REPUBLIC OF SOUTH AFRICA

SOUTH GAUTENG LOCAL DIVISION,
JOHANNESBURG

CASE NO: 3155/13

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

19.09.14
DATE

SIGNATURE

In the matter between:

ANDRI ANNABELLE DE KOCK **Appellant**

And

MINISTER OF POLICE **Respondent**

JUDGMENT

TEFFO,J:

[1] This is an appeal against the judgment that was handed down by Magistrate Makda for the district of Vereeniging in the Vereeniging Magistrate Court on 12 July 2013.

[2] The appellant was the plaintiff in the court below and the respondent was the defendant. For the purposes of this judgment I will refer to the parties as they were referred to in the court below. Condonation was granted for the late setting down of the hearing of the appeal.

[3] The plaintiff sued the defendant in the court a *quo* for damages for unlawful arrest and detention in the amount of R50 000,00.

[4] The action was defended and at the conclusion of the trial the court dismissed the plaintiff's action with costs after finding that the arrest and detention of the plaintiff were lawful.

[5] The plaintiff appeals against the whole judgment on the following grounds:

5.1 That the Magistrate erred in exercising his discretion taking into account that the arresting officer was also the complainant in the criminal case. This fact according to the plaintiff influenced the arresting officer's discretion whether or not to arrest her.

5.2 The court a *quo* failed to take into consideration the fact that the arresting officer, Warrant Officer Tsibulane, saw the plaintiff on the night of the incident but did not arrest her. He only arrested her two days later at the

college where she was attending lectures although he knew where she resided at the time.

5.3 The respondent failed to justify the arrest without a warrant.

5.4 The court a *quo* failed to take into account that the arresting officer did not arrest her for purposes of bringing her to court but for other reasons.

[6] It is necessary to summarise the facts that led to the action in order to identify the issues that the trial court had to deliberate upon.

[7] The plaintiff and her husband, Mr Ivan De Kock, were separated. At the time of the incident the plaintiff's husband and Ms Gladys Moloi (the defendant's first witness) were involved in a love relationship. They were renting an outside room at Warrant Officer Tsibulane's homestead.

[8] Ms Gladys Moloi (Gladys) testified that around past 18h00 on 30 May 2011 she was in her room when she heard some noise outside. The plaintiff's husband was shouting at her telling her not to open the room. Suddenly the door of the room was pushed and kicked. She then saw the door opening up as if it was being broken down because at that time it was locked. She had at the time used a mattress to block it. After the door had opened she saw the plaintiff entering her room while Mr Tsibulane's wife and the plaintiff's husband were holding the

plaintiff back in order to prevent her from entering the room. The plaintiff managed to enter the room, damaged things inside the room and insulted her. She then removed some goods in the room and left. After she had left, Mr Tsibulane arrived. He went to the room to check what damage was done. He asked her what happened and she told him who broke the door and how it was broken. They went inside the room to assess the situation.

[9] She testified that the handle of the door was broken down and the door went open. The door was damaged and its handle could not lock. She and her boyfriend, the plaintiff's husband, had to use steel to lock the door from inside.

[10] Warrant Officer Tsibulane's evidence was that he was in Sharpville when he received a call from either his wife or the plaintiff's husband, informing him that people were fighting at his homestead. He went home and upon his arrival he found the plaintiff, her husband and sister-in-law outside. When he entered the house, in the dining room he found the plaintiff's mother-in-law and he could see that food was thrown all over the floor. He asked his wife as to what was happening. She told him that the plaintiff was the cause of all what was happening.

[11] He then went to the outside room where Gladys and her boyfriend resided. He found that the door of the room and its handle were broken. He asked Gladys, plaintiff's husband and his wife as to who broke the door. They all told him that

the plaintiff broke it as she kicked it until it went open. Police were called and they came but they did not arrest the plaintiff. He then laid criminal charges against the plaintiff for malicious damage to property, took statements from Gladys, the plaintiff's husband and his wife, together with his arresting statement, placed them in the docket and handed the docket to Warrant Officer Letswalo, who was the Investigating Officer in the matter. He arrested the plaintiff two days later on 1 June 2011 at Sedibeng College around 10H00 where she was attending lectures. He met the plaintiff's teacher and explained the purpose of his visit. The plaintiff was at the time in class. Her teacher called her outside and he then arrested her. He disputed that he arrested the plaintiff in class in front of her co-students.

[12] Gladys and Mr Tsibulane disputed that the door of the room was damaged prior to the incident and that it had a funny way of opening. They maintained that the door opened normally and that it was only after the incident that the door had problems of opening.

[13] Mr Tsibulane explained that he knew where the plaintiff resided. He arrested her so that she could be taken to court as she did not have the right to break the door of his room. He was not involved in the investigation of the matter. He arrested the plaintiff because he had powers to arrest her. The case against her was subsequently withdrawn and she was then released from the police cells.

[14] Although it is common cause between the parties that the plaintiff was at Mr Tsibulane's homestead on the night of the incident, the plaintiff disputed Gladys's evidence that she entered her room, damaged and removed some of her goods and left after breaking the door. Her evidence was to the effect that on the day of the incident, her husband, Ivan, called her while she was at Sedibeng College and requested her to come and fetch him as he was sick and that Gladys had left him with nothing in the room. According to her that was the only reason why she went to Mr Tsibulane's homestead. She was not alone there. She was with her husband's mother and sister, Mavis and Mavis was the person who took a pot from the room which she alleged belonged to her mother.

[15] She denied breaking and damaging the door of the room which her husband rented with Gladys and maintained that it was damaged prior to the incident and had a funny way of opening which evidence was corroborated by her daughter who testified that she used to visit the place prior to the incident.

[16] Her evidence was that as she was at Mr Tsibulane's homestead with Mr Tsibulane's wife, her mother and sister-in-law, Mavis, to explain the reason for their visit, her husband came and started insulting them, telling them to leave the premises as they were not residing there. She subsequently went to the outside room with Mavis and her husband followed them. She denied that she was prevented from entering the room by Mrs Tsibulane and her husband and that she forced the door open after pushing and kicking it as alleged by Gladys. She also

testified that after her husband had followed her and Mavis to the outside room, he continued insulting them and ended up assaulting her. This evidence was disputed by Gladys who testified that she did not witness Ivan assaulting the plaintiff as she was never outside but remained in the room.

[17] In her evidence the plaintiff mentioned that she was arrested while she was in class at Sedibeng College in front of +/- 20 to 30 co-students while Mr Tsibulane knew where she resided. The plaintiff's witness and friend, Ms Tarina Swanepoel, testified in support of this evidence.

[18] The plaintiff's evidence also revealed that her children had to sleep alone on the night she spent in custody which evidence was corroborated by her 18 year old daughter at the time who stated that she had to look after her siblings that night.

[19] The following averments were made in paragraphs 3, 4 and 5 of the plaintiff's particulars of claim:

> "3
>
> *On or during 1 June 2011 and at Sedibeng College, Vereeniging, at approximately 10H00, the plaintiff was unlawfully arrested by a police officer whose full names is not known to plaintiff or possibly by Warrant Officer T.S Tsibulane.*
>
> *4*

Plaintiff was thereafter detained at Vereeniging police station until 2 June 2011 at approximately 14H00 whereafter the charges against her were withdrawn and she was released from the police holding cells.

5

As a result of the aforesaid unlawful arrest plaintiff suffered damages in the amount of R50 000,00 being in respect of her contumelia, dignity, reputation and deprivation of her freedom."

[20] The defendant in its plea stated the following in response to paragraphs 3, 4 and 5 of the plaintiff's particulars of claim:

" 3

AD PARAGRAPH 3 AND 4

Defendant pleads that plaintiff was arrested lawfully and was lawfully detained. Defendant pleads that plaintiff was lawfully arrested in accordance with the provisions of Section 40(1)(b) of Act 51 of 1977 as amended in that the arresting police officer suspected on reasonable grounds that plaintiff had committed the offence of malicious damage to property.

5

AD PARAGRAPH 5

Each and every allegation contained herein is specifically denied and plaintiff is put to the proof thereof."

[21] The trial court had to determine whether or not the arrest of the plaintiff by Warrant Officer Tsibulane and or the other police officer with whom he was at the college, was lawful taking into account the provisions of *Section 40(1)(b) of Act 51 of 1977* ("the Criminal Procedure Act").

[22] This court has to determine whether the court a *quo* erred by dismissing the plaintiff's action with costs after finding that the arrest and detention of the plaintiff were lawful.

[23] *Section 40(1)(b)of the Criminal Procedure Act* provides that a peace officer may without a warrant arrest any person whom he reasonably suspects of having committed an offence referred to in Schedule 1, other than the offence of escaping from lawful custody.

[24] As was held in ***Duncan v Minister of Law and Order [1986] 2 All SA 241(A) at 248*** the jurisdictional facts for a section 40(1)(b) defence are the following:

24.1 The arrestor must be a peace officer;

24.2 The arrestor must entertain a suspicion;

24.3 The suspicion must be that the suspect (arrestee) committed an offence referred to in Schedule 1; and

24.4 The suspicion must rest on reasonable grounds.

[25] It is trite that the onus rests on the defendant to justify the arrest. As Rabie CJ explained in ***Minister of Law and Order and Others v Hurley and Another 1986 (3) SA 568 at 589E-F:***

"An arrest constitutes interference with the liberty of the individual concerned, and it therefore seems fair and just to require that the person who arrested or caused the arrest of another person should bear the onus of providing that his action was justified in law."

[26] In ***Zealand v Minister of Justice and Constitutional Development and Another 2008 (6) BCLR 601 (CC)at para 25,*** the Constitutional Court in affirming this principle said:

"It has long been firmly established in our common law that every interference with physical liberty is prima facie unlawful. Thus, once the claimant establishes that an interference has occurred, the burden falls upon the person causing that interference to establish a ground of justification."

[27] **Van Heerden JA *in Duncan v Minister of Law and Order*** *(supra)* at 249 said the following:

"If the jurisdictional requirements are satisfied, the peace officer may invoke the power conferred by the subsection, i.e. he may arrest the suspect. In other words,

he then has a discretion as to whether or not to exercise that power (of ***Holgate-Mohammed v Duke E [1984] 1 ALL ER 1054 HL at 1057****). No doubt the discretion must be properly exercised."*

[28] In ***R v Van Heerden 1958 (3) SA 150 (T)*** the court held that the suspicion must be reasonable and the test for such reasonableness is objective.

[29] The approach to be adopted in considering whether the suspicion was reasonable is the one followed by Jones J in ***Mabona and Another v Minister of Law and Order and Others 1988 (2) SA 654 (SE) at 658 F-H***:

> *"It seems that in evaluating his information a reasonable man would bear in mind that the section authorises drastic police action. It authorises an arrest on the strength of a suspicion and without the need to swear out a warrant; i.e. something which otherwise would be an invasion of private rights and personal liberty. The reasonable man will therefore analyse and assess the quality of the information at his disposal critically, and he will not accept it lightly or without checking it where it can be checked. It is only after an examination of this kind that he will only allow himself to entertain a suspicion which will justify an arrest. This is not to say that the information at his disposal must be of sufficient high quality and cogency to engender in him a conviction that the suspect is in fact guilty. The section requires suspicion but not certainty. However, the suspicion must be based on solid*

grounds. Otherwise, it will be flighty or arbitratory and not a reasonable suspicion."

[30] At paragraph 25 of its judgment, the court in ***Minister of Safety and Security v Sekhoto and Another 2011(1) SACR 315 (SCA)*** said the following:

"It could hardly be suggested that an arrest under the circumstances set out in section 40(1)(b) could amount to a deprivation of freedom which is arbitrary or without just cause, in conflict with the Bill of Rights. A lawful arrest cannot be arbitrary."

[31] The court in the ***Sekhoto*** matter referred to *supra* went on at paragraph 44 of the judgment to say:

"While the purpose of arrest is to bring the suspect to trial, the arrestor has a limited role in that process. He or she is not called upon to determine whether the suspect ought to be detained pending a trial. That is the role of the court (or in some cases a senior officer). The purpose of arrest is no more than to bring the suspect before the court (or the senior officer) so as to enable that role to be performed. It seems to me to follow that the enquiry to be made by the peace officer is not how best to bring the suspect to trial: the enquiry is only whether the case is one in which that decision ought properly to be made by a court (or the senior officer). Whether his decision on that question is rational naturally depends

upon the particular facts, but it is clear that in cases of serious crime and those listed in schedule 1 are serious, not only because the legislature thought so- a peace officer could seldom be criticised for arresting a suspect for that purpose."

[32] Innes ACJ articulated the following principle in ***Shidiack v Union Government (Minister of Interior) 1912 AD 642 at 651-652:***

"Now it is settled law that where a matter is left to the discretion or the determination of a public officer, and where his discretion has been bona fide exercised or his judgment bona fide expressed, the Court will not interfere with the result. Not being a judicial functionary no appeal or review in the ordinary sense would lie, and if he has duly and honestly applied himself to the question which has been left to his discretion, it is impossible for a Court of Law either to make him change his mind or substitute its conclusion for its own... There are circumstances in which interference would be possible and right. If for instance an officer acted mala fide or from ulterior and improper motives, if he had not applied his mind to the matter or exercised his discretion at all, or if he has disregarded the express provisions of a statute – in such cases the court might grant relief. But it would be unable to interfere with a due and honest exercise of discretion, even if it considered the decision inequitable or wrong."

[33] In ***Louw v Minister of Safety and Security 2006 (2) SACR 178(1)*** mention was made of a fifth jurisdictional fact that there must be no less invasive options other

than arrest to bring the suspect to court. This fact was refuted by the Supreme Court of Appeal in the case of ***Sekhoto*** referred to *supra* where the court held that the standard is not breached because an officer exercises discretion in a manner other than that deemed optimal by the court.

[34] In ***Charles v Minister of Safety and Security 2007(2) SACR 137(W)*** Goldblatt J expressly rejected the ***Louw*** matter referred to *supra* and stated (at 144A) that the 'existing law' is what Schreiner JA said it was in ***Tsose v Minister of Justice 1949(4) SA 141 W at 17H***, namely that there is no rule of law that demands that the milder method of bringing someone to court must be employed whenever such milder method would be as effective as a warrantless arrest. At 144B–D Goldblatt said the following:

"The Legislature having granted a peace officer the right to make an arrest in the circumstances set out in s40 has created a situation where due compliance with such section by a peace officer is lawful and affords such peace officer protection against an action for unlawful arrest. In my view, the court has no right to impose further conditions on such persons. To do so would open a Pandora's box where the courts would be called upon in cases of this type to have to enquire into what is reasonable in a variety of circumstances and further where peace officers would be called upon to make value judgments every time they effect an arrest in terms of section 40. These judgments which they would have to make would later have

to be considered and tested by judicial officers attempting to place themselves in the shoes of the arresting officer."

[35] In ***Gellmann v Minister of Safety and Security 2008 (1) SACR 446 W at [90-94]*** the following was said:

"A policeman should always consider whether the accused's attendance can be procured through a summons as this is the preferable method... In determining whether he should arrest or not to effect an arrest, the arresting officer should carefully consider his/her standing orders. The arrest which is in violation of the standing order would be indicative that the discretion was not properly exercised and that the warrantless arrest was unlawful."

[36] Standing Order ("SO") 341[3] provides as follows:- *"a member even though authorised by law, should normally refrain from arresting a person if:*

Attendance can be secured by means of a summons;

If he believes a magistrate will impose a sentence of less than R3 000 in which event he should issue a J534 of securing attendance of accused in the Magistrate's court;

A member may not arrest a person in order to punish, scare or harass such a person."

[37] In ***Minister of Safety and Security v Van Niekerk 2008(1) SACR 56(CC)*** the Constitutional Court refused to lay down an all purpose test for constitutionally acceptable arrests. It did not resolve the conflict between the ***Louw*** and the ***Charles*** matters referred to *supra*. The court concluded that the constitutionality of the arrests would almost invariably be dependent on the facts of each case. Police officer who make arrests and their superiors who supervise the exercise of the powers to make arrests are in the best position to establish the appropriate parameters within which the discretion to arrest should be exercised.

[38] The full court of the Supreme Court of Appeal, in ***Sekhoto*** (*supra*), unanimously held that the introduction of a fifth jurisdictional point in ***Louw*** (*supra*) and by the cases that followed it, was unfounded. Relying on the *dicta* from the judgments of Chakalson P (***Mistry v Interim Medical and Dental Council of SA 1998(4) SA 1127 CC at (3)*** and P Langa (**Investigating Directorate: *Serious Economic Offences & Others v Hyundai Motor Distributors (Pty) Ltd & Others 2000(2) SACR 349(CC), 2001 (1) SA 545 (CC)*** at [21] – [26], the Court held that a court that had to interpret a statute in a way which promoted the spirit, purport and objects of the Bill of Rights was limited to what the text was capable of meaning but the court, per Harms DP, was unable to find anything in section 40(1)(b) which could lead to the conclusion that there was somewhere in the words a hidden fifth jurisdictional fact. A fifth jurisdictional point could also not be read into section

40(1)(b) in terms of section 172(1)(b) of the Constitution to save it from being unconstitutional because a "reading in" is permissible only after the provision in question had been declared unconstitutional in terms of section 172 (1)(a). However, in none of the High Court judgments in which a fifth jurisdictional point was acknowledged was the question of the possible unconstitutionality of section 40(1)(b) considered. It is impossible that section 40(1)(b) when put to the test for constitutionality, would be found wanting. The conclusion is inevitable: ***Louw*** (*supra*) and other cases in which a fifth jurisdictional point, being the absence of less invasive options to bring the suspect to court than his or her immediate detention was required, have lost their authority.

[39] Counsel for the plaintiff made the following submissions:

39.1 Warrant Officer Tsibulane together with the police officer with whom he was when the plaintiff was arrested, did not form a reasonable suspicion when they arrested her.

39.2 Warrant Officer Tsibulane was *mala fide* or grossly negligent alternatively did not apply his mind properly to the matter. He abused the power assigned to him. He was the complainant and the arresting officer.

39.3 The Criminal Procedure Act allows a police officer to arrest a person if he has reasonable suspicion subject to the standard required by the constitution

and employment guidelines. If there is no proof like in the present matter that the discretion was not employed at all and no reference was given to its standing order, then the arrest has to be unlawful.

39.4 Warrant Officer Tsibulane knew the plaintiff. He knew where she stayed. She was not a flight risk. He saw her on the night of the incident but left her. He only arrested her two days later at a college. He should have consulted with the Investigating Officer about the progress in the matter. He should have informed the plaintiff about the charge and warned her to attend court. Alternatively he should have instituted civil proceedings for damages to the door. No evidence was led with regard to the extent of the damages to the door.

39.5 A police officer should always consider whether the accused's attendance can be procured through a summons as that is a preferable method. In exercising his discretion whether or not to arrest, he should consider standing orders. Where the arrest is in violation of the standing order that would be an indication that the discretion was not properly exercised and that the warrantless arrest was unlawful.

39.6 The detention of the plaintiff was also unlawful.

39.7 Counsel for the plaintiff relied mainly on the following decisions referred to *supra*, ***Louw, Van Niekerk, Gellman*** and submitted that the ***Sekhoto*** matter was wrongly decided.

[40] Counsel for the defendant made the following submissions:

40.1 The issue of the exercise of discretion by the police officer before effecting the arrest and the unlawful detention of the plaintiff were not pleaded and neither were they raised in the court a *quo*. In reply counsel for the plaintiff conceded that the issue of the exercise of discretion by the police officer before effecting the arrest was not pleaded. After being referred to paragraph 4 of the plaintiff's particulars of claim (*supra)* in paragraph 19 he submitted that if the arrest is unlawful it follows that the detention is also unlawful. Paragraph 4 of the plaintiff's particulars of claim reads:

"Plaintiff was thereafter detained at Vereeniging police station until on 2 June 2011 at approximately 14h00 whereafter charges against her were withdrawn and she was released from the police holding cells?"

[41] From a reading of the above paragraph it is clear that the issue of the unlawfulness of the plaintiff's detention was not pleaded. I agree with counsel for the defendant that the issue was only raised in argument and was not included as a ground of appeal although the court a *quo* dealt with it and concluded that the arrest and detention of the plaintiff were lawful. Holmes JA in ***South British***

Insurance Company Limited v Unicorn Shipping Lines (Pty) Limited 1976 (1) SA 708 (A) at 714G considered when it would be competent for a court to pronounce upon matters not raised in pleadings. He stated the following:

"However, the absence of such an averment in the pleadings would not necessarily be fatal if the point was fully canvassed in evidence. This means fully canvassed by both sides in the sense that the Court was expected to pronounce upon it as an issue."

[42] From the record of the proceedings in the trial court it cannot be said that the issue was fully canvassed by both parties except to say that it was referred to in cross examination. As I have alluded to in paragraph 41 I am of the view that the court a *quo* has correctly dealt with the issue and I do not have any reasons to interfere with its decision.

[43] Counsel for the defendant submitted further that a peace officer who relies on section 40(1) (b) has to prove the jurisdictional facts in that section. Once these facts are present the discretion whether or not to arrest arises. He further argued that the arresting officer's decision to arrest must be based on the intention to bring the arrested person to justice. He submitted that the arresting officer must exercise his discretion to arrest in good faith, rationally and not arbitrarily and once the jurisdictional fact of the existence of the reasonable suspicion is proved

by the defendant, the arrest is brought within the ambit of the enabling legislation and thus justified.

[44] It is common cause between the parties that Warrant Officer Tsibulane is a peace officer. His evidence was that he was called to his homestead whereafter he was told what happened, who did it, he went to the outside room where he found that the door of the room and its lock were damaged. He then called the police who came, assessed the situation and left without arresting the plaintiff. He, on his own, opened a charge of malicious damage to property against the plaintiff, took statements from the people who were present when the incident happened, namely, his wife, Gladys and the plaintiff's husband, his arresting statement and placed them in the docket which he handed to Warrant Officer Letswalo, the Investigating Officer in the matter. Two days later he went to arrest the plaintiff at Sedibeng College.

[45] From this evidence it cannot be said that Warrant Officer Tsibulane did not entertain a suspicion and that the suspicion was that the plaintiff committed an offence referred to in Schedule 1. Warrant Officer Tsibulane had information that the plaintiff broke the door and or the door handle of the outside room at his home. He went to the room, saw that indeed the door and the handle were damaged. He indeed entertained the suspicion that an offence referred to in schedule 1 was committed.

[46] As regards whether the suspicion was reasonable it cannot be said that Warrant Officer Tsibulane did not analyse and assess the quality of the information at his disposal critically without checking it before exercising the discretion to arrest the plaintiff from the facts discussed *supra*. The court a *quo* correctly made a finding that there was no evidence placed before it that confirmed that since Warrant Officer Tsibulane was also the complainant, he had no right to arrest the plaintiff on the charge levelled against her. I also agree with the submission made by counsel for the defendant that there is no indication in the evidence that Warrant Officer Tsibulane was *mala fide* or had any ulterior motive in suspecting that it was the plaintiff who damaged the property.

[47] The submission by counsel for the plaintiff that a police officer should always consider whether the accused's attendance can be procured through a summons and that in exercising his discretion whether or not to arrest, he should consider standing orders, is without merit taking into account the decision arrived at in the ***Sekhoto*** *(supra)* that the introduction of the fifth jurisdictional point in ***Louw*** *(supra)* and the cases that followed it, was unfounded. Harms DP in the ***Sekhoto*** was unable to find anything in section 40(1)(b) which could lead to the conclusion that there was somewhere in the words a hidden fifth jurisdictional fact. Counsel for the plaintiff conceded that the conflict between the ***Louw*** and ***Charles*** *(supra)* was not resolved in the ***Van Niekerk*** matter. In terms of the ***Sekhoto*** matter it is not required of a police officer who is a defendant in a case where damages are claimed for unlawful arrest, and who relies on section 40(1)(b) to prove as a

jurisdictional fact that he had no less invasive options to bring the suspect before court. The full court of the Supreme Court of Appeal in the ***Sekhoto*** matter has therefore settled the confusion that was caused in the ***Louw*** matter and cases that followed it. Based on the reasons outlined above I find that the submission by counsel for the plaintiff that the ***Sekhoto*** matter was wrongly decided is misplaced.

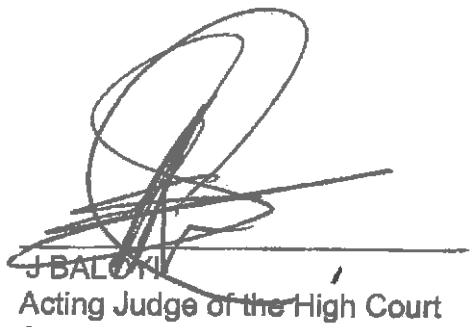
[48] I therefore find that the four jurisdictional facts as laid down in section 40(1)(b) and outlined in the ***Duncan*** *(supra)* have been proved successfully by the defendant and that the discretion to arrest the plaintiff was properly exercised. I further find that the arrest of the plaintiff under the circumstances was justified. There is therefore no reason to fault the decision of the court a *quo* which found that the arrest and the detention of the plaintiff was lawful and dismissed the plaintiff's action with costs.

[49] In the result I propose the following order:

49.1 The appeal is dismissed with costs.

Judge of the High Court South Gauteng Local Division, Johannesburg

I agree:



J BALOYI
Acting Judge of the High Court
South Gauteng Local Division,
Johannesburg

Appearances:

For the Plaintiff	:	Advocate GW Raath
Instructed by	:	Mills & Groenewald Attorneys
For Defendant	:	Advocate FF Opperman
Instructed by	:	The State Attorneys
Heard on	:	22 July 2014
Judgment delivered	:	19 September 2014