

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, PRETORIA)

Case number: 1679/2018

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: NO	
(2) OF INTEREST TO OTHER JUDGES: NO	
(3) REVISED No	
<u>01/02/2024</u>	
DATE	SIGNATURE

In the matter between:

JEAN-PIERRE EGERER

PLAINTIFF

And

THE MINISTER OF POLICE

1ST DEFENDANT

EKURHULENI METROPOLITAN COUNCIL

2ND DEFENDANT

THE NATIONAL COMMISSIONER OF THE SAPS

3RD DEFENDANT

THE PROVINCIAL COMMISSIONER OF POLICE

4TH DEFENDANT

THE STATE ATTORNEY

5TH DEFENDANT

JUDGMENT

KHWINANA AJ

INTRODUCTION

[1] The plaintiff instituted action against the defendant for damages suffered when the plaintiff was arrested on 14 April 2017 and detained until 15 April 2017.

[2] The First Defendant is THE MINISTER OF POLICE.

2.1 The Second Defendant is EKURHULENI METROPOLITAN COUNCIL.

2.2 The third Defendant THE NATIONAL COMMISSIONER OF THE SAPS,

2.3 The fourth Defendant THE PROVINCIAL COMMISSIONER OF POLICE.

2.4 The Fifth Defendant is THE STATE ATTORNEY.

[3] The plaintiff issued a summons for unlawful arrest and detention in the sum of R150 000.00 and R 150 000.00 for defamation. The defendant did not enter an intention to defend. The plaintiff alleges that he did comply in terms of section 3 (2) of Act 40 of 2002. This matter is proceeding on a default basis. I am ceased to determine if the arrest and detention were lawful, defamation, and the fair and reasonable amount of compensation.

BACKGROUND

[4] The plaintiff was arrested without a warrant of arrest on the 14th of April 2017 at a traffic light at Range View Road, Benoni. He says that he was arrested by traffic officers for allegedly exceeding the speed limit under cas number 246/04/17.

[5] He says that the traffic officers did not comply with the guidelines as requested by the technical committee for speed prosecution which constitutes an inaccurate measurement of the speed the Plaintiff was traveling at. He says he was detained at Brakpan Police Department without a just cause.

[6] He says that on the 15th of April 2017, he was released on warning to appear in court on the 18th of April 2017. He says he appeared several times in court and the matter was ultimately withdrawn against him. He says the police

officers that effected the arrest and detention were acting under the scope and cause of employment.

[7] He says the Metro Police failed to take the necessary steps to ensure his release, had no justification to arrest and detain him, and passed unsavoury and derogatory remarks in the presence of the plaintiff's family members, members of the first and second defendant, and members of the public. He says he was detained in a deplorable and unhygienic conditions with three other inmates. He was denied his medication. He says the cell was gloomy and he could not keep track of time. He says the cell was very dirty and he was advised to shower and wash with soap upon release. He says he had to sleep next to a stinking toilet and had no toilet paper.

[8] He says he did not have privacy with the other inmates when using the toilet. he requested medication but was detained. The plaintiff says he suffered damages of R 150 000.00 being for seven nights and eight days and contumelia. He says he suffered general damages in the sum of R 150 000.00 as a result of the enjoyment of the amenities of life in that he suffered loss of self-respect, humiliation, degradation, loss of dignity, and unusual and cruel punishment post-traumatic stress disorder.

[9] The plaintiff claims R 150 000.00 for derogatory remarks passed by members of the first and second defendant in the presence of members of the public which injured his *fama* (name)

COUNSEL'S SUBMISSION

[10] He submitted that the arrest and subsequent detention of the plaintiff were unlawful because the officers who arrested the plaintiff did so without a

warrant of arrest, and without any reasonable suspicion, he did not exercise his discretion correctly in that there was no need to arrest the plaintiff to secure his attendance at court and could have been brought before court in any of the many other formats afforded to himself in terms of the Criminal Procedure Act 51 of 1977 (hereafter referred to as “the act”), as well as in terms of Standing order G341.

THE LAW APPLICABLE

[11] Section 40 (1) (b) of the Criminal Procedure Act¹, sets out the essential jurisdictional facts that have to be present to justify an arrest without a warrant. These are;-

- (a) The arresting officer must be a peace officer;
- (b) The arresting officer must entertain a suspicion;
- (c) The suspicion must be that the suspect committed an offence to in Schedule 1; and
- (d) The suspicion must be based on reasonable grounds.

[12] Botha v Minister of Safety; January v Minister of Safety and Security² has held that in a case where the Minister of Safety and Security is being sued for unlawful arrest and detention and does not deny the arrest and the detention, the onus to justify the detention as being lawful rests on the defendant and the burden shifts to the defendant based on the provisions of Section 12(1) of the Constitution.³

¹ Act 51/1977

² 2012 (1) SACR 305 (ECP)

³ Constitution of RSA

- [13] These provisions, therefore, place an obligation on the police official who is bestowed with duties to arrest and detain persons charged with and/or suspected of the commission of criminal offences, to establish before detaining the person, the justification and lawfulness of such arrest and detention.
- [14] It is trite that the onus rests on the police to justify the arrest. Rabie CJ explained in *Minister of Law and Order v Hurley and Another*⁴: ‘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.
- [15] In *Biyela v Minister of Police*⁵, the court affirmed that the test whether a suspicion is reasonable, is objectively justiciable. At [34] Musi AJA said “ *The standard of a reasonable suspicion is very low. The reasonable suspicion must be more than a hunch; it should not be an unparticularised suspicion. Whether that information would later, in a court of law, be found to be inadmissible is neither here nor there for the determination of whether the arresting officer at the time of arrest harboured a reasonable suspicion that the arrested person committed a Schedule 1 offence*”.
- [16] It is now a well-established principle of our law that a person's freedom and security are sacrosanct and are protected by our Constitution. In *Mahlangu and Another v Minister of Police*,⁶ Tshiqi J captured this principle as follows at “It is now trite that public policy is informed by the Constitution. Our

⁴ 1986(3) SA 568 (A) T 589 E – F

⁵ [[2022\] ZASCA 36](#) (01 April 2022)

⁶ [2021 \(2\) SACR 595](#) (CC)

Constitution values freedom, understandably so when regard is had to how, before the dawn of democracy, freedom for the majority of our people was close to non-existence. The primacy of “human dignity, the achievement of equality and the advancement of human rights and freedoms” is recognized in the founding values contained in section 1 of the Constitution... These constitutional provisions and the protection in section 12 of the right of freedom and security of the person are at the heart of public policy consideration”.

[17] In **Rahim and 14 Others v Minister of Home Affairs** (4) SA 433 (SCA) at paragraph 27 it was stated:

‘the deprivation of liability 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 liability the amount of satisfaction is calculated by the court *ex aequo et bono*. *Inter alia* the following factors are relevant:

‘17.1 circumstances under which the deprivation of liability took place;

17.2 the conduct of the defendants; and

17.3 the nature and duration of deprivation ...’

[18] The general approach regarding the amount of damages for unlawful arrest and detention was appropriately captured by Bosielo AJ in *Minister of Safety and Security v Tyulu*⁷, at [26], the Judge remarked thus “ *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 comensurate with the injury inflicted.* Therefore, 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.

[19] In *Mathunjwa v Minister of Police* (A3134/2021) [2023] ZAGPJHC 12 (11 January 2023) this principle was reiterated that “*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....It needs to be kept in mind when making such awards that there are many legitimate calls upon the public purse to ensure that other rights that are no less important also receive protection*”⁸..

[20] In ***Olga v Minister of Safety and Security*** 2008 JDRJ582E paragraph 6 (ECD case number 608/207) Jones J remarked:

‘In modern South Africa a just award for damages for wrongful arrest and detention should express the importance of the constitutional right to individual freedom, and it should properly take into account the facts of the case, the personal circumstances of the victim and the nature, extent and

⁷ [2009 \(5\) SA 85](#) SC

⁸ *Minister of Safety and Security v Seymour*, (295/05) [[2006\] ZASCA 71](#); [2006] SCA 67 (RSA); [2007] [1 All SA 558](#) (SCA) (30 May 2006)

degree affront to his dignity and his sense of worth, These considerations should be tempered with restraint and proper regard to the value of money to avoid the motion of an extravagant distribution of wealth from what Holmes J called the “horn of plenty” at the expense of the defendant’.

[21] At common law, the elements of the delict of defamation are: (a) the wrongful and (b) intentional (c) publication of (d) defamatory statement (e) concerning the plaintiff. It is not an element of the delict in common law that the statement be false. Once a plaintiff establishes that a defendant has published a defamatory statement concerning the plaintiff, it is presumed that the publication was both unlawful and intentional. A defendant wishing to avoid liability for defamation must then raise a defence which rebuts unlawfulness or intention

[22] *In Minister of Police v Mbilini*⁹, the Court stated:

“Every person has an inborn right to the tranquil enjoyment of his peace of mind, secure against aggression upon his person, against the impairment of that character for moral and social worth to which he may rightly lay claim and of that respect and esteem of his fellow-men of which he is deserving, and against degrading and humiliating treatment; and there is a corresponding obligation incumbent on all others to refrain from assailing that to which he has such right.”

[23] *In [Ryan v Petrus](#)*¹⁰, the Court confirmed that the nature of the word uttered, as well as the context in which it is used, will affect the damage suffered.

⁹ 1983 (3) SA 705 (A)

¹⁰ CA 165/2008) [2009] ZAECGHC 16; 2010 (1) SA 169 (ECG); 2010 (1) SACR 274 (ECG) (27 March 2009)

[24] *Hix Networking Technologies v System Publishers (Pty) Ltd and Another*¹¹, Plewman AJ defined defamatory statements as follows: "...a defamatory statement is one which injures the person to whom it refers by lowering him in the estimation of the ordinary intelligent or right-thinking members of society...".

[25] *It is now a well-established principle of our law that a person's freedom and security are sacrosanct and are protected by our Constitution. In Mahlangu and Another v Minister of Police 2021 (2) SACR 595 (CC) Tshiqi J captured this principle as follows at [43], It is now trite that public policy is informed by the Constitution. Our Constitution values freedom, understandably so when regard is had to how, before the dawn of democracy, freedom for the majority of our people was close to non-existence. The primacy of "human dignity, the achievement of equality and the advancement of human rights and freedoms" is recognized in the founding values contained in section 1 of the Constitution... These constitutional provisions and the protection in section 12 of the right of freedom and security of the person are at the heart of public policy consideration*¹².

ANALYSIS

[26] It is well-established in this context that the plaintiff only needs to demonstrate to this Honourable Court that he was arrested without a warrant.

¹¹1997 (1) SA 391 (A).

¹² Mathunjwa v Minister of Police (A3134/2021) [2023] ZAGPJHC 12 (11 January 2023)

Following this, the burden shifts to the defendants, who must then prove or convincingly demonstrate to this Honourable Court that the arrest was justified under section 40 of the Criminal Procedure Act 51 of 1977.

[27] The affidavit presented confirms that the plaintiff was arrested without a warrant. It is also evident that in the docket uploaded on caselines, it is clear that the plaintiff's arrest occurred without a warrant of arrest. It is encumbered upon the defendant to demonstrate the lawfulness of the arrest and detention in this instance. However, despite being duly served, the defendants has not defended this matter leaving the court with a unilateral account of the events.

[28] The plaintiff alleges that the traffic officers did not adhere to the technical committee's guidelines for speed prosecution. This is a crucial claim, as non-compliance could indicate an inaccurate measurement of the plaintiff's speed. I would consider the specifics of these guidelines and whether the evidence supports the plaintiff's claim of non-compliance. The accuracy of the speed measurement is central to the legitimacy of the initial stop and subsequent actions by the officers.

[29] The plaintiff asserts that he was detained at the Brakpan Police Department without justifiable reason. This claim raises questions about the lawfulness of his detention. Under the law, detention must be justified and proportionate to the offence. The lack of just cause for detention is a violation of the plaintiff's rights.

[30] The plaintiff's statement that he was released on a warning and subsequently appeared in court multiple times, with the matter eventually being withdrawn, could indicate a lack of sufficient evidence or grounds for the charge. I

therefore consider the implications of the case's withdrawal on the legitimacy of the arrest and detention.

[31] The plaintiff's assertion that the police officers were acting within the scope and course of their employment when they arrested and detained has not been rebutted. It is imperative to note that any liability or wrongful conduct will be attributed to their employer regard being had to the fact that there is no counter evidence that the defendants were acting within their scope of employment.

[32] The plaintiff's assertion that the Metro Police did not take necessary steps for his release and had no justification for his arrest and detention. The law requires arrests and detentions to be based on just cause and to comply with procedural safeguards. A key point of analysis would be whether the Metro Police's actions were lawful and justified under the applicable legal framework, without the first and second defendant's plea to this matter, this court has only one version. The version of the plaintiff remains uncontroverted.

[33] The plaintiff's description of being detained in deplorable and unhygienic conditions, along with the denial of medication, presents concerns regarding the treatment of detainees. The conditions described by the plaintiff, constitute violations of basic human rights and dignity. The standards for detention conditions and treatment of inmates are key in the promotion and protection of human rights. A detained person has the following rights in terms of the Constitution at Section 35 (2) (e) they are

"everyone who is detained including every sentenced prisoner has the right to conditions of detention that are consistent with human dignity, including at least exercise and provision of adequate

accommodation, nutrition, reading material and medical treatment at the state expense."

- [34] The lack of privacy in the cell and the denial of medication are serious allegations, particularly if the plaintiff's medical condition requires specific treatment.
- [35] The plaintiff's claim for damages includes compensation for the alleged mistreatment and the psychological impact of the experience, including post-traumatic stress disorder. The assessment of these damages would involve evaluating the extent of the plaintiff's suffering and the causal link between the defendant's actions and the alleged harm. However, it is imperative to mention that there is no expert evidence to confirm the plaintiff's claim herein.
- [36] The claim for general damages due to loss of self-respect, humiliation, degradation, and loss of dignity would require an evaluation of both the tangible and intangible impacts on the plaintiff's life. The nature and extent of the alleged unusual and cruel punishment have to be scrutinized. However, this court is limited to that which has been alluded to by the plaintiff and there is no expert appointed who would assist this court in determining nature and the extent of the trauma.
- [37] Van der Schyff J¹³ held "Little information was provided regarding the plaintiff's personal circumstances, save that it was the first time that he was arrested and detained. He testified that he was humiliated by

¹³ Kutiya v Minister of Police (19474/19) [2022] ZAGPPHC 543 (18 July 2022)

the ordeal and that his reputation suffered. In addition, he was deprived of his liberty, and detained in dismal circumstances.

[38] This court is limited to the facts as alluded to by the plaintiff and therefore I have taken into account the manner of the arrest as described followed by the detention wherein the plaintiff suffered great indignity. The plaintiff was driving a motor vehicle when he was stopped and detained by the Metro police. He was detained without being issued with a traffic fine. He was subjected to a cell that was dirty and unhealthy. His life was put at risk as the officers refused his medication to be handed over to him.

[39] The matter was arraigned for the plaintiff to appear in court, he was subjected to postponements in court and that the matter was ultimately withdrawn without a trial. TSHIDADA J¹⁴ held that “It is undisputable that plaintiff's constitutional rights were infringed by the conduct of the defendant's employees. I am duty bound to consider and apply fairness demanded of me when considering all circumstances relevant to quantify the harm caused by the violation of one's constitutional rights. The period of time for which a person is detained after an arrest cannot only be the factor to be considered when determining the extent of the damage suffered. All prevailing circumstances should be considered cumulatively”.

[40] The claim of unsavoury/unwarranted remarks made by the plaintiff in the presence of the plaintiff's family and the public touches on the issue of defamation and the injury to the plaintiff's reputation and dignity. However, the

¹⁴ Sylvia v Minister of Police (307/2021) [2023] ZALMPHC 5 (24 March 2023)

mere mentioning of unsavoury/unwarranted remarks is not sufficient for a claim of defamation.

[41] Similarly in this case the plaintiff says that he was humiliated in the presence of his family members, members of the public and the police. He says unsavoury/unwarranted remarks were made towards him but fails to provide details thereof. There is no evidence of the trauma as alluded to in his damages' affidavit nor what was said to the plaintiff that he has termed unsavoury. There is also no evidence by his family member, a bystander nor an independent witness to confirm what happened on the day in question.

Order

[42] In the result, I am satisfied that the total sum of R 300,000.00 is a fair and reasonable amount in the circumstances for unlawful arrest and detention.

I have considered the draft order filed and have amended it accordingly.

**KHWINANA ENB
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

COUNSEL FOR PLAINTIFF: ADV. A.C. GOBETZ

DATE OF HEARING: 02 NOVEMBER 2023.

DATE OF JUDGMENT: 01 FEBRUARY 2024