**REPUBLIC OF SOUTH AFRICA**

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

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

DATE SIGNATURE

**APPEAL CASE No: A3172/18**

In the matter between:

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| **SIMON MMAPHUTI MAPHOTO** | **1st Appellant** |
| **MAPETU PHILEMON MAKWENG** | **2nd Appellant** |
| **MLUNGISI VINCENT MNGADI** | **3rd Appellant** |
| **BUSISIWE GLADNESS ZIKALALA** | **4th Appellant** |
| **FIKILE CONSTANCE MBONGWE** | **5th Appellant** |
| **ALLOCIOUS OLEBOGENG NTULI** | **6th Appellant** |
| **PHADI SHAUN LENCWE** | **7th Appellant** |
| **BEN BUOANG NTSHOLANE** | **8th Appellant** |
| **NOMZAMO CYNTHIA NTETH** | **9th Appellant** |
| **VUSUMUZI SYDNEY KUNENE** | **10th Appellant** |
| **MLUNGISI NTETHO** | **11th Appellant** |
| **SIPHO ALFRED SHOZI** | **12th Appellant** |

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|---|---|
| **HLABEKILE MAHLANGU** | **13th Appellant** |
| **MASEGO SHADRACK MEGALANYANE** | **14th Appellant** |
| **THOBILE CYNTHIA MOLOI** | **15th Appellant** |
| **KEITUMETSE HARRIETTE MONCHUSI** | **16th Appellant** |
| **MBALI PATIENCE MCHUNU** | **17th Appellant** |
| **WEZIWE EDITH MAGWANYA** | **18th Appellant** |
| **BUYELWAJINI FIKILE NDLOVU** | **19th Appellant** |
| **LESPHORO ERNEST MAKWENG** | **20th Appellant** |
| **KHOLISWA ZIMBI** | **21st Appellant** |
| **KHAZAMULA JEFFREY MASHALI** | **22nd Appellant** |
| **PHYLLIS HLEZIWE NXUMALO** | **23rd Appellant** |
| **KAGISO JAFTER MATLHARE** | **24th Appellant** |
| **MORAKANE MARY MOSAKA** | **25th Appellant** |
| **HLENGANI DANIEL MALULEKE** | **26th Appellant** |
| **MAROPENG EMMANUEL MAPHOTO** | **27th Appellant** |
| **JOSEPH MNGOMEZULU** | **28th Appellant** |
| **KHAZAMULA RECKSON MALULEKE** | **29th Appellant** |
| **MBONISENI LUSHOZI** | **30th Appellant** |
| **JAMES MEFOLO** | **31st Appellant** |
| **BONGEKILE HLENGIWE ZULU** | **32nd Appellant** |
| **TRINITY BALESENG MEGALENYANE** | **33rd Appellant** |
| **SAKHILE DANIEL ZWANE** | **34th Appellant** |
| **SLINDILE PIYOSE** | **35th Appellant** |
| **KHULANI NDLOVU** | **36thAppellant** |
| **SFISO NGUBANE** | **37th Appellant** |
| **CELSA VICENTE FONDO** | **38th Appellant** |
| **JOHANNES MEHLAPE** | **39th Appellant** |
| **DAZA LUSHOZI** | **40th Appellant** |
| **FLORENCE MTHIMKHULU** | **41st Appellant** |
| **AGOSTINHO ANTONIO CHALE** | **42nd Appellant** |
| **MATLOU MAPHOTO** | **43rd Appellant** |
| **XOLISILE WINLOVE MBONANI** | **44th Appellant** |

**DELIWE NYANDU** **45th Appellant**
**THEMBISILE MTUNGWA** **46thAppellant**
and

**THE MINISTER OF POLICE** **1st Respondent**
**THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS** **2nd Respondent**

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**JUDGMENT**

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**INGRID OPPERMAN J**

**INTRODUCTION**

**[1]** On 20 June 2018 this court set aside and replaced an order granted by Magistrate Beharie in the Johannesburg Magistate's Court dismissing a claim instituted by the appellants against the respondents in which they claimed damages arising out of their unlawful arrest and detention. Merits and quantum had been separated and this court declared that the first respondent was liable for 100% of any damages the appellants might prove. The matter was remitted back to the Magistrate's Court for the hearing on the quantum of such damages.

**[2]** On 19 October 2018, Magistrate Sibonyoni granted judgment for the 12th appellant in the sum of R40 000 together with interest from date of judgment and costs and for the 15th appellant in the sum of R45 000 together with interest as aforesaid, and costs. Absolution from the instance was granted against the remainder of the 44 appellants. This appeal lies against these orders.

**[3]** The 12th and the 15th appellants testified and the remaining 44 appellants did not. The magistrate found that those who had not adduced any evidence, had failed to prove their damages and granted absolution from the instance.

**THE FACTS FOUND BY THE FULL BENCH ON 20 JUNE 2018**

**[4]** On 26 August 2008, and under case number 2008/19472 issued out of this court, 17 respondents and "further unlawful occupiers of Erf […]8 and […]9 Bellevue Hillcrest Mansions" ('*the property*') were ordered by Malan J to be evicted from such property within 30 days of the granting of the order. The eviction order was granted in favour of Abraham Aubrey Levert, the owner of the property ("*the owner*").

**[5]** Four years and seven months later, on 22 March 2013, the deputy sheriff evicted all of the occupants of the property. The deputy sheriff deposed to an affidavit on 18 March 2015 stating that the eviction was pursuant to the court order dated 26 August 2008. The evicted occupants of the property were no longer 17 plus "further unlawful occupiers of Erf […]8 and […]9 Bellevue Hillcrest Mansions" but rather all the occupants of the property.

**[6]** On the same day, being 22 March 2013, the appellants obtained an order by Satchwell J in the urgent court of this Division, restoring peaceful and undisturbed occupation of the property and interdicting and restraining the owner from evicting the appellants pending the finalisation of an eviction application. Satchwell J gave further directives on how the eviction application was to be prosecuted.

**[7]** Seven months later, on 18 November 2013, the appellants obtained an order from Vally J rescinding the eviction order of 26 August 2008. This order, however, rescinded an eviction order under case number 32404/08, a case number

different from the original order under which the order on 26 August 2008 had been granted.

**[8]** On 28 May 2015 Captain Bila ('*Capt Bila*'), a police officer, received an instruction from the investigating officer in the matter, Constable Mbombi ('*Cst Mbombi*'), to gather manpower and arrest the appellants. This arrest, according to Capt Bila, was effected pursuant to the 26 August 2008 eviction order and a complaint laid by the owner against the appellants for trespassing. The owner of the property had, approximately three months prior to the arrests, complained about the appellants trespassing on the property. According to Capt. Bila, he was given a docket by Cst Mbombi which contained the 26 August 2008 order and was told by Cst Mbombi that it was valid because she (Cst Mbombi) had investigated this aspect and the order was extant. She was not called to testify. The restoration order of 22 March 2013 was missing from the docket. Capt Bila was accompanied by the owner when he effected the arrests. Capt Bila had not enquired from any of the appellants about the lawfulness of their occupation.

**[9]** The appellants were arrested, detained, taken to court the following morning and released on warning in the afternoon. They attended court on numerous occasions thereafter until the charges were withdrawn on 6 April 2016.

**EVIDENCE PRESENTED IN THE COURT *A QUO***

**[10]** Appellants 12 and 15 testified. Their evidence was largely undisputed.

**[11]** Appellant 12 testified that at the time of his arrest, he was 45 years old and lived with his wife and small children, a boy aged 1 year and 3 months (his grandchild) and a girl aged 7. He had passed matric during 1990. At the time of his

arrest, he had already worked as a general worker for about 20 years at a company called Footwear Trading. The police arrived between 22h00 and 22h30.

**[12]** An unknown number of police came to his flat and knocked on the door. When he opened the door, the police told him to get dressed. At the time, the children were awake and his youngest was crying because she did not know what was happening. He asked the police what he had done but did not get any response. The police said they should get dressed so that they could leave. Outside he found other community members who had been instructed to form a queue. They were placed in a police van and taken to the Hillbrow Police Station. At the Hillbrow Police Station, they were made to sit in an open area where fingerprints were taken. Upon asking the police why their fingerprints were being taken, they were shown pictures and told that they had been arrested for the "hijacking" of a building. They were told they were living in the property unlawfully. Thereafter they were taken to a big room where they had to wait until the next morning. There was nowhere to sleep. He explained that the place where they were kept was an open area with a gate. There was a toilet right "near" them. The conditions in the place where they were kept were dirty. There was no privacy, the toilet was open, and people were relieving themselves in full view of the other occupants. There was a lot of dust on the ground, no blankets and it was cold. It was cold because, since he did not know he was going to be arrested, he did not dress warmly. He testified that everyone was scared as they were arrested for something of which they knew nothing. The incident was particularly traumatic for him as the children had been left alone at the flat and he did not know who was taking care of them. His wife was also arrested, and she was appellant number 32.

Only when he came back to the flat did he find out that the security guards had been looking after the children. His daughter cried when he arrived back. He (and others) were taken to court the following day after receiving tea, where he was released on warning at about 14h00. He did not have any difficulties with his employer regarding his absence since he had proof from the police in the form of a letter, explaining what had occurred.

**[13]** Appellant 15 testified that she was a 44-year old woman, a mother of an 11-year old boy. She, the father of her child and the child, reside at the property. She was arrested at the same time as appellant 12. She completed Form 5 which is the equivalent of a matric. At the time when the police arrived, she was not at the property as she had gone to the hospital to take toiletries to a fellow tenant who had just given birth. She arrived back at about 21h00 with another tenant. They could not find parking as the police vehicles had blocked all the parking spaces. They encountered metro police officers and police officers, who asked them if they lived there. When they answered that they do, the police told them to get in line and take out their identity documents ('*ID's*'). She saw people coming down from their flats. She saw another person who was fighting with the police as he did not want to get into the police van. Some were already in the police van. She then asked the female metro police officer at the gate what was wrong, but she simply said that she must not ask questions and just get in the line. She did not even get to go to her flat. She thought that, since there was a vehicle from Home Affairs, they were looking for people's ID's. Like the others, she too got into the police van and was taken to the Hillbrow Police Station. It all happened very fast. They got off in the parking area of the police station and they were asked for their ID's whereafter the police made

them ‘write’ some things and then ushered them into a cell with about 20 other women.

**[14]** The conditions in the cells were bad as most of them (not the witness herself) were wearing pyjamas. The cells were cold and smelt foul because of a blocked toilet which could not be flushed. Some were scared and some of them had never been arrested before. When they were given food, she and other inmates could not eat because they were looking at the faeces from the toilet and the stench was unbearable. She asked a police officer to do something about it. He said he would return with a female officer, but the police officer never returned. Someone arrived the following day to fix the toilet. Neither the witness nor her fellow detainees could use the toilet even though they needed to. They eventually urinated at the cell door, but still had to stay in the cell. They were only taken to court at approximately 14h00. She felt ‘*disappointed*’ because she felt like a criminal. She did not know why she had been arrested. She had to leave her child behind in the flat as both she and the child’s father (appellant 24) had been arrested.

**THE GROUNDS OF APPEAL**

**Absolution from the instance**

**[15]** The appellants contended that the court *a quo* had misdirected itself when it found that there was no factual basis for an assessment of the quantum of damages in respect of all the appellants (‘*the remaining appellants*’), save for appellants 12 and 15, by virtue of the fact that they did not testify at trial.

**[16]** The court *a quo* quoted a passage from the textbook titled *"The Law of Personality"*[1] which sets out the factors that ought to be taken into account when assessing the quantum of damages in wrongful arrest and detention matters. They are: (a) the circumstances under which the deprivation of liberty occurred; (b) the presence or absence of malice or an improper motive on the part of the defendant; (c) the duration of the deprivation of liberty; (d) whether the defendant apologised or provided a reasonable explanation for what happened; (e) the honour and reputation of the victim and (f) previous awards in comparable cases.

**[17]** Save for those relating to (e), the court was appraised of all the facts underpinning the considerations listed by the learned authors. The circumstances under which the deprivation of liberty occurred were known with reference to the evidence tendered during the merits portion of the trial as appears from the appeal judgment dated 20 June 2018 (and summarised herein), which includes that all the appellants were detained at the Hillbrow Police Station and were released on warning at about 14h00 in the afternoon of 29 May 2015, that all the appellants were arrested pursuant to the very same rescinded order, that the existence of the restoration order was not brought to the attention of the police before the arrest of the appellants and that the police had not sought any explanation from the appellants regarding the lawfulness of their occupation of the building. No apology had been tendered by the respondent. The duration of the deprivation of liberty of the appellants was established to be overnight from around 23h00 on 28 May 2015 to approximately between 14h00 to 15h00 of 29 May 2015 after which the

[1] Neethling, Potgieter & Visser, 5th Edition at page 130 paragraph 2.4

appellants were released at court after their first appearance. Accordingly, they were detained for approximately 16 hours.

**[18]** In declining to award damages to the appellants, solely on the basis that the appellants had not personally testified, the court *a quo* overlooked the aforesaid factors.

**[19]** Any wrongful arrest and detention is inherently degrading and traumatising to the victim of such arrest and detention.[2]

**[20]** In *Olivier v Minister of Safety & Security And Another*[3] the court reasoned as follows regarding the plaintiff's failure to lead evidence regarding his personal circumstances in a claim for wrongful arrest and detention:

> "The plaintiff closed his case without leading any evidence. Mr Joubert, who appeared on behalf of the defendants, criticised the plaintiff for his failure to testify. In *Titus v Shield Insurance Co Ltd* 1980 (3) SA 119 (A) Miller JA at 133E said:
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> > "It is clearly not an invariable rule that an adverse inference be drawn; in the final result the decision must depend in large measure upon 'the particular circumstances of the litigation' in which the question arises. And one of the circumstances that must be taken into account and given due weight, is the strength or weakness of the case which faces the party who refrains from calling the witness."
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> In my view the above comments of Miller JA are paramount where the defendant such as is the case here, bears the onus. It is quite permissible for a plaintiff in a case of unlawful arrest, when the onus rests on the defendant, when the facts are largely common cause and the unlawfulness of the defendant's conduct can be ascertained from those facts and the evidence presented by the defendant, to refrain from giving evidence. Even more so where there is nothing for the plaintiff to rebut, such as was the case here. In my view nothing sinister can be read into

[2] *Seymor v Minister of Safety & Security* 2006 (6) SA 320 SCA at par [21]; See *Radhuva v Minister of Safety & Security* [2016] ZACC 24 at par [57]
[3] 2009 (3) SA 434 (W) at 440I – 441C

> the plaintiff's decision not to give evidence in the circumstances of the case."

**[21]** In *Chamberlain v Minister Police*[4], the plaintiff elected not to testify. The period and condition of the detention were known and the court awarded the plaintiff damages in the amount of R100 000 despite the following aspects of his personal circumstances not being available:

> "[29] In the present case the plaintiff chose not to testify. There is no evidence before me of his age, level of education or occupation. The arrest did occur in the public eye and there is no evidence before me of any extraordinary features which may have exacerbated the humiliation ordinarily associated with an arrest. The only evidence placed before me in respect of the circumstances of his detention emerged from the cross-examination of Mlaza who testified that the plaintiff was detained in a large cell together with other suspected offenders. The cell has a sleeping area, toilet and shower, however, there are no beds or other furniture upon which to sleep. Mlaza confirms that during the detention of the plaintiff he, together with other prisoners, would have been regularly fed. He is unable to provide particulars of the menu or the times at which prisoners were fed as these functions are performed by the Uniform Branch….. There has been no suggestion in the evidence of Mlaza, or any other police officer, that they had dealt harshly with the plaintiff either at the time of his arrest or during his detention. The evidence does not establish the status or standing of the plaintiff in society nor is there any evidence relating to his health. The evidence does not suggest any publicity given to his deprivation of liberty."

**[22]** In *Mapurunga v Minister of Police*[5] the court, despite the fact that the plaintiff did not testify as to quantum, nevertheless made an award premised upon, amongst other sources, the evidence elicited from the arresting officer. The court found that even though it would have been very helpful to the court if the plaintiff

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[4] Unreported, ECLD 3500/2009, 8 May 2014.
[5] Unreported, 2011/34441 (15 May 2013) GP

had testified to his personal circumstances, the court could not hold it against him, more so because the onus was on the defendant to establish the lawfulness of the arrest and detention.[6]

**[23]** In *Gabayi and Another v Minister of Police and Another*[7] one of the plaintiffs passed away after the proceedings were instituted. *Litis contestatio* had therefore taken place before his death and the executrix was therefore competent to pursue the matter to its finality. With specific reference to the deceased's claim for damages flowing from his unlawful arrest and detention, the court found that the defendant did not discharge the onus of justifying the arrest and detention and therefore the plaintiff was entitled to damages by virtue of the onus being upon the defendant.

**[24]** The appellants argued, and we agree, that a concession by a defendant or a pronouncement by a court that an arrest and detention is unlawful, *ipso facto* entitles the victim to an award of appropriate general damages flowing therefrom.[8] Of course it is advisable that the personal circumstances and the impact the arrest had on the particular individual concerned would be helpful in assessing damages but to contend that the appellants had not shown that they were entitled to at least R1 because they did not testify, which is the effect of the judgment of the court *a quo*, has no foundation in law or in fact and goes against the very spirit of the values entrenched in our Constitution.

**[25]** The order granting absolution in respect of the remaining appellants, accordingly falls to be set aside.

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[6] See par [34] of the judgment
[7] Unreported, 966/2015 (23 January 2018) ECLD
[8] Olivier *supra* at 446H-J; *Gabayi supra* at par 11(w)

**Quantum of appellants 12 and 15 and the remaining appellants**

**[26]** Appellant 12 was awarded R40 000 in damages and appellant 15, R45 000. Their counsel, Mr van Rooyen, in his very able argument, submitted that there is a striking disparity between what the court *a quo* ought to have awarded and what it in fact awarded, and this would entitle this court to set the awards aside and make the appropriate awards.

**[27]** He argued that the court *a quo,* had failed to afford the following facts which were common to all appellants, the appropriate weight:

27.1. The severity of the circumstances and extreme inconvenience and discomfort the appellants suffered by being arrested very late at night;

27.2. The rounding-up of all the appellants like cattle in the parking garage of the building and herding them into police vans;

27.3. The humiliation and hardship endured by the appellants when they were detained in overcrowded cells under conditions which were not consonant with human dignity or compliant with the Constitution;

27.4. The fact that the appellants were all detained in cells that had no working ablution facilities and that there were no blankets;

27.5. That they had nowhere to lay down as there was not enough space in the cell to accommodate all the detainees; and

27.6. The fact that the appellants were not treated in accordance with the presumption of innocence, but as criminals.

**The general approach in the assessment of damages for unlawful arrest and detention**

**[28]** The Supreme Court of Appeal held as follows in *Minister of Safety and Security v Tyulu*:[9]

> '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 awards 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 (*Minister of Safety and Security v Seymour* 2006 (6) SA 320 (SCA) at 325 para 17; *Rudolph and Others v Minister of Safety and Security and Another* 2009 (5) SA 94 (SCA) ([2009] ZASCA 39) paras 26–29).'

**Factors that can play a role in the assessment of damages**

[9] *Minister of Safety and Security v Tyulu* 2009 (5) SA 85 (SCA) paragraph 26 at 93D-F.

**[29]** The authors of Visser & Potgieter *Law of Damages* have extracted from South African case law the following factors which can play a role in the assessment of damages:[10]

> 'In deprivation of liberty the amount of satisfaction is in the discretion of the court and calculated ex aequo et bono. Factors which can play a role are the circumstances under which the deprivation of liberty took place; the presence or absence of improper motive or 'malice' on the part of the defendant; the harsh conduct of the defendants; the duration and nature (eg solitary confinement or humiliating nature) of the deprivation of liberty; the status, standing, age, health and disability of the plaintiff; the extent of the publicity given to the deprivation of liberty; the presence or absence of an apology or satisfactory explanation of the events by the defendant; awards in previous comparable cases; the fact that in addition to physical freedom, other personality interests such as honour and good name as well as constitutionally protected fundamental rights have been infringed; the high value of the right to physical liberty; the effects of inflation; the fact that the plaintiff contributed to his or her misfortune; the effect an award may have on the public purse; and, according to some, the view that the actio iniuriarum also has a punitive function.

**[30]** Section 35(2)(*e*) of the Constitution[11] provides as follows:

> '(2) Everyone who is detained, including every sentenced prisoner, has the right –
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> …. (*e*) to conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment.'

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[10] Visser & Potgieter *Law of Damages* Third Edition, pages 545–548. This list of factors has been referred to with approval in *Ntshingana v Minister of Safety and Security* (unreported judgment dated 14 October 2003 under Eastern Cape Division case number 2001/1639) and *Phasha v Minister of Police* (unreported judgment by Epstein AJ dated 23 November 2012 under South Gauteng High Court case number 2011/25524).

[11] Constitution of the Republic of South Africa, 1996.

**[31]** In *Minister of Safety and Security vs Seymore*[12], Nugent J A stated at paragraph 17:

> 'The assessment of awards of general damages with reference to awards made in previous cases is fraught with difficulty. The facts of a particular case need to be looked at as a whole and few cases are directly comparable. They are a useful guide to what other courts have considered to be appropriate but they have no higher value than that.'

**[32]** In *Mandleni v Minister of Police*[13], Hellens AJ observed as follows in para [13]:

> 'In *Masisi v Minister of Safety and Security 2011 (2) SACR 262* Mokgoka J very wisely in my view described the purpose of an award of general damages in the context of a matter such as the present as a process in which one seeks to compensate a claimant for deprivation of personal liberty and freedom and the attendant mental anguish and distress. The right to liberty is an individual's most cherished right, and one of the foundational values giving inspiration to an ethos premised on freedom, dignity, honour and security. Its unlawful invasion therefore struck at the very fundament of such ethos. Those with authority to curtail that right had to do so with the greatest of circumspection, and sparingly. Where members of the Police transgressed in that regard, the victim of the abuse was entitled to be compensated in full measure for any humiliation and dignity which resulted.'

**[33]** Conscious of the limited value that previous cases provide, I will refer to certain decided cases and work my way to an appropriate assessment of damages in this case.

**[34]** In *Baasden v Minister of Safety & Security*[14] a professional landscaper received an award of what is today the equivalent of R154 000 (original award

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[12] 2006(6) SA 320 (SCA)
[13] an unreported judgement of this division dated 24 April 2017 by Hellens AJ under case number 37539/14

R120 000) after he was arrested at OR Tambo Airport. He had been detained overnight on a charge of alienation of goods, which goods were still on credit. Whilst the court took cognisance of the fact that it must have been very humiliating for him to be arrested, no particular negative conditions of detention were recorded.

**[35]** In *Latakgomo v Minister of Safety & Security*[15], the head of security at a Pick n Pay store, received an award of what is today the equivalent of R90 000 (original award R80 000) after he was falsely accused of stealing chicken from the store where he was employed. He was arrested whilst on duty in full view of his colleagues and customers. He was detained overnight in dire conditions and only released the next day at lunch time after the prosecutor decided not to prosecute.

**[36]** In *Tsuma & Another v Minister of Safety & Security And Another*[16], a security guard was awarded damages in an amount of what today is the equivalent of R114 000 (original award R65 000) after having been arrested and detained overnight from just before midnight and released at around 10h00 the following day, the period of detention being approximately 9 hours.

**[37]** In *Louw v Minister of Safety and Security*[17], a young couple was awarded damages in an amount of what today is the equivalent of R146 000 (original award R75 000) for having been unlawfully arrested and detained for a period of 20 hours. This was in full view of the public in one of Pretoria's busiest police stations. They were both traumatised by the arrest and were exposed to hardened criminals and detained under appalling conditions. They were people who could deal with what had happened to them and their reputations had not suffered materially.

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[14] 11874/2011, Unreported, 28 February 2014, GNP,
[15] 2016 JDR 1601 (GP)
[16] (Unreported) (WLD 27661/2006) (30 May 2008)
[17] 2006 (2) SACR 178 (TPD)

**[38]** In *Van Rensburg v City of Johannesburg*[18], the Plaintiff was a 74 year old male retiree. The Plaintiff was detained in a holding cell at the Johannesburg Central Prison. The Plaintiff spent about 6 hours in custody. The Plaintiff was awarded general damages of R75 000. Adjusted for inflation this is approximately R123 000 in today's money.

**[39]** In *Pasha v Minister of Police*[19] Epstein AJ awarded general damages of R80 000 (in today's money approximately R112 000). The Plaintiff had spent about 9 hours in custody. He was 40 years old at the time of his arrest. He had a wife and children. He worked as a Debt Collector at the office of the State Attorney in Johannesburg. The Plaintiff knew the Police Officials who arrested him as they were colleagues of his wife. After having been handcuffed, the Plaintiff was led through a shopping mall which caused him to feel humiliated, embarrassed and his dignity was impaired. People who knew the Plaintiff were surprised to see what was happening. He was detained in the holding cell with about 7 other detainees. The toilet in the cell was filthy and there was no toilet paper. The blankets provided were dirty. The Plaintiff felt that the community no longer had confidence in him and regarded him as a robber. Sometimes colleagues made negative comments towards him.

**[40]** In *Mothoa v Minister of Police*[20], a matter decided during 2013, the plaintiff was forced to endure a detention lasting twenty two hours in the holding cells of the Johannesburg Central police station under appalling conditions. The plaintiff was

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[18] 2009 (2) SA 101 WLD

[19] Unreported judgment by Epstein AJ, dated 23 November 2012, under South Gauteng High Court case number 25524/2011.

[20] An unreported judgment by Hutton AJ, dated 8 March 2013, under South Gauteng High Court case number 2011/5056

awarded R150 000 (approximately R204 000 today) as damages for his unlawful arrest and detention.

**[41]** In *Black v Minister of Police*[21] (decided during 2013), the plaintiff was sleeping inside his parked vehicle outside a building of flats when he was arrested. He had pneumonia and was under medical treatment. He was arrested for drunkenness. He was refused access to a bathroom and defecated in his pants. He was kept in over crowded holding cells both at the police station and at court. It was mid winter. This ordeal lasted 40 hours. Damages in the amount of R140 000 (approximately R187 000 today) were awarded for his unlawful arrest and detention.

**[42]** In *Keitumetsi Letlalo v Minister of Police*[22], the plaintiff, a hairdresser, photographed with his cell phone, police officers assaulting two persons. The police demanded the phone, when he refused he was arrested and detained for 24 hours. There was no legal basis for his arrest. He was kept in appalling circumstances. He was awarded R110 000 (approximately R141 000 today).

**[43]** Having regard to the facts as a whole, the past awards and the relevant case law, in my view a fair and reasonable amount for the damages to be awarded to appellants 12 and 15 is R80 000 each and R 60 000 for the remainder of the appellants. Appellants' counsel, during argument, conceded that it would be appropriate to draw a distinction between the appellants who testified and those who did not as the personal information relating to the remainder of the appellants was lacking.

**INTEREST**

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[21] An unreported judgement by Windell J, dated August 2013 under case number 2011/38093

[22] An unreported judgment by Francis J, dated 28 March 2014, under Gauteng Local Division, Johannesburg case number 28575/12

**[44]** We were requested to order interest to run from date of demand or service of summons, as provided for in Section 2A of the Prescribed Rate of Interest Act, Act 55 of 1975. No reason was advanced why this should not follow and I know of none.

**ORDER**

**[45]** I accordingly grant the following order:

45.1. The appeal is upheld with costs.

45.2. The order of the court *a quo* is set aside and replaced with the following:

45.2.1. 'The 1st defendant is ordered to pay plaintiffs 12 and 15 the amount of R 80 000 each, together with interest thereon at the rate of 10,25%, from date of service of summons until date of payment, both days inclusive.

45.2.2. The 1st defendant is ordered to pay plaintiffs 1 to 11, 13, 14 and 16 to 46 the amount of R 60 000 each, together with interest thereon at the rate of 10,25%, from date of service of summons until date of payment, both days inclusive.

45.2.3. The 1st defendant is to pay the costs of suit.'

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I OPPERMAN
Judge of the High Court

Gauteng Local Division, Johannesburg

I Agree

H.E MKHAWANE
Acting Judge of the High Court
Gauteng Local Division, Johannesburg

Heard: 6 August 2019
Judgment delivered: 29 August 2019
Appearances:
For Appellants: Adv. J.M. Van Rooyen
Instructed by: N Ndebele Inc Attorneys
For First Respondent: Adv. S.I. Vobi
Instructed by: The State Attorney