



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

CASE NO: 40149/2014

DELETE WHICHEVER IS NOT APPLICABLE

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

30/10/17

DATE:

SIGNATURE

In the matter between:

**ABRAHAMS, IMTIAAZ AHMED**

**PLAINTIFF**

and

**MINISTER OF SAFETY & SECURITY**

**DEFENDANT**

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**JUDGMENT**

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**SELEKA AJ:**

**Introduction**

- [1] These are action proceedings in which the plaintiff, Mr Imtiaaz Ahmed Abrahams, claims damages against the defendant, the Minister of

Safety and Security, in the amount of R300 000, plus costs of suit. The claim is principally based on an alleged unlawful arrest, in that on or about 15 January 2013 at approximately 8:30 the plaintiff was allegedly arrested without a warrant and on false averments that the plaintiff was engaged in transporting drugs and in money laundering. The plaintiff alleges in the alternative, that the arrest was unlawful in that the arresting officers knew that the purpose of the arrest was not to take the plaintiff to court and that he would not be prosecuted.

- [2] Statements made to the police, by the plaintiff and his witness, that shall be referred to below, show that the incident took place on Monday, 14 January 2013. At commencement of the trial, the plaintiff made an amendment to his particulars of claim to correctly reflect the date of the incident as 14 January 2013. This is the same date also referred to in the heads of argument for the plaintiff as the date of the incident.<sup>1</sup>
- [3] The matter came for trial on 27 and 28 February 2019, during which the plaintiff and his only one witness and brother, Mr Ebrahim Abrahams, testified on behalf of the plaintiff. The plaintiff closed his case on the second day of the trial, whereafter a witness for the defendant, Sergeant Van Rooy, was called to testify. The Sergeant was examined and cross-examined on the same day. Sergeant Van Rooy was also the only witness for the defendant. He testified that he has 18 years of experience in the police force, currently specialising in the investigation of serious and violent crimes, fraud and high-profile cases. He is the investigating officer ("IO") in the criminal case emanating from the plaintiff's alleged unlawful arrest.
- [4] During the cross-examination of Sergeant Van Rooy, counsel for the plaintiff requested a postponement of the trial on the grounds that there were new matters, heard by the plaintiff for the first time during the testimony and evidence of Sergeant Van Rooy. There had been no

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<sup>1</sup> At the end of the trial, counsel undertook to file heads of argument as follows: for the plaintiff on 4 October 2019 and for the defendant on 11 October 2019.

opposition to the request for a postponement, the matter was postponed *sine die*, with costs reserved.

- [5] In the intervening period, the plaintiff sought and obtained, unopposed, an amendment to his particulars of claim, based on what transpired in his own case during the trial. Central to the amendment are allegations of detention, and/or assault and/or robbery testified about by both the plaintiff and his witness during the plaintiff's case. It is significant regarding robbery, that the evidence of both the plaintiff and his witness was that they had thought that what took place against them on 14 January 2013 was an arrest, but realise six (6) years later that it was in fact robbery. They were robbed of a cash amount of about R80 000.
- [6] When the trial resumed on 25 September 2019, the amendment had been effected, effective 1 April 2019. The remainder of the trial was pursued only on the basis of re-examination of Sergeant Van Rooy, with the plaintiff's counsel advising that she had completed her cross-exam on the previous occasion.
- [7] In his amended particulars of claim the plaintiff has introduced the following averments:
- “8. *Subsequent to the plaintiff's unlawful arrest, the plaintiff was wilfully and unlawfully:*
- 8.1 *detained by the arresting officers when he was;*
- 8.2 *and/or assaulted by the arresting officers when he was;*
- 8.3 *and/or robbed by the arresting officers.*”
- [8] It is further alleged that the plaintiff was unlawfully detained at the back of the SAPS vehicle until approximately 12h00 on the day in question and was taken to an untarred road near Zeberfontein informal settlement and dropped off there.

[9] It is averred that as a result of the unlawful arrest and the conduct alleged in paragraph 8 of the particulars of claim:

1. the plaintiff's privacy, dignity and bodily integrity were violated;
2. the plaintiff underwent medical treatment, experienced and continues to experience emotional and mental anguish;
3. the plaintiff suffered damages as a result of *contumelia*, deprivation of liberty, emotional shock and discomfort;
4. the plaintiff suffered patrimonial loss when he was permanently deprived of an aggregate amount of R80 500.

[10] As a result of the alleged arrest, detention and/or assault and/or robbery and the sequelae therefrom, the plaintiff allegedly suffered damages in the sum of R300 000.

[11] Some four causes of action are alleged. However, it is by no means clear, especially by reason of the words "and/or", whether they are being pursued in the alternative or cumulatively and how the alleged amount of R300 000 is made up, either in relation to each cause of action or cumulatively in respect of all of them. There is an apparent vagueness in the particulars of claim, yet the defendant did not raise any concern.

[12] I should state here, in regard to the allegation that the plaintiff underwent medical treatment, that this averment is not borne out by the plaintiff's evidence. In fact, the averment is inconsistent with his evidence on this point, which was that he never went to see a doctor. Instead, he went to a chemist, bought painkillers and treated himself. About, two weeks or so, he had a stiff neck and back, and a bruised shoulder, and asked his son to rub him with some ointment to ease the

pain. This adds to the uncertainty of the amount claimed for by the plaintiff.

**Critical Information not Secured**

[13] In fact, the pursuit of this case was unsatisfactory in various respects. The claim was instituted in November 2014 and when the matter came for trial over four years later, the plaintiff still did not have in his papers certain documents critical to the case and had inexplicably failed to take steps to compel the production of those documents. The documents included:

- (a) statements made by the plaintiff and his brother to the police, each on at least two separate occasions, on the day of the incident and thereafter;
- (b) certain contents of the police docket, especially those contained in the so-called B-clip, regarding investigations conducted by the Investigation Officer;
- (c) statements made to the police by two passengers who were present with the plaintiff and his brother in their motor vehicle at the time of the alleged incident;
- (d) the plaintiff's statement dated 26 March 2013, contained in bundle "E" discovered, together with other documents, by the defendant on 25 February 2019, just two days before the trial date (i.e. 27 February 2019).

[14] The failure to secure these documentations inevitably led, as already mentioned, to the plaintiff's counsel seeking a postponement of the trial during her cross-examination of the IO.

[15] At resumption of the trial on 25 September 2019 this issue was again raised by me and I enquired whether the plaintiff had compelled the

production of, *inter alia*, the police docket. The plaintiff's counsel said no, save that the plaintiff had issued two subpoenas calling for production of the police docket. Copies of the two subpoenas were handed up in Court, one issued against the Midrand Station Commander and the other against the Lenasia Station Commander, both dated 5 February 2019.

- [16] The subpoenas are similarly worded. In each the Station Commander is requested to be present in Court and bring with him all documentation, docket, police report and witness statements [under case 1] *"relating to an incident that took place on 15 January 2013 at approximately 8h30 at or near the Avalon Cemetery"* whereby firearms were stolen. In the subpoena to the Midrand Station Commander it is added: *"which was duly reported to the Midrand SAPS, under the care of Brigadier Moodley"*.
- [17] There was apparently no compliance with the subpoenas and, as already stated, no application to compel compliance either. It is therefore unclear to me why the plaintiff decided to proceed with the trial in the absence of such critical information.
- [18] A bundle of documents discovered by the defendant under cover of an Index dated 25 February 2019, titled Case Docket Kliptown Case No: 1203/01/2013' contained ten (10) items, namely-
- (1) front cover of Crime Docket;
  - (2) SAPS 3M dated 14 January 2013;
  - (3) plaintiff's incomplete sworn statement ("A2"), which only had one page);
  - (4) sworn statement of Ebrahim Abraham ("A1"), dated 14 January 2013;

- (5) another sworn statement of Ebrahim Abraham ("A3"), dated 23 January 2013;
- (6) plaintiff's sworn statement ("A4"), dated 23 January 2013;
- (7) sworn statement of Soni Brijesh Rajendrakumar ("A5"), dated 23 January 2013;
- (8) sworn statement of Elias Khaya Mdluli ("A6"), dated 23 January 2013;
- (9) sworn statement of Ebrahim Abraham ("A7"), date is illegible; and
- (10) another plaintiff's sworn statement ("A8"), dated 26 March 2013.

[19] Despite all these statements, the plaintiff and his witness testified that they never made statements to the police. According to them, *"they only talked about the ordeal"* and were given pieces of paper to sign. However, the evidence shows otherwise, that each had made at least two statements to the police, all under oath and on different occasions. During cross-examination, the plaintiff conceded, *albeit* with some measure of reluctance, to having made a statement at the Midrand Police Station.

[20] It is therefore unclear to me why the plaintiff and his witness sought to advance a version that was so inconsistent with what had actually transpired. This is significant because, during his testimony, the plaintiff appeared adamant on certain aspects of his version, but not so when it came to making statements to the police.

[21] Even under cross-examination, when presented with one of his statements in bundle "E", the plaintiff denied making a statement to the police. However, he confirmed the signature at the bottom of the page as his signature. He also confirmed "A4" as a statement given by him. He confirmed the signature thereon to be his and also confirmed the

correctness of the paragraphs in respect of which he was questioned under cross-examination.

- [22] When the plaintiff's witness took his turn to testify, he readily admitted that statements were taken from them at the Midrand Police Station, and confirmed his name and signature on one of them ("A7"), as well the correctness of its contents.
- [23] The plaintiff's sworn statement dated 26 March 2013 ("A8"), expressly begin by stating that:

*"Imtiaaz Ahmed Abraham states further under oath in English, I have submitted a statement in this case and have no objection taking down a further statement".*

- [24] This shows that the plaintiff acknowledged that he had, prior to this statement, given a statement, presumably to the police.
- [25] All this compels me to approach the plaintiff's case with extreme caution.
- [26] Soni and Khaya, the two gentlemen who were in the motor vehicle with the plaintiff and his brother when the incident occurred, were not called to testify, as according to the plaintiff, Soni has gone back to India and the plaintiff could not get hold of Khaya.

#### **Basis for the Claim vs the Evidence**

- [27] The position becomes even more disconcerting when considering the alleged basis for the plaintiff's claim against the evidence tendered by and for the plaintiff.
- [28] As already stated, the claim is principally based on unlawful arrest. However, during the plaintiff's case, both him and his witness testified



that they first said the incident was an arrest, but six years later, they say that it was robbery; robbery by police officers. According to the plaintiff's witness it was robbery because the alleged police officers were gone with the money.

[29] It was because of this evidence that the amendment, already referred to, was sought and effected to introduce, *inter alia*, robbery of a sum of approximately R80 500 to the particulars of claim.

[30] However, the allegations of robbery are not made for the first time, six years after the incident. Robbery or armed robbery was the very basis on which statements were made to the police on the day the incident and some days thereafter. These are statements referred to above that were not compelled for production. I have, from the plaintiff's evidence, accepted as common cause that statements were taken from him and his companions at the Midrand Police Station, immediately following the incident.<sup>2</sup>

[31] In the statements it is alleged that the incident was an armed robbery, as the perpetrators made away with cash, in the amount of approximately R80 000, and two firearms that belonged to the plaintiff. In one of the statements ("A7"), the plaintiff's witness concludes by stating that he subsequently laid a criminal charge of armed robbery. And states further that "*I never gave anyone permission to rob me, hence I desire police investigation in this matter*".

[32] In the plaintiff's statement, dated 26 March 2013 ("A8"), it is stated: "*All of the males that robbed us on the day in question were African males*".

[33] The front cover of the Crime Docket also records the nature and description of the offence as "armed robbery". Similarly, a newspaper

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<sup>2</sup> At least one statement of the plaintiff's witness is dated 14 January 2013, the day of the incident ("A1"). Others statements were also deposed to during January 2013 ("A3", "A4" and "A7").

article, published on the Lenasia Sun and produced by the plaintiff as evidence in this Court, carried the headlines: "*Dramatic highway robbery... by cops*", and reported on the plaintiff and his companions' "*terrifying robbery experience*".

- [34] However, despite all this, the plaintiff and his witness initially sought to disavow any allegation of robbery and testified that money was, to them, "*not the issue at all*". Their evidence during the trial and subsequent amendment of the particulars of claim clearly show otherwise.
- [35] I should also point out that when the plaintiff was referred to the newspaper article during his testimony, he was asked by his counsel whether he needed to read the article again or whether he could confirm that it contains everything that he said. The plaintiff replied: "*I confirm that this is everything, because I read it over and over last night again*".
- [36] However, I let the plaintiff read that article into the record and after reading a passage, with repeated reference to the word 'robbery', he paused to explain to the Court that he had told the reporter that "*it was not robbery, but after the incident you can maybe call it robbery. It was an arrest*". However, the word arrest does not feature anywhere in the article.
- [37] The plaintiff also testified that he was contacted by Carte Blanche which did a shoot of the whole incident and "*the enactment of the robbery*". It is therefore evident that robbery or armed robbery was the main feature of the plaintiff's complaint.
- [38] The defendant contends that by use of the word 'robbery' and the evidence from the sworn statements that a charge of armed robbery was reported, as opposed to unlawful arrest, this shows that the

plaintiff himself did not believe that the perpetrators were police officers.

### **Applicable Test**

[39] In the overall, I am faced with irreconcilable versions, on critical factual aspects of the case, not only between the plaintiff and the defendant, but also within the plaintiff's own case; namely his version in court and the version given in sworn statements of more than six years ago; but shortly after the incident. I consider these discrepancies and contradictions, shown more fully below, to have a bearing on the probabilities of the plaintiff's case. In this regard, the test has been formulated as follows:

*"To come to a conclusion on the disputed issues a court must make findings on (a) the credibility of the various factual witnesses; (b) their reliability; and (c) the probabilities. As to (a), the court's finding on the credibility of a particular witness will depend on its impression about the veracity of the witness. That in turn will depend on a variety of subsidiary factors, not necessarily in order of importance, such as (i) the witness' candour and demeanour in the witness-box, (ii) his bias, latent and blatant, (iii) internal contradictions in his evidence, (iv) external contradictions with what was pleaded or put on his behalf, or with established fact or with his own extracurial statements or actions, (v) the probability or improbability of particular aspects of his version, (vi) the calibre and cogency of his performance compared to that of other witnesses testifying about the same incident or events. As to (b), a witness' reliability will depend, apart from the factors mentioned under (a)(ii), (iv) and (v) above, on (i) the opportunities he had to experience or observe the event in question and (ii) the quality, integrity and independence of his recall thereof. As to (c), this necessitates an analysis and evaluation of the probability or improbability of*

*each party's version on each of the disputed issues. In the light of its assessment of (a), (b) and (c) the court will then, as a final step, determine whether the party burdened with the onus of proof has succeeded in discharging it. .... But when all factors are equipoised probabilities prevail.”<sup>3</sup>*

[40] I am compelled to approach this case on the basis of this test, for reasons above and those that will become more apparent below.

### **Main Issue**

[41] The principal issue in this case is who committed the alleged unlawful acts; whether it was police officers or some imposters, and whether the plaintiff has succeeded in establishing that it was police officers.

[42] The plaintiff's case turned on three factual aspects on this issue, namely:

42.1 that the perpetrators were all in police uniform and bulletproof vests;

42.2 that they were all armed with R5 police rifles; and

42.3 that one of the two vehicles driven by the perpetrators was a marked police vehicle, with blue lights.

[43] Both the plaintiff and his witness testified that they were able to memorise the number plates of the two vehicles. One was a Golf 6, with registration numbers BSP 973 B and the other an unmarked white BMW, with registration numbers ZNV 957 GP.

[44] However, despite the assertion by the plaintiff and his witness of their ability to memorise the vehicle number plates, they had given two different, *albeit* slightly similar, number plates for the Golf 6. The other

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<sup>3</sup> Stellenbosch Farmers' Winery Group Ltd and Another v Martell et Cie & others 2003 (1) SA 11 (SCA) at para 5.

number plate was BSP 973 GP.<sup>4</sup> In one of the witness' statements ("A7"), made apparently in 2013, the number plates are swapped around. For the Golf 6 the numbers are ZNV 957 GP and for the BMW, BSP 973 GP.

- [45] It is remarkable that whilst the plaintiff and his witness asserted that the number plates given were 100% correct, as they were able to quickly memorise them, they also testified that they were shocked and traumatised during the incident and therefore unable to pay attention to certain details, such as whether all the alleged police officers had name tags, whether they observed money being taken from the boot of the plaintiff's vehicle and whether they had made statements to the police. They became visibly vexed when asked questions on these aspects, stating that how were they expected to observe or remember all that when placed in such a traumatic situation. The plaintiff also testified that his mind was confused whilst at the Midrand Police Station. I refer to this only in order to show challenges regarding reliability and probabilities inherent in the plaintiff's version.
- [46] The IO testified that he conducted a search on the given number plates and his evidence in respect of each was as follows:
1. Golf 6: BSP 973 B – the vehicle does not exist and does not appear on the police system vehicle circulation system, which gives them access to the eNastis system;
  2. Golf 6: BSP 973 GP – shows that it belongs to a certain gentleman in Khutsong, Carletonville, but the vehicle is a blue BMW 5 Series, not a Golf 6;
  3. White BMW: ZNV 957 GP – No information on this, the vehicle does not exist.

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<sup>4</sup> This appears from witness's statement ("A3"), dated 26 January 2013 and plaintiff's own statement ("A4"), dated 25 January 2013.

- [47] The IO concluded that based on his search the alleged Golf 6 was not a police vehicle. During his handling of the case he learned of another case where a Golf 6, police marked vehicle, was recovered in Mondeo, South of Johannesburg and firearms recovered the next day. A suspect was arrested, but later released and the case withdrawn. It was only after the withdrawal that he learned of that case. He was not asked questions regarding the recovered Golf 6 and the firearms recovered (of what kind).
- [48] The IO testified that the *modus operandi* of the perpetrators leads him to conclude that they must be a Blue Light Gang; a gang that masquerades as police officers. He relied in this regard on the plaintiff's evidence regarding the manner in which the perpetrators drove one vehicle in front of them to block them off completely, tied the hands of the plaintiff's brother, and ultimately the plaintiff himself, with cable ties and dumped them and their companions at a deserted place, not taking them to a police station. They also robbed the plaintiff of his cash and two firearms.
- [49] According to the IO, the police would sound the siren when stopping a vehicle and would pull the vehicle over to a safe place on the side of the road, not simply block it off on the highway, and would stop behind the vehicle, not in front of it.
- [50] Regarding police uniform, the oral testimony by and for the plaintiff was that the seven men who stopped them were all in police uniform, police vests, police caps and police boots. However, in "A7", one of the statements of the plaintiff's witness, the witness states: "*Some of them were wearing private clothes with blue police bullet proof vests and others wearing full police uniform without name tags*".
- [51] The plaintiff, on the other hand, gave two different versions, both inconsistent with his version above during the trial. In one sworn statement ("A4"), dated 23 January 2013, the plaintiff recorded seeing
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three of the men in full police uniform. However, in his other sworn statement ("A8"), dated 26 March 2013, the plaintiff states, *inter alia*, that:

*"They were a total of seven males, I also saw constable ranks on the one male, he was also wearing a bullet proof.*

*The inspector was in full uniform, I am not sure about the others but I did see bullet proof vests, all of them had these vests on."*

[52] Although the defendant's witness did not have an answer to this, simply speculating that the uniform might have been stolen, the apparent discrepancies and contradictions in the plaintiff's versions are worrisome. The testimony given more than six years later and at variance with sworn statements given shortly after the incident is, in my view, manifestly unreliable. Yet, the plaintiff chose to advance and stick to such version above what appears from the sworn statements. Worse still, the sworn statements were not disputed, but confirmed by the plaintiff and his witness. Thus, leaving one *in limbo* as to which of the multiple versions should be accepted as correct.

[53] Regarding the R5 rifles, the plaintiff's version during the trial was that the seven men were all armed with R5 police rifles. Under cross-examination, the plaintiff was even more emphatic on this aspect, that *"all seven of them had police R5 rifles"*, that *"there were altogether seven R5 rifles"*.

[54] However, in two of the sworn statements by the plaintiff's witness ("A1" and "A7"), the former dated 14 January 2013, the day of the incident, the witness stated that the perpetrators had about five (5) rifles on them ("A1") and in "A7" reported to have seen only two (2) R5 rifles. The plaintiff's sworn statements are silent on this aspect, even though he specifically testified in court that all seven of the perpetrators were armed with R5 rifles.

[55] The discrepancies expounded above impinged on the questions of credibility, reliability and probability of the plaintiff's version. I am unable, given these discrepancies and contradictions, to find the plaintiff's version in Court credible, reliable and probable on the main issue, namely that it is police officers who committed the alleged wrongful acts. I come to the conclusion, sadly, that the plaintiff has not, on the probabilities, succeeded in discharging the burden of proof that lay upon him.


[56] This is not to say that the alleged wrongful acts did not take place. That was not the question before the Court. A wrongful and criminal act/s appear to have been committed more than six years ago, but a breakthrough in the investigation still eludes the police. It is still unclear as to who committed the alleged acts. The authorities relied upon in the heads of argument for the plaintiff do not assist in this regard. The delictual claim was pursued seemingly without much attention to details and certainly without first procuring all the critical information.

### **Conclusion**

[57] In the result, I make the following order:

57.1 the plaintiff's action is dismissed,

57.2 each party is to pay their own costs.

  
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**SELEKA AJ**  
**ACTING JUDGE OF THE HIGH COURT**



Appearances:

Counsel for the plaintiff: Instructed by:	Adv N Adam Wadee & Wadee Attorneys, Johannesburg
Counsel for the defendant: Instructed by:	Adv M Sekhethela State Attorney, Johannesburg
Date heard:	27, 28 February 2019, 25 September 2019
Date delivered:	31 October 2019