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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 27/5/2016 ---------- DATE SIGNATURE

27/5/2016

CASE NO: 14209/14

In the matter between:

GUGULETHU TIMOTHY ZWANE PLAINTIFF

and

THE MINISTER OF SAFETY AND SECURITY 1st DEFENDANT

THE NATIONAL DIRECTOR OF PUBLIC PROSECUTION 2nd DEFENDANT

JUDGMENT

CANCA AJ;

INTRODUCTION

[1] The plaintiff, Mr Gugulethu Timothy Zwane, an adult male, who at the time of his arrest and detention was approximately 33 years old, and residing at No. […], Morgenzon, is suing the defendants, the Minister of Safety and Security and the National Director of Public Prosecution, for an alleged unlawful arrest and detention. He is claiming damages in the sum of R600 000.00 for the unlawful arrest, R600 000.00 for the unlawful detention and R100 000.00 for contumelia, together with costs of suit.

[2] The defendants deny liability. They contend that the plaintiff was lawfully arrested and detained on a reasonable suspicion of having committed murder and rape.

[3] The first defendant, the Minister of Safety and Security ("the Minister") is sued in his official capacity as the Minister responsible for the South African Police Services ("the Police"). The plaintiff holds the Minister vicariously liable for the alleged wrongful and unlawful actions committed by members of the Police stationed at the Morgenzon Police Station.

[4] The second defendant, the National Director of Public Prosecution, is also sued in his official capacity and is held liable by the plaintiff for the actions of those of his officials that were involved in the plaintiff's alleged unlawful detention.

BACKGROUND FACTS

[5] This action has its origin in the small farming town of Morgenzon, in the district of Ermelo, Mpumalanga.

[6] The half-naked body of Ms P.N ("the deceased") was discovered in an open field between the old and the new cemeteries in the vicinity of Extension 2, Sivukile Township, Morgenzon by members of the public on the morning of 16 December 2012. The deceased appeared to have been stabbed on her chest and neck, presumably with the broken beer bottle which was found at the crime scene.

[7] Acting on information that the deceased and the plaintiff were drinking alcohol the previous evening at a local tavern, Mkhulu'sTavern, in Sivukile Township, and that they were seen leaving the tavern together, the Branch Commander of the town's police station, Warrant Officer Kubheka ("Kubheka"), arrested the plaintiff later that day. The arrest was, according to Kubheka's testimony, based on information that the plaintiff was the last person seen with the deceased, the plaintiff's apparent nervousness whilst being interviewed by him and a colleague, scratches on his hand and the fact that the plaintiff could not explain the presence of bloodstains on a jacket found in his room.

[8] The plaintiff was detained at the Morgenzon Police Station where he was charged with murder and rape. He appeared at the Morgenzon Magistrate Court on 19 December 2012. Thereafter, he was transferred to the Ermelo Prison as an

awaiting trial prisoner. Although the plaintiff did not apply for bail at his first appearance at Court, he asked for legal aid representation. The matter was then postponed in order to get the plaintiff legal representation and for further investigation.

[9] The plaintiff, who remained detained, made several appearances at Court until he was eventually released from custody on 9 April 2012 for lack of evidence. He was represented by a Legal Aid appointed attorney at one of those appearances. It is not clear from the evidence or the record why this attorney only appeared once or why he did not apply for the plaintiff to be released on bail. The record also does not reveal whether or not the presiding officer at those appearances enquired as to the progress of the investigation or why the plaintiff should not be released on bail. The plaintiff's release from custody came about as a result of the perpetrator of the offences being arrested on 6 April 2012 and confessing thereto the following day, 7 April 2012.

THE PLEADINGS

[10] The essence of the plaintiff's claim on the charges of unlawful arrest and unlawful detention is found in paragraphs 5, 6, 7, 8, 9, 10 and 11 of his Amended Particulars of Claim. These paragraphs read as follows:

5.

> *"On or about the 16TH December 2012 at Morgenzon, the Plaintiff* was *arrested without* a *warrant by Officers VP Kubheka and PJ Serulama, members of the South African Police Service whose ranks are unknown to the Plaintiff.*

6.

Thereafter, the Plaintiff was *detained at the Morgenzon Police Station until the 19th December 2012 at the instance of the aforesaid police officers and various other police officers whose names and rank are unknown to the Plaintiff.*

7.

Thereafter the Plaintiff was *further detained at Ermelo Prison until the gth April 2013 at the instance of the aforementioned members of the South African Police Service and at the instance of the second defendant.*

8.

8.1 1 At the time of his arrest, the plaintiff was *handcuffed and forced into* a *police van and placed at the Morgenzon Police Holding Cells under inhuman, humiliating and degrading circumstances by the aforesaid Police Officers.*

8.2 Consequent to his arrest, charges of murder and rape were levelled against the plaintiff at the instance of the aforementioned members of the South African Police Services and at the instance of the 2nd defendant.

9.

The arrest and detention constituted a *mischief against the plaintiff given that he* was *later released after the Court held that there* was *not enough evidence to prosecute [the plaintiff].*

The Police Officials aforesaid had no reasonable belief that plaintiff was *involved in the commission of the offence when they arrested and detained the plaintiff.*

10.

The purpose of arrest in this case was *never achieved and the arrest* was *used in this manner for* a *purpose it* was *not meant for. Plaintiff* was *kept in Police custody for* a *period of four (4) months without just* cause *for charges which were struck off [the] roll on the 9th April 2013 against him by the Ermelo Court and therefrom [sic] the plaintiff* was *released from prison.*

11.

The said members of the South African Police Services were acting in the course and scope of their employment as *police officers of the South African Police Services."*

[11] In their Plea, the defendants raised the defence provided by Section 40 (1)(b) of the Criminal Procedure Act 51 of 1977("the Act") which permits a peace officer to arrest, without a warrant, a person whom he reasonably suspects of having committed an offence referred to in Schedule 1 of the Act. Section 40 (1)(b) of the Act provides that:

"(1) A peace officer may without warrant arrest any person -

(a) ....

(b) *whom he reasonably suspects of having committed an offence referred to in Schedule 1, other than the offence of escaping from lawful custody,"*

One of the offences listed in Schedule 1 is murder.

[12] The relevant parts of the Plea, for purposes of this judgment, are the following:

4.

AD PARAGRAPHS* 5,6,7,8,9, *10,11,15 AND 16 THEREOF

4.1.1 The Plaintiff was arrested by a *Peace Officer at Morgenzon without* a *warrant of arrest on 16h December 2012.*

4.1.2 The Plaintiff was arrested in terms of Section 40 (1) (b) of the Criminal Procedure Act 51 of 1977.

4.1.3 The Plaintiff was reasonable suspected of committing a *Schedule 1 Offences [sic] (murder) of P.N in the morning of the 16th or late night of 15th December 2012.*

4.1.4 The arresting officer entertained the suspicion, and the suspicion was based on reasonable grounds.

4.1.5 The Plaintiff's arrest was lawful.

4.2.1 The Plaintiff was dealt with in terms of Section 50 of the Criminal Procedure Act 51 of 1977.

4.2.2 The Plaintiff was then charged with murder, appeared in Court and did not apply to be released on bail. Consequently, he was detained, pending trial and/or further investigations.

4.2.3 The Plaintiff's further detention was lawful.

4.2.5 The charge preferred against the Plaintiff was withdrawn by the Prosecutor on 9 April 2013, due to insufficient evidence to prosecute the plaintiff.

4.2.6 At the time of the Plaintiff's arrest, the arresting officer was acting with[in] the course and scope of employment as an employee of the First Defendant.

4.2.7 Any other allegation which is at variance with the contents herein, is deny [sic] and the Plaintiff is put to the proof thereof "

[13] Van Heerden JA, in *Duncan v Minister of Law and Order* 1986 (2) SA 805 (A) at 818 G-H held that the following jurisdictional facts have to be met for a successful Section 40 (1)(b) defence, namely: (a) the arrestor must be a peace officer;(b) the arrestor must entertain a suspicion;(c) the suspicion must be that the arrestee committed an offence referred to in Schedule 1 (to the Act) and (d) the suspicion must rest on reasonable grounds. This test was re-affirmed by Harms JA in The *Minister of Safety and Security v Sekhoto* 2011 (5) SA 367 SCA at 373 B-C.

[14] It is common cause that Kubheka is a peace officer and that he arrested the plaintiff without a warrant. Two of the threshold requirements for a Section 40 (1)(b) defence have thus been met by the defendants. In order to ascertain whether or not the rest of the jurisdictional facts have been met, it is convenient to examine the testimony of the witnesses for the respective parties.

THE EVIDENCE

[15] It is trite law that an arrest without a warrant is *prima facie* unlawful and that in such an event the onus is on the arrestor to justify the arrest. Thereafter, the

arrestee has to prove the unlawfulness of the arrest and prove the quantum of his or her damages. See *Minister of Safety and Security v Linda* 2014 (2) SACR 464 at 466 [5f]. Consequently, the defendants' witnesses were the first to give evidence.

THE DEFENDANTS' EVIDENCE

[16] Kubheka was the defendants' first witness. He testified that he was called to the crime scene by one of his junior officers, Constable Nhlapo, on the morning of 16 December 2012 where he found the deceased's body. There he was informed by the deceased's sister that the deceased's cell phone was missing. Following further investigation, he ascertained from Ms F.S ("S"), apparently one of the deceased's friends, that she, the deceased and the plaintiff were together the previous evening drinking alcohol at Mkhulu's Tavern. During the course of that evening the plaintiff proposed love to the deceased. The proposal was rejected. At some stage S left the deceased and the plaintiff at the tavern and on her return, approximately 2 hours later, ascertained from the other patrons that the deceased and the plaintiff had left the tavern together. Kubheka also obtained directions to the plaintiff's residence from S

[17] Kubheka further testified that he and a colleague drove to the plaintiff's residence where he proceeded to interview him. According to Kubheka, the plaintiff confirmed that he, the deceased and S were drinking alcohol at Mkhulu's Tavern the previous evening and that his proposal was turned down by the deceased. He also informed Kubheka that he accompanied the deceased to the

edge of the field where her body was found that morning but had, on their parting, proceeded straight to his house. Kubheka stated that he suspected that the plaintiff was the perpetrator of the offence as he appeared nervous during the interview and had scratches on his hand. He then asked to search the place. It was during this search that he came across a green jacket with blood stains on its right sleeve. When asked about the origins of the bloodstains, the plaintiff did not, according to Kubheka, give an explanation but kept apologising and said that he did not know that she was going to die. It was then that he arrested the plaintiff as a suspect. According to him, his suspicion was based on the fact that the plaintiff was the last person seen in the company of the deceased, the scratches on the plaintiff's hand and the fact that he could not explain the blood on the green jacket.

[18] He then took the plaintiff to the Morgenzon Police Station where he was detained. His DNA was taken 18 December 2012 where after he was charged. The plaintiff was brought to Court on 19 December 2012 but, according to Kubheka, he was by then no longer involved in the investigation as he had passed on the case to his colleagues, initially, Constable Serulama ("Serulama") and then to Constable Nhlapo.

[19] Under cross examination, Khubeka conceded that the green jacket played a vital role in him arresting the plaintiff. He also stated that the jacket was booked with the other items in order for the bloodstains on it to be analysed forensically. However, he could not explain why there was no mention of the green jacket in his Investigation Diary or in his letter to the Commander of the Forensic Science Laboratory which accompanied the items which required analysis. His letter only

listed a sexual assault evidence kit, an evidence bag containing the deceased's nails, a blood kit and two evidence bags containing the deceased's clothes. The green jacket is only mentioned in his written statement which was penned on 18 December 2012, two days after the arrest. He also could not explain why his written statement did not include reference to the plaintiff's apology. There is also no reference in his statement that the plaintiff allegedly said that he did not know that the deceased would die.

[20] The Prosecutor Information Form (the "Prosecution Form"), completed by Serulama, who listed himself as the investigating officer in the Prosecution Form, however, contains the following information, which I consider material for purposes of arriving at a conclusion in this matter. According to the Prosecution Form, the plaintiff, *inter alia,* has, (1) fixed employment, (2) children, (3) a previous conviction of 6 months - what he was convicted for is not stated - (4) did not evade or resist arrest, (5) co-operated with the police, (6) was a danger to person/community, (7) would interfere with witnesses, (8) should not be released on warning or on bail and, (9) should not [sic] be held in prison.

[21] The defendants' second witness, Ms Marokane, was the State Prosecutor at the plaintiff's Court appearance on 19 December 2012. She was not involved in the plaintiff's subsequent Court appearances. Her testimony had no effect on whether or not the arrest was unlawful. Regarding the claim for unlawful detention though, she stated during cross examination that, given the fact that the plaintiff was charged with a Schedule 1 offence, she would have opposed bail had same been applied for.

THE PLAINTIFF'S EVIDENCE

[22] The plaintiff's first witness was his older brother, Mavukuthu Zwane. The essence of his testimony was the he was arrested 3 days after the plaintiff's arrest and was detained for 6 days. The reason for the arrest was apparently because Khubeka did not believe that the plaintiff had committed the crime by himself and that the police wanted to take a sample of his blood. He successfully sued the First Defendant for unlawful arrest and detention. He was paid damages in the sum of R160 000.00 for the aforesaid arrest and detention.

[23] During his testimony the plaintiff confirmed S's version of what had happened the previous evening at Mkhulu's Tavern and acknowledged that he was with the deceased and S. He further testified that he and the deceased parted ways at the edge of the field where she was later discovered. Thereafter he went home. On the morning of his arrest, he went to a tavern in the township where he drank alcohol and thereafter went back to Mkhulu's Tavern where he continued drinking alcohol. He denied that the arrest took place at his house. His evidence was that Kubheka and his colleagues found him outside Mkhulu's Tavern. Kubheka informed him that he was being arrested for the murder of the deceased and then drove him to his house where they proceeded to search it. The officers came across the green jacket, which is the top of a two-piece overall he wore at work. His further testimony was that he informed Kubheka that he had injured himself at the dairy where he worked. The injury occurred approximately a month before his arrest, the bloodstains and the scratches on his hand were old, so his evidence continued. Kubheka did not accept this explanation. However, according to the plaintiff,

Kubheka's colleagues believed him and allegedly told Kubheka that they should leave him alone. I assume that the plaintiff took this to mean that Kubheka's colleagues exonerated him. Kubheka ignored his colleagues and drove the plaintiff to the Morgenzon Police Station where he was detained. After his Court appearance on the 19th December 2012, he was later transferred to the Ermelo Prison until his release.

[24] Under cross examination, the plaintiff could not be shaken from his version of what had transpired on the afternoon of his arrest, namely, that he was arrested outside Mkhulu's Tavern, was driven to where he stays by the Police and that he explained the scratches on his hand and how the jacket got stained with blood. He could, however, not explain why he wore a jacket with bloodstains for a month without having washed same. He also conceded that his attorney did not apply for bail but stated that he had asked him to do so.

OVERVIEW OF THE EVIDENCE

[25) In my view, the following are aspects of the plaintiff and Kubheka's testimonies that require careful consideration:

25.1 was the plaintiff arrested outside Mhkulu's Tavern or at his house?

25.2 is the plaintiff's evidence of how the green jacket got stained with blood credible?

25.3 was the information at Kubheka's disposal sufficient to give rise to a reasonable suspicion to effect the arrest?

[26] The issue of where the plaintiff was arrested is important in the following respects: (a) if the arrest was outside Mkhulu's Tavern then, so the plaintiff contends, Kubheka's suspicion could not have been reasonable as the only information at his disposal, at that stage, was S's statement referred to in paragraph 16 above. That information, namely, that the deceased and the plaintiff were drinking alcohol the previous evening, that the deceased had turned down the plaintiff's proposal and that the plaintiff and the deceased had left the tavern together, was clearly not sufficient to raise a reasonable suspicion to arrest the plaintiff. At most, that information was sufficient for the Police to interview the plaintiff, and (b) if, as Kubheka testified, that the arrest took place at the plaintiff's house after he observed the plaintiff's nervous behaviour, saw the scratches on his hand and the blood on the green jacket, then the question to be asked is whether or not his suspicion, that the plaintiff was the perpetrator of the offence, was reasonable.

[27] There were various aspects of Kubheka's testimony which, in my view, rendered him a poor witness. His evidence that the plaintiff was scared and nervous during the interview at his house is not enough to conclude that the suspicion was reasonable. To my mind, the plaintiff's nervousness has a rational explanation. It is conceivable that the plaintiff, (a man of small stature, who kept breaking down during his testimony), when informed by the Police that he was either being arrested for or was a suspect in the murder of someone he was drinking with the previous evening and whom he was seen leaving the tavern that evening, would display symptoms of nervousness. When I suggested this to the defendants' counsel during argument, he

agreed that most people in the plaintiff's position would be nervous. The plaintiff's nervousness during his interview by Kubheka, was consequently, by itself, in my view, not sufficient evidence to justify a reasonable suspicious for his arrest.

[28] The evidence that the plaintiff kept apologizing and had said that he did not know that the deceased would die, when Kubheka discovered the bloodstained jacket, does not ring true, is unconvincing and untenable. The fact that, what amounted to an admission of guilt by the plaintiff, was not included in Kubheka's statement, allegedly given under oath on 18 December 2012, fortifies me in the view that that aspect of Kubheka's testimony is improbable and is a fabricated version. This evidence is consequently rejected.

[29] Moreover, if the jacket played such a vital role in Kubheka's suspicion, him not submitting the jacket for forensic examination or not having a plausible explanation for not doing so, leads me to the conclude that the bloodstains were indeed probably old and could not have been from the previous evening. The deceased's wounds, judging from a perusal of the photographs of her body, are such that there would have been significantly more blood on the jacket than what is suggested by Kubheka's evidence.

[30] It is also worth noting that under cross examination, Kubheka could not adequately explain why, when asked by an official in the employ of the second defendant, the jacket had not been included in the items sent for forensic analysis. There is also nothing in the record to show that Kubheka subsequently responded to

the said letter or that the jacket was eventually sent for analysis by the Forensic Laboratory. The plaintiff's evidence that Kubheka's colleagues exonerated him when he explained how the jacket got stained with the blood, must therefore be accepted. Kubheka's testimony, that the blood on the jacket played a major contributing factor in him suspecting the plaintiff of the offence, is rejected. Kubheka was then left with only Sithole's evidence.

[31] It is convenient to re-state the test for a reasonable suspicion when affecting an arrest without a warrant in the circumstances such as those faced by Kubheka on that fateful day. In *Duncan supra,* it was decided, at paragraph 814 D-E, that the test is not whether a policeman believes that he has reason to suspect, but whether, on an objective approach, he in fact has reasonable grounds for his suspicion. Jones J, in *Mabona and Another v Minister of Law and Order and Others* 1988 (2) SA 654 (SE) at 658 E-G, stated that, in deciding what constituted evidence that would lead an arresting officer to form a reasonable suspicion which was objectively sustainable, one would have to ask whether a reasonable man in that policeman's position and possessed of the same information would have considered that there were good and sufficient grounds for suspecting that the plaintiff was guilty of the offence. The learned Judge goes on to state that *"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."*

[32] Kubheka's testimony falls short of the test set out in *Mabona* above. A reasonable investigating officer in Kubheka's position, to my mind, even if he was not convinced that the blood was old and from a previous injury as stated by the plaintiff, would have sent the jacket for analysis of the blood before arresting the plaintiff given that he knew where the plaintiff lived and had secure employment in that small town. A reasonable policeman in a small town, where most people, generally know each other, would have warned the suspect who, as is stated in the Prosecution Form referred to in paragraph 20 above, had co-operated with the Police, had children and fixed employment in that town, not to leave town until he had been ruled out as a suspect. I am not convinced that Kubheka, when affecting the plaintiff's arrest, excised the requisite critical examination and analysis of the limited information he had obtained from S and the responses he received from his interview of the plaintiff.

[33] Is the plaintiff's testimony as to how the jacket got stained with blood credible? The difficulty in answering this question is the fact that neither the plaintiff's counsel nor counsel for the defendants properly explored the aspect of the bloodstains during the evidence in chief or during cross examination. It is not clear how big or how widely spread the bloodstains were. Were there just a few spots or was there a large stain? Whilst the defendants' counsel attempted to disprove the plaintiff's testimony in this respect by contending that it was improbable to wear a jacket with bloodstains for approximately a month, regard must be had to the fact that the jacket was part of an overall the plaintiff wore at work in a dairy. It is conceivable that as a labourer his work was manual and did not necessarily require

clean clothes. It is also not clear from the evidence how prominent those bloodstains were given that they were old and that the jacket was dark in colour (green). The plaintiff may very well have considered the bloodstains insignificant and not requiring removal. Although I have, elsewhere in this judgment, referred to the plaintiff as living in a house, in fact, he lived in a township "back room" and probably did not have the luxury of a washing machine and the detergents to remove stubborn stains which blood generally leaves on clothes. The plaintiff's testimony largely withstood cross-examination. The instances where he faulted during cross - examination where not material to the averments made in the particulars of claim.

[34] In the light of the above, I am of the view that the plaintiff's evidence of how the jacket got stained with blood is credible. Kubheka could easily have gone to the plaintiff's place of employment to verify the plaintiff's story, but failed to do so. He also failed to have the blood on the jacket analysed.

MERITS

[35] In argument, the defendants' counsel, relying on *Linda supra* (cited in paragraph 15 above), sought to persuade me that, because the plaintiff did not specifically allege, in his particulars of claim, that the arrest and detention was based on an unreasonable suspicion, his claim should fail on that reason alone. I do not agree.

[36] The particulars of claim are poorly drafted. However, a close reading of paragraph 9 thereof, the relevant parts of which state that *" The arrest and detention*

constituted a mischief against the Plaintiff . .." and *" The Police Officials aforesaid had no reasonable belief that plaintiff was involved in the commission of the offence when they arrested and detained the Plaintiff."* as well as paragraph 10, in which it is alleged that *" ...the arrest was used in this manner for a purpose that it was not meant for."* is in my view, albeit inelegantly framed, sufficient to put the reasonableness of Kubheka's suspicion in issue.

[37] Although, as was held in *Linda supra,* at [21a-b], that "a *police officer is not expected to satisfy himself to the same extent as a court'* and that "a *suspicion can be reasonable despite there being insufficient evidence for* a *prima facie case,"* when looked at as a whole, the evidence at Kubheka's disposal was, in my view, not sufficient to raise a suspicion that was reasonable to effect the arrest. The arrest and detention was arbitrary and consequently unlawfully. Notwithstanding the aforementioned, there is nothing in the testimony of the witnesses or in the record to suggest that Kubheka's actions were motivated by malice. At most, he was overzealous and probably too eager to secure an arrest in what was a rather gruesome crime.

[38] There is no evidence before me or in the record on which I can make a determination on the culpability of the second defendant. As stated in paragraph 20 above, the only witness for the second defendant testified that, given the serious nature of the offences levelled against the plaintiff, she would not, at that early stage of the investigation, have agreed to his release on bail. The plaintiff, who bore the onus of showing exceptional circumstances justifying his release on bail, did not

present any credible evidence why an application for his release on bail was not made nor is there any evidence of wrongdoing on the part of the second defendant's officials. The plaintiff's claim against the second defendant for unlawful detention therefore stands to be rejected.

QUANTUM

[39] It is common cause that the plaintiff, who was arrested and detained on 16 December 2012, was only released on 9 April 2013, following the confession of the perpetrator of the offences, on 7 April 2013. Although there is no fixed formula for the determination of the quantum in cases of this nature, the dictum of Bosielo AJA, as he was then, in *Tyulu v* The *Minister of Safety and Security* 2009 (4) ALL SA 38 (SCA) at paragraphs 26 & 27, is instructive. It is important, in the light of what the learned Judge says in that case, that the award I make in this matter highlights the right to personal liberty and that the arbitrary deprivation of such liberty is viewed seriously in our law.

[40] In argument, the defendants' counsel contended that, in the event that I found in the plaintiff's favour, I should only hold the first defendant liable for the plaintiff's arrest and detention until the 19th December 2012. In support of this contention, counsel referred me *Linda supra* at 477 g - i. Here Murphy J held that *"In Sekhoto [2011 (5) 367 at 383 C-0] the SCA drew* a *clear distinction between the powers of* a *peace officer to arrest and the power to detain. The power to arrest is exercised for the purpose of bringing the suspect to justice. Once an arrest has been*

effected the peace officer must bring the arrestee before a *court as soon as reasonably possible and at least within 48 hours (depending on court hours)."*

[41] It is trite law that, once an arrestee has been brought to Court, the authority to detain, which is inherent in the power of arrest, is exhausted. The authority to detain a suspect further then falls within the discretion of the Court. See *Linda* at 477 i - j.

[42] I am of the view that the plaintiff was poorly treated by the justice system in this matter. The second defendant and the Judiciary bear a responsibility not to allow matters to be postponed for months and months without good cause, particularly when the accused is in custody. However, I have already found that there was no evidence to show any culpability on the second defendant.

[43] Having considered the testimony of the various witnesses and having carefully perused the record and the relevant authorities, I am persuaded by the defendants' argument that the plaintiff's unlawful arrest and detention was from the afternoon of the 15th December 2012 until his appearance at Court on 19 December 2012. The plaintiff was therefore denied his liberty from 16 to 19 December 2012. The plaintiff's counsel argued strongly that I should, when considering the issue of quantum, take into account the fact that the plaintiff, who is still traumatised by his arrest and detention, had lost his employment as a result of that arrest and detention. However, neither the plaintiff nor his counsel were able to show that the Police could have foreseen him losing his employment.

''

[44] I have given careful consideration to the facts of this case, the circumstances of the plaintiff's arrest including his social standing, the real possibility that his reputation in Morgenzon, and in particular Sivukile Township, has been sullied by his arrest and detention. Having observed the plaintiff during his testimony, I have no doubt that his arrest and prolonged detention as an awaiting trial prisoner was very traumatic and that he is still suffering the effects of that experience. I urge the plaintiff's legal representatives to impress upon him the need to seek help from an appropriate healthcare professional.

[45] I have also taken note of the dictum by Nugent JA, in *Minister of Safety and Security v Seymour* 2006 (6) SA 320 (SCA) at 325 B, that *"the awards of general damages with reference to awards made in previous cases was fraught with difficulty [and that the] facts of* a *particular case needed to be looked at as* a *whole and few cases are comparable".* In *Seymour,* the respondent was also detained at a police station. However, he had free access to his family and doctor and after 24 hours was transferred to a clinic where he spent the rest of his 5 days in detention in a hospital bed. The Court awarded him damages in the amount of R90 000.00 in 2006. There is no evidence as to the conditions under which the plaintiff was detained at the Morgenzon Police Station. The defendants' counsel submitted that, in the event I found against the first defendant, an amount of R120 000.00 would be appropriate damages for the plaintiff. I do not agree. Although I have found that the plaintiff's detention following his appearance at Court on 19 December 2012 was lawful, justice demands, given the facts of this particular case, that the amount suggested by the defendants' counsel be increased.

[46] In the light of the above, I consider an award in the amount of R 180,000.00 to be fair and appropriate compensation in the circumstances of this case.

COSTS

[47] Both the plaintiff and the defendants argued that they would be entitled to costs in the event that they were successful. I have already found that the plaintiff has been successful in his claim against the first defendant. Costs, therefore, should follow the cause.

[48] The plaintiff has been unsuccessful against the second defendant. Ordinarily, the plaintiff would be liable for that defendant's costs. However, given that the two defendants were represented by the same counsel, Messrs Phaswane and Kekane, and given my comments in paragraph 42 above, it would be inappropriate in these circumstances to order the plaintiff to pay the second defendant's costs.

ORDER

[47] I order as follows:

1. Judgment is granted in favour of the plaintiff against the first defendant for payment of damages in respect of his unlawful arrest in the sum of R180 000.00, together with interest thereon at the statutory rate as from the date of judgment, and costs.

2. The plaintiff's claim against the second defendant is dismissed. No order as to costs.

MP CANCA
Acting Judge of the High Court

APPEARANCES:

For the Plaintiff: Adv. L Mgwetyana

Instructed by: Mjali & Zimema Attorneys, Volksrust.

For the Defendants: Advocates MS Phaswane & DM Kekana

Instructed by: N A Qongqo

State Attorney, Pretoria.

Heard on: 15 & 16 March 2016
Judgment on: 27 May 2016