



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

CASE NO: 2015/34496

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

14/8/2023
DATE

J Moorcroft
SIGNATURE

In the matter between:

THOMAS, HENRY GRAHAM

Plaintiff

and

THE MINISTER OF POLICE

Defendant

JUDGMENT

MOORCROFT AJ:

Summary

Arrest and detention – Plaintiff arrested and released 24 hours later without appearing in court

Criminal Procedure Act, 51 of 1977 - section 40(1)(h) – arrest of suspect by peace officer entertaining reasonable suspicion that arrestee committed an offence under any law governing inter alia the making, supply, possession or conveyance of dependence-producing drugs

Possession of undesirable dependence-producing substance – Drugs and Drug Trafficking Act, 140 of 1992 – section 4 - undesirable dependence-producing substance in Part III of Schedule 2 – section 11 – powers of search and seizure

Order

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

1. *The plaintiff's claim is dismissed;*
2. *The plaintiff is ordered to pay the defendant's costs.*

[2] The reasons for the order follow below.

Introduction

[3] The plaintiff's delictual claim¹ against the defendant for unlawful arrest and unlawful detention is based on the *actio iniuriarum*. The delict is alleged to have been committed by members of the South African Police Service.² A second claim based on assault was

¹ It was common cause that the plaintiff had complied with section 3 of the Institution of Legal Proceedings Against Certain Organs of State, Act 40 of 2002.

² The plaintiff referred in argument to sections 10, 12 and 35 of the Constitution, 1996.

abandoned and correctly so as no factual allegations of assault were made in the particulars of claim. The parties were *ad idem* that the onus to prove that the arrest and detention were lawful was on the defendant and that the defendant would have the duty to begin.

[4] It was common cause that

4.1 the plaintiff was arrested by members of the South African Police Service acting within the course and scope of their duties on 19 January 2015 at approximately 15 minutes past five o'clock in the afternoon on a charge of "*possession of drugs*" under the Drugs And Drugs Trafficking Act, 140 of 1992,³ and he was released the next day at approximately half past three o'clock in the afternoon;

4.2 the officers were patrolling in a marked police vehicle on the K43 road in Klipspruit West In the vicinity of a bridge on the boundary between Klipspruit and Eldorado Park when they encountered the plaintiff walking on the shoulder of the road and Constable (now Detective Sergeant) Nkosi was the driver of the police vehicle.

[5] The plaintiff denied that he was in possession of drugs and that he was arrested by the police officer who was behind the steering wheel of the police vehicle as testified by the defendant's witnesses. His evidence was that there were three policemen in the vehicle and the one who arrested him was not the driver.

[6] I was advised that had been agreed at a pretrial conference that documents in the bundle were what they purported to be without admission of the contents. In the judgment I only take account of the documents referred to in evidence.

³ See section 4, and Part III of Schedule 2 of the Act.

The defendant's witnesses

[7] The defendant called three police officers to testify. They were Sgt (then Constable) Mduduzi Nkosi, Sgt (then Constable) Maluleke and Warrant Officer Shadrack Hlongwane.

[8] The investigating officer, Constable Mkhawana, was not called to testify nor was the failure to call this witness explained until after the close of both parties' cases.

[9] Sgt Nkosi testified that in 2015 he was a constable at the Crime Prevention Unit at the Kliptown Police Station dealing mostly with drug related offences and robbery. On 19 January 2015 he was on patrol in a police vehicle with Sgt Maluleke. Driving along the K43 road he saw the plaintiff walking with another man. When the plaintiff saw the police vehicle he started to run away. This was suspicious. Sgt Nkosi's experience was that people who run away when they see a police vehicle might be in possession of drugs or an unlicensed firearm. He brought the vehicle to a stop and gave chase. He apprehended the plaintiff and during a search he noticed that the plaintiff was holding something in his left hand. When he opened the plaintiff's hand he found⁴ one Mandrax tablet in his hand. Sgt Nkosi was familiar with the appearance of a Mandrax tablet, typically blue and with a distinctive star emblem on its face. He explained that such a tablet would usually be smoked by addicts in combination with dagga (cannabis).

[10] He read the plaintiff his rights and arrested him for unlawful possession of the Mandrax tablet. Sgt Maluleke had followed Sgt Nkosi out of the vehicle and they confiscated the tablet. It was later sealed in a forensic bag at the police station under the number PA5001667950. The bag was then booked into the SAP13 store at the Kliptown Police Station.

[11] They took the suspect to the Kliptown Police Station where Sgt Nkosi opened a police docket⁵ and Sgt Maluleke took the plaintiff to the police cells. He could not recall any subsequent contact with the plaintiff.

⁴ The chemical composition of the tablet could of course only be definitively determined in a laboratory analysis.

⁵ CaseLines 011-67.

[12] The witness identified his contemporaneous statement and conceded that his independent recollection of the arrest was very vague (not unexpectedly as these events took place more than eight years earlier) and that he was relying largely on his statement⁶ deposed to at the Kliptown police station about 40 minutes after the arrest.

[13] He identified the place where the arrest took place as a “*drug hotspot*.” He added that people usually bought to drugs in Eldoradopark and then crossed into Klipspruit using this road, the K43.

[14] During cross examination Sgt Nkosi testified that he joined the South African Police Service in 2006 and had been stationed at the Kliptown police station since 2007. In about 2013 he joined the section dealing with drugs and robbery. He confirmed that the Kliptown police station served the Kliptown area and a section of Eldorado Park.

[15] When it was put to him that they were three police officers in the vehicle and not two, he replied that he could not be sure but that they usually patrolled in pairs and that he could not remember or recall a third officer in the vehicle. On occasion however there would be more than two police officers in a vehicle. He also confirmed that they often wore plain clothes when on patrol but he could not recall whether they were in uniform on this occasion.

[16] It was put to him that the plaintiff was not in the company of a third party prior to the arrest and that while he (Sgt Nkosi) was the driver of the car, he was not the arresting officer. It was also put to him that the plaintiff was not found with drugs in his possession, that his rights where never explained to him, and that when the plaintiff insisted on identification of the police officers who were wearing plain clothes, the police officers told him (and I paraphrase) that “*you think you are clever, can you not see that we are in a Police vehicle*” to which the plaintiff responded that people who were not police officers were often driving around in vehicles carrying police markings. Sgt Nkosi disputed this conversation and reiterated his own version of events.

[17] I found Sgt Nkosi to be a reliable witness. He readily conceded that his memory was sketchy eight years after the events took place but he was adamant about the essential facts, namely that he arrested the plaintiff for possession of what he (an

⁶ CaseLines 011-95.

experienced policeman) regarded as a Mandrax tablet.

[18] Sgt Maluleke was the second witness called by the defendant. He testified that he was in the vehicle with Sgt Nkosi when Sgt Nkosi first saw the plaintiff running away. He also alighted from the vehicle and followed Sgt Nkosi who apprehended the suspect. He stood close behind Sgt Nkosi when they saw the tablet that was confiscated. When they drove to the police station he was sitting in the back of the vehicle with the plaintiff. He was uncertain whether they may have been a third policeman with them but testified that they were normally two policemen in a vehicle. He was also not sure whether they were in uniform on that particular day as they often wore plain clothes. He never deposed to a statement in this matter and it was impossible for him to refresh his memory.

[19] When they arrived at the police station he informed the plaintiff of his rights in terms of the Constitution by reading the standard notice to the plaintiff. He placed particular emphasis on the right to consult with a lawyer and told the plaintiff that he should speak up if there was anything he did not understand. The plaintiff never said anything. Both he and the plaintiff signed the notice.⁷

[20] Sgt Maluleke identified an entry made by him in the SAP Record on 19 January 2015.⁸ It was noted that the number CAS 414/1/2015 was allocated to the case, and that the suspect had provided a home address in Klipspruit. It was recorded that one "*tablet with star (drug)*" had been found in possession of the plaintiff and sealed in the forensic bag already referred to above. After fulfilling his duties he never saw or dealt with the plaintiff again.

[21] It was put to Sgt Maluleke that the plaintiff was taken to the cells by the arresting officer and not by either of Sgt Maluleke or by Sgt Nkosi. The plaintiff could not identify this police officer.

[22] It was also put to him that the plaintiff had not been permitted to make a telephone call during his detention and that it was therefore not possible for him to call his relatives

⁷ CaseLines 014-94.

⁸ CaseLines 011-108.

to bring his epilepsy⁹ medication to the cells so that he could take his medication in time. He denied this.

[23] W/O Hlongwane was the last of the defendant's witnesses. He confirmed the contents of his contemporaneous statement.¹⁰ He testified that on the morning of the 20th at about 8 o'clock he took the plaintiff's fingerprints digitally using the electronic MCD fingerprint machine linked to the South African Police Service data base. He found a match between the plaintiff's fingerprints and those of a suspect wanted for questioning by the police station in Eldorado Park in a theft complaint referenced under CAS 773/12/2003. He informed his colleagues in Eldorado Park accordingly and it was confirmed by them that the plaintiff was indeed a suspect. He expected the officers of the Eldorado Park Police Station to make the necessary arrangements for the plaintiff to appear in court on the theft charge and he had no further involvement in the matter.

[24] There were a number of perceived differences between the evidence of Sgt Nkosi and that of Sgt Maluleke. These are as follows:

- 24.1 Sgt Nkosi testified that he gave the tablet to Sgt Maluleke at the scene of the arrest: Sgt Maluleke said he was given it at the Police Station;
- 24.2 Sgt Maluleke testified that they all went into the charge office upon arriving at the police station, whereas Sgt Nkosi said went in alone to prepare a docket;
- 24.3 Sgt Nkosi testified that the plaintiff's details were obtained at the scene of arrest whereas Sgt Maluleke said this happened at the charge office.

[25] After eight years these discrepancies were not unexpected.

⁹ it was common cause at the trial that the plaintiff was being treated for epilepsy and documentation of the City of Johannesburg Health Services formed part of the trial bundle at CaseLines 005-10.

¹⁰ CaseLines 011-87.

The evidence of the plaintiff

[26] The plaintiff testified that he was a widower and that he was born in 1964. He resided in Kliptown West. He was medically boarded in 2012 because he suffered from epilepsy and in 2015 he was doing “*odd jobs*” as a carpenter. At the time of his arrest he was painting a house in Eldorado Park ext 9 for an owner who was in the process of moving.

[27] On the day of the arrest he left the house where he was working at the end of the working day and was walking to his home in Klipspruit West. Near the bridge between Klipspruit and Eldorado Park a marked police vehicle approached and stopped next to him. There were two other members of the public close by but he was not walking with them. There were three men in the vehicle, all of them wearing plain clothes. A man alighted from the front passenger seat of the vehicle and asked if he could search him. The plaintiff responded by asking for the man's identification whereupon the man grabbed him and dragged him to the car and forced him into the rear of the vehicle. The man who had accosted him said to the other two, and I paraphrase, “*this one thinks he's clever, he wants identification.*”

[28] When told that he could see that the car was a police car he responded by saying that even robbers had police cars.

[29] The man then went back and searched the other person who had been walking on the shoulder of the road before returning to the vehicle. They then took the plaintiff to the Kliptown police station. They were three men in plain clothes with him in the vehicle and he was sitting in the back between two of them. Sgt Nkosi was driving.

[30] He testified that was never searched and nothing was found on him. At the police station he was taken round the back to the cells and placed in the custody of a man in police uniform. He gave his name and address to this officer who entered these details in the register. The other man who had been with him in the police car (but who was not one of the police witnesses who testified) returned and asked for the detained rights book. This police officer then wrote his details in the book and told him to sign.

[31] It was then that he saw the reference to “*possession of drugs*” on the notice of rights

document¹¹ and he questioned the police officer about that. He was told to sign and to keep quiet. He signed the document.

[32] His personal belongings were taken and he was given a receipt. He then made a request that he be permitted a telephone call to tell his relatives where he was and to ask them to bring his epilepsy medication to the police station. The police officer said that this was not possible as he did not have the code for the telephone. He was given blankets and placed in a three by three metre cell with three other men. The blankets and the cell were dirty and smelled of urine.

[33] He was called again at approximately half past six o'clock and met the investigating officer who told him that he would be charged with possession of drugs. The investigating officer had the docket with him. When asked whether he wanted to make a statement he replied in the affirmative, and he wrote:¹² *"I deny the allegations against me because they found nothing on me."* He signed this document which forms part of the warning statement.¹³

[34] He again requested an opportunity to telephone his relatives so that they could bring his medication to the police station. The officers were not unwilling to assist but they did not have the code for the telephone.

[35] He was then taken back to the cells and a while later he had an epileptic seizure. There were no policemen present and he was assisted by the other men in the cell with him. At nine o'clock that evening a policeman did arrive to do a cell inspection and he told this policeman about the seizure and again requested that his relatives be contacted. He then fell asleep until the next morning when he was offered tea and bread, and he was then taken to court.

[36] He was detained in the cells at the court until about half past three o'clock in the afternoon when his name was called and he was released without appearing in court. It appears from an extract¹⁴ from the court attendance register that the matter was never

¹¹ CaseLines 011-94.

¹² CaseLines 011-90B. This document did not form part of the trial bundle but was handed up by agreement.

¹³ CaseLines 011-88.

¹⁴ CaseLines 005-6.

placed on the court roll.

[37] The total lack of any explanation as to what happened to the investigations both by the Eldorado Park Police Station and the Kliptown Police Station is worrying. The confiscated tablet was sealed and booked into the SAP13 store and never seen again. I was told from the bar that the investigating officer had left the employ of the South African Police Service and was not available to testify, and that no further investigation was possible as the police docket went missing on 20 January 2015, the day after the arrest and the date on which the plaintiff was taken to court. No evidence was led in this regard. It is stating the obvious that police dockets are important documents and should not go missing, and when they do go missing the matter ought to be investigated to determine the reason. None of this was done on the evidence before the Court.

[38] The plaintiff was not a satisfactory witness. His counsel did not test the evidence of W/O Hlongwane in cross examination but when he himself testified he denied that the evidence by the Warrant Officer was true. His evidence of a seizure on the night of the 19th stands in contrast with the particulars of claim where in the abandoned second claim he alleged that because he was not permitted access to his medication he was *at risk* of seizures. There was and is no explanation for this discrepancy and in the absence of any explanation the inference is or it is at least likely that such an allegation was not conveyed to the plaintiff's attorneys at the time when pleadings were drafted nor was the allegation conveyed to the plaintiff's counsel as nothing was put to the defendant's witnesses in this context.

Analysis

The Drugs and Drug Trafficking Act, 140 of 1992

[39] Methaqualone, including Mandrax, Isonox, Quaalude, or any other preparation containing methaqualone and known by any other trade name is classified as an undesirable dependence-producing substance in Part III of Schedule 2 of the Drugs and Drug Trafficking Act.

[40] Section 4 of the Act prohibits the use or possession of such substances except under strictly controlled circumstances not relied upon by the plaintiff. Section 11 of the Act arms police officials with the power, *inter alia*, to search people when there is a reasonable suspicion of the commission of an offence.

Section 40 of the Criminal Procedure Act

[41] The jurisdictional facts for an arrest on reasonable suspicion were set out in *Minister of Safety and Security v Sekhoto and another*¹⁵ in the context of section 40(1)(b) and can be summarised as follows for the purposes of section 40(1)(h) of the Criminal Procedure Act:

- 41.1 The arresting officer must be a peace officer, such as a police officer;
- 41.2 The arresting officer must entertain a reasonable suspicion that the arrestee committed an offence under any law governing the making, supply, possession or conveyance of intoxicating liquor or of dependence-producing drugs or the possession or disposal of arms or ammunition;

[42] In the *Sekhoto* case, Harms DP quoted¹⁶ with approval the judgment of Innes ACJ in *Shidiack v Union Government (Minister of the Interior)*:¹⁷

“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 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

¹⁵ *Ibid* para 6.

¹⁶ *Ibid* para 34.

¹⁷ *Shidiack v Union Government (Minister of the Interior)* 1912 AD 642 at 651–652.

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.”

[43] Similarly, in *Duncan v Minister of Law and Order*¹⁸ 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. Whether every improper application of a discretion conferred by the subsection will render an arrest unlawful, need not be considered because it does not arise in this case.”

[44] 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*:¹⁹

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

¹⁸ *Duncan v Minister of Law and Order* [1986] 2 All SA 241, 1986 (2) SA 805 (A) 818H.

¹⁹ *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,

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.”

Probabilities and credibility

[45] In the oft-quoted case of *National Employers' General Insurance Co Ltd v Jagers*²⁰ Eksteen AJP said that where there are two mutually destructive versions the parties on whom the onus rests

“... can only succeed if he satisfies the Court on a preponderance of probabilities that his version is true and accurate and therefore acceptable, and that the other version advanced by the defendant is therefore false or mistaken and falls to be rejected. In deciding whether that evidence is true or not the Court will weigh up and test the plaintiff's allegations against the general probabilities. The estimate of the credibility of a witness will therefore be inextricably bound up with a consideration of the probabilities of the case and, if the balance of probabilities favours the plaintiff, then the Court will accept his version as being probably true. If however the probabilities are evenly balanced in the sense that they do not favour the plaintiff's case any more than they do the defendant's, the plaintiff can only succeed if the Court nevertheless believes him and is satisfied that his evidence is true and that the defendant's version is false.

*This view seems to me to be in general accordance with the views expressed by COETZEE J in *Koster Ko-operatiewe Landboumaatskappy Bpk v Suid-Afrikaanse Spoorweë en Hawens* (supra)²¹ and *African Eagle Assurance Co Ltd v Cainer* (supra).²² I would merely stress however that when in such*

²⁰ *National Employers' General Insurance Co Ltd v Jagers* 1984 (4) SA 437 (E) 440E to 441B.

²¹ *Koster Ko-operatiewe Landboumaatskappy Bpk v Suid-Afrikaans Spoorweë en Hawens* 1974 (4) SA 420 (W).

²² *African Eagle Life Assurance Co Ltd v Cainer* 1980 (2) SA 234 (W).

circumstances one talks about a plaintiff having discharged the onus which rested upon him on a balance of probabilities one really means that the Court is satisfied on a balance of probabilities that he was telling the truth and that his version was therefore acceptable. It does not seem to me to be desirable for a Court first to consider the question of the credibility of the witnesses as the trial Judge did in the present case, and then, having concluded that enquiry, to consider the probabilities of the case, as though the two aspects constitute separate fields of enquiry. In fact, as I have pointed out, it is only where a consideration of the probabilities fails to indicate where the truth probably lies, that recourse is had to an estimate of relative credibility apart from the probabilities.”

Conclusions

[46] I accept the evidence of the two police officers who carried out the arrest that

- 46.1 they encountered the plaintiff walking on the shoulder of the road,
- 46.2 that Sgt Nkosi noticed the plaintiff's reaction when he saw the police vehicle,
- 46.3 that he then brought the vehicle to a stop and accosted that the plaintiff,
- 46.4 that he then found the Mandrax tablet in the possession of the plaintiff,
- 46.5 that he formed a reasonable suspicion²³ that a crime had been committed and arrested the plaintiff lawfully,²⁴
- 46.6 that the plaintiff was taken to the Kliptown police station soon as was

²³ See *Mabona and Another v Minister of Law and Order and Others* 1988 (2) SA 654 (SE) 658E in respect of a reasonable suspicion, albeit in terms of section 40(1)(b).

²⁴ The arrest was for possession of drugs in terms of section 40(1)(h) of the Criminal Procedure Act.

possible and proper procedures were followed.²⁵

[47] The decision to arrest the plaintiff when he was encountered next to the road with what Sgt Nkosi identified, *prima facie*, as a Mandrax tablet was therefore a reasonable one.²⁶ The police officers had a discretion and they exercised their discretion. A police officer encountering a tablet that his experience tells him is a Mandrax tablet is entitled to apply his experience and form a reasonable *prima facie* view that this is indeed a prohibited substance.

[48] At that point in time it was not possible to verify the plaintiff's identity and address. There is simply no ground for arguing that other, equally rational options to ensure the plaintiff's attendance at court were available at that stage. Once he was under arrest, a bail application became necessary to ensure his freedom. The plaintiff would not have qualified to be released on bail granted by a police officer of or above the rank of non-commissioned officer in terms of section 59 of the Criminal Procedure Act: He was suspected of an offence listed in Part II of Schedule 2 of the Act namely the possession of a dependence producing drug.

[49] I also accept the evidence

49.1 that the next morning W/O Hlongwane formed a reasonable suspicion that the plaintiff might be linked to a charge of theft committed in 2003 and investigated by the Eldorado Park Police station,

49.2 that the plaintiff was taken to the court the next morning where he was detained lawfully until a decision was made to release him,

49.3 that he was released before the expiry of the 48 hour period referred to in section 50(1)(c) of the Criminal Procedure Act, 51 of 1977.

[50] Whether the decision taken on the 20th to release the plaintiff (presumably on the ground that the docket was missing) was a good decision or a bad decision need not now

²⁵ See section 50 of the Criminal Procedure Act.

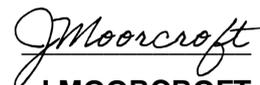
²⁶ Compare *Minister of Safety and Security v Sekhoto and another* 2011 (5) SA 367 (SCA), [2011] 2 All SA 157 (SCA) para 32.

be decided.

[51] It is so that the notice of rights read to the plaintiff does not expressly refer to the right to apply for bail. It does so in a rather oblique way in that the suspect is informed that “*you have the right to be released from detention if the interests of justice permit, subject to reasonable conditions.*” Consideration might be given to improving the wording to make it clear that under certain circumstances a suspect might be released on bail even before²⁷ his or her first appearance in court,²⁸ while in other circumstances a bail application may be brought at the first appearance in court that must take place within 48 hours of arrest.²⁹

[52] I find the defendant’s version of what occurred on 19 January 2015 more probable than the version put up by the defendant. On the defendant’s version, the suspicions of the police was aroused when the plaintiff ran away when he saw the police vehicle. They stopped, searched the plaintiff, and found a Mandrax tablet. On the plaintiff’s version, the Police confronted him and arrested him for no reason at all.

[53] On a preponderance of probabilities the claim must fail and I make the order in paragraph 1.


J MOORCROFT

**ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
JOHANNESBURG**

Electronically submitted

Delivered: This judgement was prepared and authored by the Acting 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 **14 AUGUST 2023**.

²⁷ Referred to as ‘police bail.’

²⁸ Section 59 of the Criminal Procedure Act, 51 of 1977.

²⁹ *Ibid*, section 50(c).

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INSTRUCTED BY:

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L H ADAMS

INSTRUCTED BY:

STATE ATTORNEY

DATE OF THE TRIAL:

18 & 19 JULY, & 11 AUGUST 2023

DATE OF JUDGMENT:

14 AUGUST 2023