IN THE HIGH COURT OF SOUTH AFRICA

MPUMALANGA DIVISION, MBOMBELA

CASE NO: 2678/2020

(1) REPORTABLE: **NO**
(2) OF INTEREST TO OTHER JUDGES: **NO**
(3) REVISED **YES/NO**

[redacted]

20 June 2025
DATE

SIGNATURE

In the matter between:

ISAAC SOLOMON NYARENDE **PLAINTIFF**

and

MINISTER OF POLICE **DEFENDANT**

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date and time for hand-down is deemed to be 11:00 on 20 June 2025.

Summary: Delict – unlawful arrest and detention – whether the arrest and detention of Plaintiff was unlawful – whether the Defendant was liable to compensate Plaintiff for his arrest and detention for a period of 9 days.

JUDGMENT

Moleleki AJ

[1] The Plaintiff claims for delictual damages from the Defendant on the assertion that he was unlawfully arrested and detained by members of the South African Police Service (the SAPS) acting within the course and scope of their employment with the Defendant.

[2] The arrest occurred on 31 January 2020 at approximately 15h00 at or near Sheba Siding, Barberton District, Mpumalanga. He was arrested without a warrant of arrest. The Plaintiff was detained at Barberton Police Station for a period of two days. He appeared in court for the first time on 3 February 2020. Subsequent to his appearance at court, he was detained at Nelspruit Correctional Centre. On 10 February 2020, he was granted bail in the amount of R1 500. The matter was postponed several times until it was ultimately struck off the roll by the court on 29 July 2020 due to the absence of witnesses.

[3] The Defendant pleaded that the arrest of the Plaintiff without a warrant was in accordance with the provisions of section 40(1)(a) and (b) of the Criminal Procedure Act 51 of 1977 (the Criminal Procedure Act), and that he was detained in terms of section 50(1) thereof.

[4] The issues for determination by this Court are whether or not the arrest of the Plaintiff by a member of the SAPS and the subsequent detention thereafter were unlawful and, if so, the determination of the Plaintiff's damages as a result thereof.

The Defendant's Version

[5] Sergeant Riaan Prinsloo, a member of the SAPS with 19 years of service, testified that he was the investigating officer in this matter, in which the Plaintiff was

arrested together with 22 others underground at Sheba mine, which is a mine that is no longer operational. The 23 arrestees were arrested for being in possession of possible gold material by members of the SSG Security Company. The arrestees were found in possession of food and equipment that is usually used to dig by illegal miners, such as hammers, chisels, saws and butcher knives.

[6] The security personnel deposed to statements and took photographs of those arrested and took them to the police station. When they were handed over to the officer in charge at the police station, Sergeant Moya, the security handed their statements and photographs to Sergeant Moya.

[7] The case docket was handed over to Sergeant Prinsloo for further investigation of the matter. Sergeant Prinsloo did not interview any of the witnesses but relied on the documents that were inside the docket. According to Sergeant Prinsloo, he encountered difficulties whilst investigating the matter, in particular when he had to prepare for the bail application. He had to verify addresses, and amongst the arrestees were minor children and illegal foreigners. The Plaintiff was granted bail in the amount of R1 500 a week after his arrest, on 10 February 2020. Others brought their bail applications on 27 March 2020.

[8] The matter was postponed several times and the difficulty with the matter was that after they had been granted bail, the arrestees did not attend court. On the day the matter was ultimately set down for trial, most of the arrestees were no longer attending court, and the witnesses were also not before court. It was for this reason that the matter was struck off the roll by the court. Subsequent thereto, he made attempts to re-enrol the matter, but when he went to the addresses that had been provided by the arrestees, they could not be found, as some were renting, and others were foreign nationals.

The Plaintiff's Version

[9] The Plaintiff testified that he was in the company of two of his friends. They were at the veld collecting firewood and were in possession of a bag containing a hammer, chisel, saw and butcher knife. He stated that he earns a living from selling

wood. The Plaintiff refutes the fact that he was arrested by security officers, but rather by police officers. The police officers were travelling in a marked police vehicle; they placed them inside the police vehicle and drove with them to the police station without explaining anything to them.

[10] At the police station, he and his friends found a group of other people who had been arrested. They were made to join those other people, and they were charged together. Their rights were not explained to them until their first appearance in court, where it was explained for the first time what they were arrested for. His evidence is that he was denied bail on the basis that he was a foreign national when in fact he was born and bred in South Africa. The Plaintiff concedes that he was charged with 23 to 24 others and that all of them were found in possession of similar equipment.

[11] Regarding the condition of the cell in which they were kept at the Barberton Police Station, he stated that they were all kept in the same cell. The ablution facility was not clean. Although he was given food, he could not bear to eat because of the conditions. Following his appearance in court, he was detained at the Nelspruit Correctional Centre for a period of seven days until he was ultimately granted bail. The Plaintiff did not testify about the conditions at the correctional facility. According to the Plaintiff, when the matter was ultimately struck off the roll, there were only five arrestees out of the 23 that were before court.

The Law

[12] In our law, the arrest and detention of the Plaintiff are deemed *prima facie* wrongful as they comprise the deprivation of his liberty. Therefore, the Defendant bears the onus to prove the lawfulness of the arrest and detention.[1] A Defendant who relies on one of the defences created by section 40(1) of the Criminal Procedure Act as a ground of justification must prove the jurisdictional facts for such a defence on a balance of probabilities. It is only when all the jurisdictional facts for the defences created by the section are satisfied that the peace officer may invoke the power

[1] *Minister of Law and order and Others v Hurley and Another* [1986] 2 All SA 428 (A).

conferred on it, and only then would a peace officer be empowered to arrest without a warrant.

[13] The relevant portion of section 40(1) of the Criminal Procedure Act provides:

> "(1) A peace officer may without a warrant arrest any person –
> (a) who commits or attempts to commit any offence in his presence;
> (b) whom he reasonably suspects of having committed an offence referred to in Schedule 1, other than the offence of escaping from lawful custody;
> (c) …"

[14] It is common cause that the witness who testified on behalf of the Defendant in justification of the arrest did not effect the arrest. According to the evidence, when the Plaintiff and others were handed over by security officers, it was Sergeant Moya who received them. Sergeant Moya, the arresting officer, was not called to testify.

[15] It is trite that the grounds of justification must be exercised objectively. The section requires suspicion and not certainty. However, the suspicion must be based upon solid grounds; otherwise, it would be arbitrary. The test is whether a reasonable man in the position of the arresting officer and possessed of the same information would have considered that there were good and sufficient grounds for suspecting that the Plaintiff committed the offence/s.

[16] There are two mutually destructive versions. The approach to resolving two irreconcilable, mutually destructive versions is well established.[2] The technique generally employed by courts in resolving factual disputes of this nature may conveniently be summarised as follows. In determining the disputed issues, a court must make findings on (a) the credibility of the various factual witnesses; (b) their reliability; and (c) the probabilities.

[17] As stated, Sergeant Moya was not called to testify. Sergeant Prinsloo, on the other hand, was not privy to the arrest of the Plaintiff. His evidence was that he relied

[2] *See Stellenbosch Farmers' Winery Group Ltd and another v Martell et Cie and Others* 2003 (1) SA 11 (SCA) para 5.

on statements that were contained in the case docket. Although the Defendant's legal representative was allowed to cross-examine on the statements relied on by Sergeant Prinsloo, such documents were not discovered. The Defendant bore the onus to justify the arrest and detention. It is therefore unreasonable for the Defendant to expect the court to accept as evidence documents which were not discovered. The parties are confined to their pleadings. Failure to discover documents which were crucial to its case ought to be at the Defendant's own peril.[3]

[18] The Defendant is legally obliged to satisfy the jurisdictional factors to justify the arrest of the Plaintiff, which is viewed as *prima facie* unlawful. On the version of the Defendant, the Plaintiff was arrested by security officers. Therefore, the alleged offence was not committed in the presence of Sergeant Moya as is provided for by section 40(1)(a) of the Criminal Procedure Act. What is telling is the failure by the Defendant to call Sergeant Moya as a witness to testify on the circumstances of the arrest of the Plaintiff.

[19] I now turn to consider the jurisdictional facts to be established for a defence based on section 40(1)(b). These jurisdictional facts are:

19.1 The arrestor must be a peace officer;

19.2 The arrestor must entertain a suspicion;

19.3 The suspicion must be that the suspect committed an offence referred to in Schedule 1; and

19.4 The suspicion must rest on reasonable grounds.[4]

[20] What the evidence of Sergeant Prinsloo establishes is that the information prior to the arrest of the Plaintiff was available to the security officers, who in turn handed the arrestees to Sergeant Moya. Sergeant Moya was not called to testify on what information was available to him on which a suspicion could be formed. Whatever information Sergeant Prinsloo had in the case docket became available to him after

---

[3] The object of discovery was stated in *Durbach v Fairway Hotel Ltd* 1949 (3) SA 1081 (SR) at 1083 to be:
"to ensure that before trial both parties are made aware of all the documentary evidence that is available. By this means the issues are narrowed and the debate of points which are incontrovertible is eliminated."

[4] See *Minister of Safety and Security v Sekhoto and Another* 2011 (5) SA 367 (SCA) para 6.

the Plaintiff had been arrested. Therefore, the circumstances relating to the arrest of the Plaintiff would, at most, be known to the arresting officer. Clearly, there was no credible evidence available based on the testimony of Sergeant Prinsloo for him to suspect that the Plaintiff committed a Schedule 1 offence. It cannot, in the circumstances, be said that Sergeant Prinsloo entertained a suspicion on objectively reasonable grounds either. There is no evidence that Sergeant Moya exercised a discretion of his own on whether to effect the arrest or not.

[21] On the conspectus of the evidence led on behalf of the Defendant, the ineluctable conclusion to come to is that the Defendant has failed to satisfy the threshold justifying the arrest on the two statutory grounds that have been pleaded.

[22] Consequently, the arrest of the Plaintiff was unlawful. It follows, therefore, that the detention would suffer a similar fate.

Quantum

[23] The next issue for determination is what constitutes just and equitable compensation to be awarded to the Plaintiff.

[24] The general approach regarding the amount of damages for unlawful arrest and detention was set out by Bosielo AJA (as he then was) in *Minister of Safety and Security v Tyulu*[5] as follows:

> "In the assessment of damages for unlawful arrest and detention, it is important to bear in mind that the primary purpose is not to enrich the aggrieved party but to offer him or her some much-needed solatium for his or her injured feelings. It is therefore crucial that serious attempts be made to ensure that the damages awarded are commensurate with the injury inflicted. … The correct approach is to have regard to all the facts of the particular case and to determine the quantum of damages on such facts."

[25] In *Minister of Safety and Security v Seymour,*[6] Nugent JA remarked that:

---

[5] *Minister of Safety and Security v Tyulu* 2009 (5) SA 85 SCA para 26.
[6] *Minister of Safety and Security v Seymour* 2006 (6) SA 320 (SCA); [2007] 1 All SA 558 (SCA) para 20.

> "Money can never be more than a crude *solatium* for the deprivation of what, in truth, can never be restored and there is no empirical measure for the loss. … It needs also to be kept in mind when making such awards that there are many legitimate calls upon the public purse to ensure that other rights that are no less important also receive protection.

[26] Notwithstanding the absence of an empirical measure for the loss, a court in exercising its discretion judicially, must strive to be balanced and even-handed.[7] The court must take care to see that its award is fair to both sides – it must give just compensation to the plaintiff, but it must not pour out largesse from the horn of plenty at the defendant's expense.[8]

[27] In determining the amount to be awarded, it is helpful to have regard to awards made in previous cases. Previous awards serve only as a guide and must not be slavishly followed. The correct approach is to have regard to all the facts of the particular case and determine the quantum of damages based on those facts.[9] Therefore, what other courts have considered to be appropriate awards have no higher value than being useful guides.

[28] When addressing the issue of exorbitant amounts that are being claimed in matters of unlawful arrest and detention, Makaula AJA writing for the court in *Diljan v Minister of Police*[10] was very emphatic and stated that the court was urged by Counsel for the appellant to have regard to past awards in assessing the appropriate amount to be awarded. The court was referred to the judgment of Lopes J in *Khedama v The Minister of Police*.[11] The plaintiff in that matter had been arrested and detained for 9 days and had issued summons claiming R1 000 000. In *Khedama*, the court had regard to the appalling conditions in the country's detention facilities, such as lack of water, blocked toilets, dirty and smelling blankets, sleeping on the cement floor, bad quality of food, and lack of sleep. Having considered various heads of damages,

---

[7] *Motsaathebe v Minister of Police* [2024] ZANWHC 8 para 20.
[8] *Pitt v Economic Insurance Co Limited* 1957 (3) 284 (D) at 287E.
[9] *Seymour* at fn 6 above para 17.
[10] *Diljan v Minister of Police* [2022] ZASCA 103 paras 14 and 15.
[11] *Khedama v The Minister of Police* 2022 JDR 0128 (KZD).

Lopes J awarded damages in the total of R1 760 000. However, due to the amount claimed having been limited to R1 000 000, the latter amount was awarded.

[29] On appeal to the full court, the amount awarded by Lopes J was reduced to the sum of R350 000. Aggrieved by the decision, the appellant appealed to the Supreme Court of Appeal[12] and it ordered the defendant to pay damages in the sum of R580 000 arising from the unlawful arrest and detention. The court in *Diljan*[13] went on to state that:

> "[18] The acceptable method of assessing damages includes the evaluation of the plaintiff's personal circumstances; the manner of the arrest; the duration of the detention; the degree of humiliation which encompasses the aggrieved party's reputation and standing in the community; deprivation of liberty; and other relevant factors peculiar to the case under consideration.
>
> [20] A word has to be said about the progressively exorbitant amounts that are claimed by litigants lately in comparable cases and sometimes awarded lavishly by our courts. Legal practitioners should exercise caution not to lend credence to the incredible practice of claiming unsubstantiated and excessive amounts in the particulars of claim. Amounts … should not be 'thumb-sucked' without due regard to the facts and circumstances of a particular case."

[30] Although the facts in the matter before me seem to be similar to those in *Khedama*, the amount awarded in *Khedama* would be excessive considering the personal circumstances of the Plaintiff, the manner of arrest, the degree of humiliation and his standing in the community. The assessment of damages is not based solely on the duration of the detention; rather, it gives weight to the overall treatment of the detainee.

[31] The Plaintiff's account of the arrest does not seem to be accurate. Sergeant Prinsloo had the advantage of reading through the case docket. There is no reason not to accept his version that the Plaintiff was arrested with 22 others. It is inexplicable why the Plaintiff and other arrestees would have been in possession of similar

[12] *Khedama v The Minister of Police* [2025] ZASCA 79.
[13] *Diljan* at fn 10 above paras 18 and 20.

equipment when, in fact, it was only the Plaintiff and two of his friends who were arrested whilst collecting firewood.

[32] In his particulars of claim, the Plaintiff pleaded that he was arrested for the offence of trespassing, which entitled him to be released on bail in terms of section 59 of the Criminal Procedure Act. This cannot be correct. The evidence of the Defendant that the Plaintiff was arrested for trespassing and attempted theft of gold-bearing material was not disputed. His initial version was that he was not offered food whilst in police custody. He later adjusted his version to say he was given food but could not eat due to the condition of the cell. The Plaintiff's evidence has to be approached with caution. In as much as this Court has accepted that the Plaintiff was arrested, this Court is alive to the fact that his account of events was susceptible to the embellishment of his ordeal.

[33] It remains to be determined whether the harm associated with the Plaintiff's detention following his first appearance in court to the date of his release on bail on 10 February 2020, can be attributed to the unlawful arrest by the police.

[34] As stated in his particulars of claim, the Plaintiff seeks to hold the Defendant liable for the entire period of his detention. His contention is that the police wrongfully failed to release him on bail at Barberton Police Station. There is also suggestion in the Particulars of Claim that the investigating officer, Sergeant Prinsloo, refused him being released on bail on the basis that he was a foreign national who was not a holder of a valid passport. This was vehemently denied by Sergeant Prinsloo, who testified that following the arrest of the Plaintiff and 22 others, the matter was postponed to allow him to gather detailed bail information, including confirmation of the residential addresses of the arrestees.

[35] This appears to be a responsible and pragmatic approach by the investigating officer. He clearly took the necessary steps to place all relevant information before the Magistrate in order to allow for a decision to be made regarding bail. There is no reason not to accept the evidence of Sergeant Prinsloo on this aspect. There is no evidence that he gave false information to the court. The matter was postponed for 7 days, and the very next week the Plaintiff was granted bail in the sum of R1 500.

[36] What needs to be considered is whether the deprivation of liberty following an order by a Magistrate was lawful. Regard has been had to the manner in which the remand order was made. In as much as the continued detention of a detainee pursuant to an order of court may be lawful, even though detention followed from an unlawful arrest, it does not, however, mean that every remand in terms of section 50(1) renders further detention lawful.

[37] The Constitutional Court in *De Klerk v Minister of Police* [14] when dealing with the test for legal causation stated that, ultimately, the test for legal causation, while infused with constitutional considerations, must remain flexible and fact-sensitive. There must be times when the police must be liable notwithstanding the persuasive separation of power considerations. A reasonable arresting officer in the circumstances may well have foreseen the possibility that, pursuant to an unlawful arrest, the arrested person would routinely be remanded in custody after their first appearance.[15]

[38] Similarly, Sergeant Moya must have foreseen that harm may arise from routine postponements after the Plaintiff's first appearance in court. The subsequent detention of the Plaintiff after his first appearance was a consequence of his unlawful arrest by the arresting officer. He reconciled himself with such knowledge when he proceeded to arrest him. Sergeant Moya must have known that with the Plaintiff appearing with 22 other arrestees, the court would not have released him at his first appearance. It is therefore reasonable, fair and just to hold the Defendant liable for the entire period.

[39] The Plaintiff testified to the conditions in police cells for the two days he spent thereat. He stated that the ablution facility was not functioning. Having considered the evidence led and comparable awards, the decline in the value of money, and not forgetting what was stated in *Diljan*[16] regarding progressively exorbitant amounts that are claimed by litigants lately in comparable cases and sometimes awarded lavishly by our courts, I consider an award of R200 000.

---

[14] *De Klerk v Minister of Police* [2019] ZACC 32 para 75.
[15] Ibid para 76.
[16] *Diljan* at fn 10 above.

Costs

[40] There is no reason to deviate from the general principle that costs follow the result. Costs should be awarded in favour of the Plaintiff as there is no basis that warrants deviation from the trite principle applicable.

Order

[41] In the result, the following order is made:

1 The Defendant is ordered to pay the Plaintiff an amount of R200 000 together with interest at the prescribed rate from the date of judgment to the date of payment.

2 The Defendant is to pay the costs of the suit on a party and party basis and on the Magistrates' Court scale

[redacted]

M R MOLELEKI

ACTING JUDGE OF THE HIGH COURT

MPUMALANGA, MBOMBELA

Appearances

For the Plaintiff:	Mr. I.S Phiri Masinga SD Attorneys Inc 39 Brown Street Nelbro Building 1st Floor, Office No. 5 Mbombela
For the Defendant:	Mr. B. Mashele 52 Samora Machel Drive R104 West Acres 3rd Floor, West Wing Administration Block Mpumalanga High Court Building Mbombela
Matter heard on:	30 April 2025
Judgment delivered on:	20 June 2025