



**CASE NO: 2018/14594**

**NQIBISA, MZWANDILE v THE CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY & ANOTHER**

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**SUMMARY**

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- [1] The plaintiff instituted an action for damages against the defendants for unlawful arrest and detention.
- [2] The Court had to determine the lawfulness of the plaintiff's arrest by the JMPD officers; the lawfulness of the plaintiff's detention; and the quantum to be awarded to the plaintiff should any or all defendants be found liable for the arrest and/or the detention.
- [3] In considering the lawfulness of the arrest, the Court highlighted that section 40(1)(b) of the Criminal Procedure Act<sup>1</sup> permits peace officers to make an arrest without a warrant however, in order to rely on this section, four jurisdictional facts must be satisfied. These facts are that the arrestor must be a peace officer; he must entertain a suspicion; the suspicion must be that the arrestee committed an offence referred to in Schedule 1 of the CPA; and the suspicion must be based on reasonable grounds.<sup>2</sup>
- [4] The Court acknowledged that JMPD officers are qualified as peace officers by the SAPS Act<sup>3</sup> and are empowered to effect an arrest with or without a warrant. Furthermore, in the present case, the JMPD officer did suspect the plaintiff of committing an offence listed in Schedule 1. Thus, the Court was left to determine whether the JMPD officer's suspicion was based on reasonable grounds.
- [5] In determining the reasonableness of the suspicion, the Court stipulated that the crucial question would be whether the circumstances prevailing at the time the JMPD officer effected the arrest without a warrant were such that a reasonable man finding himself in the same position as the officer would form a reasonable opinion that the plaintiff has committed a Schedule 1 offence. The Court

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<sup>1</sup> 51 of 1977.

<sup>2</sup> *Duncan v Minister of Law and Order* 1986 (2) SA 805 (A) at 818G-H.

<sup>3</sup> 68 of 1995.

considered the reasonable man test set out in *Mabona and Another v Minister of Law and Order and Others* and the requirements to satisfy the test stipulated therein.<sup>4</sup> Based on the manner in which the arrest was effected, the Court found that the JMPD officer's suspicion was not based on reasonable grounds and therefore the arrest of the plaintiff was unlawful as it was effected without reasonable and probable cause.

- [6] In considering the lawfulness of the plaintiff's subsequent detention by the SAPS, the Court highlighted that once the plaintiff had been placed in custody, the SAPS were obliged to consider afresh whether the continued detention of the plaintiff was justified and lawful.<sup>5</sup> The Court noted that the second defendant elected not to call any witnesses to justify the detention of the plaintiff, and whilst this did not automatically entitle the Court to make an adverse finding against the second defendant, in this particular instance, the reasons for the plaintiff's detention were in the second defendant's particular knowledge. Additionally, the second defendant agreed that it bore the onus to prove the plaintiff's detention was justified. As such, the Court held that in the circumstances it could only conclude that there was no reasonable and probable cause to detain the plaintiff and that the second defendant had failed to discharge the onus resting on it to justify the detention. Thus, the Court found the detention to be unlawful.
- [7] In considering quantum, the Court noted that the right to liberty and freedom was a precious right enshrined in section 12(1)(a) of the Constitution. As such, the deprivation of liberty is to be taken seriously. The Court considered the fact that the plaintiff was detained for 3 days and 11 hours without an option of bail and that he was granted no access to a legal representative until he was released. The condition of the cell he was detained in was poor and he was in high school at the time of his arrest. Based on these factors, the Court found that the first defendant was liable to pay the plaintiff R35 000.00 in damages for the unlawful arrest. The second defendant was ordered to pay the plaintiff R175 000.00 in damages for the unlawful detention.
- [8] The Court finally remarked on the fact that it appeared that metro officers are not subjected to standing orders or strict guidelines when it comes to arrest and detention as compared to their SAPS counterparts. As such, the Court directed that the judgment be circulated to all relevant authorities in an effort to decrease irregular conduct of metro police officers when it comes to matters of arrest and detention specifically.

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<sup>4</sup> 1988 (2) SA 654 (SE) at 658F-H.

<sup>5</sup> *Botha v Minister of Safety and Security and Others; January v Minister of Safety and Security and Others* 2012 (1) SACR 305 (ECP) at para 29.