

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION PRETORIA)**

CASE NO: 57214/16

(1)	REPORTABLE: <input checked="" type="checkbox"/> NO / <input checked="" type="checkbox"/> YES
(2)	OF INTEREST TO OTHER JUDGES: <input checked="" type="checkbox"/> NO / <input checked="" type="checkbox"/> YES
(3)	REVISED
<u>20 April 2022</u>	
DATE	SIGNATURE

In the matter between:

DALE SKHOSANA

PLAINTIFF

And

THE MINISTER OF POLICE

DEFENDANT

This judgment is issued by the Judge whose name is reflected herein and is submitted electronically to the parties/their legal representatives by email. The judgment is further uploaded to the electronic file of this matter on Caselines by the Judge or his/her secretary. The date of this judgment is deemed to be 20 April 2022.

JUDGMENT

MAUBANE AJ

1. Introduction

1.1. The plaintiff, an adult male person who was 37 years at the time of his arrest and is currently 46 years, issued summons against the defendant for unlawful arrest and detention.

1.2. The issue before court is to determine whether the arrest was lawful in terms of the provisions of Section 40(1)(e) and if so, what the award for such arrest should be.

1.3. Common cause issues

1.3.1. that the above Honourable Court has jurisdiction

1.3.2. Identity of the plaintiff,

1.3.3. Plaintiff complied with Sections 3(2) and 4(1) Of Act 40 of 2002

1.3.4. Plaintiff was arrested on the 25th of July 2013 and released on the 29th of July 2013,

1.3.5. Plaintiff was arrested by a member of the SAPS, acting in the course and scope of his official duties, and Plaintiff was arrested without a warrant.

1.4. It is not in dispute that the arrest was effected without a warrant and it was done so in terms of Section 40(1)(b) of *the Criminal Procedure Act 51 of 1977* as amended.

2. Background

- 2.1. On or about the 25th of July 2013 at about 21h00 at Nellmaphius the plaintiff was arrested by unknown members of the South African Police Services, as he was alleged to have committed a crime of cable theft. It is alleged by the plaintiff that the arrest was effected without a warrant and no statement was taken from him.
- 2.2. The plaintiff was then detained at Mamelodi East Police Station until the 26th of July 2013. On the 26th of July 2013, the plaintiff was transferred to Rustenburg Police Station whereat fraud charges were preferred against him. He was then detained at Rustenburg Police Station until his appearance at Rustenburg Magistrate Court on the 29th of July 2013. The charges against him were provisionally withdrawn and was released.
- 2.3. It is alleged by the plaintiff, on his particulars of claim that the arrest was intentional, unlawful, and wrongful as it was effected without a warrant.
- 2.4. It is not in dispute that the plaintiff was arrested at Mamelodi on the 25th of July 2013 and later transferred to Rustenburg Police Station on the 26th of July 2013 and was taken to Rustenburg Magistrate Court on the 29th of July 2013 whereat the charges were provisionally withdrawn.
- 2.5. Both parties preferred not to call any witness but agreed that the

defendant had a duty to prove that the arrest and detention of the plaintiff was lawful.

2.6. At the commencement of the trial, the defendant's Counsel addressed the Court and acceded that the arrest and detention was intentional, unlawful, and wrongful. The defendant's Counsel further informed the Court that she did not have a mandate to settle the quantum but believed a fair and reasonable amount for compensation of the plaintiff for the defendant's action would be an amount of R140 000,00, which she discussed and agreed to with the Plaintiff's Counsel.

2.7. As a result of the concession of liability by the defendant and subsequent agreement as to the amount to be awarded by the Court, the Court deemed it fit to reserve judgment to appraise itself with the amount it will consider to be reasonable and fair as compensation to the plaintiff.

3. Quantum

3.1. In cases of such a nature, the determining factors, amongst others, though not exhaustive, in making an award are:

3.1.1 The manner in which the arrest was effected,

3.1.2 The age of the plaintiff,

3.1.3 The conditions of the cell in which the plaintiff was kept, and,

3.1.4 The duration of detention.

3.2. When making an award for damages resulting from unlawful arrest and detention, the Court should consider cases of similar nature. In ***Le Jengh v Du Pisau*** No (2005C5) SA S47 (SCA) at par 60, the court laid down the basic rule that the award should be fair to both sides, it must give just compensation to the plaintiff but not pour largesse from the horn of plenty at the defendant's expense.

3.3. In *Minister of Safety and Security v Seymour* (2006 (6) SA 320 SCA at par 17 the court said 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 a whole and few cases are directly comparable. They are useful guide to what other courts have considered to be appropriate, but they have no higher value than that..." In Seymour case the plaintiff was awarded R90 000 for being arrested and detained for 5 days. When making an award in the present case the court should take into consideration the lapse of time since Seymour's arrest and detention, inflation, and costs of living. In ***Minister of Safety and Security v Tyulu*** (327/2008) [2009] ZA SCA 55, 2009 (5) SA SCA the court awarded the respondent an amount of R15 000 for unlawful arrest and detention for a period of 15 minutes. In that matter the court said 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. It is therefore crucial that serious attempts be made to ensure that the damages awarded are commensurate with

the injury inflicted. However, our courts should be astute to ensure that the awards they make for such infractions reflect the importance of the right to personal liberty and the seriousness with which any arbitrary deprivation of the personal liberty is viewed in our law".

3.4. In *Mvu v Minister of Safety and Security and Another* (07/20296(2009) ZAGPJHC 6,2009(2) SACR29(GSJ) the court awarded the plaintiff an amount of R30 000.00 for being arrested and detained for a day.

3.5. In *Olivier v Minister of Safety and Security and Another* 2009 (3) SA 434 (w) the plaintiff was awarded an amount of R50 000 for a period of 6 hours.

3.6. It is common cause that the plaintiff was arrested for a period of three days, however the court was not informed, amongst others, about the manner of the arrest, conditions of detention of the plaintiff which would have placed the court in a better position to make a just and equitable decision regarding the fair and reasonable award but however the court has to take into consideration the agreement reached by both parties as far as the amount of compensation is concerned. By its nature deprivation of someone's liberty is inhuman, unconstitutional, and unbearable given the fact that there was no justifiable cause to do so.

Having regard to the argument of both parties and previous case laws, the court is satisfied that on a balance of probabilities a proper case has been made by the plaintiff and as such the draft order filed by the

parties is hereby made order of the court.



JUDGE OF THE HIGH COURT

Appearances

Counsel for the Plaintiff	: Adv. C. Zeitsman
Attorney for the Plaintiff	: Loubser Van Wyk Inc
Counsel for the Defendant	: Adv. M. Mokadikoa-Chauke SC
Attorney for the Defendant	: The Office of the State Attorney : Pretoria
Date of Hearing	: 11 April 2022
Date of Judgment	: 20 April 2022

Judgment transmitted electronically

