

REPUBLIC OF SOUTH AFRICA



SOUTH GAUTENG HIGH COURT
JOHANNESBURG

CASE NO: 5056/11

In the matter between:

STEVEN MOTHOA

Plaintiff

and

MINISTER OF POLICE

Defendant

SUMMARY

Criminal procedure – Arrest and detention – Unlawful – Compensation – Social status of victim not a relevant consideration in assessing damage done to his dignity and the value to be placed on the deprivation of his liberty.

Constitutional law – *Bill of rights – provisions of section 35(2)(e) of the Constitution of the Republic of South Africa, 1996, apply to persons detained in holding cells after arrest.*

The plaintiff was unlawfully arrested and detained by police officials. The facts of the arrest and detention were set out in an agreed statement of facts in terms of Rule 33(2)(a) of the Uniform Rules. The question of an appropriate award for the injury to plaintiff's dignity and the deprivation of his liberty arising.

The plaintiff was arrested without a warrant by police officials who (1) did not identify themselves to the plaintiff, (2) assaulted the plaintiff when arresting him, despite his having submitted to custody, (3) body searched the plaintiff without a warrant, (4) did not inform the plaintiff that he was being arrested, (5) refused to inform the plaintiff of the cause of his arrest, (6) did not explain to the plaintiff his rights in terms of the Constitution and (7) made the plaintiff stand on the pavement for several minutes in full view of many onlookers.

The plaintiff was thereafter unlawfully detained in a holding cell at the Johannesburg Central police station. During his detention the plaintiff was only given food and water after 14 hours, was locked up with many other inmates in an unhygienic, dirty, stinking holding cell with only one open toilet that did not work, but in which inmates relieved themselves in full view of others and had to sleep on a cold cement floor without a mattress and only one filthy, smelling blanket. The plaintiff was never taken to court or required

to appear in court and was simply released from detention without further ado after 22 hours.

Held, argument on behalf of the defendant that section 35(2)(e) of the Constitution is not applicable to arrested persons incarcerated in holding cells to be rejected as devoid of merit.

Held, that the social status of the victim of an unlawful arrest is not a relevant consideration in assessing the damage that has been done to the victim's dignity and the value to be placed on the deprivation of his liberty.

Held, in the light of all the circumstances of the case, which was a serious one with many aggravating factors, that it would be appropriate to award the plaintiff the sum of R150 000 as compensation for the harm done to him as a result of his unlawful arrest and detention.