



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MTHATHA)**

CASE NO: CA 91/2022

In the matter between:

[REPORTABLE]

MINISTER OF POLICE

Appellant

and

LONWABO MJALI

First respondent

THANDOLWENKOSI MJALI

Second respondent

WANDA MJALI

Third respondent

JUDGMENT

RUSI J

[1] *‘Money can never be more than a crude solatium for the deprivation of what in truth can never be restored and there is no empirical measure for the loss.’¹*

¹ *Minister of Safety and Security v Seymour* [2007] 1 All SA 558 (SCA); 2006 (6) SA 320 (SCA), para 20.

[2] In an action for damages arising from the unlawful arrest of the respondents on 28 September 2014 and their subsequent detention until 30 September 2014, in which they claimed amount of R900 000.00, the court *a quo* (Mtshabe AJ) awarded each respondent an amount of R200 000.00 as compensation. The first respondent's additional claim of malicious prosecution was dismissed by the court *a quo*, correctly in my view, and no further reference need be made to it.

The background facts

[3] These are the common cause background facts of the appeal. The respondents were arrested by the members of the appellant without a warrant around 09h00 on Sunday, 28 September 2014 after they were alleged to have attacked one Lucky Maqutho (the victim) at his home in 3rd Avenue Norwood, Mthatha. They were found by the police at the scene of the alleged attack together with two other persons.

[4] When the police arrived at the scene, they found the victim holding two firearms. They disarmed him and placed him in the police van. Meanwhile, the respondents and two other persons that were at the scene were ordered by the police to lie down. Once the police had spoken to the persons at the home of the victim about what transpired between him and the respondents, they placed the respondents and their two other co-suspects in the police van and conveyed them to the Madeira police station and later conveyed them to Mthatha Central police station where they were detained until Tuesday 30 September 2014.

[5] On 30 September 2014 in the morning, the respondents were transported to Mthatha Magistrate's Court. The first respondent appeared before the magistrate and was released on bail of R500.00, while the second and third respondents were released around 16h00 on the same day from the holding cells without appearing before the magistrate. After his release on bail, the first respondent continued to attend court in respect of the charge of assault by threats until 22 June 2015 when the charges against him were withdrawn by the prosecution.

The grounds of appeal

[6] The Minister of Police (the appellant) is now appealing against the *quantum* of damages awarded by the court *a quo*. Appropriately paraphrased, the grounds of appeal relied upon by the appellant are that the court *a quo* erred in the following respects:

- (a) In finding that the amount of R200 000.00 awarded to each respondent was a fair and reasonable amount of compensation.
- (b) In not considering recent judgments of this Division for comparison purposes.
- (c) In placing reliance on cases which had no relevance to the facts of the case in so far as they dealt with periods of detention computed in hours not days.
- (d) In failing to provide reasons for arriving at the amount of damages awarded when regard is had to the fact that no exceptional circumstances were placed for it justifying the award.
- (e) In making a grossly excessive award of damages.
- (f) In failing to have due regard to the fact that the main aim of an award of damages was not to enrich the respondents but to offer the much needed solatium.

Condonation

[7] The appellant simultaneously seeks condonation for the late prosecution of the appeal. At the hearing of this appeal, we voiced our disquiet with the appellant's non-compliance with the Uniform Rules of Court in the prosecution of the appeal. The Notice of appeal was filed in January 2021; hence the appeal had lapsed. There is paucity of facts in the affidavit in support of the condonation sought for the late prosecution of the appeal regarding the reasons for the delay. The notice of appeal itself contains no prayer seeking the re-instatement of the appeal.

[8] In the exercise of our discretion in the interest of finality, we granted the appellant condonation for the late prosecution of the appeal. We caution that this should not be interpreted as readily condoning tardiness and ineptitude in the conduct of proceedings in this Court.

In the court a quo

[9] Both the merits and *quantum* of the respondent's claim were determined at the trial before the court *a quo*. The merits of the arrest and detention are not an issue before us. It is expedient, however, that I make reference to the pleadings and evidence adduced in support of the entire claim for proper context.

[10] The respondents' particulars of claim are no model of precision. In their particulars of claim which are largely similarly worded, the respondents alleged, *inter alia*, that their arrest was wrongful and unlawful in that it was without a warrant and the police entertained no reasonable suspicion that they had committed an offence referred to in schedule 1 of the Criminal Procedure Act 51, of 1977;

alternatively, that the members of the defendants failed to properly exercise their discretion before making the arrest; further alternatively that they were malicious in arresting them.

[11] They further alleged that their arrest interfered with their constitutional rights; embarrassed and humiliated them; and was in full view of the members of society who raised eyebrows and looked upon them as criminals. They further asserted that their arrest and detention caused them much grief.

[12] Regarding their detention, the respondents alleged that it was equally embarrassing and humiliating. They were detained in a very congested cell which was also very filthy and made to sleep with very dirty blankets full of lice. They were made to eat rotten and sometimes not properly cooked food and were abused by fellow inmates.

[13] While admitting the respondents' arrest without a warrant and their subsequent detention from 28 to 30 September 2014, the appellant sought to justify the arrest and detention by pleading that in arresting the respondents, its members acted in terms of section 40(1)(b) of the CPA.²

The evidence for the appellant

[14] In line with the onus on it to justify the arrest and detention and to adduce evidence first, the appellant led the evidence of Warrant Officer Jokozela who attended the scene with his colleague, Warrant Officer Ntombela. His evidence was that he and Warrant Officer Ntombela received a complaint of persons who were attacking the victim in 3rd Avenue Norwood.

² Section 40(1)(b) provides that a peace officer may without warrant arrest any person whom he reasonably suspects of having committed an offence referred to in Schedule 1, other than the offence of escaping from lawful custody.

[15] On arrival and the scene, they found five male persons among whom were the respondents. Some were inside the premises of the victim of the alleged attack while some stood next to a minibus taxi that was parked in the street. They caused all of them to lie down. Having enquired from the persons who were present in the premises as to what had occurred, and after they were told that the respondents and two other persons came to attack the victim, they conveyed all the suspects in the police vehicle to the Madeira police station for questioning.

[16] Warrant Officer Jokozela denied that he arrested the respondents and stated that his colleague, Warrant Officer Ntombela was the one who arrested them. In this regard, he told the court *a quo* that when the respondents were conveyed from the scene to Madeira police station, it was so that they may be questioned.

[17] Quite astoundingly, Warrant Officer Jokozela had no knowledge of the charges on which the respondents were arrested. Warrant officer Ntombela was not called to testify as the person who arrested the respondents. During the course of his cross examination, it became an undisputed fact between the parties that the respondents were arrested on a charge of assault by threats. It would appear from the evidence adduced by Warrant Officer Jokozela that his role in the arrest and detention of the respondents ended when they were brought to Madeira police station. No evidence was led pertaining to the reasons for detention of the respondents.

The case for the respondents

[18] The first respondent testified with reference to his particulars of claim that his arrest and detention interfered with his constitutional rights, caused him much

grief and was embarrassing and humiliating since he was arrested in full view of the members of society. Regarding the conditions of his detention, his evidence was that he was detained in a congested and filthy and dirty cell.

[19] The second respondent gave similar evidence to that of the first regarding how their arrest came about. He testified that when they were brought to court on Tuesday 30 September 2014, he was caused to remain in the court holding cells until 16h00 when police officers released him and told him that no charges had been preferred against him. He further testified that his arrest and detention took place in full view of the public and it violated his constitutional rights as he had not committed any offence. He confirmed the averments he made in his particulars of claim that he was detained in a filthy, and dirty cell with dirty blankets; and was served rotten food.

[20] Likewise, the third respondent gave similar evidence as the first and second respondents regarding the arrest and how it came about. He too testified that he and the second respondent were released from the court holding cells on Tuesday 30 September 2014 at 16h00 without appearing before the magistrate. On the invitation of his legal representative, he also regurgitated the averments he made in his particulars of claim regarding the conditions of his detention.

The parties' submission on appeal

[21] Mr *Calaza*, counsel for the appellant, submitted that the fact that no evidence was adduced by the respondents who merely repeated the contents of their particulars of claim militated against the award that the court *a quo* determined. This in turn, so he submitted, rendered it unclear what factors the court *a quo* considered. He further submitted that the court *a quo* ought to have individualized the awards when regard is has to the fact that the second and third

appellants were released from custody before appearing in court. The court *a quo*, so the submissions went, ought to have considered that no aggravating factors existed in relation to the conduct of the police at the time of the respondents' arrest and none existed while they were in detention for the two days.

[22] The view taken by Mr *Calaza* was that the previous awards relied upon by the court *a quo* were of no relevance to the facts of the instant case, and that the court *a quo*'s award was disproportionate in the circumstances of the case. Therefore, said Mr *Calaza*, the court *a quo* misdirected itself in its approach in assessing the damages suffered by the respondents. We were referred in the parties' heads of argument to several previous awards, including those made by this Division in similar cases, it is not necessary to belabour this judgment by repeating them.

[23] Mr *Notununu* who represented the respondents submitted that in the light of the fact that an award of damages is a matter for the discretion of the court, it cannot be lightly interfered with by the court of appeal. He further submitted that the appellant has failed to show that the court *a quo* did not exercise its discretion properly. This, he said, is apart from the fact that the appellant has not relied upon a failure by the court *a quo* to exercise its discretion properly as a ground of appeal.

[24] It was Mr *Notununu*'s submission further, that in any event, the court *a quo* considered the material facts that were placed before him in determining the award appealed against. This was so, he said, regardless of the fact that the respondents gave no further details of the facts alleged in their particulars of claim which they merely confirmed on oath.

The law

[25] As held in *Minister of Safety and Security v Slabbert*³, the purpose of the pleadings is to define the issues for the other party and the court. A party has a duty to allege in the pleadings the material facts upon which it relies. It has also been stated⁴ that pleadings serve the purpose of:

- ‘(a) Ensuring that both parties know what the points of issue between them are, so that each party knows what case he has to meet. He or she can thus prepare for trial knowing what evidence he or she requires to support his own case and to meet that of his opponent.
- (b) Assisting the court by defining the limits of the action.
- (c) Placing the issues raised in the action on record so that when a judgment is given such judgment may be a bar to the parties litigating again on the same issues, enabling a party to raise a defence of *res judicata* if the other party attempts to raise the same issues.’

[26] Even though the lawfulness of the respondent’s arrest and detention are not an issue before us, for reasons that will become clear in the course of this judgment, it is as well to re-iterate the general principles relating to a claim under *actio iniuriarum* such as the present. Writing for the majority in *De Klerk v Minister of Police*⁵, Theron J said:

³ *Minister of Safety and Security v Slabbert* (668/2009) [2009] ZASCA 163; [2010] 2 All SA 474 (SCA) (30 November 2009).

⁴ H. Daniels - Beck’s Theory and Principles of Pleading in Civil Actions 6th edition (LexisNexis) pages 43-44.

⁵ *De Klerk v Minister of Police* (CCT 95/18) [2019] ZACC 32; 2019 (12) BCLR 1425 (CC); 2020 (1) SACR 1 (CC); 2021 (4) SA 585 (CC) (22 August 2019).

[14] A claim under the *actio iniuriarum* for unlawful arrest and detention has specific requirements:

- (a) the plaintiff must establish that their liberty has been interfered with;
- (b) the plaintiff must establish that this interference occurred intentionally. In claims for unlawful arrest, a plaintiff need only show that the defendant acted intentionally in depriving their liberty and not that the defendant knew that it was wrongful to do so;
- (c) the deprivation of liberty must be wrongful, with the onus falling on the defendant to show why it is not; and
- (d) the plaintiff must establish that the conduct of the defendant must have caused, both legally and factually, the harm for which compensation is sought.’

[27] On the score of the purpose of an award of damages, the Constitutional Court, in *Mahlangu and Another v Minister of Police*⁶, held that damages are awarded to deter and prevent future infringements of fundamental rights by organs of state. They are a gesture of goodwill to the aggrieved and they do not rectify the wrong that took place.⁷ With these principles of law in mind, I turn to deal with the issues raised in the instant appeal.

Analysis

[28] For the present purposes, the respondents, over and above proving the fact of their arrest and detention by the members of the defendant, also had to establish that they suffered damages as a result of the said arrest and detention (*factual causation*) and that the wrongful conduct of the appellant was closely connected to the harm they suffered (*legal causation*). This had to be done by way of adducing oral evidence.

⁶ *Mahlangu and Another v Minister of Police* (CCT 88/20) [2021] ZACC 10; 2021 (7) BCLR 698 (CC); 2021 (2) SACR 595 (CC) (14 May 2021).

⁷ *Ibid* para 50.

[29] In *EFF and Others v Manuel*⁸, the SCA emphasized that claims for unliquidated damages by their very nature involve a determination by the court of an amount that is just and reasonable in the light of a number of indeterminable and incommensurable factors and that in order to determine an appropriate award relevant evidence has to be presented and fully explored.⁹

[30] When the respondents gave evidence in support of their respective claims for damages, their legal representative caused them to confirm what they each alleged in their particulars of claim. As already mentioned, upon this invitation, each of them repeated the averments made in their pleadings. This must be viewed against the background that the appellant explicitly denied the allegations made by the respondents in their particulars of claim regarding the conditions under which their arrest and detention took place and the harm they alleged to have suffered as a result thereof.

[31] In its determination of the appropriate award of damages, the court *a quo* considered as evidence before it the confirmation by the respondents of the averments they made in their particulars of claim. The learned Acting Judge encapsulated the respondents' evidence as he took it, as follows:

'[54] The Plaintiffs were unlawfully arrested on 28 September 2014 and were detained from 9h00 until 30 September 2014. They were detained for 2 days and 7 hours.'

⁸ *EFF and Others v Manuel* (711/2019) [2020] ZASCA 172 (17 December 2020).

⁹ *Ibid*, paras 93 and 96; *See also Minister of Police v Mzingeli and Others* (115/2021) [2022] ZASCA 42 (5 April 2022).

[55] *They have testified that the arrest and detention interfered with their constitutional rights. It embarrassed and humiliated them. It caused them much grief. It impaired their dignity as human beings and they were arrested in the full view of the members of the society who raised eyebrows and looked upon them as criminals.*

[56] *They have also testified that the detention was equally embarrassing and humiliating. They were detained in a very congested cell that was very filthy. They were made to sleep with very dirty blankets with [sic] full of lice and testified to the effect that they were made to eat food that was not properly cooked and were abused by some of the fellow inmates. . .’*

[32] It must be stated at this early stage that the approach adopted by respondent’s legal representative in inviting the respondents to parrot the material averments they made in their pleadings and nothing more, was unconventional. The respondent’s particulars of claim were intended to delineate the issues between the parties, to enable the parties to determine the nature and extent of evidence they would need to present in support of their claim and defence as the case may be. Apart from this function, their particulars of claim would in turn be referred to by the court to determine whether any inadmissible evidence was introduced during the trial. In essence, the respondents’ particulars of claim paved the way for the evidence that each party would lead to establish the facts pleaded (subject to rules relating to discovery). They could not therefore, substitute evidence.

[33] I am alive to the fact that it is possible that in certain types of disputes, the issues are capable of being determined by mere recourse being had to the pleadings than to the evidence adduced. For the reasons stated in the case law quoted above, the quantification of damages is not one of such matters.

[34] There needs to be a clear understanding of the role played by evidence of conditions under which the arrest and detention took place in the determination of the lawfulness of the arrest and detention on the one hand, and its role in the quantification of damages resulting from the unlawful arrest and detention on the other.

[35] In determining the lawfulness of the arrest and detention, what is required to be proven by the party who bears the onus (in this case, the appellant) is whether they took place within the confines of what the law allows, and whether they violated the constitutionally enshrined right to personal liberty. When the issue to be determined is the *quantum* of damages to be awarded for the violation of a person's liberty, evidence of the conditions under which a person was arrested and detained plays a significant part.¹⁰

[36] Notably, none of the respondents gave any further detail regarding the conditions of the arrest and detention and how they were affected thereby. The court *a quo*, for example, made a finding that the respondents were traumatized by their arrest and detention. No details were given by any of the respondents regarding how they were emotionally or psychologically so affected – no expert evidence was led either. The same observation applies regarding the absence of evidence from the respondents pertaining to the manner in which they were abused by other inmates.

¹⁰ *Zealand v Minister for Justice and Constitutional Development and Another* (CCT54/07) [2008] ZACC 3; 2008 (6) para 40-41.

[37] Furthermore, the court *a quo* accepted the repetition of the averments in the particulars of claim that the holding cell in which they were detained was very congested, yet, no evidence was placed on record, of the extent of such congestion. The respondents gave no details of factors like the number of the inmates in the cell at the time of their detention, their personal experience in the cell, and the like.

[38] While it is generally known that most places of detention are congested and that the accepted standard of hygiene is not always adhered to, bald statements such as those made by the respondents, namely, that the holding cell was congested and very filthy, cannot without more, be blindly accepted in a given case. Flood gates would be opened, I think, and the extent of liability of the Minister of Police unduly extended in claims founded on unlawful arrest and detention without any cogent proof being presented of damages alleged to have been suffered as a result of a person's arrest and subsequent detention. The conditions of the holding cell in which the respondents were detained were within the knowledge of the respondents, therefore, they had to give specific details to the court regarding its alleged congestion and filthy state.

[39] I must not be understood to mean that no harm or injury immediately follows from an unlawful violation of a person's right to liberty. The unlawful deprivation of a person's liberty is, in itself, a serious injury which constitutes an impermissible infringement of his/her constitutional rights to freedom and security of the person, and to human dignity.¹¹

¹¹ *Motladile v Minister of Police* (414/2022) [2023] ZASCA 94 (12 June 2023) para 22; *Rahim v The Minister of Home Affairs*, (965/2013) [2015] ZASCA 92; 2015 (4) SA 433 (SCA); [2015] 3 All SA 425 (SCA) (29 May 2015).

[40] However, I re-iterate that in the quantification of damages for which the appellant was held liable, it was imperative that sufficient evidence be led and fully explored to aid a fair assessment of the damages suffered by each of the respondents. The Court, in *Rahim v The Minister of Home Affairs*¹², said the following on this issue:

[27] The deprivation of liberty is indeed a serious matter. In cases of non-patrimonial loss where damages are claimed the extent of damages cannot be assessed with mathematical precision. In such cases the exercise of a reasonable discretion by the court and broad general considerations play a decisive role in the process of quantification. This does not, of course, absolve a plaintiff of adducing evidence which will enable a court to make an appropriate and fair award. In cases involving deprivation of liberty the amount of satisfaction is calculated by the court *ex aequo et bono*. Inter alia the following factors are relevant: (i) circumstances under which the deprivation of liberty took place; (ii) the conduct of the defendants; and (iii) the nature and duration of the deprivation. (Emphasis added)

[41] I hold the view that the effect of the approach adopted in the court *a quo* in causing the respondents to merely regurgitate the averments made in their particulars of claim, was that the court *a quo* was left with limited or minimal evidence on which to determine what the appropriate award would be in the circumstances of the case. This leads me to the question whether, as contended by the respondent, the award of damages was grossly excessive in the circumstances; whether the court *a quo* misdirected itself in its resort to previous awards it considered; and whether there was a misdirection on its part in considering previous awards which were determined in hours and not days.

¹² Ibid para 27.

[42] It is settled law that an appeal court will interfere with an award of damages determined by the trial court if it finds that the court *a quo* misdirected itself with regard to material facts or in its approach to the assessment, or having considered all the facts and circumstances of the case, the trial court's assessment of damages is markedly different to that of the appellate court.¹³ This will also be so if it finds that the award of the trial court was palpably excessive and clearly disproportionate in the circumstances of the case.

[43] It bears emphasizing that previous awards are not meant to be a benchmark of the amount of damages to be awarded in a given case, otherwise, the court's discretion in determining an appropriate award of damages would be impermissibly fettered. As held in *Minister of Safety and Security v Tyulu*¹⁴ while it is always helpful to have regard to previous awards, 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.¹⁵

[44] Recently, the Court in *Motladile v Minister of Police*,¹⁶ held:

[17] 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 absence of improper motive or malice on the part of the defendant; (c) the

¹³ *Motladile* supra, para 12; *Sandler v Wholesale Coal Supplies Ltd* 1941 AD 194 at 200.

¹⁴ 2009 (5) SA 85 (SCA).

¹⁵ *Ibid*, para 26.

¹⁶ *Supra* footnote 11.

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] It is as well to remember what this Court said in *Tyulu v Minister of Police*: ‘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. . .’ (footnotes omitted)

[45] And in *Spannenberg and Another v Minister of Police*¹⁷ (quoted with approval by the SCA in *Motladile*), it was said:

‘[T]here is a misnomer that the High Court in the *Ngwenya* judgment set as a benchmark an amount of R15 000.00 per day as the norm for unlawful arrest and detention. This is incorrect and misplaced. Each case must be decided in its own peculiar facts and circumstances (merits). This cannot be emphasized enough. There is no benchmarking nor is there a one size (or amount) fits all practice that must be followed. This will most definitely erode the judicial discretion of presiding officers. However, there must be a balance of all the competing interests and it can never be that there be poured from the

¹⁷ *Spannenberg and Another v Minister of Police* (2993/2019) [2022] ZANWHC 4 (24 February 2022) para 20.

proverbial ‘horn of plenty’. A claim for damages is not a get rich quick opportunity but a *solatium* as compensation for the damages suffered.’ (footnotes omitted)

[46] If regard is had to these authorities, the contention on behalf of the appellant that previous awards in which detention was computed in hours and not days were incorrectly considered by the court *a quo* becomes fallacious and has no merit.

[47] Over and above the regurgitation of the averments made by the respondents in their particulars of claim, the learned Acting Judge had particular regard to the arbitrary nature of the arrest and detention, and the fact that the second and third respondents were never brought before court which is the purpose of an arrest. The police told them to ‘go home as no charges were preferred against them’. From this observation, it must *perforce* follow that the contention that the court *a quo* did not give reasons for the award it made should fail.

[48] That being said, I share the Court’s sentiments in *Diljan v Minister of Police*¹⁸, with respect, when it held:

‘[17] Thus, a balance should be struck between the award and the injury inflicted. Much as the aggrieved party needs to get the required *solatium*, the defendant (the Minister in this instance) should not be treated as a ‘cash-cow’ with infinite resources. The compensation must be fair to both parties, and a fine balance must be carefully struck, cognisant of the fact that the purpose is not to enrich the aggrieved party.’

[50] In *Motladile*¹⁹, an award by the court *a quo* of R60 00.00 for detention for four nights was increased on appeal to R200 000.00. The appellant in that case gave testimony of the manner in which the conditions of his detention affected him and his family. In *Nyanya v Minister of Police*²⁰, the plaintiff was awarded R160

¹⁸ *Diljan v Minister of Police* (Case No. 764/2021) [2022] ZASCA 103 (24 June 2022).

¹⁹ *Supra*, footnote 11.

²⁰ *Nyanya v Minister of Police* (3577/2013) [2019] ZAECGHC 136; 2020 (2) SACR 550 (ECG (12 December 2019)).

000.00 for detention for three and a half days; and in *Mahlanza v Minister of Police*.²¹ In *Mtola v Minister of Police*²², the Full Court of this Division on appeal awarded the plaintiff R125 000.00 for his unlawful detention for 5 days. In *Diljan v Minister of Police*²³, the Plaintiff was awarded R120 000.00 for a period of 3 days' detention.

[51] I hold the view that the court *a quo* ought to have considered the paucity of detail in the testimony of the respondents regarding the conditions under which their arrest and detention took place and how they were affected thereby. I accept that in the case of the second and third respondents, the fact that they were released without appearing before the magistrate after spending two days in detention distinguishes their position from that of the first respondent. However, it was incumbent upon the second and third respondents to place on record through evidence, what their personal experience was during their further detention upon arrival in the court holding cells and how this affected them. That did not happen in the instant case. I come to the conclusion that in the circumstances of the present case, the award of damages granted by the court *a quo* is excessive. This Court is at large to interfere with it.

[52] That being said, the respondents must still be compensated fairly for the damages they suffered as a result of their unlawful arrest and detention for the period of two days. Regard must be had to the fact that unlawful deprivation of the appellant's liberty is, in itself, a serious injury which constitutes an unjustified infringement of his rights to freedom and security of the person, and to human dignity. The effect of inflation on the currency must also be considered when

²¹ *Mahlanza v Minister of Police* (EL 1326/2017) [2019] ZAECLL 32 (26 November 2019).

²² *Mtola v Minister of Police* (CA 23/2016) [2017] ZAECMHC 56 (29 June 2017).

²³ *Ibid.*

having regard to previous awards to ensure that the respondents get the current value of the award they receive.

[53] It is the view I hold that an amount of R100 000.00 is a fair amount of compensation to be awarded to each respondent for the damages suffered resulting from their arrest and detention for two days.

Costs

[54] There is no reason why the general rule that costs follow the cause, should not apply in this appeal.

Order

[55] In the result, I would make the following order:

1. The appeal is upheld, with costs.
2. The order of the Court *a quo* is set aside and substituted with the following:

- “(a) The defendant shall pay each plaintiff R100 000.00 as and for damages resulting from the plaintiff’s arrest on 28 September 2014 and subsequent detention until 30 September 2014.***
- (b) The above amount of R100 000.00 shall be paid to each plaintiff within thirty (30) days from the date of this judgment.***
- (c) Interest on the award of R100 000.00 shall be payable at the prescribed legal rate from 10 February 2016 (this being the date when the demand was received by the defendant) to date of payment.***

(d) The defendant shall pay the plaintiffs' costs of suit at the High Court scale."

L RUSI
JUDGE OF THE HIGH COURT

I agree:

S RUGUNANAN
JUDGE OF THE HIGH COURT

I agree:

D.O. POTGIETER

JUDGE OF THE HIGH COURT

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Date heard : 14 August 2023

Date delivered : 07 November 2023

