REPUBLIC OF SOUTH AFRICA

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

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

.....
SIGNATURE **DATE:** 3 November 2021

CASE NO: 2017/12111

In the matter between:

SHABALALA: VELI STANLEY Plaintiff

and

MINISTER OF POLICE Defendant

JUDGMENT

DOSIO AJ:

Introduction

[1] This is an action whereby Veli Stanley Shabalala, (the 'plaintiff') seeks damages from the Minister of Police (the 'defendant') for an alleged unlawful arrest and detention. The plaintiff also seeks damages in respect of a malicious prosecution.

[2] The crisp issues for determination are:

(a) Whether the arrest was lawful within the contemplation of s 40(1)(b) of the Criminal Procedure Act 51 of 1977 (the 'CPA');

(b) Whether or not there was a reasonable suspicion formed on the part of the arresting officer, Colonel Zonke Raphael Nzimande ('Colonel Nzimande'), in order to effect the arrest;

(c) Whether the detention was unlawful;

(d) Whether the plaintiff was assaulted at the time of the arrest; and

(e) Whether the prosecution was malicious.

[3] If I find in favour of the plaintiff, the next question to be determined is the issue of quantum.

Background

[4] It is common cause that the plaintiff was arrested on 27 April 2016, and that he was detained from that date to 29 April 2016 at the Diepkloof police station on a charge of business robbery.

[5] After appearing in the Orlando Magistrate Court in Soweto on 29 April 2016, the plaintiff was remanded in custody to the Johannesburg Central Prison ('Sun City'). He was refused bail on 28 June 2016. After numerous postponements, and due to the non-attendance of witnesses at the trial proceedings, he was released on 2 March 2017.

[6] The plaintiff alleges that the members of the defendant acted maliciously in that they persisted with the arrest of the plaintiff in the face of:

(a) The express denial of the plaintiff of the accusations levelled against him;

(b) A complete absence of evidence against the plaintiff;

(c) Nothing incriminating the plaintiff.

[7] The defendant alleges the arrest was lawful within the contemplation of s 40 of the CPA.

The evidence

[8] The defendant called Colonel Nzimande who testified that on 27 April 2016, he received a telephone call whilst attending to another arrest at Roots butchery. Mr Fredericks, a manager at Pick n Pay, informed Colonel Nzimande that one of the cashiers by the name of Violet Thobela had identified a man who participated in the armed robbery that took place at Pick n Pay on 6 April 2016.

[9] Colonel Nzimande testified that on his arrival he found the plaintiff and Mr Fredericks waiting outside. Mr Fredericks pointed out the plaintiff. Colonel Nzimande requested to see Violet Thobela, however, he was informed that after seeing the plaintiff she was so traumatised that she left the cash till under her supervision unattended.

[10] Colonel Nzimande testified that he viewed the CCTV footage of the robbery which took place on 6 April 2016, however it was not clear. The footage was copied onto a memory stick and was given to the investigating officer. He testified that another cashier by the name of Nonjabulo Khumalo confirmed that the plaintiff was one of the suspects who committed the robbery and stated he is *'really the one'*. Colonel Nzimande proceeded to read the plaintiff his rights and arrested him for business robbery. He was asked, given the time he had spent in service, whether what he was told by Mr Fredericks and Nonjabulo Khumalo was enough to arrest the plaintiff and he replied, *'It was not exactly enough as there was supposed to be the other cashier, the one who was traumatised'*. The defendant's counsel asked, *'if the information was not exactly enough, why did you arrest the suspect at the time?'* to which he replied, *'I did because Nonjabulo confirmed it and the footage showed it'*.

[11] Under cross examination, Colonel Nzimande confirmed that the footage was not so clear and that he could not identify the suspect. He agreed that the fact that he viewed the footage and spoke to Nonjabulo Khumalo was not in his statement, however, he stated that it is the investigating officer who has to record witness statements. He did state that Nonjabulo Khumalo confirmed that the plaintiff was one of the suspects who committed the robbery at Pick n Pay, however, when asked by the plaintiff's counsel whether anyone gave him any facial identification marks of the suspect, Colonel Nzimande stated, '*As I arrested him, no one explained anything to me*'. He was asked whether he enquired whether there were any outstanding suspects who had not yet been arrested for the robbery committed at Pick n Pay on 6 April 2016, to which he replied, '*No, that is the duty of the investigating officer*'. Colonel Nzimande stated that he did not communicate with the investigating officer prior to arresting the plaintiff. The plaintiff's counsel put a version to Colonel Nzimande during cross-examination to the effect that when he arrested the plaintiff, he had no justifiable cause for arresting him, to which Colonel Nzimande replied, '*I don't have a comment*.'

[12] The plaintiff testified that on 27 April 2016 he was exiting the Pick n Pay after having bought some provisions for his son's schooling, when he was accosted by men wielding rifles. He was asked where the car was that he had been travelling in, and he replied that he was coming from work and wanted to go and relax. These men persisted in asking him where his co-accused were. Colonel Nzimande felt in the plaintiff's pocket stating that he wanted the keys to the plaintiff's car. At this point the other men started to butt the plaintiff with their rifles. Colonel Nzimande told the plaintiff that he was being arrested for a robbery that had taken place at Pick n Pay. The plaintiff was handcuffed and pushed into the back of the van. His cell phone was removed and he was taken to the Diepkloof police cells where he was detained from 27 April to 29 April 2016. During his detention at Diepkloof police cells he was also taken to Orlando, Chamdor and Protea. The plaintiff appeared for the first time in Orlando Magistrate Court on 29 April 2016, after which he was remanded to Sun City. When the bail application was held, the investigating officer opposed the granting of bail, citing that the plaintiff was a danger to the witnesses if released on bail. At the time of his arrest, the plaintiff was gainfully employed, however upon his

release on 2 March 2017, the company had employed someone else and as a result he had no income.

[13] As regards the conditions at the Diepkloof cells, the blanket given to him smelt and the food was not of a good quality. As regards the conditions at Sun City, the plaintiff testified that this trauma was unforgettable as he had to sleep on the floor and the cell was full of people. If a bed was available, four to five people would be on that bed. The beds were smelly and full of lice. It took three weeks for him to continue with his tuberculosis treatment.

Legal principles and evaluation

[14] It is a well-established principle that the onus rests on the arresting officer to prove the lawfulness of the arrest. The learned Rabie CJ stated in the case of *Minister of Law and Order and Others v Hurley and Another*,[1] that:

'An arrest constitutes an interference with the liberty of the individual concerned, and it therefore seems to be fair and just to require that the person who arrested or caused the arrest of another person should bear the *onus* of proving that his action was justified in law.'[2]

[15] In respect of s 40(1)(b) of the CPA, the jurisdictional facts which must exist for a s 40(1)(b) defence to succeed were set out in the matter of *Duncan v Minister of Law and Order*.[3] They are:

(a) The arrestor must be a peace officer;

(b) The arrestor must entertain a suspicion;

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

(d) The suspicion must rest on reasonable grounds. In order for the suspicion to be a reasonable one, it must be objectively sustainable.

---

[1] *Minister of Law and Order and Others v Hurley and Another* 1986 (3) SA 568 (A).
[2] Ibid at 589E-F.
[3] *Duncan v Minister of Law and Order* 1986 (2) SA 805 (A) at 818E-H.

[16] In the matter of *Mabona v Minister of Law and Order and Others*,[4] the following was said in relation to how a reasonable suspicion is formed:

'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 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 sufficiently 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 upon solid grounds. Otherwise, it will be flighty or arbitrary, and not a reasonable suspicion.'[5]

[17] In the matter of *Zealand v Minister of Justice and Constitutional Development and Another*,[6] the following was said:

'The Constitution enshrines the right to freedom and security of the person, including the right not to be deprived of freedom arbitrarily or without just cause, as well as the founding value of freedom. Accordingly, it was sufficient in this case for the applicant simply to plead that he was unlawfully detained. This he did. The respondents then bore the burden to justify the deprivation of liberty, whatever form it may have taken.'[7]

[18] It is trite that police officers purporting to act in terms of s 40(1)(b) of the CPA should investigate exculpatory explanations offered by a suspect before they can form a reasonable suspicion for the purpose of a lawful arrest.[8]

[19] Colonel Nzimande testified that he did not ask the plaintiff any questions as to his involvement in the robbery and, according to the plaintiff's testimony, the policeman was not interested in his version. Colonel Nzimande did not ask the cashier, Violet Thobela, to point out the suspect who had allegedly robbed the store three weeks before. Despite this failure, Colonel Nzimande arrested and detained the plaintiff. There is no evidence that Colonel Nzimande or the investigating officer

---

[4] *Mabona and Another v Minister of Law and Order and Others* 1988 (2) SA 654 (SE).
[5] Ibid at 658G-H.
[6] *Zealand v Minister of Justice and Constitutional Development and Another* [2008] ZACC 3; 2008 (2) SACR 1 (CC).
[7] Ibid para 24.
[8] See *Louw & Another v Minister of Safety and Security & Others* 2006 (2) SACR 178 (T); *Liebenberg v Minister of Safety and Security* [2009] ZAGPPHC 88.

interviewed Violet Thobela to clarify the identification of the plaintiff, or that Violet Thobela attended an identification parade to confirm the identity of the suspect.

[20] Colonel Nzimande could also not identify the plaintiff as one of the perpetrators from the available CCTV footage in the Pick n Pay store, and neither was he given any identifying facial features or marks of the suspect. Colonel Nzimande merely arrested the plaintiff after Mr Fredericks pointed out the plaintiff. In fact, the plaintiff was arrested on the hearsay evidence of Violet Thobela, Nonjabulo Khumalo and Mr Fredericks. Despite no positive identifying features of the alleged suspect, the plaintiff was still detained at the Diepkloof police cells.

[21] Apart from the evidence of Colonel Nzimande, who had no idea whether the plaintiff had been involved in the robbery on 6 April 2016 or not, the defendant presented no additional evidence in respect of the identification of the plaintiff as a possible suspect. Colonel Nzimande also did not liaise with the investigating officer to discuss how many suspects were involved in the robbery and whether any suspects still needed to be arrested. The suspicion upon which Colonel Nzimande arrested the plaintiff in terms of s 40(1)(b) of the CPA cannot be said to have rested on reasonable grounds.

[22] In the matter *in casu*, the Minister of Justice and Director of Public Prosecutions were not joined. In the case of *De Klerk v Minister of Police*,[9] the Constitutional Court stated that:

'The Minister of Justice and Director of Public Prosecutions might be jointly and severally liable with the Minister of Police, but it is sufficient for one of them to be sued for their proven delict for the applicant to succeed. A plaintiff may elect to sue only one person whose delict caused her harm, even if another person's independent delict also caused that same harm. It is not obligatory that *all* joint wrongdoers be sued in the same action. Where all joint wrongdoers have not been sued, a court is not barred from determining the liability, if any, of the party or parties before it.'[10]

---

[9] *De Klerk v Minister of Police* [2019] ZACC 32; 2020 (1) SACR 1 (CC).
[10] Ibid para 83.

[23] The plaintiff is suing for malicious prosecution and in light of the decision of *De Klerk*, I see no problem that the Minister of Justice and the Director of Public Prosecutions were not joined.

[24] To succeed on a claim for malicious prosecution a claimant must prove that:

(a) The defendant set the law in motion and that it instigated or instituted the proceedings;

(b) The defendant acted without reasonable and probable cause;

(c) The defendant acted with 'malice' (or *animo iniuriandi*) that is, with the intention to injure the plaintiff; and

(d) The prosecution failed.[11]

[25] The test to determine the absence of reasonable and probable cause was set out in the matter of *Beckenstrater v Rottcher and Theunissen*,[12] as follows:

'When it is alleged that a defendant had no reasonable cause for prosecuting, I understand this to mean that he did not have such information as would lead a reasonable man to conclude that the plaintiff had probably been guilty of the offence charged; if, despite his having such information, the defendant is shown not to have believed in the plaintiff's guilt, a subjective element comes into play and disproves the existence, for the defendant, of reasonable and probable cause.'[13]

[26] The onus to prove these requirements rests on the plaintiff. The defendant bears the evidential burden to rebut this interference regarding its state of mind, including any mistake that would exclude its liability.

[27] It is not disputed that the servants of the defendant caused the institution of the prosecution of the plaintiff in the matter *in casu*. The prosecution was based on the same information relied upon for his unlawful arrest. It therefore follows that there was no reasonable or probable cause to prosecute the plaintiff. At that stage more

---

[11] *Minister of Justice and Constitutional Development and Others v Moleko* [2008] ZASCA 43; 2009 (2) SACR 585 (SCA); *Minister of Safety and Security NO and Another v Schubach* [2014] ZASCA 216.
[12] *Beckenstrater v Rottcher and Theunissen* 1955 (1) SA 129 (A).
[13] Ibid at 136A-B.

importantly, the servants of the defendant were aware that neither the victims of the robbery nor the CCTV footage could link the plaintiff to the robbery. Despite this, the defendant proceeded to instigate the prosecution of the plaintiff, regardless of the consequences of its conduct. In acting as it did, it acted *animo injuriandi.*

[28] I cannot find, on the evidence available, that a reasonable and probable cause for the arrest and prosecution existed, accordingly, the conduct of the prosecution in instigating the prosecution was wrongful. As a result, I am convinced that the plaintiff has proved the requirements of malicious prosecution.

[29] After the plaintiff's first appearance on 29 April 2016, the Magistrate postponed the case on numerous occasions until it was subsequently withdrawn by the state. The defendant's counsel argued that the further detention of the plaintiff from 29 April 2016 up to 28 June 2016, when the plaintiff was denied bail, and the further detention up to 2 March 2017, constituted an intervening event that cannot be attributable to the defendant. It was argued that the defendant should not be liable for the further detention.

[30] In the matter of *De Klerk*,[14] the Constitutional Court referred to the decision in *Zealand*,[15] where it was stated that a remand ordered by a Magistrate does not necessarily render the subsequent detention lawful. What matters is whether, substantively, there was just cause for deprivation of liberty. Moreover, in determining whether the deprivation of liberty pursuant to a remand order is lawful, the court can consider the manner in which the remand order was made.[16]

[31] The defendant, who bore the burden of proof in respect of the unlawful arrest and detention, presented no additional information, and failed to call the investigating officer to explain the reasons for the further remand orders in detention from 29 April 2016, up to the refusal of bail on 28 June 2016, and finally to the release of the plaintiff on 2 March 2016. The onus to obtain the record of the bail proceedings was on the defendant, yet it was not obtained. In the absence of the investigating officer's testimony at the bail hearing, the only inference to be drawn is that the investigating

---

[14] *De Klerk* (note 9 above).
[15] *Zealand* (note 6 above).
[16] *De Klerk* (note 9 above) para 62.

officer opposed the release of the plaintiff on bail, notwithstanding the weak evidence available against the plaintiff.

[32] In the matter *in casu*, the factual component of causation is satisfied because, but for the arrest by Colonel Nzimande and the opposition of bail by the investigating officer, the Magistrate would not have postponed the matter to 28 June 2016 for a formal bail application and would not have denied bail.

[33] The next question to consider is legal causation. Legal causation is concerned with the remoteness of the damage, which entails an enquiry into whether the wrongful act is sufficiently closely linked to the harm for legal liability to ensue. Generally, a wrongdoer is not liable for harm that is too remote from the conduct concerned or harm that was not foreseeable.[17]

[34] In the matter of *De Klerk*,[18] the application before the Constitutional Court was in respect to whether the harm associated with the applicant's detention on the order of the Magistrate, after his first court appearance until his release on 28 December 2012, could be attributed to the unlawful arrest by the police. In the court *a quo*, the majority judgment of the Supreme Court of Appeal (SCA) concluded that the arresting peace officer could not be held liable to compensate the applicant for his unlawful detention, after a court hearing and where the presiding officer had failed to fulfil their responsibilities regarding the further detention of the arrested person. As a result, the majority judgment held that the respondent was only liable to compensate the applicant for his unlawful detention up to his appearance in court. The minority judgment in the SCA held that the respondent should be liable for the entire period of detention. The minority judgment reasoned that what matters is whether the police can be said to have caused (both factually and legally) the detention after the first hearing as a result of their unlawful conduct (the arrest). The minority judgment found that factual and legal causation for the applicant's injury had been established and awarded the applicant R300 000 in non-patrimonial damages. The minority held that because the Magistrate had not exercised any considered discretion regarding bail, there was no break in the causation between the arrest and the detention, after the applicant's first court appearance.

---

[17] *De Klerk* (note 9 above) para 25.
[18] Ibid.

[35] On appeal to the Constitutional Court, the learned Theron J, who penned the majority judgment, (Basson AJ, Dlodlo AJ, Kampepe J and Petse AJ concurring), had to decide whether the wrongful act of Constable Ndala, in arresting the applicant, legally caused the harm arising from the appellant's detention for a further seven days after his first court appearance. The court held that:

'The determination of legal causation is based on the considerations of the various traditional factors already discussed, including direct consequences, reasonable foreseeability, and the presence of a *novus actus interveniens*.'[19]

[36] The learned Theron J held further that:

'In the present matter, Constable Ndala subjectively foresaw the precise consequence of her unlawful arrest of the applicant. She knew that the applicant's further detention after his court appearance would ensue. She reconciled herself to that consequence. What happened in the reception court was not, to Constable Ndala's knowledge, an unexpected, unconnected and extraneous causative factor – it was the consequence foreseen by her, and one which she reconciled herself to. In determining causation, we are entitled to take into account the circumstances known to Constable Ndala. These circumstances imply that it would be reasonable, fair, and just to hold the respondent liable for the harm suffered by the applicant that was factually caused by his wrongful arrest. For these reasons, and in the circumstances of this matter, the court appearance and the remand order issued by the Magistrate do not amount to a fresh causative event breaking the causal chain.'[20]

[37] The conduct of the defendant in the matter *in casu*, after the arrest, is to be carefully scrutinised to assess whether the full truth was brought to the Court's attention for purposes of the consideration of the bail application. In determining this, the following is of importance:

(a) The police, at no time after the arrest or thereafter, verified the identity of the plaintiff as being the perpetrator with either Violet Thobela or Nonjabulo Khumalo, as neither of these two witnesses attended an identity parade;

---

[19] Ibid para 65.
[20] Ibid para 81.

(b) There is no evidence that the police informed the prosecutor that the available CCTV footage was unclear and that no identification was possible from the footage;

(c) There is no evidence that the police investigated the data of the plaintiff's cell phones or informed the prosecutor of those facts;

(d) The police found no evidence of stolen goods or other suspicious items in the possession of the plaintiff;

(e) There is no evidence that the police obtained a search warrant to search the dwelling of the plaintiff to look for the firearms used in the robbery;

(f) There is no evidence that the investigating officer further investigated the allegations by one Tebogo Tlabakwe, who allegedly knew four of the robbers. If this had been done the innocence of the plaintiff could have been established.

[38] In the investigating officer's affidavit opposing bail, he appears convinced of the plaintiff's participation in the robbery which occurred on 6 April 2016. However, no evidence has been placed before this court explaining whether any of the aspects referred to in paragraph [37] above were investigated.

[39] In the matter of *Minister of Safety and Security v Tyokwana,*[21] the police also failed to fairly bring the full facts before court. The SCA stated that:

'...Kani, as well as Muller, failed dismally to give a fair and honest statement of the relevant facts to the prosecutor and to bring all the relevant circumstances under the attention of the magistrate. On the contrary, they wilfully distorted the truth, thereby misleading the prosecutor and the magistrate with the result that the respondent was remanded in detention and refused bail, and remained in custody until his acquittal on 20 July 2009....

In *Zealand v Minister of Justice and Constitutional Development* [2008] ZACC 3; 2008 (4) SA 458 (CC), a claim for delictual damages for wrongful detention was considered and it was held that the detention of the plaintiff for the entire period of his incarceration was unlawful, in that s 12(1)(a) of the Constitution was unjustifiably and unreasonably violated....

---

[21] *Minister of Safety and Security v Tyokwana* [2014] ZASCA 130; 2015 (1) SACR 597 (SCA).

In my view, the respondent has shown that the circumstances in which the appellant's employees instigated and persisted with his prosecution, amounted to an unjustifiable breach of s 12(1)(a) of the Constitution. This is sufficient to establish delictual liability on the part of the appellant for the full period of the respondent's detention from 2 October 2007 to 20 July 2009.'[22]

[40] A similar approach was followed recently in the matter of *Mahlangu and Another v Minister of Police*.[23] The Constitutional Court referred to the matter of *Woji v Minister of Police*,[24] as well as the matter of *Zealand*,[25] and stated:

'In *Woji*, the Supreme Court of Appeal followed *Zealand*. It held that the Minister was liable for post appearance detention where the wrongful and culpable conduct of the police had materially influenced the decision of the court to remand the person in question in custody. Its reasoning effectively means that it is immaterial whether the unlawful conduct of the police is exerted directly or through the prosecutor.

If we are to give meaning to freedom as a foundational value of our Constitution and to the right to freedom and security of the person, we cannot allow the police to deprive people of their freedom by so simple a stratagem as behaving in the egregious manner in which they did here and then lying low and keeping quiet to see if anything will come to the rescue of the victims of their nefarious deeds. If we allow that to happen, then police – like they did before the advent of our democracy – will continue to ride rough shod over the freedoms of our people. So, generally in circumstances like the present public policy dictates that delictual liability must attach, lest we find ourselves in a situation where freedom as a constitutional value and the right to freedom and security of the person are devalued.

The unlawful continued concealment by the police of the fact that the confession was obtained illegally therefore provides the applicants with a basis for holding the Minister delictually liable for the full detention period.'[26]

[41] The defendant *in casu* did not call a single eyewitness of the robbery incident. Furthermore, in the absence of any evidence from the investigating officer to explain his reasons for opposing bail, as well as the shortcomings in the investigation of this matter, I find that this distorted the truth, thereby misleading the court to deny the

---

[22] Ibid paras 41, 43-44.
[23] *Mahlangu and Another v Minister of Police* [2021] ZACC 10; 2021 (7) BCLR 698 (CC).
[24] *Woji v Minister of Police* [2014] ZASCA 108; 2015 (1) SACR 409 (SCA).
[25] *Zealand* (note 6 above).
[26] *Mahlangu* (note 23 above) paras 33, 44-45.

plaintiff bail. I find further that the defendant's employees accordingly foresaw that the plaintiff would be remanded to Sun City and reconciled themselves with that consequence, thereby legally causing the extended detention of the plaintiff.

[42] I accordingly find no reason why the defendant should not be liable to compensate the plaintiff for the full period of incarceration.

Quantum

[43] In cases where the deprivation of an individual's liberty is in issue, the quantum of damages which is to be awarded is in the discretion of the trial court. This discretion is to be exercised fairly and considering the merits of each individual case.

[44] In the matter of *Pitt v Economic Insurance Co. Ltd*,[27] it was stated that:

'...the Court must take care to see that its award is fair to both sides – it must give just compensation to the plaintiff, but must not pour our largesse from the horn of plenty at the defendant's expense.'[28]

[45] In the matter of *Sondlo v Minister of Police*,[29] it was stated that:

'The plaintiff's damages will ultimately be forthcoming from the State coffers to which citizens of this country contribute. Some restraint is called for the awarding damages when the fiscus is the source thereof.'[30]

[46] In the matter of *Minister of Safety and Security v Tyulu,*[31] the SCA stated that:

'In 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 injured feelings. It is therefore crucial that serious attempts be made to ensure that damages awarded are commensurate with injury inflicted.'[32]

---

[27] *Pitt v Economic Insurance Co Ltd* 1957 (3) SA 284 (D)
[28] Ibid at 287E.
[29] *Sondlo v Minister of Police* (2012) JOL 29354 (GSJ).
[30] Ibid para 10.
[31] *Minister of Safety and Security v Tyulu* [2009] ZASCA 55; 2009 (5) SA 85 (SCA).
[32] Ibid para 26.

[47] I now proceed to consider some comparable cases and awards made previously.

Cases referred to by the plaintiff in respect of quantum

[48] I was referred to the matter of *Mahlangu and Another v Minister of Police*,[33] where the majority in the SCA awarded the sum of R100 000 to each of the plaintiffs who had been unlawfully detained for two weeks.

[49] In the matter of *Mahleza v Minister of Police and* Another,[34] the court ordered compensation of R600 000 for 19 days.

[50] In the matter of *Buthelezi v Minister of Police*,[35] the court awarded the plaintiff general damages of R1,6 million for his detention for a period of twelve and a half months.

[51] The plaintiff's counsel argued that looking at previous guidelines, that compensation to the amount of R1 500 000 for the period of eleven months should be awarded to the plaintiff. As regards the malicious prosecution, an additional R500 000 should be awarded to the plaintiff.

[52] Although these cases have been of some assistance, it is trite that each case must be determined upon its own merits and no one case is factually the same as another.

[53] In the matter of *Woji*,[36] the facts were similar to the matter *in casu*, in that the investigating officer negligently misrepresented the strength of the state's case at the bail hearing, thereby resulting in bail being denied. This resulted in the plaintiff remaining in custody from 12 December 2007 (when bail was refused) until his release on 13 January 2009. The prosecutor withdrew the matter as the video footage of the robbery was not clear. The period of the unlawful detention was for 13 months. The plaintiff was forced to endure appalling conditions whilst in detention as the cells were overcrowded, dirty and there were insufficient beds to sleep on. He

---

[33] *Mahlangu & another v Minister of Police* [2020] 2 All SA 656 (SCA)
[34] *Mahleza v Minister of Police and Another* [2019] ZAECGHC 137; 2020 (1) SACR 392 (ECG).
[35] *Buthelezi v Minister of Police and Others* [2021] ZAKZDHC 20.
[36] *Woji* (note 24 above).

was subjected to the control of a gang, and suffered the appalling, humiliating and traumatic indignity of being raped on two occasions. This resulted in him having difficulty in enjoying sexual relations with his girlfriend. He also witnessed a prisoner being stabbed which made him fearful for his life. After eight months he was allocated a single cell, which although improved his situation, also resulted in him feeling isolated and lonely. The SCA granted the plaintiff the sum of R500 000 in respect to his unlawful detention for the period of 12 December 2007 to 13 January 2009.

[54] In the matter of *Lebelo v Minister of Police*,[37] the court awarded the plaintiff an amount of R500 000 in damages for an unlawful arrest and detention totalling a period of 15 weeks (or 101 days) in detention. The plaintiff testified that some inmates tried to sodomise him and he feared for his life. He even tried to report this attempt to sodomise him to the warden, but he was hit with a baton on his back by the warden. The plaintiff feared for his life from both inmates and wardens. The plaintiff was also throttled by another inmate and he had to hand over his cell phone airtime to his attackers. This plaintiff also suffered from tuberculosis like the plaintiff in the matter *in casu*, and after he presented his TB card he was treated for tuberculosis.

[55] In the matter *in casu*, the salient facts which I must consider in determining an appropriate award are that:

(a) The plaintiff testified about the hardship suffered during his incarceration in that the conditions in prison were shocking, the quality of food was poor and the bedding was atrocious.

(b) The plaintiff had problems not only with obtaining his chronic medication but also with his TB medicine.

(c) His children suffered as he was the only one earning an income as the mother of his children was not employed.

(d) As a result of his incarceration he lost his job.

---

[37] *Lebelo v Minister of Police* [2019] ZAGPPHC 69.

[56] Although the plaintiff in the matter *in casu* suffered a traumatic ordeal, his experience is not as severe as the plaintiff's experience in the matter of *Woji* and *Lebelo*.[38] The plaintiff's period of detention in the matter *in casu* is also shorter than the matter of *Woji* and *Buthelezi*.[39] The plaintiff in the matter *in casu* was working at a company where plastic containers were manufactured. His exact position in that company was not disclosed to this Court. The plaintiff in the matter of *Buthelezi* was an educator and was occupying the position of acting Deputy Principal at a public school. Although there is a difference in social status between that of the plaintiff in the matter of *Buthelezi* and that of the plaintiff *in casu*, this is not a reason to award a lesser amount. However, what is of importance in differentiating the award made in the matter of *Buthelezi*, is that the plaintiff had to endure a lengthy trial as opposed to the plaintiff *in casu* where the matter was withdrawn on the first arrest, without any evidence being led against him. It is further important to note that in the plaintiff's affidavit in support of his bail application, the plaintiff does not mention anything of being hit with rifles. In addition, during the cross-examination of Colonel Nzimande, the plaintiff's counsel did not put it to Colonel Nzimande that he refused to give the plaintiff his chronic medication. In the absence of these two very important aspects being put to Colonel Nzimande for his comment, it is difficult for this Court to determine whether it actually occurred, or whether it was a fabrication by the plaintiff. These above-mentioned factors reduce the award to be made.

[57] Taking into account all the relevant factors, as well as previous awards granted, I am of the view that an amount of R900 000 is a fair and reasonable amount.

Costs

[58] There is no reason why costs should not follow the result.

[59] As regards the costs that were reserved on 29 November 2018, it is important to note that a day before the plaintiff's case came to court, which was on 28 November 2018, the police arrested him for a second time with a warrant of arrest. This resulted in the plaintiff being unable to proceed with his claim against the

---

[38] *Woji* (note 24 above); *Lebelo* (note 37 above)
[39] *Buthelezi* (note 35 above).

defendant. I can find no reason why the plaintiff should not be entitled to the costs reserved on 29 November 2018.

Order

[60] In the result, I make the following order:

1. The defendant shall pay to the plaintiff compensation in the sum of R900 000 (nine hundred thousand rand), within 14 days from the date of this order;
2. The aforesaid amount shall bear interest at the rate of 9% per annum, calculated from the date of service of the summons upon the defendant to the date of payment.
3. The defendant is ordered to pay the costs of the action, inclusive of the costs reserved on 29 November 2019, including the costs of two counsel where so employed.

D DOSIO
ACTING JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG

This judgment was handed down electronically by circulation to the parties' and/or parties' representatives by email and by being uploaded to CaseLines. The date and time for hand-down is deemed to be 10h00 on 3 November 2021.

Date of hearing:	11-12 October 2021
	via MS Teams
Date of judgment:	3 November 2021

Appearances:

On behalf of the plaintiff:	Adv T.P Kruger SC
	Adv VLJ Mthunzi
Instructed by:	S. Twala Attorneys
On behalf of the defendant:	Adv I.E Tshoma
Instructed by:	The State Attorney