



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

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
	DATE
SIGNATURE	

**CASE NO: A3015 – 2020
VEREENIGING REGIONAL
COURT CASE NUMBER
RC 135/2013**

In the application by

MINISTER OF POLICE

APPELLANT

And

ELS, JOHANNA ESTRIASA

RESPONDENT

In re

ELS, JOHANNA ESTRIASA

PLAINTIFF

And

MINISTER OF POLICE

DEFENDANT

JUDGMENT

MOORCROFT AJ:

Summary

Appeal from Magistrates' Court – Unlawful arrest and detention – Onus on State to prove arrest by police officers justified – onus discharged – appeal upheld

Failure to provide medical care to arrestee while in custody – Arrestee failing to prove that police officers failed to provide or arrange access to medical care during period of detention – counter-appeal dismissed

Civil onus – preponderance of probabilities

Order

[1] In this matter I make the following order:

1. *The appeal is upheld;*
2. *The following order is substituted for the order in the court a quo:*
 - a) *The plaintiff's claim is dismissed;*
 - b) *The plaintiff is ordered to pay the costs of the action.*
3. *The counter-appeal is dismissed;*
4. *The appellant is ordered to pay the costs of the appeal and of the counter-appeal.*

[2] The reasons for the order follow below.

Introduction

[3] This is an appeal¹ against a judgement handed down by the learned Magistrate Morwane in the Vereeniging Regional Court on 21 January 2020. The trial commenced before the learned Magistrate Moletsane and when she unfortunately passed away, it proceeded before Mr Morwane by agreement between the parties.

[4] I refer to the parties as they were referred to in the court below, in other words to the appellant as the defendant and to the respondent (and counter-appellant) as the plaintiff.

[5] In the amended particulars of claim filed on her behalf, the plaintiff alleged that she was arrested without a warrant by members of the South African Police Service on 22 July 2019 at approximately 01h40. The plaintiff was arrested on suspicion of driving a motor vehicle under the influence of alcohol and detained until 14h00 on the same day, when she was released on bail from the Sebokeng Hospital. The defendant admitted the arrest and relied on justification for the deprivation of the plaintiff's freedom.

[6] The plaintiff alleged that she was severely injured in an assault and in a motor vehicle accident that preceded her arrest and that the failure of the police officers to arrange for medical treatment for her exacerbated her injuries. A number of injuries were listed in paragraph 10 of the amended particulars of claim. These included a laceration of the left knee; an injury to the left clavicle, and an injury to the right upper leg.

[7] The plaintiff alleged that the arresting officer had no reasonable grounds to arrest her and that the arrest was carried out "*possibly*" for an "*ulterior motive*." The plaintiff in her first claim, sought damages of R100,000 for an alleged infringement of her dignity, *contumelia*, and deprivation of her freedom arising out of the arrest.

[8] In a second claim, the plaintiff alleged that she had been assaulted by hijackers who had stabbed her on her right leg and left knee. Paragraph 9 of the particulars of claim made reference to more than one hijacker, and paragraph 11 to one hijacker. As

¹ See section 83 of the Magistrates' Courts Act 32 of 1944 and section 16 of the Superior Courts Act 10 of 2013

a result of the assault the plaintiff allegedly lost control of the motor vehicle and collided with a tree on the sidewalk. The members of the police found the plaintiff at the scene of the accident with severe injuries but instead of affording her immediate medical treatment the plaintiff was taken to hospital for an alcohol test where she was allegedly denied medical treatment. The plaintiff was then detained at a police station before being returned to the hospital where she was released on bail at 14h00.

[9] The plaintiff alleged that she was denied painkillers or any medication and was also denied medical attention which would have eased her pain and suffering. In paragraph 14 of the amended particulars of claim, the plaintiff alleged that she was afforded treatment 16 hours after being incarcerated. The evidence showed that the plaintiff was arrested at approximately 01h40 and if she received medical attention for the first time 16 hours later, she did not receive any medical treatment during the period that she was in custody, until 14h00. If the plaintiff only received medical treatment 16 hours after incarceration, she first received medical attention at approximately 18h00, a few hours after her release on bail.

[10] The plaintiff relied on section 35(2)(e) of the Constitution of 1996. The relevant subsection reads as follows:

“(2) Everyone who is detained, including every sentenced prisoner, has the right-

...

(e) to conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment;”

[11] The plaintiff claimed general damages of R200,000 and compensation for future medical expenses in the amount of R168,000.

[12] After the conclusion of the trial, the learned magistrate gave judgement in favour of the plaintiff in the amount of R25,000 *“for unlawful arrest and detention”* and R100,000 for *“damages,”* with interest and costs. The defendant appeals against the whole of the judgement and the plaintiff counter-appeals. The plaintiff argues that the learned Magistrate ought to have awarded R160,000 as general damages and

R135,000 as estimated future medical expenses.

The evidence

[13] Two police officers, Constables Motlejeba and Raselamane (né Malindi), testified as to the events at the scene of the accident. They related how they responded to a report of a collision in Reynold Street, Falconridge sometime after midnight on 22 July 2019. It was common cause that Reynold Street is a public road.

[14] Upon their arrival on the scene, they observed the plaintiff sitting behind the steering wheel of a motor vehicle that had collided with a tree. The engine of the vehicle was running and Const Raselamane reached through the car window and turned off the ignition. The plaintiff informed the two constables that she had had an argument with her husband after a "*few drinks*" and had decided to leave her home. The constables became aware that the plaintiff reeked of alcohol. The plaintiff advised that she could not move and that she was trapped behind the wheel.

[15] The constables called for an ambulance and when the ambulance arrived a paramedic, Mr Ngubeni, assisted the plaintiff to alight from the vehicle. It was not clear whether the plaintiff was able to walk unaided or whether Mr Ngubeni assisted her. Mr Ngubeni testified that upon his arrival at the scene of the accident he found the plaintiff in the driver's seat of the motor vehicle. The plaintiff informed him that she was not injured and did not wish to go to the hospital. Mr Ngubeni told the plaintiff not to move and went to the ambulance to fetch his equipment. When he returned to the car, the plaintiff had moved to the passenger side of the motor vehicle and was sitting on the floor. Mr Ngubeni admonished her for moving and she responded that she was not injured and that she did not want treatment.

[16] The plaintiff exited the vehicle at Mr Ngubeni's request but refused him permission to immobilise her neck or back. At the ambulance, the plaintiff refused Mr Ngubeni permission to take vital health information from her or to administer any treatment to her. Mr Ngubeni eventually left the scene after failing to convince the plaintiff to accept treatment. His services were needed elsewhere.

[17] Mr Ngubeni's evidence was that he did not see the plaintiff's husband at the scene. The police officers contradicted this evidence, testifying that when Mr Els arrived the plaintiff was in the back of the ambulance. Const Motlejeba stated that the husband was screaming at his wife to get out of the ambulance because, in the words of the witness, "*these people are going to leave with you and they are going to arrest you.*" The police witnesses saw Mr Els there, gesticulating to his wife who then alighted from the ambulance.

[18] Mr Ngubeni acknowledged that his recollection of events was not very clear (he could for instance not remember the name of his colleague who was on the scene, and nor could he remember the make, model and colour of the car) and that he was in any event concentrating on the patient rather than on other observations. It must also be noted that –

18.1 Mr Els was not someone who was known to Mr Ngubeni and he would not have had reason to recognise him upon his arrival.

18.2 In evaluating the evidence, it is relevant that these events occurred at about 02h00, in the dark of night, at the scene of a motor vehicle accident, and that the people involved were not familiar with one another. An accident scene is by its very nature dynamic, where many things happen in a short space of time and different people have to concentrate on different aspects of the scene.

[19] Mr Ngubeni confirmed that the car smelt of alcohol, that the plaintiff had no visible injuries, that he assisted the plaintiff out of the vehicle, and that she refused medical assistance despite a recommendation by the police officers that she be taken to the hospital. The plaintiff told Mr Ngubeni she was "*fine*" and had not been injured. She initially agreed to go to the ambulance with him but balked when Mr Ngubeni wanted to immobilise her back on a spine board. The plaintiff refused, jumped out of the car, and walked towards the ambulance. Mr Ngubeni assisted her.

[20] The plaintiff got into the ambulance and sat on a chair. Mr Ngubeni explained medical procedures to her. The plaintiff explained that she had had an altercation ("*fight*") with her husband. Mr Ngubeni was unsuccessful in trying to persuade the plaintiff to go to the hospital. She alighted from the ambulance and refused the medical

treatment that was available to her.

[21] A Colonel van Rooyen arrived at the accident scene and advised that the plaintiff's husband, Mr Els, was a former police officer who was known to him. The plaintiff's husband was notified of the accident but it is not clear who called him to the scene. Mr Els testified that the police colonel telephoned him at home when he was ready to go sleep. Evidence was led to the effect that Mr Els advised the plaintiff that she should refuse treatment as the paramedics would take a blood sample, and that the plaintiff took the advice and jumped out of the ambulance. The ambulance left a short while later to attend to other pressing duties.

[22] The police officers informed the plaintiff that as she had refused treatment and had assured them that she was not injured they would arrest her for reckless or negligent driving and for driving under the influence of alcohol.

[23] Accordingly, the plaintiff was arrested and the defendant pleaded that the arrest was effected in terms of sections 40(1)(a) and/or 40(1)(b) of the Criminal Procedure Act 51 of 1977 read with sections 63, and 65(1) and 65(2) of the Road Traffic Act 93 of 1996. These provisions are dealt with under a separate heading below.

[24] The police took the plaintiff to Koponong Hospital where a blood sample was taken and booked into the SAP13 store under serial number AM077051. Mr Els tried to force his way into the consulting room when the sample was being taken and had to be restrained by police officers. By then Mr Els had already advised the plaintiff not to permit the police officers to take a blood sample.

[25] The uncontested evidence of Mr Madiga, a forensic analyst in the employ of the Forensic Chemistry Laboratory of the National Department of Health in Johannesburg, was that the blood alcohol content in the blood sample of the plaintiff was 0.15 grams per 100 millilitres. This evidence was not available at the time of the arrest but supports the testimony that the plaintiff smelt of alcohol at the scene of the accident and that the police officers suspected her of driving in an inebriated state. The plaintiff objected to the production of this evidence at the trial as the evidence was never put to the plaintiff's witnesses. The Magistrate allowed the evidence and I am of the view that he was correct in doing so but the weight of the evidence must be evaluated in the light of the fact that it was not put to the plaintiff's witnesses. To my mind it carries sufficient

weight for the limited purpose of confirming that the observations of the police officers and the paramedic were not without substance.

[26] The plaintiff testified that she was bleeding profusely at the hospital. That evidence was not supported by the paramedic's evidence who testified that he found no visible evidence of wounds when he examined the plaintiff on the scene. It cannot be seriously disputed that the plaintiff was in the presence of medically trained personnel at the scene of the accident and at the hospital and that it would likely have come to their notice if the plaintiff was bleeding profusely as alleged by her and Mr Els.

[27] The plaintiff was taken from the hospital to the police station and booked into the cells. Shortly after arrival at the police station, the police officers advised that she was not well and a private medical emergency service, ER24, was summoned. Ms Swanepoel of ER24 arrived at the police station at approximately 04h00.

[28] The plaintiff was taken to the Sebokeng hospital. She arrived at the hospital between 04h00 and 05h00 and from where she was released on bail at 14h00. Given that the accident occurred during the two hours after midnight and the plaintiff was transported first to the hospital for a blood sample to be taken, she could only have been at the police station for a very short period before returning to the hospital. In his judgment, the Magistrate estimated the time spent in the police cells at thirty minutes, which is likely an accurate estimate.

[29] During the interaction with the police officers on the scene of the accident, the plaintiff did not report that she had been attacked by a hijacker or hijackers. Her version of events was that she had had an argument with her husband after a few drinks and left the home as a result of this altercation. During her testimony, the plaintiff complained of an intermittent loss of consciousness during the time after the accident. She testified that she did not tell the police of the alleged hijacking because she lost consciousness. The plaintiff denied that she refused to cooperate with the paramedics on the scene of the accident. The plaintiff testified that the police officers refused to open a case of hijacking but later conceded that no case was ever opened by her, subsequently. When pressed as to why she did not report the hijacking she said that "*Nee ek kon nie want ek was bewusteloos en ek het in die hospital wakker geword.*" The plaintiff's attorney, in paraphrasing her evidence and his instructions, said that she was conscious until the moment she was forced to stand outside her car.

[30] It was put to the defendant's witnesses during cross examination that they had consistently refused the plaintiff medical assistance. The defendant denied this. The defendant's witnesses testified that when Mr Els arrived, the plaintiff was in the back of the ambulance and that she refused medical assistance on his advice.

[31] The plaintiff testified that she consumed "*twee of drie sopies [whisky]... dit kon meer gewees het*" [*two or three drinks ... it could have been more*] at her home. When it was put to her that her breath smelt of liquor she replied: "*Wel daardie aand het ons wel 'n drankie of twee gedrink maar was dit nie so verskriklik nie.*" [*Well that evening we had a drink or two, but it was not so terrible*] She testified that she and her husband hosted a house party at their home for family and friends. After the party, the other occupants of the house were sleeping when she heard a noise outside the house and went out to investigate. She was accosted by an unknown male who threatened her with a knife and forced her into her car and to drive away. During a scuffle with the attacker, he tried to open her trousers and stabbed at her with the knife, causing her to lose control of the motor vehicle and crash into a tree.

[32] The plaintiff testified that the police officers forcibly removed her from the motor vehicle and that she was made to stand on her injured leg, and this was painful. There was an ambulance on the scene but the paramedics who were present refused her any medical help.

[33] The plaintiff made multiple concessions during cross examination. She conceded that she never informed the police of the alleged hijacking, that her blood alcohol level was above the legal limit, that her eyes were red and breath smelt of liquor, that she had consumed alcohol earlier that evening, and that no case of hijacking was ever opened.

[34] The plaintiff's husband, Mr Els, testified that upon his arrival at the scene of the accident he encountered the plaintiff in the back of a police vehicle. He therefore disputed the evidence that he saw her in the back of the ambulance. He could see that the plaintiff was in pain and there was blood on her legs. Mr Els asked for medical assistance for the plaintiff but was ignored by the paramedics and the police. Mr Els described the plaintiff's injuries as severe, so much so that she never returned to work because of the pain. When it was put to him that his wife was under the influence of alcohol he replied that "*we had a braai, we had a few drinks that night.*"

[35] At the hospital, Mr Els again sought medical assistance for the plaintiff and was forcibly removed from the consulting room by police officers. Mr Els was permitted to sit on the grass outside the hospital after he promised to behave himself. The police witnesses disputed Mr Els's evidence that the plaintiff was carried or dragged out of the hospital when she was taken from the hospital to the police station. They testified that the plaintiff walked to the police vehicle.

[36] Mr Ellis also testified that the police officers refused to complete an official accident report to enable him to launch an insurance claim.

[37] The plaintiff called Ms Swanepoel to give expert and factual evidence. She was the paramedic employed by ER24 to transport the plaintiff back to the hospital from the police station. Ms Swanepoel testified that upon her arrival at the police station at approximately 04h00 the plaintiff told her that she was experiencing pain in her arm, leg, and her whole body. Ms Swanepoel observed bruises on the plaintiff's left shoulder and arm, and blood on her leg. The injury to the leg was only evident when she exposed the plaintiff's knee area.

[38] The plaintiff was able to stand but complained of pain in her left leg. Ms Swanepoel was unable to testify as to the plaintiff's sobriety as she was not allowed to make observations in this regard in her notes. Ms Swanepoel testified that she applied a bandage and verified Ms Els's vital health parameters; what she referred to as "*the vitals*." Ms Swanepoel testified that the plaintiff appeared nervous but was fully aware of her surroundings, and also reported that the plaintiff told her that she might have been stabbed by her husband.

[39] Ms Swanepoel also testified that the injuries sustained by the plaintiff were consistent with injuries sustained by a patient in a motor vehicle accident when the dashboard underneath the steering wheel moves backwards on impact.

[40] The plaintiff called a second expert, Dr Heynes. He testified to *quantum* on the basis of facts placed before him by the plaintiff together with his perusal of the hospital records and an examination conducted two years after the collision. His expert evidence was based on the premises that

- 40.1 the plaintiff had been forcibly removed from the motor vehicle after the accident;
- 40.2 the plaintiff's knee had been fractured;
- 40.3 the plaintiff was forced to stand and walk on a freshly fractured knee; and
- 40.4 the plaintiff was refused timeous medical attention.

[41] Dr Heynes' assumptions of fact are contradicted by the evidence of Mr Ngubeni and no averments of a knee fracture were made in the particulars of claim.

The jurisdictional requirements

[42] The jurisdictional requirements for an arrest on reasonable suspicion in the context of section 40(1)(b) of the Criminal Procedure Act were set out in *Minister of Safety and Security v Sekhoto and another*²:

- 42.1 The arresting officer must be a peace officer, such as a police officer;
- 42.2 The arresting officer must entertain a reasonable suspicion that the arrestee committed an offence referred to in Schedule 1 of the Criminal Procedure Act.

[43] Harms DP quoted³ with approval from the judgment of Innes ACJ in *Shidiack v Union Government (Minister of the Interior)*:⁴

"Now it is settled law that where a matter is left to the discretion or the determination of a public officer, and where his discretion has been bona fide exercised or his judgment bona fide expressed, the Court will not interfere

² *Minister of Safety and Security v Sekhoto and Another* 2011 (5) SA 367 (SCA) para 6.

³ *Ibid* para 34.

⁴ *Shidiack v Union Government (Minister of the Interior)* 1912 AD 642 at 651–652.

with the result. Not being a judicial functionary no appeal or review in the ordinary sense would lie; and if he has duly and honestly applied himself to the question which has been left to his discretion, it is impossible for a Court of Law either to make him change his mind or to substitute its conclusion for his own. This doctrine was recognised in Moll v Civil Commissioner, Paarl (14 S.C., at p. 468); it was acted upon in Judes v Registrar of Mining Rights (1907, T.S., p. 1046); and it was expressly affirmed by this Court in Nathalia v Immigration Officer (1912 AD 23). There are circumstances in which interference would be possible and right. If for instance such an officer had acted mala fide or from ulterior and improper motives, if he had not applied his mind to the matter or exercised his discretion at all, or if he had disregarded the express provisions of a statute - in such cases the Court might grant relief. But it would be unable to interfere with a due and honest exercise of discretion, even if it considered the decision inequitable or wrong.”

[44] Similarly, in *Duncan v Minister of Law and Order*⁵ HJO van Heerden JA said:

“If the jurisdictional requirements are satisfied, the peace officer may invoke the power conferred by the subsection, ie, he may arrest the suspect. In other words, he then has a discretion as to whether or not to exercise that power (cf Holgate-Mohammed v Duke [1984] 1 All ER 1054 (HL) at 1057). No doubt the discretion must be properly exercised. But the grounds on which the exercise of such a discretion can be questioned are narrowly circumscribed.”

[45] In the Constitutional era the exercise of a discretion must also be rational. Chaskelson P said in *Pharmaceutical Manufacturers Association of SA: In Re Ex Parte Application of President of the RSA*:⁶

“It is a requirement of the rule of law that the exercise of public power by the Executive and other functionaries should not be arbitrary. Decisions must be rationally related to the purpose for which the power was given, otherwise they are in effect arbitrary and inconsistent with this requirement. It follows that in order to pass constitutional scrutiny the exercise of public power by the Executive and other functionaries must, at least, comply with this requirement. If

⁵ *Duncan v Minister of Law and Order* [1986] 2 All SA 241, 1986 (2) SA 805 (A) 818H.

⁶ *Pharmaceutical Manufacturers Association of SA: In Re Ex Parte Application of President of the RSA* 2000 (2) SA 674 paras 85 to 86, quoted in the *Sekhoto* case,

it does not, it falls short of the standards demanded by our Constitution for such action.

The question whether a decision is rationally related to the purpose for which the power was given calls for an objective enquiry. Otherwise a decision that, viewed objectively, is in fact irrational, might pass muster simply because the person who took it mistakenly and in good faith believed it to be rational. Such a conclusion would place form above substance, and undermine an important constitutional principle."

[46] The police officers acted in terms of sections 40(1)(a) and/or 40(1)(b) of the Criminal Procedure Act 51 of 1977 read with section 63, and 65(1) and 65(2) of the Road Traffic Act 93 of 1996. Section 40(1)(a) and (b) of the Criminal Procedure Act stipulates that a peace officer such as a police officer may without a warrant arrest a person who

- 46.1 commits or attempts to commit any offence in his or her presence, or
- 46.2 whom he or she reasonably suspects of having committed an offence referred to in Schedule 1 of the Criminal Procedure Act, other than the offence of escaping from lawful custody

[47] Section 63 of the Road Traffic Act outlaws negligent and reckless driving on a public road. Section 65(1) and (2) provide as follows:

"65 Driving while under the influence of intoxicating liquor or drug having narcotic effect, or with excessive amount of alcohol in blood or breath

(1) No person shall on a public road-

(a) drive a vehicle; or

(b) occupy the driver's seat of a motor vehicle the engine of which is running,

while under the influence of intoxicating liquor or a drug having a narcotic effect.

(2) No person shall on a public road-

(a) drive a vehicle; or

(b) occupy the driver's seat of a motor vehicle the engine of which is running, while the concentration of alcohol in any specimen of blood taken from any part of his or her body is not less than 0,05 gram per 100 millilitres, or in the case of a professional driver referred to in section 32, not less than 0,02 gram per 100 millilitres."

[48] These statutory provisions protect the safety of the public and are visited with a criminal sanction. Drunken driving is a scourge in society and many innocent lives have been lost or torn asunder by car accidents caused by drivers under the influence of alcohol. The offences created by the legislation are therefore not 'mere technical statutory offences' and must be taken seriously. A person who is convicted of an offence in terms of section 65(1) and (2) of the Road Traffic Act may be sentenced to imprisonment for a period not exceeding six years,⁷ and a person convicted of an offence in terms of section 63(1) may be sentenced to imprisonment for a period not exceeding three years when the offence was committed negligently, and for a period not exceeding six years when the offence was committed recklessly.⁸ Imprisonment may be imposed without the option of a fine. These offences therefore fall within the parameters of Schedule 1 of the Criminal Procedure Act.⁹

[49] On consideration of the totality of the evidence, I am satisfied that the defendant met the jurisdictional requirements and discharged the onus of proving that the arrest was justified. The plaintiff's claim based on unlawful arrest must fail. I must add that there is nothing in the evidence to suggest that the police officers acted with an "*ulterior motive*" in effecting the arrest.

[50] The plaintiff's second claim was based on allegations that whilst in the custody and under the care of the police officers the plaintiff was mistreated and not given adequate medical attention and treatment. It was common cause that the plaintiff sustained injuries as a result of her motor vehicle accident. An ambulance with at least two paramedics arrived at the scene of the accident shortly after the police officers arrived and the medical aspects of the plaintiff's treatment then became the

⁷ Section 89(1) and (2) of the Road Traffic Act.

⁸ Section 89(1) and (5) of the Road Traffic Act.

⁹ The Schedule includes any offence, except the offence of escaping from lawful custody in certain specified circumstances, that may merit imprisonment for a period of more than six months without the option of a fine.

responsibility also of the paramedics.

[51] The plaintiff's evidence was that she drifted in and out of consciousness and did not have a very clear and uninterrupted recollection of events. This evidence was somewhat at odds with other evidence of the plaintiff that she was conscious the whole time. It was also common cause that she had consumed alcohol before the accident occurred whilst still at her home. The extent to which stress caused by the accident and prior consumption of alcohol contributed to her observation of events was not fully canvassed.

[52] The defendant's witnesses testified that the plaintiff refused medical attention from the paramedic when it was available to her on the scene of the accident, and that the plaintiff's husband advised her against providing a sample of her blood or accepting medical treatment. The plaintiff's refusal to attend at the hospital for medical treatment was followed by her arrest and transport to the hospital where healthcare professionals drew a blood sample. The plaintiff was seen by these health care professionals and was not booked into the hospital as a patient. After the blood samples were taken, the plaintiff was taken to the police station – she was still under arrest. There is no evidence to suggest why the police officers and the health care officials at the hospital would have, as the plaintiff argued, ignored serious injuries and that they did so for no reason whatsoever or with some ulterior motive.

[53] When it became apparent at the police station that medical care was or might be required, the necessary steps were taken to transport the plaintiff to a hospital where she was again under the care of health care professionals. The plaintiff was without the assistance of health care professionals at the police station for approximately thirty minutes before Ms Swanepoel arrived.

[54] The averment is made in the pleadings that the police officers acted with some or other ulterior motive, and invited the inference that the health care professionals at the hospital were somehow in cahoots with the police officers by refusing the plaintiff medical treatment because of an ulterior motive. The problem with this alarming proposition is that there is no evidence of any such ulterior motive and no such motive can be inferred from the facts. The averments of an ulterior motive must be rejected, and with it the evidence that the plaintiff was in custody for ten to eleven hours without receiving medical attention by paramedics and health care professionals who saw her

at the scene of the accident and at the hospital, under circumstances where she bleeding profusely and was seriously injured.

[55] I conclude that the plaintiff did not discharge the onus to prove that the police officers failed to provide her with medical care, and the plaintiff's second claim stands to be dismissed with costs.

[56] In view of the dismissal of the plaintiff's claim the quantum of the claim need not be considered by this Court, and the counterclaim also must be dismissed with costs.

[57] As regards costs, there is no reason to deviate from the usual principle that costs should follow the result

MOORCROFT AJ
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
JOHANNESBURG

I agree and it is so ordered

CRUTCHFIELD J
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
JOHANNESBURG

Delivered: This judgement was prepared and authored by the Judges whose names are 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 **8 DECEMBER 2023**

APPEARANCE FOR THE APPELLANT:

Mr EB MAFOKO

INSTRUCTED BY:	STATE ATTORNEY
APPEARANCE FOR THE RESPONDENT:	A GROVÉ
INSTRUCTED BY:	MILLS & GROENEWALD ATTORNEYS
DATE OF ARGUMENT:	31 OCTOBER 2023
DATE OF JUDGMENT:	8 DECEMBER 2023