

CASE NO: 14013/2010

In the matter between:

NICOLAAS GEORGE VAN DER WESTHUIZEN

Plaintiff

and

**MINISTER OF SAFETY AND SECURITY
INSPECTOR M D KUTUANE**

**1st Defendant
2nd Defendant**

SUMMARY

KGOMO, J:

This is an application for damages against the Minister of Safety and Security and one Inspector Kutuane (second defendant). The Minister is sued under the doctrine of vicarious liability as the political head and accounting authority of the Department of Safety and Security for the alleged actions of Inspector Kutuane, who in the course and scope of his employment and duties unlawfully arrested (in front of his wife and kids) and detained the applicant (a well-known businessman in the area) when the applicant was clearly not the suspect the police were looking for and as a result also caused the dignity of the applicant to be harmed. Despite having produced his ID and other documentary proof that he was not their suspect, which documents were ridiculed as being fraudulent, he was arrested.

Section 12 of the Constitution gives everyone the right to freedom and security of the person, which includes the right not to be deprived of freedom arbitrarily or without just cause and not to be detained without trial.

In finding the defendants' liable, the court expressed disquiet over the abuse of power by members of the police service. The court disregarded and rubbished the version of the defendant's that the second defendant did not harbour ill-feelings or malice against the applicant. The court drew a negative inference against the second defendant who elected not to testify or in fact refused to testify.

On close examination of the authorities and the quantum awarded by other courts in similar cases the court granted the application and awarded the applicant the amount of R400 000.00 for unlawful arrest and detention and R80 000.00 for defamation. Despite the principle of vicarious liability, the court ordered that the second defendant be personally liable for the costs of the action.