




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

CASE NO. 72290/2018

(1)	REPORTABLE: YES /NO
(2)	OF INTEREST TO OTHER JUDGES: YES /NO
(3)	REVISED: YES /NO
<u>21/09/2022</u>	
DATE	SIGNATURE 

SETJEAKOBO APRIL MPHAHLELE

PLAINTIFF

AND

MINISTER OF POLICE

DEFENDANT

JUDGMENT

MAKHOB A J

INTRODUCTION

1. The plaintiff is claiming damages against the defendant for unlawful arrest and detention. The parties agreed that the merits and quantum to be separated.
2. It was further agreed that the defendant bears onus to prove the lawfulness of the plaintiff's arrest.
3. It is common cause that the plaintiff was arrested on the 30th November 2016 without a warrant of arrest. He was first detained at the Tembisa Police station and thereafter he was transferred to Modderbee Correctional Centre.
4. It is furthermore common cause that bail was fixed on the 17 January 2017 but the plaintiff chose not to pay bail. He was subsequently tried and he was acquitted.
5. The first witness to be called by the defendant is Sergeant Floyd Manzini who testified that on the 30th November 2016 he was on duty together with Sergeant Maunye.
6. At about 2am he received a message from control room as a result of which they proceeded to Sethokga Hostel in Tembisa. They met an anonymous person who directed them to the plaintiff's room and made a report to them.
7. They found the plaintiff in his room and explained to him that he was seen entering his room carrying a stolen item. Inside the room there was a big generator covered in a blanket. There was also an iron trunk mounted on

the wall. The generator was still in a good condition, there were a lot of things inside the iron trunk.

8. He asked the plaintiff where he got these things from, the plaintiff replied that he has stolen the items in Centurion. Some of the items were new he asked him for receipts, however the plaintiff could not produce any receipt. He then proceeded to arrest the plaintiff for possession of stolen properties.
9. He did not apply for a search warrant because it was early in the morning at about 2am and if he waited for the search warrant the stolen goods could easily disappear.
10. Subsequently he saw in the docket that the plaintiff had produced a receipt for the generator, however the generator did not correspond with the serial number on the generator.
11. During cross-examination the witness reiterated that the explanation given by the plaintiff is that he stole the goods. Furthermore, Sergeant Manzini testified that they could not go to the place where plaintiff said he stole the goods from because it was very early in the morning and it was the duty of the investigating officer to do that.
12. The second witness called by the state is Sergeant Prince Maunye. In his testimony he confirmed the evidence of his colleague Sergeant Manzini. In addition, he testified that the plaintiff told them that he stole the items from a garage.

13. The third and last witness by the defendant is Sergeant Makhubele. She is the one who took the plaintiff's warning statement and also visited the Pawn shop where it is alleged the plaintiff brought the generator from.
14. When she arrived at the said Pawn shop she found that the shop has recently been sold to new owners who had no records of the generator. She noticed that the receipt produced by the plaintiff it had serial numbers which did not match the serial numbers on the generator.
15. It was then decided to proceed with the case against the plaintiff since he had told the arresting officers that he has stolen the goods. The plaintiff told her that as a result of his arrest he was going to be rich because he is going to sue the state. Defendant closed its case.
16. The plaintiff testified that when he was arrested the two police officers did not explain why they were arresting him. They simply took his tools that he used for his piece jobs. They assaulted him for no reason. He refused to make a statements because he was assaulted. He was acquitted by the magistrate. All his goods that were ceased by the policed were returned to him. He denied that he told the police that he stole the goods.
17. It is submitted on behalf of the plaintiff that the police officers did not have sufficient information at the time of arrest to justify the arrest of the plaintiff.¹
18. On behalf of the defendant it is submitted that in terms of section 40(1)(e) of the Criminal Procedure Act 51 of 1977 a person found in possession of

¹ Paragraph 100 of plaintiff's heads of argument.

property reasonably suspected to have been stolen or acquired by dishonest means, can be arrested without a warrant if the peace officer reasonably suspects the person to have committed an offence in connection with the property. The jurisdictional requirements are the same as referred to in section 40(1)(b) of the CPA.

19. An arrest will not be unlawful if it was the intention of the arresting officer to arrest pending further investigations into the alleged offence prior to releasing the arrestee.²
20. It is not a requirement that the arresting officer must form the view on the likelihood or otherwise of a conviction of the person that was arrested in terms of section 40(1) of the Criminal Procedure Act. It is likewise not required that the arrestee is later charged or convicted.³
21. The two police officers who arrested the plaintiff they gave their evidence in a clear and direct manner. I find them to be credible witnesses since they did not contradict each other. I do not believe the evidence of the plaintiff that the police simply arrested him without telling him the reason thereof. I reject the evidence of the plaintiff as false and accept the evidence of the police officers.
22. This court accept that the plaintiff did inform the officers that he stole the goods found in his possession. Whether this is true, it was for the trial court to decide.

² Duncan v Minister of law and order 1986 (2) SA 805 (A) at 812H – 813B.

³ Scheepers v Minister of Safety and Security 2015 (1) SACR 284 (ECG).

23. I am furthermore of the view that in light of the facts and evidence before me that sufficient facts existed at the time the police officers arrested the plaintiff. I am satisfied that the arrest was lawful in the circumstances and that the discretion to arrest and detain the plaintiff was properly exercised. I am further satisfied that in arresting the plaintiff the arresting officers acted within the ambit of section 40(1) of the Criminal Procedure Act.

24. Thus therefore I find that the plaintiff failed to prove his case on preponderance of probabilities.

25. In the premises, I make the following order:

1. The plaintiff's claim is dismissed with costs.

A handwritten signature in black ink, consisting of a large, loopy 'D' followed by several vertical strokes, all contained within a large, irregular oval shape.

D. MAKHOB

**JUDGE OF THE HIGH COURT,
GAUTENG DIVISION, PRETORIA**

APPEARANCES:

For the plaintiff: Advocate Mavunda

Instructed by: PG Sibuyi Attorneys

For the defendant: Advocate Chabalala

Instructed by: The State Attorney

Date heard:

26 July 2022

Date of Judgment:

21 September 2022