

In the matter between:

**KHANYILE BONGINHLANHLA**

**APPLICANT**

and

**MINISTER OF POLICE**

**DEFENDANT**

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**LEGAL SUMMARY**

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**MADIMA AJ**

The plaintiff, a part-time taxi driver sued the defendant for damages for the amount of R150 000, for unlawful arrest and detention by police officers in the employ of the defendant in the course and scope of their employment with the defendant. The action arose from a vehicle collision that occurred between the minibus taxi driven by the plaintiff and the police vehicle belonging to the defendant and driven by the police officers. The collision occurred at a faulty traffic light. . The defendant argued that the plaintiff was lawfully arrested and detained as he had broken the law by not treating the faulty traffic light as a four way stop and thereby colliding with the vehicle belonging to the defendant. The plaintiff argued- that it was the police officers who did not stop at the intersection.

The court held that the onus was on the defendant to prove that the arrest and detention of the plaintiff were lawful. The police officers brought the plaintiff before a magistrate within 48 hours as required by law. The plaintiff was however not charged. A prosecute certificate was also not presented to the Court. There therefore was no evidence that by arresting and detaining the plaintiff, the police officers had the intention to have him prosecuted.- The plaintiff was released without being charged. The defendant failed to provide the court with the reasons why the accident sketch presented before the Court did not show the second minibus taxi that they allege was also at the intersection. The defendant- also -failed to provide photographs and panel beater report of the accident. The Court held -that the defendant had failed to prove that the arrest and detaining of the plaintiff was lawful.

The plaintiff was awarded damages to an amount of R110 000.00 as proven damages.