



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

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

2019.08.29  
DATE

*JH Mabuse*  
SIGNATURE

CASE NUMBER: A51/17

DATE: 29 August 2019

THOMAS SMITH NEFDI

Appellant

V

THE MINISTER OF SAFETY AND SECURITY

Respondent

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JUDGMENT

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MABUSE J (KOLLAPEN J and MUNZHELELE AJ concurring)

- [1] This is an appeal against the whole of the judgment of Magistrate Khotso of the Pretoria Magistrate Court, in which he dismissed with costs, the Appellant's claim against the Respondent. In the court a quo the Appellant was the Plaintiff while the Respondent

was the Defendant. For purposes of convenience we will refer to the parties herein as they chose to call themselves in the trial court.

- [2] On 15 September 2015 the Plaintiff issued summons against the Defendant and claimed payment of money. The Plaintiff's cause of action arose on 24 April 2015 at Mokopane Police Station when some members of the South African Police Services (SAPS), who were at all material times thereto acting within their course and scope of employment with the Defendant, unlawfully arrested the Plaintiff without a warrant of arrest and detained him at the said police station from 11h00 to 17h30.
- [3] In his amended plea the Defendant admitted the said arrest and detention and furthermore that the said arrest was effected without a warrant of arrest but pleaded that it was effected in terms of s 40(1)(b) of the Criminal Procedure Act 51 of 1977 ("the CPA").
- [4] At the beginning of the trial Mr Bouwer, counsel for the Plaintiff, pointed the court, quite correctly so, that the issue that had to be decided was whether the arrest of the Plaintiff was executed in terms of the provisions of s 40(1)(b) of the CPA as pleaded by the Defendant in his amended plea.
- [5] Mr Sebelemetsa, counsel for the Defendant, confirmed, in his opening address, that the Defendant admitted the arrest of the Plaintiff; that the said arrest indeed was effected without a warrant of arrest by a member of the SAPS and that the Plaintiff was thereafter

detained at Mokopane Police Station. He contended on the contrary that there were grounds of justification for arresting the Plaintiff in the aforementioned manner.

### THE EVIDENCE

[6] The genesis of the Plaintiff's claim against the Defendant are the following circumstances. On 23 April 2015 a certain Mawande Monyamane ("Monyamane"), was on duty as a petrol attendant at a certain Engen tank station in Mokopane. While he was thus on duty the Plaintiff arrived at that tank station on a motorbike. He asked Monyamane to put in petrol in the tank of his motorbike. Monyamane removed the petrol nozzle from its station and prepared to put it into the motorbike's petrol tank.

Some petrol escaped from the nozzle and spilled on the motorbike. The Plaintiff became furious. He grabbed the petrol nozzle from Monyamane and ordered him to wipe the petrol off his motorbike. Monyamane obliged. He took out a piece of cloth and started to wipe off the petrol from the motorbike. The Plaintiff then sprayed Monyamane with petrol in his face, in particular his left eye.

[7] Then the Plaintiff said "Fok", he was not going to pay. He ordered Monyamane to go and call his manager. While Monyamane had gone to call the manager the Plaintiff pumped more petrol into his motorbike's tank. The manager was not present. Monyamane went back to the Plaintiff and reported to him accordingly. The Plaintiff repeated his utterances that he was not going to pay for the petrol. He then took out a business card, handed it to Monyamane and told him that if they wanted him they would get his details from that card. Thereafter he left.

[8] Monyamane waited for the manager to return. After the manager had come back he made a report to him about the incident involving the Plaintiff. Thereafter he went to Mokopane police station to lay charges of theft and assault against the Plaintiff. The following day he went to consult a doctor about his left eye. His left eye was painful. He could not see properly with it.

[9] The Plaintiff left the filling station without paying for the petrol that was put into the tank of his motorcycle. The management of the tank station wanted money. If the Plaintiff did not pay he, Monyamane, had to pay from his own pocket.

[10] The second witness was Makastlou Mofya ("Mofya"). He was referred to as the arresting officer. As at 24 April 2015 he was a captain in the SAPS. On that particular day he was on duty when he received, inter alia, a case docket that related to the Plaintiff. Having perused it, he understood that a person had put in petrol into the tank of his motorcycle at an Engen tank station and left without having paid for it. That person was the Plaintiff. This docket contained the contact details of both the complainant, Monyamane, and the Plaintiff. He telephoned the complainant to obtain more information from him about the incident. He then called the Plaintiff and informed him that a case had been opened against him in which it was alleged that the previous day he had put in petrol into his motorcycle's tank at a certain tank station but failed to pay for it. The Plaintiff requested the case number. He gave it to him. Thereafter he asked the Plaintiff to come to the police station in order to sort out the matter. The Plaintiff refused. The Plaintiff told him that he would not come to the police station.

[11] He told the Plaintiff that seeing that he refused to come to the police station he would send some police officers to come and fetch him. Mofya then allocated the case dossier to an investigating officer, one constable Mashabati.

[12] On the same day the Plaintiff came to the police station. He arrived at the door of Mofya's office, knocked and, without having been invited in, walked in. Without even having greeted him or the people in that office whom Mofya was serving, he asked who Mofya was. He could not even pronounce Mofya's name properly. Mofya then assisted him with the proper pronunciation of his name. He introduced himself to the Plaintiff and the Plaintiff in turn introduced himself to him, The Plaintiff asked him if he was the one who had called him to inform him about the theft case against him. As he was busy at the time serving other members of the public, he asked the Plaintiff and his female companion in a respectable manner to take seats while he was still busy assisting those people. He told the Plaintiff prudently that he would assist them only after he had assisted the people in his office. Instead of taking the seats, the Plaintiff arrogantly told him that he was leaving and, without much ado, left. Mofya apologised to the people he was serving and asked them to be patient. He promised that he would come back and continue assisting them. He left them and the work he was doing and followed the Plaintiff.

[13] He approached the Plaintiff and asked him where he was going. The Plaintiff told him defiantly that he was leaving and that he would not arrest him. Mofya's snatched the motorbike's keys from the ignition of the motorbike and walked back to his office. The Plaintiff and his female companion doggedly followed him back into his office. He then

took the Plaintiff to the cells and detained him so that he could finish the work that he was doing on the Plaintiff's arrival. He only started attending to the Plaintiff three hours and twenty minutes after he had locked him up in the cells.

[14] He continued with his evidence and testified that they had detained the Plaintiff; that the plaintiff's particulars were entered into the register of the SAPS and that the charge against him was theft of petrol. He confirmed that he arrested the Plaintiff for the theft of petrol. He arrested the Plaintiff at 13h50 and released him at 17h20. He admitted, during his evidence-in-chief, that he arrested the Plaintiff without a warrant of arrest. He told the court that in terms of s 40(1)(b) of the CPA a police official is authorised to arrest a suspect without a warrant. He developed his evidence and told the court that the relevant s 40 makes provision for charges in respect of which a suspect may be arrested. One of the charges for which a person may be arrested in terms of s 40 was theft. To him the Plaintiff was a suspect and he suspected him on reasonable grounds of having committed theft.

[15] The Plaintiff testified in his case but called no witness to testify on his behalf. In his testimony he vigorously denied that he pumped petrol into Monyamane's face. According to him, if it happened; it was by sheer accident. He testified that in an attempt to put in petrol into his motorbike's tank, Monyamane spilled petrol over the tank and engine of his motorbike. He then took the petrol nozzle from Monyamane and put in petrol into the tank of his motorbike. Monyamane complained to him that he had poured petrol into his, Monyamane's, eyes. He testified that he did not do it intentionally.

[16] After filling up the petrol tank of the motorbike he testified that he went to his motorbike, collected his wallet, took out money and wanted to give it to Monyamane but Monyamane surprisingly refused to accept it on the ground that he did not pour petrol for him. Then he approached another petrol attendant and attempted to give him the money for the petrol that he put in his motorbike's tank. He too refused to accept it. He asked them to go and call the manager. Monyamane left and when he came back told him that the manager was not present. He then took out his business card and handed it to Monyamane and drove to his home which is 180 kms from Mokopane.

[17] The following morning he received a telephone call from a constable of Mokopane SAPS. The constable requested him to come back to Mokopane to pay money for the petrol. He was told that he must personally come back to Mokopane to pay the money.

[18] He went to Mokopane police station where he was directed to the office of Mofya. On his arrival at that office he introduced himself to the black man who was sitting behind the desk. The black man admitted that he was Mofya. He then asked Mofya how the problem was going to be resolved. Mofya started insulting him and making racial remarks about him. He then told his wife that he was not going to listen to diatribe by Mofya. He told his wife that they should leave. Both he and his wife walked to the motorbike where he took out the key for the motorbike. Captain Mofya and a number of his colleagues surrounded him in the street and continued insulting him and screaming at him. Mofya snatched the keys of the motorbike.

[19] A black lieutenant approached him and told him politely to get into the office. At the door at the charge office a number of policemen grabbed him and took him into the office of Mofya. In that office Mofya took off his tie, threw it on his table and proceeded to insult him while he sat silently on a chair in that office. Mofya ordered some uniform police officers to search him and after he had been searched to lock him up.

[20] It is correct that captain Mofya had other business to attend to for 3 hours 20 minutes. When he took the nozzle of the petrol pump he did not do anything to actively pump petrol. According to him the petrol pump must have been activated already to pump petrol. He testified that he must have been detained between 11h00 and 12h00 to 17h30 to 18h00.

[21] Now having assessed the entire evidence, the trial court made the following findings:

*"73. Having evaluated all the evidence placed before court and having applied its mind to the given facts, the court holds the following view:*

*73.1 That the Plaintiff was arrested for being uncooperative and obstructive in his conduct and hindered police in the performance of their duties;*

*73.2 That from the given facts the Plaintiff's arrest was not based on the commission of a schedule 1 offence, or failure of the police to conduct an investigation of the matter to exercise a proper discretion;*

*73.3 That the Plaintiff is to be blamed for creating the purported situation of "necessity" at the Engen garage which resulted in him driving off without paying;*



*73.4 That the Plaintiff in his testimony or papers did not address or argue about the reason for his actual arrest which was his confrontation with the captain;*

*73.5 That the Plaintiff has accordingly not discharged the onus resting on it of "attacking the exercise of discretion whether the necessary judicial facts were present";*

*73.6 That the required judicial facts are: police officer, commission of an offence and in his presence. "*

[22] The grounds on which the Appellant's appeal is predicated are fully set out in the notice of appeal. In the court *a quo*, the court was required to determine whether, in arresting the Plaintiff, the Defendant had satisfied the requirements of s 40(1)(b) of the CPA. It will be recalled that this was the Defendant's case. The provisions of s 40(1)(b) state that:

*"A peace officer may without a 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."*

The Defendant had admitted that the Plaintiff was arrested on 24 April 2015 at Mokopane by members of the SAPS and that the arrest was effected without a warrant of arrest. He pleaded though that the arrest was not unlawful.

[23] It is not in dispute that it was Mofya who arrested the Plaintiff on 24 April 2015. In his evidence Mofya gave two reasons why he arrested the Plaintiff. The first ground that he gave was that there was a charge of theft that had been laid against the plaintiff at the local police station. This information was previously contained in the case docket that

had earlier been given to him. This case docket contained the statement that had been made by Monyamane the previous day about the incident that took place at the Engen tank station between him and the Plaintiff. This was the charge that was laid against the Plaintiff by Monyamane on 23 April 2015 arising from the events of the same day. The second reason that he gave was that he had noticed that the Plaintiff was not cooperative and that he was about to leave. For that reason he booked him.

[24] Section 40 creates a number of circumstances under which an arrest without a warrant of arrest may lawfully be executed. A defence against a claim based on the first reason proffered by Mofya for the arrest of the Plaintiff would be the one arising from s 40(1) (b) of the CPA. The other arrest falls under s 40(1) (j) of the CPA. It is of paramount importance to point out that the Defendant had pleaded that the arrest of the Plaintiff was in terms of s 40(1) (b) of the CPA and it was for the theft of petrol by the Plaintiff on 23 April 2015. For this reason the observation by the trial court that:

*"Since the court is of the view that s 40(1) (b) read with s 40(1)(j) the Plaintiff's claim is misplaced. Alternatively his particulars of claim are silent about the basis of his arrest"*

"is misplaced". It is misplaced because the Defendant's defence is neither based on the provisions of s 40(1) (a) nor of s 40(1) (j) of the CPA. The plea made it quite clear that the Defendant relied on s 40(1) (b) of the CPA. It was the arrest under s 40(1) (b) of the CPA whose lawfulness the court was required to decide. The court was not required to determine the arrest effected in terms of s 40(1) (a) or s 40(1) (j) of the CPA. The court was bound by the pleadings and the evidence placed before it. It had to decide the issues placed before it and could not venture outside the scope of the pleadings. In this regard we are fully in agreement with the argument contained in the Appellant's

counsel's heads of argument that it was not lawful for the presiding officer to make a finding outside the scope of the pleadings, in particular in the circumstances where the parties had not been given an opportunity to canvass the new point. Support for this argument was found in *De Klerk v Minister of Police* (329/17) [2018] ZASCA 45 (28 March 2018), where the Constitutional Court had the following to say:

*"The court a quo reasoned that the police were entitled to arrest without a warrant for 'any offence, except the offence of escaping from lawful custody in circumstances other than circumstances referred to immediately hereunder, the punishment whereof may be a period of imprisonment exceeding six months without the option of a fine'. This approach overlooked the fact that the respondent did not plead nor canvass this in evidence. The court a quo mero motu raised it, without asking the parties to address it on the subject. The appellant argued that it amounted to a hearing by ambush and referred to Molusi & others v Voges NO & others 2016 (3) SA 370 (CC) para 28 where Nkabinde J observed that:*

*"The purpose of pleadings is to define the issues for the other party and the Court. And it is for the Court to adjudicate upon the disputes and those disputes alone." Of course, there are instances where the court may, of its own accord (mero motu), raise a question of law that emerges fully from the evidence and is necessary for the decision of the case as long as its consideration on appeal involves no unfairness to the other party against whom it is directed. In Slabbert [Minister of Safety and Security v Slabbert [2010] 2 All SA 474 (SCA)] the Supreme Court of Appeal held:*

*"A party has a duty to allege in the pleadings the material facts upon which it relies. It is impermissible for a plaintiff to plead a particular case and seek to establish a different*

*case at the trial. It is equally not permissible for the trial court to have recourse to issues falling outside the pleadings when deciding a case."*

This court is, however, not bound by the analysis of the evidence as set out by the court *a quo*.

[25] There are several reasons why this Court differs with the court *a quo* with regards to the analysis of the entire evidence. In the first place the Defendant pleaded that when the members of the SAPS, in particular captain Mofya, arrested the Plaintiff he did so without a warrant of arrest and in terms of the provisions of s 40(1)(b) of the CPA; secondly the evidence of the Defendant's witnesses established that the Plaintiff had committed theft of petrol after he himself had put in petrol into the tank of his motorbike and left the Engen tank station without having paid for the petrol; thirdly the Defendant's defence was never based on the provisions of s 40(1)(j) of the CPA which states that:

"40(1) A peace officer may without a warrant arrest any person –  
(j) who wilfully obstructs him in the execution of his duties."

This was never the Defendant's case. Observation by the court *a quo* therefore that: "73.1 that the Plaintiff was arrested for being uncooperative and obstructive in his conduct and hindered police in their performance of their duties", does not enjoy the support of the pleadings and is an interpretation of the evidence in isolation rather than holistically and in context. We are unanimous in our view that the evidence as a whole does not support that conclusion as we will demonstrate.

## THE LAW

[26] The fundamental principle of our law is that where a Defendant admits the arrest, as does the current Defendant, there rests on him the duty to prove that the said arrest was lawful. Relying on *Matlou v Makhubedu* 1978(1) SA 946(A), the Court had the following to say in *Mabona and Another v Minister of Law and Order and Others* 1988 (2) SA 654 SECLD at page 656 I-J, the Court had the following to say:

*"The onus of proving the lawfulness of the arrest and detention rests upon the First and Second Defendants."*

[27] The test employed in the determination of whether or not a peace officer acts lawfully when he arrests someone without a warrant is objective. The crucial question would be whether or not the circumstances prevailing at the time the policeman effects the arrest without a warrant are such that a reasonable man founding himself in a same situation as the policemen involved would form an opinion reasonably that the Plaintiff has committed an offence listed in Schedule 1. The policemen shall consider the situation, assess it and decide objectively whether it warrants an arrest.

*"The test of whether a suspicion is reasonable entertained within the meaning of s 40(1) (b) is objective (S v Nel and Another 1980 (4) SA 28E at 33H) would a reasonable man in the Second Defendant's position and possessed of the same information have considered that there were good and sufficient grounds in suspecting that the Plaintiff were guilty of conspiracy to commit robbery or possession of stolen property knowing it to have been stolen."* See in this regard *Mabona and Another* at 658 D-F. See also *Duncan v Minister of Law and Order* 1986(2) SA 808 (A) at 814 D-E where the Court stated that:

*"It was common cause that the question whether a police officer reasonably suspects a person of having committed an offence within the meaning of s 40(1) (b) of the Act is objectively justiciable. And it seems clear that the test is not whether a policeman believes that he has a reason to suspect, but whether, on an objective approach, he in fact has reasonable grounds for his suspicion."* See *F Watson v Commissioner of Customs & Excise* 1960 (3) SA 312 (N) at 316; *R v Van Heerden* 1958(3) SA 150 T at 152; *Wisner v Molomo* 1983 (3) SA 151 (A) at 159. See also *Le Roux v Minister of Safety and Security & Another* 2009 (2) SA 252 KZP at page 258 par 33 where Madondo J stated the following:

*"Section 40(1) (b) provides that the arresting officer must have a reasonable suspicion that the suspect has committed an offence referred to in schedule 1 to the Act. The test as to whether "reasonable suspicion" could have existed and did exist is to be determined by an objective standard, that of a reasonable man with the knowledge and experience of a peace officer based upon the facts and circumstances then known to the arresting peace officer. An exercise of power will be unlawful if the arrester knowingly invokes the power to arrest for the purpose not contemplated by the legislature. The proper onus of establishing the improper object of the arrester will rest on the arrestee."*

[28] The legal position regarding the arrest without a warrant was summarised in a clear and concise way by the Supreme Court of Appeal as follows in the case of *Minister of Safety and Security v Sekhoto and Another* 2011 (5) SA 367 SCA. The Court stated, in that case of Sekhoto, that:

*"In defending a claim for unlawful arrest, the four jurisdictional facts set out in s 40(1) (b) of the Criminal Procedure Act 51 of 1977 must be pleaded; that the arrester was a*

*peace officer; that he or she entertained a suspicion; that the arrestee had committed a schedule 1 offence; and that the suspicion rested on reasonable grounds.” See page 367.*

[29]

29.1 The arrestee was a peace officer

In his amended plea, the Defendant has pleaded as follows:

*“4.3 The Defendant admits that such arrest was effected without a warrant but pleads that it was lawful for the following reasons –*

*4.3.1 the said member was at all material times hereto a peace officer as defined in section 1 of the Criminal Procedure Act 51 of 1977, as amended.”*

It is not in dispute that the Plaintiff was arrested on 24 April 2015 by Mofya and that Mofya was a captain in the SAPS. The definition of a peace officer as contained in section 1 of the CPA is that:

*“A ‘peace officer’ includes any magistrate, justice, police official, correctional official as defined in section 1 of the Correctional Services Act 1959 (Act 8 of 1959) and, in relation to any area, offence, class of offence or power referred to in a notice issued under section 334(1), any person who is a peace officer under that section.”*

By virtue of him being a captain in the South African Police Service, Mofya is a police official and is therefore a peace officer as envisaged by the provisions of s 40(1) of the CPA. We are therefore unanimous in our view that the defendant has, by pleading as set out *supra*, satisfied the first jurisdictional fact set out in Sekhoto.

## 29.2 That he or she entertained a suspicion

It is not in dispute that on 23 April 2015 Monyamane went to lay a charge of theft against the Plaintiff at the Mokopane Police Station. He arrived there and made a statement relating to how the offence of theft was committed. The docket containing this statement was placed before Mofya. Mofya read it and entertained a suspicion based on reasonable grounds that the Plaintiff had committed the offence of theft. Having considered the situation and having assessed it, he decided objectively that it warranted an arrest. This is what Madondo J stated in Le Roux's case *supra* at paragraph 24 at page 259:

*"However the arresting officer must have good and sufficient grounds to suspect that a suspect is guilty of an offence for which he or she seeks to arrest him. He must analyse and assess the quality of the information at his disposal critically. He must not accept it lightly or without checking it where it can be checked. It is only after an examination of this kind that he must allow himself to undertake a suspicion which would justify an arrest. See Mabona and Another v Minister of Law and Order and Others 1988(2) SA 654 SE at page 658 H. However, this does not mean that the information at his disposal must be of a sufficiently high quality and cogency to engender in him a conviction that the suspect is guilty. Suffice to say that the suspicion must be based on solid grounds, otherwise it would be flighty or arbitrary and not a reasonable suspicion. See in this regard Gellman v Minister of Safety and Security 2008(1) SACR 446W paragraph 72 at page 460 E."*

We are satisfied that on the facts the suspicion that Mofya entertained was founded on reasonable grounds.



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29.3 That the suspicion was that the arrestee had committed a Schedule 1 offence

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29.3.1 The following facts are not in dispute: that the Plaintiff was not a petrol attendant; that on 23 April 2015 he put in petrol in the tank of his motorcycle and more importantly that he left the tankstation without having paid for the petrol. It is also not in dispute that Monyamane laid a charge of theft of petrol against the Plaintiff on 23 April 2015; that he made an affidavit about the incident involving the Plaintiff to the police and that the said affidavit was in the case docket that was placed before captain Mofya on 24 April 2015.

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29.3.2 The evidence of the witnesses as to what transpired after the Plaintiff had put in petrol in his motorbike tank differs. It is not in dispute that the Plaintiff left the tank station without having paid for the petrol. The Plaintiff's version on that aspect was that after he had put in petrol in the tank of his motorcycle he went to his motorcycle, took out a wallet and walked to Monyamane to pay. He tried to give money to Monyamane but Monyamane refused to accept it on the ground that he did not pour petrol for him. When Monyamane refused to take the money from him he then approached another petrol attendant who also refused to take his money when he gave it to him.

29.3.3      Monyamane disputed the Plaintiff's evidence that the Plaintiff wanted to give him money for petrol and secondly, that he refused to accept it.

29.3.4      The evidence of the Plaintiff that he tried to give money to Monyamane and he refused it is highly improbable. Monyamane testified that it was his duty to serve people who came to put in petrol. That duty included not only pouring petrol in their vehicles but also receiving money from them. Secondly, it is highly unlikely that Monyamane could refuse to accept money from the Plaintiff when such refusal could have dire consequences for him. Monyamane told the court that in the event of the Plaintiff not paying he himself would be personally liable for the costs of the petrol that the Plaintiff had put into his motorcycle's tank. Thirdly, he told the court that the Plaintiff told him twice that he would not pay for the petrol. This evidence was not disputed. Fourthly, there seems to be no reason why Monyamane would refuse to receive the money from the Plaintiff but later go and lay a charge of theft against the Plaintiff at the police station. All these do not make sense. Fifthly, nothing prevented the Plaintiff from giving the money to the cashier inside the shop. In our view all this evidence shows that the Plaintiff's version is highly improbable.

29.3.5      It was put to Monyamane during cross examination that the Plaintiff, when he could not pay and where there was no manager that he could talk to, told him that he would return later to pay for the petrol.

Monyamane disputed this statement. He told the court that the Plaintiff only gave him a business card.

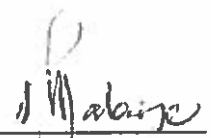
29.3.6 It was argued by Mr Scholz, counsel for the Appellant, that the Plaintiff had no intention to steal the petrol or to deprive the owner of the tank station permanently of his petrol. This argument is, in our view, flawed. The mere removal of the petrol from the tank station coupled with failure to pay for it there and then constituted theft, if the Plaintiff had not obtained the permission of the tank station to take it away or to pay for it later. The act of leaving a business card did not constitute payment.

[30] We are accordingly satisfied that the act of the Plaintiff to put petrol, whether through the instrumentality of Monyamane or himself, in the tank of his motorcycle and to leave without having paid for it or without having made proper arrangements for later payment with the management of the tank station constituted theft. He did not tell the court *a quo* that, while he was in Louis Trichardt (now called Makhado), he had made arrangements or he had intended making arrangements to pay the money for the petrol. He also did not tell the court *a quo* that he had obtained the contact details of Monyamane and the tank station so that he could, at his own pleasure, call them to make arrangements for the payment of the money. In fact, he gave no indication to the court *a quo* that he regretted having left the tank station without having paid while he knew that the tank station did not belong to Monyamane but to someone else. Theft is an offence referred to Schedule 1 of the CPA.

[31] It was argued further by Mr Scholz that there existed no plausible reason to arrest the Plaintiff because Mofya had testified that the Plaintiff had contacted him on the information on the business card. He developed his argument and stated that the Plaintiff had come on his own free volition. Mr Scholz lost sight of the fact that, firstly, according to Mofya's assessment, the Plaintiff had committed a Schedule 1 offence of theft; secondly, he had called the Plaintiff to Mokopane Police Station about the matter. It was not the Plaintiff who called Mofya. The Plaintiff had arrived at Mokopane Police Station in response to the calls that had been made to him by Mofya. He had thereby submitted himself to Mofya but unsuspectingly and suddenly left before Mofya could even talk to him about the case. Thus while the unbecoming conduct of the Plaintiff may well have been an event in the chain of events that precipitated his arrest, it was not in law the reason for his arrest. At that stage, and the evidence compellingly demonstrates it, all the jurisdictional requirements necessary to effect an arrest in terms of s 40(1)(b) of the CPA were present and it must accordingly follow from that the arrest was lawful.

[32] Accordingly we are unanimous, in our view, that the appeal cannot succeed. The order that we make herein is as follows that:

The appeal is dismissed with costs.



PM MABUSE

JUDGE OF THE HIGH COURT



N KOLLAPEN

JUDGE OF THE HIGH COURT



M MUNZHELELE

ACTING JUDGE OF THE HIGH COURT

Appearances:

Counsel for the Appellant:	Adv H Scholz
Instructed by:	Potgieter Penzhorn & Taute Inc
Counsel for the Respondent:	Adv TC Kwindu
Instructed by:	The State Attorney
Dates heard:	31 July 2019
Date of Judgment:	29 August 2019