Reportable:	YES/**NO**
Circulate to Judges:	YES/**NO**
Circulate to Magistrates:	YES/**NO**
Circulate to Regional Magistrates:	YES/**NO**

IN THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION, MAHIKENG

CASE NO.: **1634/2023**

In the matter between:

SERAME PETRUS TIKOE **PLAINTIFF**

And

MINISTER OF POLICE **DEFENDANT**

CORAM: MASIKE AJ

ORDER

(i) The defendant is liable for 100% of the plaintiff's proven damages.

(ii) The defendant is ordered to pay the plaintiff an amount of R 850 000.00 (Eight Hundred and Fifty Thousand Rands) in respect of the unlawful arrest and detention of the plaintiff from 1 September 2022 to 15 February 2023.

(iii) The defendant is ordered to pay interest on the amount referred to in paragraph (ii) above at the prescribed rate, same to be calculated from the date of service of the summons on the defendant to date of final payment.

(iv) The defendant is ordered to pay the costs of suit on a party and party scale, including costs of counsel on Scale "B".

JUDGMENT

MASIKE AJ

INTRODUCTION

[1] On 21 January 2025, this matter sat before this Court for trial for unlawful arrest and detention. The matter was set down for hearing on both merits and quantum. On that day, an application was made by counsel for the defendant for postponement of the matter to enable the defendant to amend its plea.

[2] The Court granted the application for postponement and indicated that it would case manage the matter. Time frames were set for the defendant to serve its notice of intention to amend, for the plaintiff to oppose the intended amendment should he so wish, for the defendant to affect the amendment or bring an application for leave to amend. A date for the hearing of the application for leave to amend was indicated and the trial in this matter was postponed to 4 March 2025.

[3] On the morning of 4 March 2025, the Court was informed that on 28 January 2025, the defendant made a written settlement proposal in terms of rule 34(1) and (5) of the Uniform Rules of the High Court (the rules) which was served on the attorneys of the plaintiff on 29 January 2025.

[4] The Court was informed on 4 March 2025 by counsel for the plaintiff and counsel for the defendant that the plaintiff accepted the settlement offer.

[5] Rule 34(1) reads as follows:

"(1) In any action in which a sum of money is claimed, either alone or with any other relief, the defendant may at any time unconditionally or without prejudice make a written offer to settle the plaintiff's claim. Such offer shall be signed either by the defendant himself or by his attorney if the latter has been authorised thereto in writing."

[6] Rule 34(5) reads as follows:

"(5) Notice of any offer or tender in terms of this rule shall be given to all parties to the action and shall state—

(a) whether the same is unconditional or without prejudice as an offer of settlement;

(b) whether it is accompanied by an offer to pay all or only part of the costs of the party to whom the offer or tender is made, and further that it shall be subject to such conditions as may be stated therein;

(c) whether the offer or tender is made by way of settlement of both claim and costs or of the claim only;

(d) whether the defendant disclaims liability for the payment of costs or for part thereof, in which case the reasons for such disclaimer shall

be given, and the action may then be set down on the question of costs alone."

[7] The rule 34(1) and (5) notice which was served on the attorney of the defendant on 29 January 2025, reads as follows:

"1. The Defendant concedes 100% merits in favour of the Plaintiff's proven damages;

2. The issue of quantum to be dealt within on the 4th of March 2025; and

3. Costs to be cost in the cause."

[8] The Court was satisfied that the issue of merits had been settled between the parties and the trial on quantum was heard on 4 March 2025. The evidence of the plaintiff was led on the question of quantum.

EVIDENCE OF THE PLAINTIFF

[9] The plaintiff, Mr. Serame Petrus Tikoe, a 39 year old male person testified that on the afternoon of 1 September 2022 at around 16H00, he was at Potchefstroom town on his way to the butcher. A male police officer whom the plaintiff would later come to know as Myburgh stopped the plaintiff and told him he wanted to talk to him.

[10] Myburgh was wearing the prescribed uniform of members of the South African Police Services (SAPS). Myburgh took the plaintiff's

hands and held them behind the plaintiffs back, pushed the plaintiff to the ground and handcuffed the plaintiff.

[11] Myburgh called for backup and two members of SAPS whose names and ranks are to the plaintiff unknown arrived on the scene. Myburgh instructed the two officers to open the back of the police bakkie and the plaintiff was pushed into the back of the bakkie. The plaintiff was alone in the back of the bakkie, and he remained handcuffed. The arrest of the plaintiff was affected in the presence of members of the public whose names and further particulars are to the plaintiff unknown.

[12] Plaintiff was driven to the Potchefstroom police station and at the police station, Myburgh told the plaintiff that he was charging him for the offence of armed robbery and possession of ammunition. The plaintiff was given a notice of rights and taken to the cells of the police station.

[13] On 5 September 2022, Sergent DC Mokoena charged the plaintiff. The plaintiff was not informed of the reason for being charged or when the alleged offence was committed. The plaintiff was taken to court on 5 September 2022. The matter was postponed. On 14 September 2022, the plaintiff was taken for an identity parade. On 15 September 2022, the plaintiff was taken to Bougroep prison where he remained in custody until 15 February 2023. On 15 February 2023, the plaintiff was released on bail.

[14] The police cells at Potchefstroom police station were small. There were about 20 people in the cell and the plaintiff knew none of them. The plaintiff could not bathe for a period of 5 days because there was no water in the cell. There was also no water in the toilet. If you wanted water, you had to ask the police officers to bring you water.

[15] The blankets at the Potchefstroom police station cells were filthy. The plaintiff was placed in a cell with members of a gang. The members of the gang would take the plaintiffs' food. The food consisted of tea and two slices of bread. The plaintiff did not have any visitors at Potchefstroom police station because his family members did not know he was arrested.

[16] At Bougroep prison, there were 45 people in a cell. Each of the people in the cell slept on a bed. They were given two slices of bread, porridge and tea in the morning. At around 13H00 they were given pap and a peace of bone, the plaintiff emphasized it was literally a bone with no meat.

[17] At Bougroep prison the plaintiff was put in a cell with gang members. The plaintiff saw people being raped in the cell. When the plaintiff had visitors and they gave him cigarettes, the plaintiff would give the cigarettes to the members of the gang. This was for protection from the gang members.

[18] At the time of the arrest of the plaintiff, the plaintiff had a girlfriend who was pregnant. The plaintiff's girlfriend lost the baby. The plaintiff

believes his girlfriend lost the baby because he was not there to support her. The plaintiff was not convicted of the offence he was charged with.

[19] Under cross examination the plaintiff conceded that at his first appearance in court he did not apply to be released on bail. On the day the identity parade was held the plaintiff was represented by a legal representative and the legal representative of the plaintiff advised the plaintiff to wait until they obtained the contents of the docket before applying for bail.

[20] The plaintiff testified that he did not report to the SAPS members at Potchefstroom police station that the members of the gang were taking his food because the gang members would have fought with him.

[21] The plaintiff closed his case without calling further witnesses and the Defendant closed its case without calling any witnesses.

THE LAW

[22] In the matter of *Minister of Safety and Security v Tyulu* 2009 (5) SA (SCA) at para 26, the Supreme Court of Appeal held 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. However our courts should

be astute to ensure that the awards they make for such infractions reflect the importance of the right to personal liberty and the seriousness with which any arbitrary deprivation of personal liberty is viewed in our law. I readily concede that it is impossible to determine an award of damages for this kind of injuria with any kind of mathematical accuracy. Although it is always helpful to have regard to awards made in previous cases to serve as a guide, such an approach if slavishly followed can prove to be treacherous. 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 (Minister of Safety and Security v Seymour 2006 (6) SA 320 (SCA) 325 para 17; Rudolph & others v Minister of Safety and Security & others (380/2008) [2009] ZASCA 39 (31 March 2009) (paras 26-29)."

[23] In *Protea Assurance Co Ltd v Lamb* 1971 (1) SA 530 (A) at page 535G – 536B the appellate division held as follows:

"It should be emphasised, however, that this process of comparison does not take the form of a meticulous examination of awards made in other cases in order to fix the amount of compensation; nor should the process be allowed so to dominate the enquiry as to become a fetter upon the Court's general discretion in such matters. Comparable cases, when available, should rather be used to afford some guidance, in a general way, towards assisting the Court in arriving at an award which is not substantially out of general accord with previous awards in broadly similar cases, regard being had to all the factors which are considered to be relevant in the assessment of general damages. At the same time it may be permissible, in an appropriate case, to test any assessment arrived at upon this basis by reference to the general pattern of previous awards in cases where the injuries and their sequelae may have been either more serious or less than those in the case under consideration." (my emphasis)

[24] In *Pitt v Economic Insurance Co Ltd* 1957 (3) SA 284 (N) at page 287E the court held as follows:

"...the Court has to do the best it can with the material available, even if, in the result, its award might be described as an informed guess. I have only to add that the Court must take care to see that its award is fair to both sides - it must give just compensation to the plaintiff, but must not pour our largesse from the horn of plenty at the defendant's expense." (my emphasis)

[25] In *Motladile v Minister of Police* (414/2022) [2023] ZASCA 94 (12 June 2023) at para 17 the Supreme Court of Appeal said the following:

"The assessment of the amount of damages to award a plaintiff who was unlawfully arrested and detained, is not a mechanical exercise that has regard only to the number of days that a plaintiff had spent in detention. Significantly, the duration of the detention is not the only factor that a court must consider in determining what would be fair and reasonable compensation to award. Other factors that a court must take into account would include (a) the circumstances under which the arrest and detention occurred; (b) the presence or absence of improper motive or malice on the part of the defendant; (c) the conduct of the defendant; (d) the nature of the deprivation; (e) the status and standing of the plaintiff; (f) the presence or absence of an apology or satisfactory explanation of the events by the defendant; (g) awards in comparable cases; (h) publicity given to the arrest; (i) the simultaneous invasion of other personality and constitutional rights; and (j) the contributory action or inaction of the plaintiff."

[26] In *Thandani v Minister of Law and Order* 1991 (1) SA 702 (E) at page 707A – B, Van Rensburg J said the following:

"In considering quantum sight must not be lost of the fact that the liberty of the individual is one of the fundamental rights of a man in a free society which should be jealously guarded at all times and there is a duty on our Courts to preserve this right against infringement. Unlawful arrest and detention constitutes a serious inroad into the freedom and the rights of an individual."

[27] In *Olgar v The Minister of Safety and Security* 2008 JDR 1582 (E) at para 16, Jones J remarked as follows:

"In modern South Africa a just award for damages for wrongful arrest and detention should express the importance of the constitutional right to individual freedom, and it should properly take into account the facts of the case, the personal circumstances of the victim, and the nature, extent and degree of the affront to his dignity and his sense of personal worth. These considerations should be tempered with restraint and a proper regard to the value of money, to avoid the notion of an extravagant distribution of wealth from what Holmes J called the 'horn of plenty', at the expense of the defendant."

[28] In *Minister of Safety and Security v Seymour* 2006 (6) SA 320 (SCA) at para 17 the Nugent JA writing for the court wrote as follows:

"The assessment of awards of general damages with reference to awards made in previous cases is fraught with difficulty. The facts of a particular case need to be looked at as a whole and few cases are directly comparable. They are a useful guide to what other courts have considered to be appropriate but they have no higher value than that."

[29] In *Diljan v Minister of Police* (746/2021) [2022] ZASCA 103 (24 June 2022) at para 17 Makaula AJA writing for the court stated the following:

"Thus, a balance should be struck between the award and the injury inflicted. Much as the aggrieved party needs to get the required solatium, the defendant (the Minister in this instance) should not be treated as a 'cash-cow' with infinite resources. The compensation must be fair to both parties, and a fine balance must be carefully struck, cognisant of the fact that the purpose is not to enrich the aggrieved party."

ANALYSIS

[30] The evidence of the plaintiff is uncontested in relation to how Myburgh affected the arrest of the plaintiff. The condition of, and what occurred at the Potchefstroom Police Station cells. The condition of, and what occurred at the Bougroep prison cells.

[31] The picture that the plaintiff has drawn for the Court on the condition of the cells of Potchefstroom police station, Bougroep prison and what occurred therein is horrendous and inhumane. What is further troubling is the way the plaintiff was arrested. In my view, Myburgh had no regard to the plaintiff's rights in terms of section 12(1)(a) of the Constitution of the Republic of South Africa, the very rights Myburgh is expected to protect.

[32] Counsel for the plaintiff submitted that this matter could have been finalized on 21 January 2025, the defendant had filed a bare denial plea and on 21 January 2025, the defendant requested a postponement to amend its plea. Having been granted the opportunity to amend its plea, it did not file a notice of intention to amend its plea. In *Motladile*, the court observed that one of the questions to be considered when considering the assessment of the amount of damages to award a plaintiff, is the conduct of the defendant. In my view, the conduct of the defendant includes the conduct of the defendant in the litigation of the matter.

[33] Counsel for the defendant indicated that after the postponement of the matter on 21 January 2025, consultation was held with the representatives of the defendant and instructions were given to concede the merits. I am troubled by this submission. The defendant has always been represented by the office of the State Attorney, that is from when appearance to defend was entered until when this matter was heard by this Court. Why was a consultation not held earlier with the office of the State Attorney to discuss the merits of the matter and to obtain instructions, the Court will never know.

[34] In determining an appropriate award for damages, counsel for the plaintiff referred the Court to the decision of *July v Minister of Police* (1172/2018) [2024] ZANWHC 99 (8 April 2024) a judgment in which Mfenyana J awarded R 1 050 000.00 for unlawful arrest and detention from 11 July 2015 to 28 January 2016. This amounts to 202 days.

[35] Counsel for the plaintiff further referred the court to the decision of *Motsose v Minister of Police and Another* (814/2016) [2024] ZANWHC 267 (11 October 2024) a judgment in which Morgan AJ awarded R 3 922 500.00 for unlawful arrest and detention and from 15 March 2013 to 26 February 2015. This amounts to 714 days. The award included an award for malicious prosecution. The Honourable Morgan AJ in making the award ordered the Minister of Police to pay 80% of the R 3 922 500.00 and 20% of the R 3 922 500.00 to be paid by the National Prosecuting Authority.

[36] Counsel for the plaintiff has urged the Court to make an award in the amount of R 2 500 000.00 (Two million five hundred thousand rands). The plaintiff in his particulars of claim initially claimed R 3 000 000.00 (Three million rands).

[37] Counsel for the defendant submitted that the plaintiff could have brought a bail application at an earlier stage but did not do so. Counsel for the defendant has urged the Court to make an award in the amount of R 1 500 000.00 (One million five hundred thousand rands).

[38] In arriving at what I consider to be a fair award to both parties, I am mindful of the warning of the Supreme Court of Appeal as contained in *Diljan* at para 20, in which the following is stated:

> " 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 in monetary claims in the particulars of claim should not be 'thumb-sucked' without due regard to the facts and circumstances of a particular case. Practitioners ought to know the reasonable measure of previous awards, which serve as a barometer in quantifying their clients' claims even at the stage of the issue of summons. They are aware, or ought to be, of what can reasonably be claimed based on the principles enunciated above."

[39] In determining quantum, the factors to be considered are the inexcusable circumstances under which the plaintiff was arrested, the appalling circumstances under which the plaintiff was detained, this includes the conditions of the police cells at the Potchefstroom Police

Station which had no water, no water to the toilet and the indignity of the plaintiff not being able to bathe himself for 5 days. The humiliation of having to surrender his food to gang members in the Potchefstroom police station cells.

[40] The trauma that the plaintiff must have experienced when seeing a person being raped in the Bougroep prison cells. The unpalatable food that was given to the plaintiff at Bougroep prison and the mortification of having to secure his protection by paying the gang members at Bougroep prison with cigarettes.

[41] I have considered the past awards from this division of the High Court referred to by counsel for the plaintiff and recent awards made by other courts in comparable cases. I am alive to the *dicta* of Bosielo JA in *Tyulu* that the primary purpose for the award of damages is not to enrich the aggrieved party but to offer him or her some much-needed solatium for his or her injured feelings. I am mindful of the decisions from the Supreme Court of Appeal which caution that past awards are not binding, they are a useful guide to what other courts considered appropriate, but they have no higher value than that. I have considered the steady decline in the value of money and for those reasons I am of the view that an award of R 850 000.00 (Eight Hundred and Fifty Thousand Rands) would be an appropriate award for the plaintiff's unlawful arrest and detention from 1 September 2022 to 15 February 2023.

COSTS

[42] It is a trite principle of our jurisprudence that a successful litigant is entitled to his or her costs and I have found no reason to deviate from this principle.

[43] In arriving at what I consider to be an appropriate award on costs, I have considered that this matter was not complex. The conduct of the defendant in the litigation of the matter and the importance of the matter to the plaintiff.

[44] Resultantly, the following order is made: -

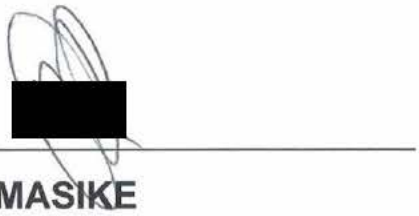
ORDER:

(i) The defendant is liable for 100% of the plaintiff's proven damages.

(ii) The defendant is ordered to pay the plaintiff an amount of R 850 000.00 (Eight Hundred and Fifty Thousand Rands) in respect of unlawful arrest and detention of the plaintiff from 1 September 2022 to 15 February 2023.

(iii) The defendant is ordered to pay interest on the amount referred to in paragraph (ii) above at the prescribed rate, same to be calculated from the date of service of the summons on the defendant to date of final payment.

(iv) The defendant is ordered to pay the costs of suit on a party and party scale, including the costs of counsel on Scale "B".



T MASIKE

ACTING JUDGE OF THE HIGH COURT

NORTH WEST DIVISION, MAHIKENG

APPEARANCES

DATE FOR HEARING : **4 MARCH 2025**

DATE OF JUDGMENT: **15 APRIL 2025**

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