



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

CASE NO: 32440/18

- (1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES:
YES/NO
(3) REVISED: NO

18 December 2023

In the matter between:

KHUMBELO MULEYA

Plaintiff

and

MINISTER OF POLICE

First Defendant

NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

Second Defendant

JUDGMENT

NOKO J*Introduction*

[1] The plaintiff sued out summons against the first and second defendants for damages suffered as a result of the unlawful arrest, detention, and malicious prosecution. This is pursuant to the arrest of the plaintiff on 2 March 2016 without a warrant by members of the first defendant and the second defendant having initiated criminal proceedings against the plaintiff. The charges against the plaintiff having subsequently been withdrawn by the second defendant.

Background

[2] The plaintiff was arrested on the allegations of assaulting Elvis Baloyi, informally called Bomba (*Mr Baloyi*) which took place on 19 December 2015 in Makausi Squatter Camp. It is alleged that Mr Baloyi laid a complaint that he was accosted and assaulted by a group of 6 people in Makausi Squatter Camp on 19 December 2015. He was then hospitalised at OR Tambo Hospital and discharged after two days. After his discharge he went to lay a charge on 22 December 2015 at Primrose police Station.

[3] The plaintiff appeared in court on 3 March 2015 and was remanded in custody. The case was postponed to 10 March 2015 whereupon he was released on bail. The charges were withdrawn on 7 April 2016.

[4] The plaintiff subsequently instituted civil proceedings against the defendants on 4 September 2018 for damages in the amount of 1million for the unlawful arrest, unlawful detention, and malicious prosecution. The plaintiff contended in his particulars of claim, *inter alia* that “[I]n effecting the arrest, detention and laying of malicious charges against the plaintiff, the members of the SAPS had no reasonable grounds to suspect and or believe that the plaintiff had committed the alleged offences.” In addition, that the second defendant opted to prosecute even though there was no probable cause or prospects of successful prosecution and conviction of the plaintiff.

[5] In retort the defendants pleaded that the arrest was justified in terms of section 40(1)(b) of the Criminal Procedure Act 51 of 1977 and further that the case was enrolled by the prosecutor as there was, *inter alia* “... a prima facie case and the prosecution had reasonable and probable cause to prosecute the Plaintiff as he admitted to assaulting the complainant.”

Issues

[6] The issues for determination are, first, whether the arrest and detention were lawful. Secondly, whether the subsequent prosecution constituted wrongful legal proceedings and lastly what would be the fair compensation, if applicable.

Evidence by the parties

[7] The plaintiff, a Venda speaking person,¹ testified under oath that on 19 December 2015 whilst carrying water with two buckets saw Mr Baloyi came running from behind and went passed him. Mr Baloyi was being chased by a group of people.

¹ The relevance of specifying the tribe is shown below.

They caught up with him. The plaintiff put down the buckets and went to them. Mr Baloyi was pleading with the group (two of whom were carrying sticks²) for forgiveness when being interrogated.

[8] The plaintiff confronted Mr Baloyi, slapped him with an open hand and said to him that he deserved to be arrested. The slapping, so plaintiff said, was intended to discourage the mob not to proceed with their threats of assaulting Mr Baloyi, which threats included that Mr Baloyi should be necklaced. The plaintiff's belief that slapping Mr Baloyi would make the mob to be more lenient on seeing that he, being a Venda speaking person, was part of the group. He thereafter left the scene and do not know what transpired thereafter.

[9] The plaintiff stated further that he saw Mr Baloyi after this incident in the vicinity on several occasions.

[10] On 2 March 2016, Mr Baloyi came with members of the first defendant to the plaintiff's place of abode and pointed him out and he was arrested. The plaintiff was then taken to the police station where he was made to sign some forms. His rights were not read to him including the reason for his arrest. He was detained at Primrose Police station. He was not given food. The cells were untidy, shower was not working and there were not enough blankets to sleep with.

[11] He appeared in court the following day at court the following day. He did not apply for bail as he thought that in the absence of the legal representatives from the Legal Aid Office it may be a long process. He was then sent to Boksburg Prison. During

² According to the plaintiff.

his detention he was forced to join prison gang for his safety and protection, he was abused, assaulted, and made to dance, the cells were overcrowded and dirty, bathrooms were dysfunctional. He was also almost raped whilst in prison, though he did not lay criminal charges as he was told his situation may be exacerbated.

[12] The plaintiff stated during cross examination that he went to the mob as he wanted to know what was going on. He was the first to slap Mr Baloyi. He did not intend that Mr Baloyi to be ultimately grievously injured. The defence brought to his attention that the statement he signed states that he informed the arresting officer that Mr Baloyi had also stolen and sold his ID book. This he denied under cross examination stating further that though he did sign the statement, but it was not read back to him prior signing.

[13] He stated further that though there were around 30 to 40 people only two had sticks with them. In addition, though his intention of slapping Mr Baloyi was to ensure that he does not get assaulted by the mob he left without ensuring that his objective was realised. He did not bother to call the police even though there was a talk amongst the crowd of burning Mr Baloyi. He did admit the fact that he initiated the assault, or he that was the first to assault Mr Baloyi.

[14] Plaintiff's counsel clarified the following during re-examination that though it was like a mob justice the plaintiff only slapped Mr Baloyi and wanted only to dissuade the mob from burning and or assaulting him. There was no evidence that the plaintiff would have threatened anyone. There was no reason not to have obtained a warrant of arrest especially since the assault took place more than three months prior the arrest.

Assault GBH was not scheduled offence as envisaged in schedule 1 and there was then no need to arrest without a warrant.

[15] The plaintiff opted not to call further witnesses and the closed his case. The defence brought an application in terms of section 174 of the Criminal procedure Act which was opposed. I dismissed the application, and the reason thereto were to be furnished on request.

[16] The defendants' first witness was Mr Mothibedi Edward Ntshane who testified that he was the investigating officer and has been in the employ of the first defendant for a period of approximately 36 years. He was allocated the docket and was to investigate a charge of assault. He noted in Mr Baloyi's statement that he was assaulted by a group of six people who broke into his house. Further that Mr Baloyi only managed to identify three of the assailants. He was assaulted with iron rod, kicked, hit with a bottle, and further stabbed with a knife between the right finger and his wrist. He was then taken to the hospital where he was treated and discharged after two days.

[17] Mr Baloyi met with him on 2 March 2015 and informed him that he saw one of the assailants. During that encounter he observed that Mr Baloyi had stiches on his hand and to him the injuries sustained were serious as the stiches still appeared to be fresh even few months of the after incident. Mr Baloyi went with him and his colleague to the plaintiff's place of abode where Mr Baloyi pointed plaintiff out as one of the assailants.

[18] The plaintiff was informed that he was placed under arrest for assaulting Mr Baloyi. The plaintiff replied that there was an arrangement for payment between him and Mr Baloyi for the injuries to which the investigating officer in retort stated that he

was there on the criminal charge. His rights were read to him, and he was then taken to the police station. He took the plaintiff to court the following day but first made him to write statement which he agreed to after informing him of his rights including the right to remain silent and that he is entitled to the service of a legal representative. The plaintiff volunteered to write a statement without an assistance of an attorney. The conversation was in Zulu and the plaintiff understood the discussion. In the said statement he confirmed that he assaulted Mr Baloyi with an open hand as he has stolen his ID book.

[19] Mr Baloyi was also given J88 for completion by the hospital staff but has never returned same to the investigating officer. He subsequently lost track of Mr Baloyi and made a statement to that effect in the docket as a result of which the charges were withdrawn.

[20] He confirmed under cross examination that he did not examine Mr Baloyi's whole body but saw the stitches on his hand. He opined that Mr Baloyi was seriously injured otherwise he would not have been kept at the hospital for two days. No warrant could be procured as the place where they stay is not structured and would not easily be located, he did not know whether he is a South African citizen, whether he had permanent job. He further stated that the plaintiff probably knew of the charges but failed come to the police station. In addition, had they left the plaintiff to first obtain a warrant it would have not been easy to trace him. Further it was sufficient that he saw the stitches and concluded that Mr Baloyi may possibly have lost the use of the hand. With the aforesaid in mind, he then exercised a discretion not to first obtain the warrant of arrest.

[21] The plaintiff's counsel confronted him of having taken an irregular step by placing the plaintiff in detention or custody in instances where there was no arrest statement as this was not in accordance with the relevant prescripts. In retort the investigating officer stated that the arrest statement was commissioned around 12:00 but it was already written by the time of the detention.

[22] The next witness was the public prosecutor, Mr Daniel Petrus Oberholzer, who stated that upon receipt of the docket his duty would be to assess whether an offence was committed, and if there is admissible evidence which links the suspect to the offence. There were statements which placed the plaintiff on the scene and his involvement was conceded by him. Further that it must be borne in mind that the plaintiff needs to appear in court within 48 hours of the arrest. The matter was therefore placed on the roll and postponed for 7 days for the purposes of obtaining bail information by the Investigating Officer. The Investigating Officer was requested to obtain further information including the injury report, tracing of further suspects and the statement from the neighbour who called the ambulance for Mr Baloyi. These would have assisted in deciding on whether the plaintiff should be admitted to bail. On the next court appearance, the investigating officer's report stated that he has been unable to trace Mr Baloyi any longer hence the charges were then withdrawn.

[23] During cross examination the witness stated that the normal information being required before the bail is granted includes, address verification, profile of the suspect and whether there are outstanding warrants or previous convictions. At that early stage the prospects of successful prosecution were not relevant. In addition, though the J88 is an important document is not necessarily determinative of the charges and the appropriate charge can be inferred for nature of instruments used, namely, iron rod, beer

bottle and being kicked could lead to serious injuries being inflicted. Common purpose could have also come to play in this matter.

Legal submissions

[24] The plaintiff's counsel submitted that in view of the fact that the arrest was without a warrant³ then it is construed as *prima facie* unlawful, and the first defendant is enjoined to demonstrate that it was lawful. To this end the first defendant contended that the arrest without the warrant is justified in terms of section 40(1)(b) of the Criminal Procedure Act in terms of which it would be lawful if the peace officer reasonably suspect that the suspect has committed an offence referred to in Schedule 1⁴ other than the offence of escaping from lawful custody.

[25] In view of some procedural irregularities, it was submitted that the requirements set out in *Duncan v Minister of Law and Order for the Republic of South Africa* 1986 (2) All SA 241 (A), (*Duncan's case*) were not met. In terms of Standing Orders and Instructions⁵ no person may be arrested if the arrest statement is not prepared. The record indicates that the plaintiff was detained at 10:15 and the arrest statement appears to have been made almost two hours later at 12:00. Though the plaintiff was arrested by two members of the first defendant there was only a statement by one arresting officer.

[26] The plaintiff's counsel proceeded further that the arresting officer speaks southern sotho but claimed to have explained the plaintiff's rights in zulu who is venda speaking. The fact that he was venda and officer being southern sotho and explaining in

³ Issued in terms of section 43 of the CPA.

⁴ Counsel contended that schedule 1 only relates to assault where a dangerous wound was inflicted and this position was amended in January 2022 and introduced in terms of sections 11 and 12 of the Criminal and Related Matters Amendment Act 12 of 2021.

⁵ National Instruction 11 of 2019.

zulu meant that some of the messages would have been lost due to lack of knowledge in the language to both parties and worse to the plaintiff who is constitutionally entitled to be read of his rights. Counsel further contended that the arresting officer failed to comply with paras 2 and 4 of the statement during the interview with the plaintiff. He failed to explain to him the basis of the arrest (nature of the offence, date and place where it occurred), failed to inform him of his rights including the right to a legal practitioner including one provided by the state.

[27] The arresting officer cannot have justifiably be considered to have had reasonable suspicion⁶ that the plaintiff committed a schedule 1 offence as assault GBH was not classified under schedule 1 of the Criminal Procedure Act. As set out earlier the schedule provided for an assault when a ‘dangerous wound’ was inflicted. To this end, counsel argued, the jurisdictional fact was not met, and it cannot be concluded that officer had reasonable suspicion of having committed as offence as contemplated in the CPA.

[28] There were also contradictions in the statement made by Mr Baloyi, so the counsel continued. First, stating that he was assaulted by Mayor and Mandla whereas in the other statement he alleged to have been stabbed by Mandla. In addition, it does not appear that the wound sustained was life threatening. In support hereof when Mr Baloyi approached the police on 22 December 2015 he was advised to come back on the 23 December 2015. The counsel referred to *Bobbert v Minister of Law and Order* 1990 (1) SACR 404 (C)⁷ where it was stated that “*a dangerous wound is meant one which itself is likely to endanger life or the use of a limb or organ.*”

⁶ Counsel referred to *Mabona and Others v Minister of Law and Order and Other* 1988 (2) SA 654 (SE).

⁷ See para 26 of the Plaintiff’s Written Submissions.

[29] In addition, the fact that the arresting office did not examine the body but only relied on the statement by Mr Baloyi and quickly assumed that it was assault with intention to commit grievous bodily harm was unreasonable under the circumstances. The important question to be asked is whether a reasonable person would have arrested being in possession of the same facts and in this instance the counsel contended that the facts did not justify arriving at the said conclusion. The arrest did not comply with the requisite legal prescripts and the subsequent detention would therefore follow suit.

[30] The plaintiff was placed in custody under inhuman conditions, and it was previously held by the courts that holding cells and correctional centres are not conducive.⁸

[31] The plaintiff's counsel made observation and summary of the evidence which was presented by the prosecutor. He received the docket on 3 March 2015 and their duties, as public prosecutors, entailed having to make an assessment whether there is a crime committed and thereafter whether the plaintiff brought to court is linked to the crime referred to. In this instance and having read the statement, which was made by Mr Baloyi, he made a conclusion that indeed there was an offence and further that the plaintiff was indeed linked to the two charges namely, assault GBH and the housebreaking. He confirmed that the case was postponed in the initial instance for the purposes of bail and the second postponement was for further investigation and the last postponement was when the charges were withdrawn.

[32] When questioned, counsel proceeded, why the matter was on the roll despite weak prospects of success the witness stated that prospects of success are not the criteria

⁸ Reference was made of the judgment of Bosielo AJ in *Raduvha v Minister of Safety and Security and Another* 2016 [10] BCLR 1326 (CC).

being used for him to make the determination at that early stage and his was only to identify commission of the offence and the link of the plaintiff to the charge.

[33] The plaintiff's counsel further argued that there are several factors underlying the claim for the malicious prosecution which include a reasonable and probable cause⁹ which entails that an honest belief founded on reasonable grounds that the institution of the proceedings is justified. In this instance there were no documents which justified the conclusion that the prosecution had probable cause to believe that there was an offence of assault GBH been committed. In this stance there was no J88, and the witness having confirmed that he relied only on statements which were in the docket. Based on the inconsistencies and contradiction which were identified in Mr Baloyi's statement, so the argument proceeded, the prosecutor appears to have relied on scanty information to decide on the probable cause.

[34] Regarding the next requirement for malicious prosecution the counsel submitted that the prosecution had intended to injure the plaintiff with consciousness of the wrongfulness of the conduct. Despite there being lack of prospect of success the prosecution nonetheless enrolled the matter for hearing. It appears that the prosecution betted on the hope that the plaintiff would incriminate himself. The plaintiff was therefore left with his reputation damaged in the face of his family members, friends, neighbours and members of the family.

[35] The counsel further contended that the decision to withdraw the charges should be considered as satisfying a further requirement for the malicious prosecution. The contention that the charges were withdrawn as Mr Baloyi was not traced should not be

⁹ Counsel having referred to *Beckenstrater v Rottcher and Theussen* 1955(1) SA 129 at 136A

accorded any credence. At the least the prosecution should be found to have been intended to tarnish the reputation on the basis of *dolus eventualis*. In the alternative, if the court find against the plaintiff in relation to the second defendant the counsel contended as per *De Klerk v Minister of Police* [2019] ZACC 32 (*De Klerk's* judgment) that the first defendant should be liable for the whole period since the date of arrest until the date of withdrawal of charges.

[36] With regards to the quantum of the amount claimed counsel for the plaintiff submitted that the authorities are clear that the object is not to enrich the plaintiff but to compensate him for the suffering of the plaintiff for being dealt with unfairly by the defendants. In addition, whilst previous judgments should be looked at in making determination on quantum such findings should serve as guides as facts differs from one case to the other. Regard must also be had to the erosion and devaluation of the currency.

[37] What should be taken into account, counsel argued, would be the fact that the plaintiff's constitutional rights were violated, including but not limited to, human dignity, freedom and security and movement. Noting that plaintiff was, abused and molested, there was also attempt to rape him. He was arrested and detained without due regard to the constitutional rights and without just cause.

[38] The defendants' counsel submitted that the arresting officer objectively looked at the stitches and concluded in his opinion that Mr Baloyi suffered a dangerous wound. Reference was made on *Managa and Others v Minister of Police* 2021(1) SACR 225 (SCA) where it was stated that “[I]t is not necessary to establish as a fact that the inflicted wound was dangerous. Suspicion implies an absence of certainty or adequate

proof. This suspicion might be reasonable even if there is insufficient evidence for a prima facie case against the arrestee.” Furthermore, the plaintiff admitted being the first to assault Mr Baloyi and when he left the scene, he was also aware that the mob is likely to assault him but would not burn him instead the mob would surrender him to the police community forum.

[39] Defendants contend that the charges were withdrawn on 7 April 2016. There is no evidence that can point to malice on the part of the prosecution. The plaintiff admitted that he was involved in the assault of Mr Baloyi. The admission by the plaintiff of the assault was a clear indication that there was offence committed and linked to the plaintiff himself. Counsel further submitted that the plaintiff’s version is not credible if anything it implicates the doctrine of common purpose

“... whose purpose is to criminalise collective criminal conduct and this to satisfy the social need to control crime committed in the course of joint enterprises. The phenomenon of serious crimes committed by collective individuals, acting in concert, remains a significant societal scourge. In consequence crime such as murder, robbery, malicious damage to property and arson, it is often difficult to prove that the act of each or of a particular person in the group contributed causally to the criminal result. Such a causal prerequisite for liability would render ineffectual the object of the criminal norm of common purpose and make prosecution of collaborative criminal enterprises intractable and ineffectual.” (underlining added).

[40] The defence counsel lastly stated that the requirements for a claim for malicious prosecution were not satisfied as there is, inter alia, no evidence to suggest that the withdrawal of the charge amounted to failure to prosecute. In addition, no evidence was presented to demonstrate that the prosecution acted with malice and further that he acted without reasonable or probable cause.

Legal principles and analysis

[41] It is trite that an arrest is *prima facie* unlawful unless there are grounds for justification at the instance of the arresting authority. In *Minister of Law and Order v Hurley* 1986 (3) SA 586 (A) at 589E-F Rabie CJ stated that “... *an arrest constitutes an interference with the liberty of the individual concerned, and it therefore seems fair and just to require that the person who arrested or caused the arrest of another person should bear the onus of proving that his action was justified in law*”.

[42] In his exercise of discretion to arrest the peace officer should have regard to the following jurisdictional factors, namely, that he must be a peace officer, he must entertain a suspicion, the suspicion must be that the suspect committed a schedule 1 offence and the suspicion rest on reasonable grounds.¹⁰

[43] Both parties have also addressed the court regarding factors which requires consideration when adjudicating a *lis* on malicious prosecution, namely, defendant set the law in motion, defendant acted without reasonable or probable cause, defendant acted with malice and that the prosecution failed.

[44] I have evaluated the evidence and concluded that the plaintiff has failed to demonstrate with a measure of persuasion the basis of arguing that the mob would have been softer to Mr Baloyi by communicating with him in Venda or even slapping him. Even if there could be shred of credibility in that stance and further that he, being

¹⁰ See *Minister of Safety and Security v Sekhoto and Another* 2011 (1) SACR 315 (SCA) at para [28]. See also *Duncan v Minister of Law and Order* 1986 (2) SA 805 (A).

genuine to assist another vanda speaking person, he failed to demonstrate the basis for not ensuring that indeed he succeeds in that endeavour. He even failed to alert the police of the mob justice which was about to unravel just after his alleged departure. He states that when he left, he foresaw probabilities that Mr Baloyi is likely to be assaulted and may be handed over to the police.

[45] Plaintiff admitted that he was the first one to assault Mr Baloyi and this would have obviously triggered the mob to assault Mr Baloyi. Ordinarily in mob justice there should always be one assailant to start the assault and others would follow. This is in fact what transpired. His evidence that he started the assault to discourage the others to assault Mr Baloyi is therefore bizarre and certainly implausible.

[46] He informed the investigating officer that Mr Baloyi also stole his ID book as it was the case with the other assailants. The investigating officer also stated that the plaintiff's rights were read. Despite the plaintiff's attempting to dispute the contents thereof he has been consistent that he slapped Mr Baloyi and has never eschewed that stance.

[47] In favour of the investigating officer, it does make sense that it may be difficult to easily trace a person in informal settlements which, as he stated, are unstructured.

[48] Though the investigating officer confirmed that he did not examine Mr Baloyi's whole body it was sufficient that he saw fresh stiches and was able to conclude that indeed there was a serious injury which was inflicted on Mr Baloyi. Despite the uncontroverted evidence that Mr Baloyi was stabbed with a knife¹¹ and being

¹¹ In addition to be hit with iron bar, beer bottle and being kicked.

hospitalised for two days the plaintiff asserts that such a wound is not likely to endanger the use of a limb or organ, because “... *when the complainant went to the police station on 22 December 2015 an arrangement was made with complainant to come on 2015/12/23...*”.¹² This submission fails to appreciate the fact that Mr Baloyi was already treated, stabilised and discharged and the arrangement that he could not be assisted by members of the first defendant on the same day does not take away the nature and extent of the injuries.

[49] The SCA in *Mananga and Others v Minister of Police* 2021(2) SACR 225 (SCA)¹³ held that it is sufficient that the arresting officer should harbour a suspicion that the inflicted wound was dangerous and need not provide sufficient evidence for *prima facie* case. It must be noted that such “... *suspicion need not based on information that would subsequently be admissible in a court of law*”.

[50] The evidence of the second state witness was also unscathed during the cross examination by the plaintiff’s counsel. In particular one would not deduce from the conduct of the prosecutor that there was malice in the prosecution of the plaintiff. The matter was enrolled on the basis of the statements by the investigating officer, Mr Baloyi and the plaintiff. Section 50 of the CPA allows for the postponement for bail application to verify the plaintiff’s information. In any event the plaintiff confirms that he did not want to venture into applying for bail in circumstances where there was no legal representation. If there was malice the prosecutions could have nevertheless postponed the case further after Mr Baloyi being untraceable and would have insisted on the

¹² See plaintiff’s written submissions at CL 052-31, para 26.

¹³ As quoted by the defendant’s counsel (see para 63 of the written submissions) and referred to the judgment in *Duncan v Minister of Law and Order 1986 (2) 805 (A)* relied to by the plaintiff’s counsel.

investigating officer to attempt further to locate Mr Baloyi. Instead, he immediately withdrew the charges.

[51] The plaintiff's contention that there was no probable cause for prosecution since there was no J88 fails to proffer any cogent reason why the statement by the plaintiff that he slapped the complainant was good evidence of assault underpinning prospects of a successful prosecution and conviction of even common assault on the plaintiff's version or worse on the basis of common purpose¹⁴ as submitted by the defence having regard to weapons/instruments used during the assault. A further contention that the complainant did not identify who stabbed him would ordinarily not dent the evidence not to be credible at all since there were many people¹⁵ who were involved in the assault. As such the submission that "... *second Defendant prosecuted even when it foresaw that there were zero prospects of securing a successful conviction*"¹⁶ appears gratuitous. On the very same basis there is no aorta of credence to be accorded to the submission that the "*2nd Defendant's conduct was intended to injure the Plaintiff with consciousness of the wrongfulness of the conduct.*"¹⁷ There is no basis to underscore the submission that there was malice by the second defendant, directly or indirectly.

[52] Having regard to the above analysis and conspectus of the evidence presented I conclude that the plaintiff was not a reliable witness, and his evidence is not credible. His evidence is highly improbable and is bound to be rejected.

[53] On the other hand, the defence's witness made a good impression in their testimony and appeared confident and honest. There was no shred of biasness or cover

¹⁴ As read in tandem with the constitutional court judgment in *Jacobs and Others v S* 2019 (5) BCLR 562 (CC) referred to by the Defendant in para 69 of the written submissions.

¹⁵ Six according to Mr Baloyi and approximately 40 according to the plaintiff.

¹⁶ See plaintiff's submission, CL 052-44 para 42.9.

¹⁷ Ibid at para 43.3, CL 052-46.

up during their testimony. The cross examination by the plaintiff's counsel left the gravamen of their evidence unscathed.

Conclusion

[54] I therefore conclude that with the information at the disposal of the arresting officer any other person would have exercised a discretion to arrest the plaintiff without having first to obtain the warrant of arrest. In addition, the prosecution was under the circumstances justified in enrolling the case for prosecution based on the information at its disposal. The plaintiff's claim is therefore unsustainable and bound to fail.

Costs

44 The costs are ordinarily within the discretion of the court which must be exercised judicially having regard to the relevant factors. It was held in *Affordable Medicines Trust and Others v Minister of Health and Others* 2006(3) SA 247 (CC) that “[T]he award of costs is a matter which is within the discretion of the Court considering the issue of costs. It is a discretion that must be exercised judicially having regard to all relevant considerations.” It is also trite that the costs follow the result, and, in this instance, no persuasive argument was mounted warranting deviation therefrom.

Conclusion

45 I grant the following order:

The plaintiff's claim is dismissed with costs.

Mokate Victor Noko
Judge of the High Court
Gauteng Local Division, Johannesburg

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be 18 December 2023.

Appearance.

For the Plaintiff:	Mr N Gumede	
Instructed by:	Ndou Attorneys Inc.	
For the Defendants:	Ms NM Mtsweni	
Instructed by	:	State Attorney, Jhb.
Date of hearing:		3 August 2023
Date of Judgment:		18 December 2023