular:

[91.1] the concentration of income in a single, owner-operated business without diversification across multiple sites or revenue sources;

[91.2] the dependence of a material portion of projected income on a single annual motoring event, itself dependent on weather, attendance, and continued patronage;

[91.3] the reliance of the business on the personal reputation and continued presence of the Plaintiff, which the underlying facts in this matter show to be a live and material risk;

[91.4] the historical volatility already evident in the Museum's turnover figures over the years analysed in my report; and

[91.5] the general risk inherent in a small, owner-managed trading entity of this kind failing to sustain projected growth over an 11-year projection period.

[92] Mr. Koski confirmed that save for the risk premium featured into the discount rate he did not make any separate contingency allowance. He elaborated that it was not an oversight as the risk that the projected income may not be achieved was already accounted for within the 15.5% discount rate itself, through the risk premium embedded in that rate.

[93] If the court had to apply a further, separate contingency deduction on top of a risk-adjusted discount rate it would, in his professional view, risk double-counting the same underlying business risk once within the discount rate used to determine present value, and again as a standalone reduction to the result.

[94] Mr. Koski opined that his application of the discount rate in his assessment is an appropriate and sufficient mechanism to account for the uncertainty inherent in the projection, without additionally discounting for a contingency.

[95] The Defendant in response to the statements made in paragraph [88] here in before expressed and emphasized the following:

[95.1] A discount rate is conceptually and methodologically distinct from a contingency allowance. A discount rate converts projected future cash flows into present value and accounts, among other matters, for the time value of money and the required rate of return. A contingency allowance, by contrast, addresses the possibility of uncertain future events or circumstances affecting whether the projected loss will materialise as assumed.

[95.2] Mr Koski expressly confirmed that he did not apply a separate contingency allowance or deduction in his calculation.

[95.3] The Defendant noted, however, that Mr Koski in response stated that the increase from what he describes as a risk-free rate to 15.5% takes account of “*contingencies for business uncertainty*.” He accordingly seeks to characterise the risk premium embedded in the discount rate as also performing the function of a contingency allowance.

[95.3.1] The Defendant indicated that this does not alter the fact that no distinct contingency analysis or deduction was undertaken. The expert’s explanation does not separately identify or quantify the contingencies applicable to the Plaintiff’s projected loss, nor does it demonstrate that every relevant uncertainty is captured by the business-risk premium embedded in the 15.5% rate.

[95.4] The Defendant asserts that contingency deductions are separately considered by courts when quantifying future loss, and that their determination involves the Court’s assessment of the evidence and applicable circumstances.

[95.5] In *Road Accident Fund v C K*²⁹ (paragraphs 40 – 44), the Supreme Court of Appeal separately considered the appropriate

²⁹ 1024/2017) [2018] ZASCA 151; [2019] 1 All SA 92 (SCA); 2019 (2) SA 233 (SCA) (1 November 2018)

contingencies applicable to the claimant's projected loss of earnings. In this matter Dumbuza JA (Mocumie JA concurring) held:

[95.5.1] “[40] Any claim for future loss of earning capacity requires a comparison of what a claimant would have earned had the accident not occurred with what a claimant is likely to earn thereafter. The loss is the difference between the monetary value of the earning capacity immediately prior to the injury and immediately thereafter. This can never be a matter of exact mathematical calculation and is, of its nature, a highly speculative inquiry. All the court can do is make an estimate, which is often a very rough estimate, of the present value of the loss.

[41] Courts have used actuarial calculations in an attempt to estimate the monetary value of the loss. These calculations are obviously dependent on the accuracy of the factual information provided by the various witnesses. In order to address life's unknown future hazards, an actuary will usually suggest that a court should determine the appropriate contingency deduction. Often a claimant, as a result of the injury, has to engage in less lucrative employment. The nature of the risks associated with the two career paths may differ widely. It is therefore appropriate to make different contingency deductions in respect of the pre-morbid and the post-morbid scenarios. The future loss will therefore be the shortfall between the two, once the appropriate contingencies have been applied.

[42] Contingencies are arbitrary and also highly subjective. It can be described no better than the oft-quoted passage in Goodall v President Insurance Co Ltd³⁰ where the court said:

'In the assessment of a proper allowance for contingencies, arbitrary considerations must inevitably play a part, for the art or science of foretelling the future, so confidently practiced by ancient prophets and soothsayers, and by authors of a certain type of almanack, is not numbered among the qualifications for judicial office.'

[43] It is for this reason that a trial court has a wide discretion when it comes to determining contingencies. An appeal court will therefore be slow to interfere with a contingency award of a trial court and impose its own subjective estimates." (my emphasis)

[95.6] The Defendant also contends that the application of an appropriate contingency deduction would not necessarily amount to double counting. It would depend upon whether the particular uncertainty for which the contingency is allowed was already identified, quantified and adequately incorporated into the discount rate. On the information presently provided by Mr Koski, the Defendant contends that this had not been demonstrated.

[96] The Defendant's counsel also referred me to *Dlamini v Road Accident Fund (2019/31573) [2026] ZAGPJHC 560 (26 May 2026)*, where the court made reference to *Southern Insurance Association Ltd v Bailey NO 1984 (1) SA 98 (A)* and where it was held that the court must make a fair estimate of the

³⁰ 1978 (1) SA 389 (W) (*Goodall*) at 392H-393A.

Plaintiff's prospective loss, taking into account all relevant facts and applying appropriate contingencies. The court further held that the percentage deduction for contingencies should not be arbitrary but must be informed by the circumstances of each case.

[96.1] In South African Law of Delict, a 15% deduction for future earnings is widely recognized as the standard or "*normal*" baseline contingency. Courts apply general contingency deductions to account for life's uncertainties, such as periods of unemployment, sickness, or unexpected changes in the labour market. While 5% is customary for past loss of income, 15% is the frequent benchmark applied to future loss of earning capacity before an accident or event.

[96.2] Mr. Koski's calculation applied no contingency deductions, (as is evident from his report), leaving those deductions to the court's discretion. Without doubt, contingency deductions are a recognised tool to account for general risks and vicissitudes of life that may affect a person's earning capacity, such as unemployment, illness, injury, economic downturns, or early retirement. However, the court has a wide discretion in determining appropriate contingency deductions.

[96.3] The Supreme Court of Appeal in *Road Accident Fund v Kerridge*³¹ opined as follows:

"Any claim for future loss of earning capacity requires a comparison of what a claimant would have earned had the accident not occurred, with what a claimant is likely to earn thereafter. The loss is the difference between the monetary value of the earning capacity immediately prior to the injury and immediately thereafter. This can never be a matter of exact mathematical calculation and is, of its nature, a highly speculative inquiry. All the

³¹ 1024/2017 [2018] ZASCA 151 (01 November 2018).

court can do is make an estimate, which is often a very rough estimate, of the present value of the loss. (my emphasis)

[96.4] In *Southern Insurance Association Ltd v Bailey NO*³², it was held that contingencies are a practical method of accounting for the unknown future and are in the discretion of the trial court. The Court stated:

"One of the elements in exercising that discretion is the making of a discount for 'contingencies' or the 'vicissitudes of life'. These include such matters as the possibility that the plaintiff may in the result have less than a 'normal' expectation of life; and that he may experience periods of unemployment by reason of incapacity due to illness or accident, or to labour unrest or general economic conditions. The amount of any discount may vary, depending upon the circumstances of the case."

[97] The Defendant's counsel further argued that it was evident from the VAT records that although the Museum's functions expanded from *February 2016 to June 2016*, its revenue underwent a consistent decline during the same period. This observation led him to the inference that the Museum was facing financial difficulties, despite its continued operation until *March 2017*.

[97.1] Mr. Koski responded that functions are typically pre-arranged.

[98] Upon reviewing all the financial documentation presented, it was clear that the unlawful arrest served as a critical turning point for the businesses. These businesses had exhibited exponential growth prior to the arrest.

[99] Additionally, the Defendant argued that the Plaintiff had an administrator overseeing event organization, functions, and reservations. The Defendant posited that the Plaintiff's brief detention could not have led to any damages or

³² 1984 (1) SA 98 (A).

future loss of income. However, this assertion is untenable. The testimony of Mr. Koski founded on financial documentation, unequivocally established that the arrest was the significant factor to the ultimate collapse of the businesses. This assertion was further substantiated through a meticulous analysis of several months' (24) worth of financial records.

[100] It was further contended that the municipality had unlawfully seized the Plaintiff's products, yet the Plaintiff did not furnish any evidence to substantiate this claim's connection to the arrest. Notably, this argument was not presented to the Plaintiff for the purpose of rebuttal.

[101] The Defendant suggested that, should an order be made in respect of Claim D, it should be set at *R90 000.00*. However, this proposed figure appears to lack consideration for the financial documentation and evidence that were presented to the court. It seems to be a random and unsubstantiated amount, not supported by the presented evidence.

[102] Having considered the aforesaid arguments, this court is of the firm opinion that Mr. Koski had provided the court with invaluable assistance by delivering independent, objective, and unbiased opinions regarding the loss of income. His methodology was thoroughly explained in his evidence and report, and his findings were articulated in a clear and concise manner. The evidence he presented was characterized by both consistency and credibility, significantly contributing to the understanding of the case.

[103] I accordingly accept Mr. Koski's evidence that:

[103.1] he had factored in a 7.5% risk premium to the base rate of 8% in respect of his calculation of future loss of earnings. The 7.5% accounts for the specific business risks as depicted in paragraph [92] here in above.

[103.2] he had indicated that his calculation did not allow for contingencies, but that the 7.5% risk premium reflects the business risks attached to the projected income stream in this matter.

[104] I am, however, of the firm opinion that a further contingency allowance of 7.5% should be applied. This additional allowance accounts for risks not fully captured by the business-risk premium, including the Plaintiff's age, possible deterioration in health, early retirement, mortality, and broader economic factors such as downturns that may have affected the Plaintiff's income. Applying this further deduction also brings the overall adjustment closer to the standard 15% contingency commonly applied to future loss of earnings, while still recognising the specific risk adjustment already incorporated in Mr. Koski's calculation.

[104.1] Robert Koch's work is often used to determine the contingency deductions, typically 5% for past loss and 15% for future loss.

[104.2] The uncertainty factors adjust for risks unrelated or related to the arrest, such as potential illness, unemployment, economic recessions, promotions, or early retirement.

[105] The amount of **R4 481 866.00** as calculated by Mr. Koski filtered in a risk adjustment of 7.5%. If this court applies an additional 7.5% contingency deduction to the amount of **R4 481 866.00** it amounts to **R4 145 726.05** (*Four Million One Hundred and Forty Five Thousand Seven Hundred and Twenty Six Rand and Five Cents*).

[106] The Future Loss of Earnings in an amount of **R4 145 726.05** (*Four Million One Hundred and Forty Five Thousand Seven Hundred and Twenty Six Rand and Five Cents*) will then into consideration a risk premium of 7.5% and an additional 7.5% for contingencies.

[107] Having considered all the evidence I make the following order in respect of claims A and D:

Order

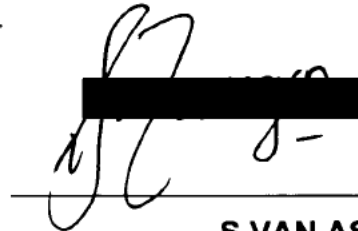
The First, Second and Fifth Defendants are to pay the Plaintiff's damages, jointly and severally, the one paying the other to be absolved, in the following terms:

CLAIM A

- [1] Payment of the amount of **R40 000.00** in respect of *contumelia* and the deprivation of bodily freedom, liberty and discomfort;
- [2] Payment of the amount of **R50 000.00** in respect of damages to the Plaintiff's good name, dignity and reputation;
- [3] Interest on the aforesaid amount at the prescribed rate of interest from date of demand (i.e. *30 March 2017*) to date of final payment.
- [4] Costs of suit on a party and party scale inclusive of legal counsel's fees on scale C.

CLAIM D

- [5] Payment of the amount of R4 145 726.05 (*Four Million One Hundred and Forty Five Thousand Seven Hundred and Twenty Six Rand and Five Cents*).
- [6] Interest on the aforesaid amount at the prescribed rate of interest from date of demand (i.e. *30 March 2017*) to date of final payment
- [7] Costs of suit on a party and party scale inclusive of legal counsel's fees on scale C.


S VAN ASWEGEN
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

Delivery date: 9 September 2026

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