IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: YES / ~~NO~~.
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO.
(3) REVISED.
1/4/2014
DATE **SIGNATURE**

2/4/2014

CASES NO: 48208/2012

48209/2012

49490/2012

In the consolidated matters between:

SIPHIWE NDABA First Plaintiff

MALIBONGWE MAZIBUKO Second Plaintiff

SBONISENI PHILLIP MAZIBUKO Third Plaintiff

and

THE MINISTER OF POLICE Defendant

JUDGMENT

MOTHLE J

Introduction

1. Each one of the three Plaintiffs; Siphiwe Ndaba, Malibongwe Maizibuko and Sboniseni Phillip Mazibuko instituted action separately against the Minister of Police *("the Defendant")* for damages arising out of an alleged unlawful arrest and unlawful detention. At the commencement of the trial an application was made by counsel for both the Plaintiffs and the Defendant for consolidation of their actions as the cause of action arose on the same date, time and place and involving the same police officers. The Court granted the order and the three actions were then consolidated and heard as one action with the three Plaintiffs against the Defendant.

2. The Defendant had also filed a notice to amend its plea to which the Plaintiffs, on expiry of the notice period, had not objected. However, the Defendant, on expiry of the notice period, failed to file an amended plea in time for the trial. The Court granted leave for the Defendant to file their amended plea at the commencement of the trial, as the time frame within which they

had to file the amended plea it in terms of Rule 28, had not expired.

The Pleadings

3. According to the pleadings the Plaintiffs allege that on or about 24 September 2011 on the N3 highway near Heidelberg, they were unlawfully and wrongfully arrested by members of the South African Police without a warrant, charged with armed robbery and detained until 27 September 2011. According to the particulars of claim, the alleged arrest and detention were unlawful and wrongful in that:

3.1 the Plaintiffs were arrested without a warrant;

3.2 that the police did not have reasonable belief that they had committed a Schedule1 offence;

3.3 that the police did not follow the correct procedures in effecting arrest on the Plaintiffs;

3.4 the members of the police were acting within the course and scope of their employment as policemen.

4. The Plaintiffs further allege that as a result of the unlawful arrest and detention each one of them suffered damages in the amount of R350,000.00 for *contumelia* and loss of amenities.

5. The Defendant initially filed a plea which in effect was a denial of knowledge of the allegations raised in the particulars of claim. Later, as I have already stated, the plea was amended, wherein the Defendant:

5.1 admitted that the arrest took place on 24 September 2011 by members of the South African Police;

5.2 that the arrest was effected on the N3 highway near Heidelberg;

5.3 that the arrest was effected without a warrant;

5.4 that the Defendant denies that the arrest was unlawful.

6. The Defendant specifically pleaded as follows:

6.1 that the arrest was carried out by police officer as contemplated by the Criminal Procedure Act, 51 of 1977;

6.2 that the arresting officer had a reasonable suspicion that the Plaintiffs had committed a Schedule 1 offence, to wit, armed robbery, in the alternative that the arrest was effected in order for further investigations to be conducted under docket CAS Lenasia 193/12/2010, in order to establish whether the Plaintiffs were involved in the offence of armed robbery in the said case.

7. The Defendant further admitted the detention of the Plaintiffs in Heidelberg and Lenasia Police Stations from 24 September 2011 at approximately 19H30 until 27 September 2011 at 07H30.

The legal principles

8. It is trite that once the Defendant admits that there was an arrest, the *onus* is on such Defendant to prove that such arrest was lawful, **see: Brand v Minister of Justice 1959 [4] All SA 420 (A) and Minister of Law and Order v Hurley [1986] 2 All SA 428 (A) at paragraph 32**. Consequently, the Defendants had the duty to begin. See in this regard **Intramed (Pty) Ltd v Standard Bank of South Africa Ltd 2004 (6) SA 252 (W) and**

Topaz Kitchens (Pty) Ltd v Naboom Spa (Edms) Bpk 1976 (3) SA 470 (A).

The evidence

9. The Defendant led the evidence, first, of two witnesses, Shaim Ismai and Abdul Gaehler who were at the scene of the armed robbery and who gave the police information by way of statements. Their evidence was helpful to the extent of the information which they gave to the police in order to commence investigation. The statements of these two witnesses together with those of other eye witnesses on the scene of the robbery informed the police that on the 6 December 2011 six men were involved in an armed robbery at a house in Lenasia. These men were travelling in a motor vehicle Nissan Tiida with registration number: VLW 060 GP and blue in colour. It was on the strength of this information that the third witness for the Defendant, Warrant Officer Baloyi *("Baloyi")* commenced his investigation of this crime.

10. Baloyi used the description of the vehicle to obtain further particulars relating to the owner thereof who turned out to be a person bearing the name of the Third Plaintiff. Baloyi testified that he went to look for the Third Plaintiff to find out what he

knew about the robbery and could not succeed in doing so as the address on the papers he had was inaccurate. On advice of his superiors, he then put a notice on the internal police communication network to seek assistance of other police officers in tracing the vehicle. This process was referred to in the trial as putting the vehicle on "*circulation.*"

11. The Defendant then called Constable Motseko ("Motseko") who is attached to the Gauteng Flying Squad, Vaalrand of the South African Police. He testified that he was on duty on the N3 highway on 24 September 2011, in the company of another police Constable, Nkonza. A message came through the radio that a vehicle described as a Nissan Tiida blue in colour with registration number VLW 060 GP had just passed the toll gate and that such vehicle was linked to an armed robbery that occurred in Lenasia, where six males were involved. The police were instructed to go and check on that vehicle. Motseko and Nkonza got onto the highway and saw the vehicle fitting that description. They stopped the vehicle and the driver of the vehicle came out. Motseko asked the driver of the vehicle whose vehicle it was and he replied by stating that he is the owner of the vehicle. When Moseko told him that the vehicle was linked to an armed robbery in Lenasia on 6 December 2010, the

driver replied that his vehicle was not involved in such robbery as he is the only person who drove that vehicle ever since he purchased it and it was never driven by anybody else. The two police officers then searched the vehicle as well as the occupants. There were four males in the vehicle including the driver. The search did not yield anything. Motseko further testifies that when he wanted to get the particulars of the other three occupants, the driver gave him his particulars but informed the other passengers not to give their addresses to the police. He testified further that he played the radio communication for the driver to listen and the message concerning the vehicle was repeated on the communication. He thereafter arrested the driver and the three other occupants and they drove to the Heidelberg Police Station.

12. At the Heidelberg Police Station he took down the Plaintiffs' particulars, informed them that he will be keeping them in the cell until the Lenasia Police arrive to take over. He then assisted the driver to collect his personal belongings from the vehicle which he recorded in the SAP 13 and then had the driver and his passengers detained in a cell. He then took the vehicle to Vaalrand where it was impounded.

13. Under cross-examination he stated that the reasons why he arrested the four occupants of the vehicle were that:

(i) the vehicle fitted the description of the vehicle which was linked to the armed robbery in Lenasia;

(ii) the driver identified himself as the owner of the vehicle and stated that he is the only person who has driven the vehicle and no one else has ever driven the vehicle since he purchased it in November 2011;

(iii) the radio message made reference to six males involved in the armed robbery and when he stopped the vehicle there were four males in it;

(iv) the driver of the vehicle advised the other occupants not to give the police their addresses.

14. That was the case for the Defendant.

15. The three Plaintiffs and a further witness, Ashen Sewpersaad also testified. Ashen's evidence was that he knew the Third Plaintiff who was his co-worker. He did not believe that the Third

Plaintiff would be involved in a robbery. He further testified that on the day of the robbery, the Third Plaintiff was at work and was part of a meeting that was held. He could however not produce any evidence to support this statement. The issue in this trial is whether the arresting police constable had reasonable grounds to hold a suspicion that the persons he arrested without a warrant had committed a schedule 1 offence. The evidence of Ashen is not relevant at all in regard to the issue before this Court. It could be relevant for establishing an alibi in the event of a criminal trial.

16. The first amongst the Plaintiffs to testify was the Third Plaintiff who was the driver and owner of the vehicle. His version basically corroborated the testimony of Motseko except that he held the belief that he was innocent and his car was not involved in the robbery. In regard to his detention in the Heidelberg Police Station, the Third Plaintiff testified that the cell in which they were kept was small, crowded and dirty. And further that the blankets which they used to sleep on were also dirty. He testified further that there was no water in the cells and the only water was on the passage located on a basin where they were let out in the morning to wash. He could only wash his teeth with

his finger and could not wash his body. He testified further that they were given coffee and bread in the morning and later on the Sunday, they were given mielie meal and beans soup for lunch. They did not have anything to eat for dinner.

17. On the Monday at about 14H00 in the afternoon the police from Lenasia came to collect them where they were shackled in both their hands and feet and driven to Lenasia Police Station. On arrival there they were locked up. Later on Monday evening at about 8 o'clock they were each called in to take a statement with Baloyi. The following morning, Tuesday 27 they were then taken to Court but later that day released as the matter was not enrolled by the prosecutor. He testified that while waiting to be called into Court he phoned his father and requested him to procure the services of an attorney to represent them, which his father did. Upon their release in the afternoon their attorney explained to them that the prosecutor refused to put the matter on the roll as there was insufficient evidence. However, an ID parade was still to be held. On the day scheduled for the ID parade, the witnesses did not arrive and therefore the ID parade was cancelled.

18. Of importance in his testimony, the Third Defendant testified that when he purchased the vehicle in November 2010, he had moved out of his father's residence and was staying at a different residence. However, he gave the financiers of the vehicle his old address where his father stays and not his new address. He identified the address on the documents that were enclosed in the bundle as Block 4, Unit 28, Volhurst Street, Jeppestown, Johannesburg. I need to mention that where 28 is written by hand there is a number that has been deleted. This address also appears as the address of the Second Plaintiff with the number 407 and not 28. During cross-examination the Third Plaintiff admitted that he misrepresented his correct residential address when he gave the financiers what he alleged was his father's address. He also admitted several inaccuracies on the statement he sent to the police complaining about his arrest and loss of certain articles in the vehicle during his arrest. The contents of this statement were inconsistent with the evidence he gave in Court and at some point he could not make up his mind on the witness box as to whether the Court should rely on his evidence in Court or on the statement itself.

19. The other two Plaintiffs also testified.

20. The Second Plaintiff testified about the arrest virtually corroborating the version of Constable Motseko, except that he denied that the driver told him not to provide their addresses to the Constable at the scene of the arrest. He further also testified that for lunch on Sunday they had rice and chicken which was different from what the Third Plaintiff has stated. He denied any involvement in the robbery. He further testified that he lost his employment as a result of the arrest and detention. The First Plaintiff was the last to testify. He broadly corroborated Motseko as well as the other two Plaintiffs on the arrest but denied that the driver told him not to give the police their addresses at the scene of the arrest. He corroborated the Third Plaintiff in regard to the meal they had. He, however, denied that they were ever taken to Court. He testified that on the morning of Tuesday, 27 they were taken out of the cells but were made to stand there and he does not remember what happened. He only knows that sometime during the afternoon they were released through the back entrance of the police station. He denied ever going to Court and at some point under cross-examination he stated that he cannot remember what happened on the day.

Evaluation of Evidence

21. The question that the Court had to deal with in this case is whether the arrest and detention were lawful or unlawful. It is trite, as already stated, that in a claim for unlawful arrest and detention, the *onus* rests on the Defendant to prove, on a balance of probabilities, that the arrest and detention were lawful. **See: Minister of Law and Order v Hurley, *supra* and Mhaga v Minister of Safety and Security [2001] 2 All SA 535 (TK).**

Arrest

22. It is common cause that an arrest without a warrant is authorised by Section 40(1)(b) of the Criminal Procedure Act, 51 of 1977 *("CPA")*, which reads thus:

> *"40.* ***Arrest by peace office without warrant.*** *– (1) A peace officer may, without warrant, arrest any person –*
> *(b) whom he reasonably suspects of having committed an offence referred to in Schedule 1, other than the offence of escaping from lawful custody;*

(e) who is found in possession of anything which the peace officer reasonably suspects to be stolen property or property dishonestly obtained, and whom the peace officer reasonably suspects of having committed an offence with respect to such thing;"

23. The Appellate Division in **Duncan v Minister of Law and Order 1986 (2) SA 805 (A) at 818 G** stated that Section 40(1)(b) stipulates the following jurisdictional facts namely:

23.1 the arrestor must be a peace officer;

23.2 he must entertain a suspicion;

23.3 there must be a suspicion that the arrestee committed an offence referred to in Schedule 1 to the Criminal Procedure Act; and

23.4 the suspicion must rest on reasonably grounds.

24. On the evidence it is not disputed that the arresting officer, Constable Motseko is a peace officer. The Plaintiffs also do not dispute that the offence for which they were arrested is a

Schedule 1 offence, to wit, armed robbery. In issue therefore is whether Motseko had a suspicion which rested on reasonable grounds. A reasonable suspicion must be objectively ascertainable, **Ralekwa v Minister of Safety and Security 2004 (1) SACR 131 (TPD).**

25. Counsel for the Plaintiffs argued that, on the authority of the matter of **Louw and Another v Minister of Safety and Security and Others 2005 JDR 0199 (T)**, the arresting officer was supposed to employ less invasive means to bring the suspect to Court other than arresting them. However, as correctly pointed out by counsel for the Defendant, that notion was rejected by the Supreme Court of Appeal in the matter of **The Minister of Safety and Security v Sekhoto and Another [2011] 2 All SA 157 (SCA).**

26. Motseko has stated his reasons for arresting the Plaintiffs. He testified that the Third Plaintiff not only identified himself as the owner of the vehicle, but went further on his own to state that he is the only person who has ever driven that vehicle since he purchased it. By implication it means if the vehicle was indeed linked to the offence, then he was the driver of the vehicle on the day of the robbery. This evidence was not disputed. On the

strength of this statement, any reasonable peace officer would suspect the driver to have been involved in the robbery. Motseko in my view had a reasonable suspicion that the driver participated in the robbery and was accordingly justified to arrest him.

27. In regard to the other three passengers in the vehicle, including the First and Second Plaintiffs, counsel for the Plaintiffs argued that the arrest was effected approximately ten months after the robbery occurred and it was accordingly unreasonable for any police officer to suspect that the passengers in that vehicle would be the same persons identified at the scene of the robbery on 6 December 2010. There is, however, other evidence that is very critical in regard to the arrest of the First and Second Plaintiff by Motseko. Motseko testified that the driver of the vehicle, being the Third Plaintiff advised the other passengers not to give their addresses to the police when they asked. During cross-examination of Motseko, this evidence was not disputed. Similarly, in the evidence in chief, cross-examination and re-examination of the Third Plaintiff this issue was not raised. It only surfaced when the Court asked the Third Plaintiff a question as to whether he advised the other passengers not to give their addresses to the police. The Third Plaintiff denied that

he did this. However, he could not explain why this denial was not put to Motseko to comment or raised in his evidence in chief or re-examination.

28. The First and Second Plaintiffs were asked if the Third Plaintiff advised them not to give their addresses to the police at the scene of the arrest and they denied. Likewise, this denial was not put to the Defendant's witnesses.

29. Section 41 of the Criminal Procedure Act provides as follows:

> *"41. **Name and address of certain persons and power of arrest by peace officer without warrant.** – (1) a peace officer may call upon any person – (a) whom he has power to arrest; (b) who is reasonably suspected of having committed or having attempted to commit an offence; (c) who, in the opinion of the peace officer, may be able to give evidence in regard to the commission or suspected commission of any offence, to furnish such peace officer with his full name and address, and if such person fails to furnish his full name and address, the peace officer may forthwith and without warrant, arrest him, or, if such person furnishes to the peace officer a name or address which the peace officer reasonably suspects to be false, the peace officer may arrest him without warrant*

and detain him for a period not exceeding 12 hours until such name or address has been verified.

30. Failure by the Plaintiffs to provide name and address to Motseko as requested will definitely fall within the ambit of Section 41 of the CPA. There are two versions before Court. The one version is that of Motseko that he requested the addresses of the passengers including the First and Second Plaintiffs and the Third Plaintiff, being the driver, advised them not to furnish such information to the police. On the other hand all the Plaintiffs denied that the Third Plaintiff told the other two not to provide the names and addresses to the police.

31. Where the Court is faced with two mutually destructive versions such as in this instance, it is apposite to refer to the approach which was laid down by the Supreme Court of Appeal in the matter of **Stellenbosch Farmers Wineries Group Life and Another v Marcell Cie and Others 2003 (1) SA 11 (SCA)**, where the Court stated that to come to a conclusion on the disputed issues the Court must make findings on:

(a) the credibility of the various factual witnesses,

(b) their reliability; and

(c) the probabilities.

32. On the question of credibility it is clear the evidence on record that there were inconsistencies in the Plaintiffs' versions. As already pointed out, Motseko's version in general was not disputed. In fact it was materially corroborated by the Plaintiffs.

33. The Third Plaintiff proved to be an unreliable and confused witness under cross examination. After his release from arrest he wrote to the senior police officers complaining about the loss of some of the articles that were in his motor vehicle. In that letter, he made certain statements that proved to be in direct conflict with what he testified before Court. At some point under cross-examination he was undecided whether to stick to his version on the statement he wrote to the police after the arrest incident or to stand by his evidence in Court. He could not make up his mind as to which version should be acceptable and that exposed contradictions in his evidence. He further admitted to have provided false and misleading information regarding his actual residential address when he purchased his motor vehicle. He was clearly a poor and unreliable witness.

34. The Second Plaintiff contradicted the other two in regard to the meals they had at the Heidelberg police station. He testified that they were served rice and meat for lunch whilst the other Plaintiffs testified that they had beans soup. The First Plaintiff also contradicted the other two Plaintiffs as to whether they were taken to Court or not. His testimony is that they were not taken to Court but were released at the back of the police station in Lenasia. Therefore in weighing the probabilities in this case, I am of the view that the Plaintiffs evidence is contradictory and unreliable. Motseko on the other hand impressed the Court with his demeanour as a witness. On a balance of probabilities the version of Motseko in regard to what transpired at the scene of arrest seems to be more probable and reliable. The Third Plaintiff, for reasons unknown, informed the other passengers in the vehicle not to provide their addresses when Motseko asked for them. This in my view provided sufficient ground for the arrest of the passengers as well.

35. It appears that all evidence considered, Motseko had reasonable grounds to suspect that the Third Plaintiff together with the other three suspects who were being conveyed in his vehicle were the people the Lenasia Police were looking for. The submission by

counsel for Plaintiff that he should have investigated or verified the version of the suspects before arresting them is clearly not practical and has been rejected in the matter of **Minister of Safety and Security v Sekhoto and Another *supra*** . The Plaintiffs were stopped on a highway at 19H30 by police officers who were not in charge of the investigation of that offence but simply impounded the vehicle and arrested the persons found in the vehicle for reasons already outlined. When the parties arrived at the police station, the Plaintiffs admit that Motseko informed them that this is a case from Lenasia and that the Lenasia police will conduct further investigations concerning the explanation that they had given and their denials of participation in the armed robbery.

36. Under these circumstances and having regard to the evidence as a whole, I am of the view that the arresting police officer had reasonable grounds to effect the arrest and that the jurisdictional facts required in terms of Section 40(1)(b) of the Criminal Procedure Act, as considered in the matter of **Duncan v The Minister of Safety and Security *supra*** were met. Under these circumstances, the Plaintiffs' action regarding unlawful arrest cannot succeed.

Detention

37. The Plaintiffs were arrested at 19h30 on 24 September 2012, a Saturday and detained at 20h10 in Heidelberg. They were released at 14h00 on 27 September 2012, on Tuesday. The first 48 hours after their arrest expired on Monday at 19h30. Since the Court was not sitting at that time, the next available court day was Tuesday 27, on which day they were taken to court and released.

38. Section 50 (1) (d) of the CPA provides that an arrested person must, if the 48 hours within which he must in terms of the section be brought before court expires outside normal court hours or on a day which is not a normal court day, be brought before a lower court not later than the end of the first court day. On proper interpretation of this section 50 (1) (d), the first court day since their arrest on Saturday was the Monday.

39. Baloyi testified that he could not obtain. Immediate access to a police vehicle to fetch the Plaintiffs at Heidelberg Police Station, but was able to do so later on Monday at 14h00.

40. Like arrest, detention in police custody results in the deprivation of liberty and movement rights, which are protected by the Constitution. In the matter of **Minister of Correctional Services v Tobani [2001] 1 All SA 370 (E)** the court stated the principle at 371F thus:

> *" So fundamental is the right to personal liberty that the lawfulness or otherwise of a person's detention must be objectively justifiable, regardless of the bona fides of the gaoler and regardless even of whether or not he was aware of the wrongful nature of the detention."*

41. In the matter of **Prinsloo v Nasionale Vervolgingsgeslag 2011 (2) SA 214 (GNP)** the Court dealt with the interpretation of Section 50 (1) (d) (i) and concluded on p220 in paragraph [21] as follows:

> *"[21] In hierdie geval het 48 uur verstryk om 16h30 op Vrydag 20 November 2009. Na my mening beteken die verwysing no eerste hofdag nie 'n hofdag na verstryking van die 48 uur nie, maar 'n hofdag in die eerste gedeelte van die 48 uur."*

42. I agree that where the 48 hours expire after hours on a court day, the person in custody must be taken to court before the

expiry of the 48 hours, since by then the court shall have adjourned. The limit of 48 hours in terms of section 50 of the CPA is to protect citizens against unnecessary deprivation of their fundamental rights and freedoms as provided for in section 12 (1) of the Constitution, see in this regard **Minister of Law and Order and Another v Parker 1989 (2) SA 633 (A) at 637J.**

43. It also seems to me that this interpretation is supported by the fact that in the immediate subsection 50 (1) (d) (ii) which follows, the statute refers to instances where the person so detained may be brought to court, subject to certain specified conditions such as physical illness *"... on, the next succeeding court day".* The notion that where the period of 48 hours after arrest expires after court hours on a court day in terms of section 50 (1) (d) (i), the detainee may be brought to court *the next succeeding court day* is false. Resort to *the next succeeding court day* is only applicable to instances which fall under section 50 (1) (d) (ii). I therefore agree with the interpretation and approach by the Court in **Prinsloo v Nasionale Vervolginsgeslag *supra*** and will follow it.

44. According to Baloyi, the Plaintiffs could not be taken to court on Monday due to unavailability of transport. They could only be

transported at 14h00 on Monday, an hour or two before the court adjourns. As a result, they had to spend one more night in custody. This clearly cannot be an excuse to prolong their incarceration. In my view, they should have been taken to court on Monday 26. Consequently, they were unlawfully detained from Monday 26 September 2012 at 20h10 until their release on Tuesday 27 at 14h00 as their further detention was neither authorised by court nor was their case on the roll awaiting hearing.

45. The Defendant is thus liable for the unlawful detention of the Plaintiffs beyond the 48 hour limit imposed by Section 50 of CPA. I now turn to consider the award of compensation for damages suffered as a result of the unlawful detention.

46. The Plaintiffs testified that the conditions in the Lenasia were same as in Heidelberg; dirty cells and dirty blankets. It is however not only the conditions of their detention that is relevant in the determination of compensation for damages. The mere incarceration is degrading and an affront to the person's dignity. Most importantly, is a deprivation of a Constitutionally protected freedom and the security of the person.

47. Determining the monetary value to these rights is not dependant on simple mathematical or other scientific calculations. Neither is case law very helpful in this regard. However, case law serve only as a guideline. In the words of Nugent JA in **Minister of Safety and Security v Seymour [2007] 1 All SA 558 (SCA) 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".

48. And at 326 paragraph 20:

"[20] Money can never be more than a crude solatium for the deprivation of what, in truth, can never be restored and there is no empirical measure for the loss."

49. The following cases were considered as a guide by the Court in the Seymour matter, namely:

"In Solomon v Visser and Another 1972 (2) SA 327 (C), a 48-year-old businessman who was detained for seven days, first in a police cell and then in a prison, was awarded R4 000 (R136 000). In Areff v Minister van Polisie 1977 (2) SA 900 (A), this Court awarded a 41- year-old businessman who was arrested and detained for about two hours R 1 000 (R24 000). In Liu Quin Ping v Akani Egoli (Pty) Ltd t/a Gold Reef City Casino 2000 (4) SA 68 (W), a businessman who was unlawfully detained for about three hours was awarded R12 000 (R 16 978). In Manase v Minister of Safety and Security and Another 2003 (1) SA 567 (Ck) in which a 65-year-old businessman was unlawfully detained for 49 days, incarcerated at times with criminals, the sum of R90 000 (R102 000) was awarded. In Seria v Minister of Safety and Security and Others 2005 (5) SA 130 (C), a professional man who was arrested and detained in a police cell for about 24 hours, for a time with a drug addict, was awarded R50 000 (R52 000).

50. The Supreme Court of Appeal in the matter of **Minister of Safety and Security v Tyulu [2009] 4 All SA 38 (SCA)** awarded compensation in the amount of R15 000 for a magistrate who was arrested and briefly detained for being drunk in the early hours of the morning.

51. It is the finding of this Court that the arrest of the Plaintiffs was lawful. The detention of the Plaintiffs was also lawful for the period until Monday 26 September 2012 at 20h11. Beyond that time, and up to their release the following day, the detention was unlawful for those hours.

In the premises I make the following order:

1. The Plaintiffs' action for unlawful arrest is dismissed.

2. The Plaintiffs' action for unlawful detention succeeds in part.

3. The Defendant is ordered to pay each Plaintiff an amount of R10 000 as damages for unlawful detention.

4. The Defendant is ordered to pay 50% of the Plaintiffs' taxed costs.

JUDGE SP MOTHLE

High Court of South Africa

Gauteng Division

PRETORIA.

Date of Hearing: 4, 5, 6 and 7 March 2014

Date of Judgment: 2 April 2014

FOR THE PLAINTIFF:	ADV. J VAN ZYL
INSTRUCTED BY:	FRANKIN ATTORNEYS 93 NJALA ROAD/ELEPHANT ROAD MONUMENT PARK PRETORIA
FOR THE DEFENDANT:	ADV. KM MOKOTEDI
INSTRUCTED BY:	THE STATE ATTORNEY SALU BUILDING 255 FRANCIS BAARD STREET PRETORIA