REPUBLIC OF SOUTH AFRICA

SOUTH GAUTENG HIGH COURT
JOHANNESBURG

CASE NO: 11/5112

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

24/1/2013
DATE

SIGNATURE

In the matter between:

CYNTHIA TLADI Plaintiff

and

MINISTER OF SAFETY AND SECURITY Defendant

J U D G M E N T

MOSHIDI, J:

INTRODUCTION

[1] Ms Cynthia Tladi, a deputy school principal ("*the plaintiff*"), has instituted action against the defendant for damages for unlawful arrest and

unlawful detention as a result of an incident that occurred on Saturday 9 October 2010.

[2] The evidence led at the trial can conveniently be categorised into two separate incidents. The first incident, which has less relevance to the issues to be determined in this trial, occurred along Von Weilligh Street (between President and Kruis Streets, Johannesburg), on 9 October 2010 during the course of the morning, shortly after 10h00 ("*the first scene*"). The second set of events occurred later that day and the following day, i.e. 10 October 2010 at the Johannesburg Central Police Station ("*the second scene*").

[3] In this trial, the Court is called upon to determine both the plaintiff's claims on the merits as well as the quantum of damages. There was no separation of issues in terms of Uniform rule 33(4). At the commencement of the trial, the plaintiff amended her particulars of claim by deleting the claim in respect of special damages based on the alleged bail amount of R1 000,00 paid to secure her release. The amendment was later granted without any opposition from the defendant.

THE COMMON CAUSE FACTS

[4] The following are common cause facts, or not seriously disputed: At the first scene, the plaintiff, accompanied in her motor vehicle by her nephew, Mr Lawrence Mosawa Makgotho ("*Lawrence*"), parked her motor vehicle illegally outside a friend's internet café. This, after she had circled the street

block several times without finding proper parking. The reason for the visit to the internet café was to offload some cold drinks and sweets ordered by the owner. Von Weilligh Street consisted of two lanes for traffic travelling in each direction, i.e. North and South and *vice versa*. As it was a Saturday morning, according to the defendant's witnesses traffic was fairly busy. The plaintiff unconvincingly disputed this.

[5] Whilst Lawrence was in the process of offloading the goods mentioned into the internet café, the plaintiff remained seated behind the steering wheel of her motor vehicle. Soon thereafter, the police arrived in a marked Quantum motor vehicle and stopped slightly in front of the plaintiff's motor vehicle. A female Metro Police officer in full uniform ("*Tebogo Manakana*"), approached the plaintiff about the manner in which the plaintiff's motor vehicle was parked. There ensued a verbal confrontation between the two ladies, which attracted spectators. In evidence the plaintiff alleged that Tebogo Manakana refused to provide any reason for issuing a traffic fine against her. On the other hand, Tebogo Manakana contended that the plaintiff was initially abusive, uncooperative and boasted about her status as a deputy school principal, and was in fact given the reason for the traffic fine.

[6] As a result of the confrontation, Warrant Officer L L Nube ("*Nube*"), alighted from the police vehicle and intervened. Again, there ensued a verbal exchange of words between plaintiff and Nube. This time the confrontation escalated to such an extent that, according to Nube, he had to call for police

backup. The situation became out of control and physical when Lawrence also intervened on behalf of the plaintiff.

[7] The police backup of about six policemen arrived but they left soon thereafter. The upshot was that the plaintiff was finally issued with a traffic fine for the illegal parking of her motor vehicle. The fine was in the amount of R500,00. The plaintiff was left behind at the scene. Lawrence, for his troubles, was arrested and bundled into the police motor vehicle by Nube and other police officers and taken to the Johannesburg Central Police Station. There he was charged with interfering with police duties, resisting arrest, assault and intimidation.

THE EVENTS AT THE JOHANNESBURG CENTRAL POLICE STATION

[8] What occurred next led to the second incident. This required a careful factual determination by the Court. Soon after the above events, the plaintiff, accompanied by the owner of the internet café, drove to the Johannesburg Central Station in order to lay charges of alleged harassment and intimidation against the police. She also wanted to establish the reason for the arrest of Lawrence. The charges against the plaintiff, i.e. of intimidation and those against Lawrence, were subsequently withdrawn by the public prosecutor at court on the following Monday. So far for the common cause facts.

[9] I must hasten to point out that the formulation of the particulars of claim as well as the plea, to an extent, was not a model of clarity. However, the defendant quite fairly admitted the arrest and detention of the plaintiff from about midday on 9 October 2010 to the following day 10 October 2010 in the afternoon. In the end, there was no misunderstanding that a determination had to be made on both these issues.

THE EVIDENCE OF THE PLAINTIFF AND HER WITNESS

[10] The plaintiff testified. She also called as a witness the owner of the internet café, Mr Charles Pierre Bouatcha ("*Mr Bouatcha*"), who testified on the events at both the scenes. In her evidence the plaintiff conceded that she had parked her motor vehicle illegally at the first scene for which she was issued with a traffic fine for obstructing traffic. The only difference in the evidence of the plaintiff and Mr Bouatcha, on the one hand, and that of the defendant's witnesses on the other hand, was the issue whether or not the plaintiff was informed of the reason for the traffic infringement. The plaintiff contended that she was never given the reason for the traffic fine by the traffic officer, Manakana. The plaintiff also denied that there was traffic which had jammed up behind her motor vehicle that Saturday morning. As Manakana was admittedly in full traffic uniform at the time, and that the plaintiff had had previous encounters with traffic violations, as a motorist, it was highly improbable that the plaintiff could not have known why the traffic fine was issued. The plaintiff was undoubtedly argumentative, stubborn and boastful of her status as an educated person and deputy school principal at the first

scene. It is, however, unnecessary to make any definitive finding on these issues.

[11] Indeed, the *crux* of the matter is what transpired at the second scene. This entails essentially a factual adjudication on the evidence presented. In this regard the plaintiff's evidence came to the following: From the first scene she and Mr Bouatcha drove to the second scene mainly for two reasons. The first was to find out the nature and the reason of the charges against Lawrence. The second reason was to lay charges of harassment against the police as a result of the events at the first scene. On arrival at the second scene the pair joined the queue at the Client Services Centre ("*CSC*"). When it was her turn to be served, the plaintiff observed Lawrence in the company of Manakana and Nube walking at the back of the police reception area. She told the police official serving her that she was there in connection with that matter of Lawrence.

[12] What followed showed a sharp contrast in the versions of the plaintiff, Mr Bouatcha and that of the police officials. According to the plaintiff, Nube instructed the police official serving her that the plaintiff should proceed to where Nube was at the back of the CSC. Nube then took the plaintiff to a back office where Lawrence was. Nube then proceeded to say to her, "... *Listen ma'am I just want to inform you that you are now under arrest*". No reasons were given for the arrest even when she was placed in a cell that night. Her rights were not read to her. She only became aware of the charges against her on her release. Mr Bouatcha when he testified, confirmed that the

plaintiff was removed from the CSC at the behest of Nube and taken to the back of the police station. He testified about his persistent but unsuccessful attempts to secure the release of the plaintiff the whole afternoon and night of 9 October 2010. He eventually left the police station only at about 04h00 the following morning but returned thereto at about 10h00.

[13] The plaintiff testified that she was verbally abused by other police officials with comments like she was a powerful woman who earlier required police backup at the first scene but now wanted to be freed. That night she was denied access to a telephone. The very same night the plaintiff was approached by a female police official who suggested the services of a particular lawyer as the only person who could ensure her release. Nube was nowhere to be found. The plaintiff spent the night in the cells. She was only released the following day during the course of the afternoon. In this regard there is a difference between her evidence and that of Mr Bouatcha as to the exact time of her release. However, this was an immaterial difference, in my view. The following Monday i.e. 11 October 2010, the plaintiff appeared in court on charges of intimidation. However, the charges were withdrawn by the public prosecutor.

[14] The exact relationship between the plaintiff and Mr Bouatcha remained unclear throughout the trial. However, it appeared that they were friends for a short period before the incident. He had met the plaintiff at her school when he repaired computers as an IT technician. He also visited the plaintiff at home to fix her personal computer. In the process, he came to know the

plaintiff's children. On the afternoon of 9 October 2010, during the incarceration of the plaintiff, he collected plaintiff's children from a hair salon and took them home. He seemed to care for the plaintiff.

THE EVIDENCE OF INSPECTOR NUBE AND TRAFFIC OFFICER MANAKANA

[15] The evidence of Manakana and Nube stood in stark contrast to that of the plaintiff and her witness relating to the events at the second scene. Their evidence amounted to this: Whilst they were busy with Lawrence, at the back, their attention was drawn to the presence of the plaintiff at the CSC. The plaintiff, in full view of other police officials on duty and members of the public, burst through a door reserved for police officials only. The plaintiff pushed Manakana aside towards the wall, calling her names, and attacked Nube. It is noteworthy that according to Manakana, who was just behind Nube, "*... She came inside there pushing me calling me a bitch in front of everyone. ... While I was busy she started pointing her fists at Nube like this, you, you I am going to kill you, I am going to kill you*". Nube, on his turn, described the situation as follows: "*... She came to me and then she started to bang me on my chest like this with her hand ... and then I informed the police that now this is enough now, I am going to take her and she is going to join her brother there where we are busy processing*".

[16] The version of Manakana and Nube as just described, was not only highly contradictory but also improbable for a number of reasons. In the first

place, whilst Nube asserted that he read to the plaintiff her rights, however, Manakana was emphatic that she in fact did so. Manakana went further to state that it was she who completed and signed the notice of rights in terms of the Constitution on 9 October 2010 at about 12h17 as contained in exhibit "A49" of the bundle. The notice of rights showed that the plaintiff was charged with the offence of intimidation only. There was no mention of assault charges in respect of Nube, nor charges of *crimen injuria* relating to Manakana. Nube said he opened the docket and that he was the complainant. This explained the reason why Mr Bouatcha, with the help of the police, could not trace the complainant's name on the computer late on Saturday evening, i.e. 9 October 2010. In addition, in his statement dated 9 October 2010 exhibit "A72", Nube made no mention at all of the attack on him by the plaintiff at the second scene.

[17] In addition, and more intriguing was Nube's evidence that there was initially no intention to arrest the plaintiff even at the police station but the police later had no option but to carry out the arrest. What is more improbable in the versions of Manakana and Nube is that the plaintiff, in full view of other police officers on duty at the CSC and members of the public, pushed and insulted Manakana and assaulted Nube. This was a Saturday midday. The evidence of Nube that the plaintiff uttered the words constituting intimidation only once the plaintiff had been removed from the CSC and taken to the backroom where Lawrence was, was difficult to understand. It can only imply that Nube had already made up his mind to arrest the plaintiff before she allegedly uttered the threats. Nube's evidence that there were at the time no

police officers at the CSC was contradicted by Manakana. Nube's evidence plainly contradicted the contents of his arresting statement, exhibit "A72"-"A74". The statement was strangely commissioned by Manakana whilst the latter's statement was commissioned by a different police official.

[18] The overall impression was that Nube, now a police lieutenant, was over-zealous, argumentative, talkative, and evasive as a witness. He was warned by the Court not to answer questions put in cross-examination by asking questions. He clearly had tremendous influence over Manakana so much so that at some stage, she took over matters at the police station, including on her version, to read the rights of the plaintiff and commissioning Nube's statement.

[19] The conduct of Nube subsequent to the arrest and detention of the plaintiff and the formal withdrawal of the charges, was highly questionable, as pointed out later hereafter. On the other hand, Mr Bouatcha, who testified for the plaintiff made a good impression. He was truthful and credible. This, in spite of his limited knowledge of the English language. He was concerned, not only about the plaintiff's well-being on 9 October 2010, but also about her children, especially the youngest child who suffered from asthma. His evidence on how he engaged various police officials, including the station commander, to secure the release of the plaintiff, was largely unchallenged. He was sent from pillar to post in his unsuccessful endeavours. He virtually slept at the police station.

THE CONDUCT OF ATTORNEY MR MOFOKENG

[20] What is disturbing in the evidence of Mr Bouatcha was his involvement with an attorney called Mr Mofokeng. The latter was recommended to him by the police officials on duty as the only lawyer who could secure the release of the plaintiff. Out of desperation, Mr Bouatcha telephoned Mr Mofokeng from the police station. He could only meet Mr Bouatcha the following morning, Sunday 10 October 2010 at about 10h00. The meeting materialised. Mr Bouatcha was quoted a fee of between R3 000/R3 500 payable in advance, which he did. However, Mr Mofokeng disappeared for lunch as early as midday and only returned in the course of the afternoon. The plaintiff was released, not on bail, but on a warning to appear in court as apparently authorised by the station commander on the previous day already.

[21] In his evidence, Nube could not dispute the activities of an attorney called Mr Mofokeng operating out of the Johannesburg Central Police Station. I say this aspect of the matter is disturbing as it clearly infringes the rights of detained persons, such as the plaintiff, the freedom of choice of legal representation. The plaintiff plainly did not know Mr Mofokeng before.

THE PROVISIONS OF SECTION 40(1)(a) OF THE CRIMINAL PROCEDURE ACT 51 OF 1977 AND SOME APPLICABLE LEGAL PRINCIPLES

[22] In defending the conduct of Nube, the defendant relied on the provisions of sec 40(1)(a) of the Criminal Procedure Act 51 of 1977, the case

of *R v Moloy* 1953 (3) SA 659 (T), as well as the case of *National Employers' Mutual General Insurance Association v Gany* 1931 SA 190 (A) at 199, which deals with the approach by courts to mutually destructive versions.

[23] In the present matter, the arrest and detention of the plaintiff on 9 October 2010 to 10 October 2010 were not in dispute. However, it was argued on behalf of the defendant that the arrest was lawful in the circumstances, and that Nube played no further role in the detention of the plaintiff after the arrest. Section 40(1)(a) provides that a police officer may without warrant arrest any person who commits or attempts to commit any offence in his presence. Much has been written about this provision in decided cases and legal textbooks and journals. Sections 50 and 59 of the Criminal Procedure Act can also be relevant. The issues of arrest and detention are somewhat intertwined (*cf Mahlongwana v Kwatinidubil Town Committee* 1991 (1) SACR 669 (E)).

[24] It is trite that a decision by an arresting officer to arrest and detain is a drastic one, which invades the arrestee's right to liberty and movement as guaranteed in our Constitution. In *Louw v Minister of Safety and Security* 2006 (2) SACR 178 (T) at 185b-c, Bertelsmann J said:

> *"An arrest is a drastic interference with the rights of the individual to freedom of movement and to dignity. In the present past, several statements made by our Courts and academic commentators have underlined that an arrest should only be the last resort as a means of producing an accused person or a suspect in court – Minister of Correctional Services v Tobani 2003 (5) SA 126 (E) [2001] 1 All SA 370 at 371f (All SA):*

> *'So fundamental is the right to personal liberty that the lawfulness or otherwise of a person's detention must be objectively justifiable regardless ... even of whether or not he was aware of the wrongful nature of the detention."*

There must be present a particular factual situation before the peace-officer's powers to arrest without a warrant can come into play. It must be plain that the conduct complained of leading to the arrest is indeed an offence. In *Olivier v Minister of Safety and Security and Another* 2008 (2) SACR 387, Horn J more than adequately examined the authorities on the subject of arrest without a warrant. It is unnecessary to reinvent the will completely.

[25] A close reading of the provisions of sec 40(1)(a) makes it clear that the commission or attempted commission of the offence must take place in the presence of the peace-officer, as alleged by the defendant in the present matter. It is also settled law that before the arrest can be classified as lawful, the arrestor must be aware that he or she has a discretion to arrest, the discretion must be exercised with reference to the particular facts, and it is strongly arguable that the arresting officer should consider using a less drastic measure than arrest in order to bring the suspect before court.

[26] It is also not acceptable for the arresting officer upon deciding to exercise the power to arrest an accused person to do so for ulterior motives, such as to harass, revenge or punish the arrestee. This was the situation faced by Bertelsmann J in *Louw v Minister of Safety and Security (supra)*.

[27] I have already discredited the evidence of Nube, as supported by that of Manakana in the instant matter. There is more criticism to be levelled against the conduct of Nube. He played a pivotal role in the matter as arrestor and complainant. On the undisputed evidence, the events at the first scene occurred at about 10h20. On Nube's version, the plaintiff thereafter arrived at the second scene (police station), after about between 30 and 40 minutes. The plaintiff's evidence was that she arrived at the second scene just after 12h00 midday. This was not disputed. The notice of rights in terms of the Constitution, allegedly completed by Manakana, showed that the plaintiff signed therefor on 9 November 2010 at about 12h17. It is accepted practice that the notice of rights is issued once a decision to arrest and charges have been made and that the accused is placed in the cell. The observation to be made on this evidence is that, by all indications, the plaintiff was summarily arrested by Nube as soon as she arrived at the police station. He alleged that he only told her that she was under arrest when she reached the office in which her nephew, Lawrence, was. This, in spite of all the extended altercations at the front, the CSC.

[27] From the above, the only reasonable inference to be made was that Nube was all and all out to punish, harass and revenge for the plaintiff's conduct at the first scene. The undisputed evidence was that every other police official taunted and teased the plaintiff for having been the powerful and educated person that required police backup, but now wanted to be released from custody. After the arrest, Nube left matters to Manakana, a traffic officer and other uninvolved police officers. He simply became unavailable. This in

spite of the credible evidence of Mr Bouatcha that he held a discussion with Nube outside the police station later that afternoon to enquire about the plight of the plaintiff.

[28] The fingerprints of the plaintiff and the warning statement to appear in court on the Monday were only attended to the next day i.e. Sunday afternoon. In cross-examination, Nube was driven to concede that upon arresting the plaintiff he never considered whether the plaintiff was capable of absconding and therefore not stand her trial. He also conceded that the charge of intimidation preferred against the plaintiff, as well as the charges against Lawrence, were all defined incorrectly on the front part of the docket as having been committed allegedly at the first scene.

[29] In almost similar circumstances as in the present matter, my Brother Willis J, in *Mvu v Minister of Safety and Security* 2009 (6) SA 82 (GSJ) had to consider the situation where an accused person was detained following a lawful arrest. In that case the plaintiff himself was an inspector in the South African Police Service. He was charged with malicious damage to property relating to his daughters' cellphones. On being telephoned by the investigating officer based at the Moroka Police Station, the plaintiff immediately travelled there for a meeting. However, the plaintiff was immediately arrested, incarcerated overnight in a cell with six other males. The next day in the magistrate's court, plaintiff was released on warning. When the matter later returned to court, the plaintiff was found not guilty and discharged at the close of the state's case. The plaintiff later claimed

damages in the High Court for unlawful arrest and unlawful detention. In finally awarding damages to the plaintiff in the sum of R30 000,00 (Thirty Thousand Rand) for unlawful detention, Willis J, accepting that the arrest was lawful, at para [10] of the judgment said:

> "*In Hofmeyr v Minister of Justice and Another King J, as he then was, held that even where an arrest is lawful, a police officer must apply his mind to the arrestee's detention and the circumstances relating thereto, and that the failure by a police officer properly to do so is unlawful. The minister's appeal was unanimously dismissed by what was then known as the Appellate Division of the Supreme Court. It seems to me that, if a police officer must apply his or her mind to the circumstances relating to a person's detention, this includes applying his or her mind to the question of whether detention is necessary at all. This, it seems to me, and in my very respectful opinion, enables one to get a better grip on an issue which has been debated in the law reports in recent cases such as Minister of Correctional Services v Tobani; Ralekwa v Minister of Safety and Security; Louw v Minister of Safety and Security and Others; Charles v Minister of Safety and Security; Olivier v Minister of Safety and Security; and Van Rensburg v City of Johannesburg.*" (footnotes omitted).

See also *Minister of Safety and Security v Tyulu* 2009 (5) SA 85 (SCA), where it was held, *inter alia*, at para [22] that the respondent's arrest without a warrant for being drunk in public was not justified by sec 40(1)(a).

[30] In my view, what occurred in the above decided cases, except for the arrest in the *Mvu* case, is precisely what occurred in the instant matter. From the first scene Nube and Manakana knew that the plaintiff was a teacher. The plaintiff provided her personal particulars and driver's licence to Manakana when the traffic fine was issued. Nube's assertion that he only became aware at the second scene that the plaintiff was in fact a deputy school principal, made no difference at all. The fact of the matter was that the plaintiff had fixed

employment and an address and could hardly be said to be capable of absconding. In this regard, the Investigation Diary, exhibit "A75", showed that the plaintiff's address had been confirmed by the police in the course of the morning on 10 October 2010. A warning for the plaintiff to appear in court on the Monday i.e. 11 October 2010, as indeed authorised by the station commander on 9 October 2010 already, and subsequently in fact issued on Sunday 10 October 2010, would have adequately served the interests of justice. See *Tsose v Minister of Justice and Others* 1951 (3) SA 10 (A) at 17H and *Minister of Safety and Security v Sekhoto and Another* 2011 (1) SACR 315 (SCA). Nube was simply obsessed with revenge and having the plaintiff arrested and detained at all cost. He considered nothing else. He conceded this. In *Louw v Minister of Safety and Security (supra)*, at 187d-e, it was stated that:

> *"What these statements mean is that the police are obliged to consider, in each case when a charge had been laid for which a suspect might be arrested, whether there are no less invasive options to bring the suspect before the court than an immediate detention of the person concerned. If there is no reasonable apprehension that the suspect will abscond, or fail to appear in court if a warrant is first obtained for his/her arrest, or a notice or summons to appear in court is obtained, then it is constitutionally untenable to exercise the power to arrest."*

Indeed, sec 12(1) of the Bill of Rights guarantees the right to freedom and security of the person, whilst sec 35(1)(f) guarantees the right to be released from detention if the interests of justice permit, subject to reasonable conditions.

THE DEFENDANT'S CONTENTIONS

[31] The reliance by counsel for the defendant on *R v Moloy (supra)* at 662E, for the proposition that the eventual conviction or acquittal of a person arrested is not itself proof that the arrest was lawful or unlawful, does not, in my view, take the matter any further. Each case must be decided on its own particular facts. This much is trite. For example, in that case the accused was charged with several counts, including trespassing upon private property; escaping from custody; and pointing a firearm at the police, for which he was convicted. The main alleged offence of trespassing was not committed in the presence of the arresting police officer. Incidentally, the Court finally set aside all the convictions on the ground that the arrest was unlawful. In the instant matter, the plaintiff was not prosecuted and convicted or acquitted. The single charge of intimidation was merely withdrawn by the public prosecutor at court.

CONCLUSION ON THE MUTUALLY DESTRUCTIVE VERSIONS

[32] I must make it clear that based on the above finding, the evidence of Nube, as supported by that of Manakana, on the arrest of the plaintiff, qualified to be rejected on the probabilities, for the reasons advanced earlier in the judgment. Manakana was plainly acting under the influence and spell of Nube. It was improbable. On the contrary, I accepted the evidence of the plaintiff, as supported by Mr Bouatcha on how the plaintiff was arrested. This, I did in spite of the plaintiff's palpable streak of arrogance and boastfulness of her status as an educated person and deputy school principal. This, however,

did not justify the conduct of Nube. The issue of the mutually destructive versions, as argued by the defendant on the basis of *National Employers' Mutual General Insurance Association (supra)*, must be decided in favour of the plaintiff. The probabilities favour the plaintiff's version, especially if regard is had to the technique in resolving factual disputes as enunciated in, amongst others, *SFW Group Ltd and Another v Martell ET CIE and Others* 2003 (1) SA 11 (SCA) at para [5]. It was highly improbable in the circumstances of the present matter for the plaintiff to have invaded a police station, a busy one for that matter, and committed the acts alleged. This, in full view of other police officers on duty on a Saturday afternoon.

THE FURTHER INTRIGUING CONDUCT OF INSPECTOR L L NUBE

[33] The conduct of Nube truly did not end to fascinate and intrigue even after the charge of intimidation against the plaintiff was withdrawn. On his version, this was a serious charge which warranted the instant arrest of the plaintiff. He had had enough of the plaintiff when he took the decision to arrest her, on his version. However, in spite hereof, and that he was the complainant, he never followed up the matter by finding out from the public prosecutor why the charge was withdrawn against the plaintiff. This was unbecoming and unusual conduct on his part as a senior police official. The same can be said of Nube's assertion that after the arrest of the plaintiff, he had no further involvement in her continued detention. The defendant has failed dismally to justify the arrest and detention of the plaintiff. She is entitled to her proven damages.

THE PLAINTIFF'S QUANTUM OF DAMAGES

[34] I deal with the plaintiff's quantum of damages. Different and opposing submissions were made in this regard. The undisputed facts revealed the following: The plaintiff, aged about 48 at the time, was a single mother of four children and employed as a deputy school principal. She had been a teacher for over 20 years. She went to the police station at about midday on 9 October 2010 but was arrested and detained until after lunch time on the following day, Sunday 10 October 2010. She spent the night in a single cell with one toilet and with five other inmates, some of whom were facing fraud and theft charges. She was not given food during her incarceration. At some stage of the evening on Saturday, she was denied the use of a telephone. She was virtually compelled to utilise the services of the police favoured attorney, Mr Mofokeng. The youngest child required treatment for asthma. The plaintiff was humiliated by other police officials. She was finally released on warning in the course of the afternoon of 10 October 2010.

[35] In the particulars of claim, as amended, the plaintiff has claimed the sum of R179 000,00 as damages for unlawful arrest and detention. The plaintiff was effectively in detention for just over 24 hours. As the exact determination of this kind of damages is often problematic and a difficult task, it is sometimes instructive to have regard to past awards, especially in comparable cases. In *Minister of Safety and Security v Seymour* 2006 (6) SA 320 (SCA), the respondent was unlawfully arrested and detained by the State for a period of five (5) days. In an action for damages, he was awarded

general damages of R500 000,00 by the Gauteng South High Court. The respondent was 63 years old on his detention, and a managing director of a company. The Court upheld the appeal and reduced the award to R90 000,00. In *Minister of Safety and Security v Tyulu (supra)*, the respondent, a 48 year old magistrate, was unlawfully arrested and detained on a Friday night on a charge of drunken driving. He was released on his own recognisance the following day. The full bench of the High Court, after carefully considering the amount of damages awarded and comparing it with previous comparable cases, reduced the trial court's award of R280 000,00 to R50 000,00. On appeal, the Court reduced the award to R15 000,00. In *Mvu v Minister of Safety and Security (supra)*, the plaintiff, an inspector in the South African Police Service, was arrested without warrant during the night of 23 September 2004. He was held in custody in the police cells and set free on warning the following day in the afternoon. He had spent the night in the police cells with about six other males, among whom were suspected rapists and robbers. The plaintiff was subsequently found not guilty. As stated earlier in this judgment, the detention was found to be unlawful. In a later action for damages, the Court awarded damages in the amount of R30 000,00.

[36] The facts in the last two mentioned decided cases, were in my view, closer to the facts in the present matter. However, the facts in the present matter revealed two rather worrisome features. These were, firstly, the revengeful conduct of Nube in arresting the plaintiff and detaining her. The second was this. In spite of the station commander's or his deputy's

instruction that the plaintiff be released on warning as early as Saturday (9 October 2010) afternoon, the instruction was ignored by the police officers on duty, and by implication, Nube. The release on warning (SAPS 496), in terms of section 72 of the Criminal Procedure Act 51 of 1977, was only effected at some unspecified time during the course of Sunday 10 October 2010. It must have been in the afternoon as alleged by the plaintiff or even later, on the version of her witness, Mr Bouatcha. Once more, the Investigation Diary did not specify the exact time.

THE FAIR AND JUST AWARD FOR THE PLAINTIFF

[37] From the above decided cases, it appears to me that the amount of R179 000,00 claimed by the plaintiff verged on the side of excessiveness and unreasonableness. It however remained a discretionary matter having regard to all the circumstances presented. The arrogant nature of the plaintiff alluded to above, which was also partly visible during her testimony, could not be disregarded. It plainly fuelled matters and incensed Nube to act as he did. In my view, a fair and just award for the plaintiff's damages for the unlawful arrest and detention would be, comprehensively, in the region of R25 000,00.

THE DEFENDANT'S COUNSEL'S UNSUBSTANTIATED CONTENTIONS

[38] I must add that I was not impressed at all with counsel for the defendant's veiled, yet contemptuous submission in closing argument that I had descended upon the arena when I questioned the plaintiff about police

cell in which she was detained. This, after the plaintiff had testified that she was unexpectedly placed in a cell at the police station on Saturday night, and told to start looking for blankets. The plaintiff gave no other details about the cell. In re-examination, plaintiff's counsel omitted to canvass the issue further. It was plainly incumbent on the Court to seek clarification in subsequent questioning. There is ample authority for the proposition that a trial, as the present one, is not a game of tricks. The purpose is to establish the truth within the confines of the rules of procedure. It was the ultimate responsibility of the Court, and the Court only, to determine the extent of the plaintiff's damages in the event of her proving her case. The submission was therefore ludicrous and ignored the role of a trial court.

THE COSTS

[39] I deal with the question of costs. There was no reason advanced at all why the costs should not follow the result. The only sensible argument advanced by the defendant's counsel in this regard was that the plaintiff's quantum of damages claim fell within the jurisdiction of the magistrate's court scale. With this submission I agree. The plaintiff is only entitled to the costs on the opposed magistrate's court scale.

THE ALLEGED CONDUCT OF ATTORNEY MR MOFOKENG

[40] I also deem it necessary that a copy of the judgment be transcribed by the registrar of this High Court and to be dispatched immediately to the

Station Commander at the Johannesburg Police Station in order to investigate and report to this Court on the alleged activities of attorney, Mr Mofokeng, at the police station as described by Mr Bouatcha in the body of this judgment. The station commander is hereby called upon to report in writing to this Court within ninety (90) days from the date of receipt of this judgment.

ORDER

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

1. The defendant is ordered to pay to the plaintiff the sum of R25 000,00 (Twenty Five Thousand Rand).

2. Interest on the aforesaid sum at the prescribed rate of interest from the date of judgment to date of payment.

3. Costs of suit on the magistrate's court scale as between party and party.

4. The Registrar of this Court is ordered to transcribe a copy of this judgment urgently, and to forward a copy thereof (duly edited and signed by this Court) to the Station Commander at the Johannesburg Central Police Station with the request to report in writing to this Court as embodied in the judgment.

D S S MOSHIDI
JUDGE OF THE SOUTH GAUTENG
HIGH COURT, JOHANNESBURG

COUNSEL FOR THE PLAINTIFF	A M MTEMBU
INSTRUCTED BY	MKHABELA ATTORNEYS INC
COUNSEL FOR THE DEFENDANT	MS N MAKOPO
INSTRUCTED BY	THE STATE ATTORNEY
DATE OF HEARING	19 SEPTEMBER 2012
DATE OF JUDGMENT	~~23~~ 24 JANUARY 2013

SUMMARY

Criminal procedure – arrest without warrant – detention of accused by police officer for over 24 hours even after Station Commander had authorised release of accused on warning (SAPS 496) in terms of section 72 of the Criminal Procedure Act 51 of 1977 – arrest and detention unlawful – not in compliance with provisions of section 40(1)(a) of the Criminal Procedure Act 51 of 1977 – arresting officer not applying his mind to personal circumstances of accused, a deputy school principal – that she was not a flight risk – accused degraded by other police officials – delictual damages in amount of R25 000,00 – fair and just for unlawful arrest and detention – arresting officer not entitled to arrest accused for ulterior motives, such as revenge and punishment.