



**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA**

**CASE NO: 56087/2012**

In the application between:

**MATSOBANE JACOB NGOEPE**

Plaintiff

and

**MINISTER OF POLICE**

First Defendant

**LT COLONEL MAKOBELA**

Second Defendant

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER
(3)	JUDGES: NO
	REVISED:
DATE : 13/01/2022      LENYAI AJ	

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**JUDGMENT**

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*This matter has been heard in terms of the Directives of the Judge President of this Division dated 25 March 2020, 24 April 2020 and 11 May 2020. The judgment and*

*order are accordingly published and distributed electronically. The date and time of hand-down is deemed to be 14h00 on 13 January 2022.*

LENYAI AJ

[1] This matter is for the determination of Quantum for Damages suffered by the plaintiff arising out of the unlawful arrest and detention during November 2011 as well as the impounding of his motor vehicle. The legal representatives of the parties advised the court that the merits of the matter were settled in 2014. The defendants had conceded 100% of the merits and agreed that the first defendant will pay the plaintiff's agreed or proven damages.

[2] The plaintiff instituted a claim for the following damages :

2.1	Market value of the Mazda Bakkie	R156 000.00
2.2	Unlawful arrest and detention	R250 000.00
2.3	Past loss of income	R 18 000.00
2.4	Future Loss of income	R380 000.00
2.5	Future medical expenses	R177 000.00

- [3] The plaintiff testified that he was arrested by Lieutenant Colonel Makobela after midday when he attended at the Matlala police station to enquire about the whereabouts of his motor vehicle that had broken down during the night before. He was advised that his car was impounded by the police and was in their custody. He was accused of cattle theft and detained. He was put at the back of a police bakkie and the police drove around the nearby villages of Bogom and Skoongesig where he used to stay. He was in full view of the villagers, some of whom were his previous neighbours and customers. He was later put in a small cell with seven other people. Two of the men who shared a cell with him accosted and demanded money from him. They slapped him with an open hand on the face but stopped when another prisoner intervened. Plaintiff testified that he could not sleep as the place was dirty and crowded. The following day his business partner, a certain Mr Engelbrecht visited him at the police station where he was being held accompanied by a police woman. The three of them got into the police bakkie and drove to the place where his car had broken down. The police woman and his business partner went into a nearby house where he had sought assistance the night before. They were in there for about two hours and then came out and drove back to the police station. When they arrived at the police station he was released without any explanation and told to go home. He was not given back his car, he was however later called to come and collect his car and when he arrived at the police station he was advised that his car was not in the police compound and its whereabouts could not be accounted for.

- [4] With regard to the claim for the loss of the motor vehicle the only issue was the quantification of the claim as the merits of this claim had already been conceded to by the defendants. The parties advised the court that a valuation was conducted by a professional valuer, Dr Boshoff and he placed the reasonable market value of the motor vehicle to be between R70 000.00 and R102 000.00. The parties advised the court that they had agreed on a median value of R85 000. The parties had agreed that the plaintiff will pay the agreed or proven damages. I am satisfied that the parties have considered the valuation report and have come to a reasonable agreement.
- [5] In regard to assessing general damages for unlawful arrest and detention, some of the factors that the court must take into consideration are the following: the age of the plaintiff, the circumstances under which the arrest and detention occurred, whether the arrest was malicious or not and the resultant damages that occurred as a result of the arrest, whether there was any assault during the arrest and the duration or time spent in detention.
- [6] The plaintiff testified that he was arrested when he went to the police station to make enquiries about his missing motor vehicle and was instead accused of cattle theft and arrested. He further averred that he was put in the back of a police bakkie and driven around in full view of villagers some of whom were at some point his neighbours and customers. He was assaulted by two of the prisoners who shared a cell with him, the cell was small and dirty and he could not sleep because he felt frightened, humiliated and extremely traumatised by



this whole experience. He was 58 years old at the time of the arrest and he was detained for more than 20 hours. The merits were already conceded to by the defendants. The plaintiff further testified that this was not the first time that he was accused and arrested for cattle theft by the police. He advised the court that he had other two matters of a similar nature.

[7] The protection of personal liberty is entrenched in our Bill of Rights which guarantees the right of everyone to freedom and security of person and the right not to be deprived of freedom arbitrarily or without just cause and not to be treated in a cruel, inhuman or degrading manner as provided for in section 12 (1)(a) of the Constitution. Human rights enshrined in our Constitution are sacrosanct and the courts must stand resolute against any form of abuse thereof. Our courts have the discretion to make any award it deems appropriate and it is trite that damages awarded should be proportionate to the injury inflicted.

[8] In determining the quantum for general damages suffered by an arrestee for an unlawful arrest, Potgieter JA in the matter of **Protea Assurance Co Ltd v Lamb 1971 (1) SA 530 (AD) at 536**, held that “*comparable cases when available should rather be used to afford some guidance in a general way towards assisting the Court in arriving at an award which is not substantially out of general accord with previous awards in broadly similar cases, regards being to all factors which are relevant in the assessment of general damages.....*”

- [9] However in the matter of **Minister of Safety and Security v Seymour 2006 (6) SA 320 (SCA) [2007] 1 All SA 558 para 17**, Nugent JA held that “ *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 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.*”
- [10] In the matter of **Minister of Safety and Security v Tyulu (327/2008) [2009] ZASCA 55; 2009 (5) SA 85 (SCA); 2009 (2) SACR 282 (SCA); [2009] 4 All SA 38 (SCA) (27 May 2009)**, Boshielo AJA held that “ *In the assessment of damages for unlawful arrest and detention, it is important to bear in mind that the primary purpose is not to enrich the aggrieved party but to offer him or her some much-needed solatium for his or her injured feelings.*”
- [11] In the matter of **Kwenda and Others v Minister of Safety and Security (3667/09) [2010] ZAGPPHC 274 (25 June 2010) at para 18**, Murphy J quoted a passage in **Protea Assurance Co Ltd v Lamb supra para 60**, where Potgieter JA stated that “ *It is settled law that the trial judge has a large discretion to award what he in the circumstances considers to be fair and adequate compensation to the injured party for the sequelae of his injuries.*”

[12] In reaching my conclusion on an appropriate amount to be awarded in this matter before me, I have had regard to the cases of **Protea Assurance Co Ltd v Lamb, Minister of Safety and Security v Seymour, Minister of Safety and Security v Tyulu and Kwenda and Others v Minister of Safety and Security**. The judgements in these cases illustrate what Nugent JA said, in **Seymour** that there is no specific pattern or formula followed in awarding damages and they also indicate that our courts are not extravagant in awarding compensation in unlawful arrest matters. The factors that usually have some bearing are: the age of the plaintiff; whether or not the arrest was for an improper motive; whether the plaintiff was manhandled or arrested in a humiliating, degrading or public manner; the duration of the detention; and whether the plaintiff was compromised in his dignity further by reason of him occupying an important office or position.

[13] In the matter of **Kwenda and Others v Minister of Safety and Security** *supra*, an award of R70 000 was granted for a 36 hour detention of the plaintiff under appalling conditions at the Silverton Police Station.

In the matter of **Mothoa v Minister of Police (5056/11) [2013]ZAGPJHC 38**, an award of R150 000 was granted for a 22 hour detention of the plaintiff under appalling conditions at the Johannesburg Central Cells.

In the matter of **Candice J Nel v Minister of Police (CA62/2017) [2018] ZAECGHC 1 (23 January 2018)**, an award of R35 000 was made by the appeal court for a 22 hour detention of a mother together with her two year old infant.



She was detained in a dirty police cell with other unknown females which bore an unbearable stench. She was incarcerated for the first time and she was release without appearing in court.

[14] Turning to the matter before me, it is obvious from the evidence that the plaintiff suffered humiliation by reason of the arrest in that he was driven around the nearby villages in full view of his neighbours and customers. The plaintiff was 58 years at the time of his ordeal and there is evidence that the detention and the terrible conditions in the cell, compromised his health and psychological wellbeing. There is no doubt that the humiliation and appalling conditions of the detention did have a negative impact that may possibly endure. The plaintiff was attacked by fellow prisoners and detained for 20 hours before being released without any explanation.

[15] Taking into account all the above factors and the remarks in **Tyulu** where it was held that *"In the assessment of damages for unlawful arrest and detention, it is important to bear in mind that the primary purpose is not to enrich the aggrieved party but to offer him or her some much-needed solatium for his or her injured feelings."* I consider an amount R100 000.00 to be a fair and reasonable compensation to the plaintiff in respect of his general damages.



- [16] With regard to the claim future medical expenses, the psychologists in the joint minute are in agreement that the plaintiff will incur future medical expenses. The actuarial report estimated the costs for medical expenses to an amount of R177 012.00. The parties advised the court that they had agreed on a median value of R35 000.00. The parties had agreed that the plaintiff will pay the agreed or proven damages. I am satisfied that the parties have considered the valuation report and have come to a reasonable agreement.
- [17] In regard to the loss of past and future income, the plaintiff led two witnesses being the plaintiff himself and an industrial psychologist, Ms Gaber. The plaintiff testified that he was a cattle runner and earned a commission of R250.00 per cattle sold. He further testified that he used his motor vehicle that was impounded and subsequently lost in police custody, to run his business and he was earning R25 000.00 to R30 000.00 per month. During cross examination the plaintiff could not say how many cattle he would sell per day on average nor could he indicate how much he would make per week. He also was not able to produce any proof of his income nor any evidence of the customers he had rendered service to.
- [18] Ms Gaber on the other hand testified that the plaintiff suffered psychological impairment as a result of the arrest and detention which caused a loss of past and future income. She indicated that the plaintiff was a cattle runner making a

profit of about R17 000.00 per month. She testified that she relied on information obtained from the people who worked with plaintiff before and to whom the plaintiff apparently sold cattle to. She further testified that there was no proof of income, bank statements or any information that is independent from the version of the plaintiff and the people to whom he apparently sold cattle to. Ms Gaber further testified that the business of cattle selling is vulnerable to drought and as a result the dry conditions of between the years 2019 and 2020 would have had a negative impact on this type of business.

[19] In trying to quantify the plaintiff's loss of income, the lack of basic information on which to make recommendations being made available to the industrial psychologist (Gaber) and the actuary (Gernike) made it impossible for the two experts to quantify the loss of income and both were not prepared to do a calculation due to lack of credible documentary evidence.

[20] In the matter of **Rudman v Road Accident Fund (370/01)[2002] ZASCA 129; [2002] 4 All SA 422 (SCA) (26 September 2002)** at 26, the court held :

*"... it must be remembered that in the final analysis an award cannot be based upon speculation. It must have an evidential foundation."*

[21] In the matter **Sandler v Wholesale Coal Supplies Ltd 1941 AD 194 at 199**, the court held that “ *The amount to be awarded as compensation can only be determined by the broadest general considerations and the figure arrived at must necessarily be uncertain, depending upon the Judge’s view of what is fair in all the circumstances of the case.*”

[22] In the matter of **Southern Insurance Association Ltd v Bailey NO 1984 (1) SA 98 (A)**, it was emphasised that an enquiry into damages for loss of earning capacity is of its nature speculative involving predictions as to future. The court discussed two possible approaches, one that makes a rough estimation of an amount which seems to the Judge fair and reasonable. This being a matter of guess work . “*blind plunge into the unknown*”. The second approach is to make an assessment by mathematical calculation on the basis of evidence. This approach depends on the soundness of the assumptions.

[23] It is trite that the party in a civil matter whose version of facts appears to be more probable is entitled to a favourable judgement, the proof being on a balance of preponderance of probabilities. Sufficient proof is established when an inference can be drawn on the facts at issue, provided that it is consistent with all the proven facts.



[24] Turning to the matter before me, the plaintiff has not provided any reliable or credible evidence to enable the court to draw an inference with the proven facts. There was not even a mathematical calculation provided which could be used to make a determination for the loss of past and future income. The legal representative of the plaintiff asked the court to make a rough estimation and take the plunge upon having heard oral evidence from the plaintiff and the industrial psychologist.


[25] It is noteworthy that the evidence of the plaintiff and the industrial psychologist is contradictory especially with regard to the monthly income of the plaintiff. The plaintiff did not provide the names of the people who used to buy cattle from him and he also could not provide an average daily income. The industrial psychologist also did not provide any details on the people who furnished her with the information she relied upon when she was giving evidence in court, in fact it is mentioned in the heads of argument of the plaintiff's legal representative that she was not prepared to make a written report because of the lack of information upon which she could rely. The evidence of both witnesses has not been supported by any evidential material. The glaring absence of reliable, credible and acceptable evidence makes it impossible for the court to accept the testimony of both witnesses with regard to loss of income. It is my view that the plaintiff has failed to prove his claim for loss of damages and the court cannot take the plunge as invited .

[26] It is a general rule in our law that the costs should follow the results and I see no reason to deviate from the norm.

[27] In the premises, the following order is made:

The first defendant is liable to compensate the plaintiff for :

- (a) Loss of Motor Vehicle      R 85 000.00
- (b) General damages in      R 100 000.00
- (c) Future Medical Expenses. R 35 000.00
- (d) Total Amount R **220 000.00**, such amount to be paid within 30 days from date of this order.
- (e) First defendant is ordered to pay the costs of suit.



**M.M.D. LENYAI**  
**ACTING JUDGE OF THE HIGH COURT**  
**GAUTENG DIVISION, PRETORIA**

CASE NUMBER: 56087/2012

HEARD ON: 03 - 04 November 2021,

Plaintiff's Heads of Argument submitted on 4 November 2021

Defendant's Heads of Argument submitted on 8 November 2021

FOR THE PLAINTIFF: ADV. J Moller

INSTRUCTED BY: Makhafola & Verster Inc, Pretoria

FOR THE DEFENDANT: ADV I Kalashe

INSTRUCTED BY : State Attorney, Pretoria

DATE OF JUDGMENT: 13 January 2022