



IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, JOHANNESBURG)

Case No: 28575/12

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

28 March 2014

EJ FRANCIS

In the matter between:

KEITUMETSI LETLALO

Plaintiff

and

THE MINISTER OF POLICE

Defendant

JUDGMENT

FRANCIS J

Introduction

1. The plaintiff instituted an action for damages against the defendant claiming R150 000.00 arising out of his arrest and detention. The plaintiff remained in custody for 24 hours and was released without appearing in court. The action was defended by the defendant which contended that the police acted in terms of section 40(1)(j) of the Criminal Procedure Act 51 of 1977 (the CPA).

The evidence led

2. The plaintiff testified that on 28 February 2012 at or about 13h00 whilst he was working at his work place at Classic Hair International which is at the

Moekoreng Centre, Zone 3 Diepkloof, he heard shouting and screaming coming from outside the salon. He and four of his colleagues went onto the balcony of the salon which is on the top floor of a two storey building to see what was happening. He had his cellphone in his hand and was on whatsapp with a friend. He saw that the police were assaulting two persons on the ground floor by slapping them with their open hands and kicking them around. They then went back into the salon. The police entered the salon. The police asked him for his cellphone and said that he had taken a picture of them when they were outside. He gave them his cellphone and so did the others in the salon. The police went through their cellphones and could not find any pictures or a video footage of the assault that they had just witnessed. The police gave them back their cellphones. They grabbed him by his waste and took him downstairs to a police truck where he was put in. He was alone in the truck and was driven to the Diepkloof station where he was left in an office. When he was arrested he was not told what the reason for his arrest was nor were his rights read out to him. There were about five police in the room that he was taken to and they would come and go out. He enquired repeatedly from them why he had been arrested. He was told that he was arrested for photographing the police. He then asked for evidence since they had examined his cellphone and had found nothing incriminating on it. There was an argument about it. Between 14h00 and 14h30 he was taken to another office where he had to hand in his personal belongings and shoe laces. He was taken to a place where arrested people are taken to and was given a document to sign which is A9 which had his name on it. The reason given for his arrest

on the document is 'interference with a police officer' and 'false pretence'. He read this document when he was taken to a cell. He said that he did not need an attorney because he was innocent. He was given a sponge and a blanket to sleep on. He could not sleep on it because he was not used to sleeping on a sponge and the blanket was filthy. There were initially 3 to 5 inmates but as the night progressed the number grew to twelve. The cell was about the 3 meters by 2.5 meters. It had an open toilet and a shower. He urinated once in the toilet and saw that it was a flushing toilet but there were no toilet papers. There was also a cement bench. He remembers that his fingerprints were taken. They were given stale bread and tea to eat at night and the next morning stale bread and tea. On 29 June 2012 the inmates were all taken to court and he remained alone until noon that day. He was taken out of the cells and saw that his parents were around. He was handed back his personal belongings and was transported to the Orlando Magistrates Court where he was taken to a holding cell at about 12h50. There were many people in the holding cell. A few minutes after he was in the holding cell, his name was called and he was addressed as journalist and was told that he was free to go home. He did not appear in court and was released at about 13h00.

3. The plaintiff said that he felt bad about his arrest. He always made sure that he stayed away from illegal activities. After he could not find employment, he decided to work at a hair salon. He does not trust the police after that incident and tries to stay as far away from the police because he knows that they may arrest him for something that he did not do. He denied that he interfered with

the police in the execution of their duties. He had watched from the balcony about what was the police were doing two the two persons that they were assaulting. He said that he does not know the warning statement that is at A4 and A5 and the signatures on it are not his. He did not give any warning statement. The signature on A8 is unknown to him. A8 is dated 28 February 2012 and the police did not come to his cell to complete a warning statement. He only recalls that his fingerprints were taken.

4. During cross examination he repeated that the police had taken his fingerprints during the evening of 28 February 2012 nor did they take his warning statement. At the time of his arrest there were four other colleagues and many customers in the salon since it was month end. He repeated that he was placed in a police truck. He repeated his version about how he was arrested and it is not necessary to repeat this. He said that the police had asked him if he had taken photographs and that was the reason why he was taken away. None of the persons who the police had assaulted was related to him. He knew their nicknames and they were all residing in the same neighbourhood. He only became aware why he had been arrested after he was given A9 at the police station where the reason for his arrest is stated. It was put to him that constable Maobelo, the arresting officer would say that he was arrested for obstruction of their duties and that he was taking photographs. He disagreed and said that if he had taken photographs they would have had proof and they would have found the photos. He denied that he had told the police that he was working for 3rd Degree and Debra Patta. He agreed that he did not give

the police any trouble after he had been arrested because he also would have been assaulted. He said that if the police had assaulted no one, there was no reason why they came looking for his cellphone. At the salon they told him that they were taking him with since he had taken photographs and he had asked for proof of it. They did not answer him and grabbed him and took him to the truck. It was put to him that he would say that one of them was his relative and that he had screamed and said that he was taking photographs and that he was a journalist. He denied it and said that none of them were his relatives. It was put to him that the only reason why he was arrested was that he was taking photographs and had screamed at them that he was from 3rd Degree. He denied that he said or did so. It was put to him that the arresting officer wanted to verify that he worked for 3rd Degree. He said that he does not know about it and he did not claim that he worked for 3rd Degree. He agreed that there were no pictures and that there was no other reason for his arrest.

5. The plaintiff's first witness was Sifiso Motaung. He testified that he is the owner of Classic Hair Salon business is his. He is a hairdresser and the plaintiff works for him. On 28 February 2012 they were working at the salon when they heard noises coming from downstairs. They went to the balcony to see what was happening. They saw policemen who were in an altercation with some youngsters and the police were beating them up. After they had watched the police, they went back inside the salon. The police immediately thereafter came into the salon and instructed them to take out their cellphones and asked if they had used their cellphones. The police examined their cellphones and

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found nothing. They took the plaintiff away and he asked them why they were taking him away since they had found no evidence on him. They took him to the Diepkloof police station. He went to the police station and was told that the plaintiff was not there.

6. During cross examination he said that he followed the police the police and had asked ladies working if the plaintiff was there and was told that he was not there. He did not see with who the plaintiff was taken with and thought he was placed in a police van. He had asked the police why they were taking him since they did not find any video footage on it. They did not answer him. After he left the police station he went to fetch the plaintiff's parents and went that same evening back to the police station with the plaintiff's grandmother. They did not see the plaintiff that night. The next morning went back to the police station at about 7h00. They made them wait for a long time at the police station for about an hour. His grandmother arrived and they still made them wait. After a while a lady came to them and led them to the back of the police station to the cells. She called his name and a certain lady said that he was going to appear in court. He could not recall what time he was told that. He repeated that he and his staff and customers stood on the balcony when they saw the police assaulting the people.

7. The defendant's first witness was Hofman Moabelo. He a constable with the South African Police Services (SAPS) for 14 years and is station for the same period at the Diepkloof police station. The plaintiff is known to him for 14

years. He arrested the plaintiff on 28 February 2012. Whilst he was at his workplace he received information from his informant that some youngsters were selling drugs to school children. His informant gave him a description of the youngsters. He went to the place with his colleagues namely female constable Malaty, constable Tshabangu, constable Mabeletsi and constable Mashele. They drove in a police Quantum to the place provided by the informant. They found two youngsters who were in possession of drugs and Nyaope. He said that whilst he was arresting the two youngsters there were onlookers who were screaming and making a noise. He then conducted a search on a black BMW and whilst searching it, he noticed that the plaintiff was taking his photographs. He then asked the plaintiff whilst he was a distance away from him and was still searching the BMW, what he was doing and the plaintiff told him that it was none of his business. He took the two suspects to the Quantum vehicle. The plaintiff was on the upper floor of a building and was taking photographs of him. He invited his colleagues to approach him. The plaintiff moved from his position and ran into the salon. He then asked him why he was taking photographs and he said that he wanted to take the photographs to Debra Petra. He then asked him if he was a journalist but the plaintiff did not answer him. He asked the plaintiff for a second time if he was a journalist and if he was to give him proof that he was a journalist. He also asked the plaintiff for his cellphone and the plaintiff told him that he did not need his permission to take pictures. He scrolled his cellphone and saw that he had taken pictures where he was searching the BMW. He then told the plaintiff that since he had no proof that he was a

journalist he was arresting him. He took him to the Quantum vehicle and he was driven to the police station. After they got into the vehicle the plaintiff was sitting next to him. He was in possession of the drugs that he had place in his legs in front of him. He got distracted when he was talking to another policeman and the plaintiff stole the drugs from him and placed it in his socks. When they arrived at the police station they followed him and he realised that the exhibits were missing. His colleagues surrounded them and he went to the vehicle and looked for the drugs but did not find it. He became suspicious of the plaintiff and he went and asked if he could search him. He did not find anything on his upper body but found it in one of his socks. He then asked the plaintiff why he was stealing the drugs since he did not arrest him for being in possession of drugs. From the posting area at the police station he went inside the police station building to the crime office and opened two cases. The first was against the youngsters arrested for drugs and the second against the plaintiff with interference in police duty. He said that he was allowed to do this in terms of section 67 of the Police Act of 1995 and he charged him with an offence of false representation. The reason for this charge was that he was claiming that he worked for Debra Patta and had failed to produce such proof. He said that this was an offence in terms of section 68(1) of the Police Act. Thereafter he requested constable Shezi to take the complainant to the police cells. He denied that he and his colleagues had assaulted the two youngsters and if that was the case they would have laid charges against them. He denied that he did not tell the plaintiff of the reason of his arrest and if that was the case he would have resisted the arrest. He denied that he did not read out the

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plaintiff's rights to him. Before he had arrested him he read him his rights and had his cellphone in his hands. At the police station he read out his rights to him when he wrote and opened a docket. He read out his rights that are contained in his police pocket book. He said that A9 is a document that contains his rights and is an SAP14A. There is a place on it for the detainee's signature and the other signature is that of his colleague Mabeletse. Mabeletse completed A9. He does not recall who was present in the cells when the document was completed. It was issued at the end of such process of arrest. When he arrested the plaintiff he made a statement as an arresting officer. He made the statement immediately after he arrived at the police station at 13h10 or 13h15 on 28 February 2012 which was a Tuesday. The statement is A11 to A13. Part of the statement was read into the record. It is not necessary to repeat this.

8. During cross examination he said he was on duty on 28 February 2012 and they were five policemen including the driver who went to the scene. He had already arrested and handcuffed the two suspects and was busy searching the BMW vehicle when he saw the plaintiff taking pictures. His job had already been done in that he had arrested the two and had found drugs on them. When he saw the plaintiff taking pictures it concerned him a lot. He knows that journalist when the police are doing their work, people who are free lancers would take photos of the police doing their work and would sell it to different medias. In most instances if they get such videos it comes out that the police are prejudicing the community and are not telling the truth about what was

happening. He said that he had a problem with a freelance selling photographs to different media houses and it puts the police in a bad light. It was put to him that if they look at what he told the court, he did his job well and was doing it well. He agreed and said that it was true. It was put to him that if the plaintiff took the photographs and sold it to the media house or to Debra Patta there was nothing wrong since he did his job well and it was a good marketing tool for the police. He said that it was going to put him in a good light if he was going to say and would and would not make him come out good in the media. He said that he did nothing wrong. He was asked what his problem was. He said that his problem was why he was doing so and where did he get the permission to do so. He said that he has seen many footages on television of protesters clashing with the police either on television or the newspapers and people taking pictures or it. He was asked why the journalists were not arrested for interfering with the police. He said those people are real journalists and professional journalists and the government know that they are genuine and if they are arrested it would be said that they are interfering with press freedom or oppressing the media. If the plaintiff produced prove that he was a journalist he would have left him. It was put to him that he said that he acted in terms of section 67 which deals with the interference of the media and 68 deals with false representation. It was put to him that section 68 deals with false representation where a person was pretending to be a police officer and has nothing to do with pretending to be a journalist. He said that he was denying that and was opposing it.

9. He was asked how the taking of a photograph prevented him from doing his duties and said that the plaintiff was taking photos of them. He said that the act of shooting photos of police whilst they were doing their jobs has connotations of intimidation and this is why he had ay . He had that connotation and this is why he arrested the plaintiff. He was asked if he was not arrested because he was a journalist. He said that he enquired if he was a journalist after he had taken the photographs. He was asked why he did not mention this when he gave his evidence in chief. He said that he did explain it and perhaps he might not have been understood. He approached him because he took photographs of them and there was no reason he would choose him since he was not a messiah. He agreed that he had made a detailed statement about the incident. It was put to him that he did not say that he was intimidated with the taking of the photographs. He agreed that it was not in his statement and insisted that he was telling the truth. He said that the plaintiff was telling the court lies because he believes that all the people who were present would have fought against the police and they would have been witnesses in court. It was put to him that a witness testified that he saw the police assaulting the two youngsters and he said that he did not agree with it. It was put to him that the allegation that the plaintiff stole the drugs was not in his statement. He said that it has nothing to do with interference with the police and he did not put it in statement since it would have spoiled the case of police interference. He denied that it would have strengthened because he could have been charged with theft or being in possession of the drugs and defeating the ends of justice. If he had to do it, it would have meant that he had to open a separate case of

defeating the ends of justice and have a SAP13 to proceed with the case. He denied that he was not telling the truth and that he had told his counsel about it. It was put to him that his counsel did not put this to the plaintiff when he cross examined the witnesses and that this was material. He said that it must have slipped his counsel's mind when he cross examined the witnesses. He said that it was not important to have mentioned the plaintiff's involvement with the drugs in his statement. When asked why it was important to testify about it in court he said that he mentioned it in court to show that he took photos of the police as one of the suspects was his cousin. He discovered after he had arrested the plaintiff that they were cousins. He arrested the plaintiff so that he could be prosecuted and appear in court. He would be able to prove the case against by testifying like he was doing. When asked where the photos were he said that according to constable Malatji she had deleted them. He confirmed that he did not confiscate his cellphone because he knows that some suspects would bribe some corrupt policemen to delete evidence that were confiscated. It was put to him that on his own version Malatji destroyed the case against the plaintiff. He said that there was a case in that he made a false representation and interfered in his work. There were no other statements from his colleagues.

10. He said that he confirmed that he arrested the plaintiff for taking photographs and he was offended by it. If a journalist had had taken the photograph it would have been okay and he would not have arrested the journalist. He arrested the plaintiff because he is a member of the public. He was asked

where it was stated that members of the public cannot take photographs of the police. He said that he cannot find it anywhere and it is not written anywhere. He utilised the provisions of sections 67 and 68 of the Police Act. It was put to him that the only section in the Police Act that deals with photos is section 69. He said that section 69 should be read with sections 67 and 68 and it makes reference to electronic gadgets. He denied that section 69(2)(a) of the Police Act was not applicable in this case. He said that applies to a crime scene dealt with by detectives where the taking of photos of the scene is prohibited and would be regarded as interfering with the investigation since the crime scene is still under investigation. In the present case he said that he had made an arrest and was taking the suspects to court. There was no investigation and the taking of photographs was not interfering with the police investigation. There is no reference in the section of the taking of photographs of policemen. He said that it was not wrong for a member of the public to take a photograph of a policemen who was in uniform robbing a bank since the member of the public in doing so would be protecting the interest of the public. He said that there was a photo on the plaintiff's cellphone whilst he was standing next to a black BMW 1 series. He was asked whether it was a photograph and said that he said that he did not scroll the cellphone further and had seen one and he understood that he had taken the photos. This was after he had completed searching the BMW vehicle. He agreed that the version of the one photograph was not put to the plaintiff when he testified and that it had slipped his counsel's mind. He agreed that it was the second time that material evidence had slipped his counsel's mind but denied that he was

fabricating his evidence. He was not present when the plaintiff's warning statement was taken and this was the duty of the investigating officer to do so. He was also not present when his rights were read to him. He agreed that the prosecutor had declined to prosecute but said that prosecutor did not follow the correct procedure when he did so. His consent was not sought. He did not know who the people were that were screaming and shouting during the arrest of the two suspects. They had found a crowd and he was concentrating on his duties and the screaming and shouting did not intimidate him from doing his job. It was put to him that the plaintiff did not see the physical arrest but heard a commotion and shouting and went outside and saw the police assaulting the two persons that they were arresting. He said that the plaintiff told counsel lies. It was put to him that the plaintiff denied that he had taken any photos. He said that he was telling lies. It was put to him that the police went to the salon and took the persons cellphones and he was arrested. He said it was not true. When they entered the salon he knew who the person was and what he was wearing and he went to him. It was put to him that the witness Sifiso Motaung said that no photos were found on him. He said that he did not know him and no one came next to where the plaintiff was arrested and he did not see.

11. During re-examination he said that his intention in arresting the plaintiff was to lock him up and if he did not do so he would be leaving a bad impression to the community and would know how to provoke policemen. During questioning by the court he said that he did not mention anything about the

photo in his statement and he also did not mention that he was standing next to the BMW when his photo was taken. He was asked what reason he had given in his statement for arresting the plaintiff. He said that the reason was that he was using his cell phone to take photos of them and this is stated in paragraph 4 of his statement. It was put to him that in paragraphs 7 and 8 he stated that he was arrested for failing to produce his card that he was a journalist. He said that he had asked for proof that he was a journalist and if he had he was not going to arrest him. He was asked what he would have done if he was not a journalist and said that he arrested him because he was not a journalist.

12. The defendant's second witness was Nomsa Monthso. She is an investigating officer at the Diepkloof police station and has been in the SAPS for 12 years. The plaintiff was arrested on 28 February 2012 and was detained at the Diepkloof police station. She received a docket in the morning of 29 February 2012 and she had to take the plaintiff to court on the same day. Before she took him to court, she was busy verifying addresses of other suspects. At around 12h50 she officially laid a charge against him in the cells. She took him to the Orlando Magistrate's court around that time and gave the docket to the prosecutor who declined to prosecute. The case against the plaintiff was withdrawn. During cross examination she said that she was the investigating officer in the matter and the handwriting in B11 is not hers but that of R J Mofokeng. He was the previous investigating officer who had received the docket on 28 February 2012. She took over from him as the investigating officer.

Analysis of the evidence and arguments raised

13. The defendant bears the onus to prove that when arresting officer arrested the plaintiff he had wilfully obstructed him in the execution of his duties. The defendant pleaded that the arrest of the plaintiff was effected in terms of section 40(1)(j) of the CPA. The plaintiff was arrested because he was committing an offence of interfering with police duties and false pretences.
14. Section 40(1)(j) of the CPA provides that a peace officer may without a warrant arrest any person who wilfully obstructs him in the execution of his duties. The test in this instance is not whether the defendant had a reasonable suspicion but is a factual one. Reasonable suspicion does not arise in such a case. The defendant must prove on a balance of probabilities that the plaintiff had wilfully obstructed the arresting officer in the execution of his duties.
15. Constable Moabelo testified that he had arrested two suspects who were found to be in possession of drugs and dagga. After he had effected the arrest and had handcuffed and placed the suspects in a police vehicle, he proceeded to search a black BMW 1 series and then saw that the plaintiff was taking photographs of him on his cellphone. He and the other policemen went to the salon where the plaintiff was and he enquired from him why he was taking a photograph. He asked him twice if he was a journalist and he did not respond. The plaintiff then told him that he took the photographs because he wanted to send it to Debra Patta of 3rd Degree. He then scrolled the plaintiff's cellphone and saw that he had taken photos where he was searching the BMW vehicle.

He had asked the plaintiff whether he had his permission to do so and the plaintiff told him that he did not need his permission to do so. He then told the plaintiff that since he had no proof that he was a journalist he was arresting him. He said that the plaintiff was arrested for obstructing the police in execution of their duties and for false pretence.

16. The plaintiff's version was that he was at his workplace at a salon. Whilst they were working they heard screaming and shouting from outside the salon. They went out onto the balcony to see what was happening. They saw that the police were assaulting two suspects. Whilst this was taking place, he had his cellphone in his hand and was communicating with another person on whatsapp. They then entered the salon and the police came into the salon and demanded to look at their cellphones to see whether any photographs or videos were taken of the events that took place earlier. They handed over their cellphones to the police but no pictures or videos were found of the police assaulting the two suspects. He was then arrested and placed in a police van and taken to the Diepkloof police station. He enquired why he had been arrested but no reason was given to him. He was later given a statement of his rights before he was taken into the police cells. He saw on it that he was arrested for obstructing the police and false pretences. The arrest had taken place on 28 February 2012 at 13h10 and he was released on 29 February 2012 after the prosecutor had declined to prosecute.

17. This court is faced with two diametrically versions only one of which is true.

In deciding which version to accept it is trite that the court will look at the credibility of the factual witnesses; their reliability and the probabilities. In decided the issue of credibility it will depend on the court's impression about the veracity of the witness. This will depend on a variety of subsidiary factors such as the witness' candour and demeanour in the witness-box; his bias, latent and blatant, internal contradictions in his evidence, external contradictions with what has been pleaded or put on his behalf, or with established fact or with his own extracurial statements or actions; the probability or improbability aspects of his version, the calibre and cogency of his performance compared to that of other witnesses testifying about the same incident or events etc. The list is not exhaustive.

18. The defendant deposed to an affidavit about the events that led to the plaintiff's arrest. In the affidavit he stated amongst others that the plaintiff interfered with their duties when they were arresting the two suspects who were selling drugs and dagga in the vicinity where there are two schools situated. He stated that after he had arrived with his colleagues and had searched the two suspects and had found drugs on them, he saw that the plaintiff was busy taking photographs of them and some of his colleagues were shouting and screaming at him and encouraging him to shoot photos. He asked the plaintiff who was on the top building why he was taking photos and who had given him permission to do so. The plaintiff said that he did not need permission to take photos and he was a qualified journalist working for the SABC and later changed and said that Deborah Patta was his boss and he

was working for 3rd Degree. He stated further in his affidavit that after he had searched the suspects and had placed them in the police van, he then approached the plaintiff and the plaintiff ran into the building and was followed by the others. The plaintiff then changed his phone with one of his friends. He stated that he had asked the plaintiff to produce his identity card to prove that he was a journalist and he failed to do so. He then begged him to at least produce a card that was issued by the SABC to prove that he was known to them and he failed to do so. He then asked him why he was taking photos while they were busy with their duties and he said that he was going to sell the pictures to 3rd Degree and he was not working for 3rd Degree. He then told him that he was putting him under arrest and informed him of his constitutional rights which is in his pocket book. He then took him to the police station and opened a case of interference with the police duties and false pretence.

19. Moabelo's version is a concocted version. He gave several versions of the events that gave rise to the plaintiff's arrest. He did not call any of his colleagues to support his version. His counsel had placed it on record that constable Malatji was subpoenaed to come and testify in court but did not do so. He discovered after he had closed his case that her subpoena was given to Moabelo the arresting officer, who had failed to give her the subpoena. It was alleged by Moabelo that she had deleted the photograph that she had found on the plaintiff's cellphone. He obviously knew that she would not support his version that he gave and made sure that he did not give her the subpoena. The

court can take judicial notice of the fact that communities are sick and tired of drug dealers selling drugs to school children and blame the police for not reacting when they are given information about it. I find it strange that the members of the public would have been screaming and shouting when drug dealers were being arrested. The probable version is that the screaming and shouting that the plaintiff and his colleagues heard was because the police were assaulting the two suspects and this is what made the plaintiff to come out of the salon. The police saw that he had his cellphone on him and had thought that he was taking their photos and this is what prompted them to go to the salon to look for any proof that the assault had not been captured. Their intention was to delete any such evidence if it was found. That was the real reason why the plaintiff was arrested. Evidence was perhaps found on his cellphone which was deleted by Malatji and that is probably why she was not given the subpoena. The plaintiff did not commit any offence when he photographed the police when they were taking part in an assault on the suspects. On Moabelo's own version that he gave in court was that he had already affected the arrest of the suspects when he saw the plaintiff taking photographs. There was simply no evidence led that he was interfering with the police in their execution of their duties.

20. Moabelo's evidence was also contradictory. When he testified, he said that whilst he was searching a black BMW he saw that the plaintiff was taking photos of him. He made no reference in his affidavit that he was searching a black BMW. This version was not put to the plaintiff when he testified.

However in his affidavit he said that he saw the plaintiff taking his photo whilst he was searching the two suspects. He testified further that when he went to the salon he asked the plaintiff why he was taking their photos and had asked him if he was a journalist and the plaintiff did not answer him. However in his affidavit he said that the plaintiff told him that he was a journalist but was unable to produce proof that he was a journalist. When he testified in court he said that he had asked the plaintiff whether he was a journalist and the plaintiff did not answer him. He repeated the question to him and the plaintiff then told him that he wanted to give the photos to 3rd Degree. He gave conflicting versions about why the plaintiff was arrested. He said that he felt intimidated when he saw that the plaintiff was taking their photographs. This version was not put to the plaintiff when he testified nor is this stated in his affidavit. He said that he had arrested him for failing to prove that he was a journalist and then said that he arrested him for interfering with the police and pretence. On his own version he had already affected the arrest so it is not clear how the plaintiff was interfering with the police in the execution of their duties.

21. Constable Moabelo was a dishonest witness. He fabricated his version as he was testifying. An example of this was that he said that when the plaintiff and the two suspects were driven to the police station, the plaintiff had stolen the drugs that he had found on the suspects and had hidden it in his socks. He found it after he had searched him. This version was not put to the plaintiff when he testified nor does this version appear in his affidavit. He testified

further that the plaintiff had signed a warning statement. The plaintiff denied that he did so and said that the signature that was put onto the warning statement was unknown to him. This evidence was not challenged. Someone must have signed the warning statement in the place of the statement. He was an argumentative witness and did not make a good impression on me when he testified. He blamed his counsel for not putting certain versions to the plaintiff. His counsel could not put those version to the plaintiff because he was busy making up a version whilst he was testifying. The plaintiff on the other hand made a very good impression on me when he testified. He did not contradict himself in any material respects. He stuck to his version during when he testified.

22. The defendant contended that the plaintiff had committed the offences listed in section 67 and 68 of the Police Act and was arrested for it. The defendant went on to state that had the plaintiff produced a card showing that he was a journalist he would not have arrested him. This reason is contradictory. No person is allowed to wilfully hinder the police in the lawful execution of their duties. This would include a journalist too. Section 67 of the Police Act deals with interference with members. Section 67(1)(a) provides that any person who resists or wilfully hinders or obstructs a member in the exercise of his or her powers or the performance of his or her duties or functions or, in the exercise of his or her powers or the performance of his or her duties or functions by a member wilfully interferes with such member or his or her uniform or equipment or any part thereof; shall be guilty of an offence and

liable on conviction to a fine or to imprisonment for a period not exceeding 12 months. Section 68 deals with false representation as a member of the police force. The defendant could not charge the plaintiff with false representation in terms of this section since he did not pretend or produce any certificate or held himself to be a member of the police. There is simply no evidence that the plaintiff had resisted or wilfully interfered or obstructed the police in terms of section 67 of the Police Act. The defendant said that the plaintiff was not arrested for having contravened section 69 of the Police Act so it becomes unnecessary to deal with it.

23. The defendant has failed to prove that the plaintiff had wilfully obstructed the police in the execution of their duty. There was no evidence that he had pretended to be a police officer. As such, the plaintiff's arrest and detention was wrongful and unlawful. He was arrested because the police had suspected that he had taken a picture of them whilst they were assaulting the two suspects. There is no such offence.

24. What remains to be determined is the quantum of damages. In *Minister of Safety and Security v M Tyulu* 2009 (5) SA 85 (SCA), Bosielo JA said the following at paragraph 26 of the judgment:

"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 award 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”.

25. This Court was referred to a number of cases dealing with the amounts awarded for unlawful arrest and detention. In *Minister of Safety and Security v Seymour* 2006 (6) SA 320 (SCA), the SCA reduced the general award of damages awarded to the respondent from R500 000 to R90 000.00. The respondent was a 63 year old man and had been unlawfully arrested and imprisoned for a period of five days. On appeal, the court took into account that he had free access to his family and doctor throughout his detention; that he had suffered no degradation beyond that inherent in being arrested and detained; that, after the first 24 hours, he had spent the remainder of his detention in a hospital bed; that, although the experience had been traumatic and distressing, it warranted no further medical attention after his release; and that whilst he had been diagnosed as suffering from depression and anxiety after the incident, it was not attributable solely to his arrest and detention.

26. In *Louw and Another v Minister of Safety and Security and others* 2006 (2) SA SACR 178 (T), the plaintiffs were detained for 20 hours and were awarded R75 000 each for damages. In *Olivier v Minister of Safety and Security and Another* 2009 (3) SA 434 (W), the plaintiff was a senior police officer who was arrested by the police in full view of his colleagues and then detained at the same police station where he worked. He had claimed R150 000.00 for

such arrest where he spent about six hours in custody. He was awarded R50 000.00. In *Van Rensburg v City of Johannesburg* 2009 (2) SA 101 (W), the court awarded R75 000.00 in damages for a 74 year old returned accountant who was arrested by the Metro Police and spent about five hours in custody.

27. The plaintiff is a 25 year old unmarried male with three children aged 5 years and 4 months respectively. At the time of his arrest he was 23 years old. He is a manager at a salon and is a hairdresser. He is earning R3 500.00 a month. He is a matriculant. It is common cause that he was in custody for 24 hours before he was released. There was simply no legal basis for his arrest. He had committed no offence and it is clear that he had witnessed policemen unlawfully assaulting two drug dealers. They feared that he had taken their pictures and that this would have landed them into trouble. He was not informed at the time of his arrest why he was arrested. He was not warned about what his rights were. He was detained in a cell that is 3 meters by 2.5 meters. There was a toilet and a shower that was not enclosed. The blanket that he was given was dirty and smelled. He was given a sponge and he could not sleep on it. He was given stale bread in the evening. His human rights were violated and the police had no regard to the fact that we are now living in a constitutional state. The arresting officer clearly lied about the actual reason for the plaintiff's arrest. He clearly fabricated the reasons for the arrest.
28. Our law has always regarded the deprivation of personal liberty as a serious injury, and where the deprivation carries with it the imputation of criminal

26.

conduct of which there was no basis, the injury is very serious indeed.

29. Taking into account the facts of this case as a whole, the part awards and relevant case law, a fair and reasonable amount of damages to be awarded to the plaintiff is the sum of R110 000.00.

30. In the circumstances I make the following order:

30.1 The defendant is to pay the plaintiff the sum of R110 000.00.

30.2 Interest on the said sum at the rate of 15.5% per annum *a tempore morae* from date of judgment to date of payment.

30.3 The defendant is to pay the costs of the suit.


FRANCIS J

JUDGE OF THE HIGH COURT

FOR PLAINTIFF : ATTORNEY A BERRINGER

FOR DEFENDANT : S MATHABATHE INSTRUCTED BY
STATE ATTORNEY

DATE OF HEARING : 24, 25, 26 MARCH 2014

DATE OF JUDGMENT : 28 MARCH 2014