

SOUTH AFRICA / JUDGMENT

A.M.M v Minister of Police (1924/2023)

[2025] ZANWHC 115 (9 July 2025)

[2025] ZANWHC 115**COURT**

North West High Court, Mafikeng

BEFORE

Oosthuizen-Senekal

CASE / FILE NUMBER

1924/2023

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Policy**IN THE HIGH COURT OF SOUTH AFRICA****NORTH WEST DIVISION - MAHIKENG****CASE****NUMBER: 1924/2023****Reportable: NO****Circulate to Judges: NO****Circulate to Magistrates: NO****Circulate to Regional Magistrates: NO****In**

the matter between:

M[...]

A[...]

A[...]

PLAINTIFF

and

THE

MINISTER OF

POLICE

DEFENDANT

CORAM: OOSTHUIZEN-SENEKAL AJ

Date

judgment reserved: 1

July 2025

The judgment was handed down electronically by circulation to the parties' representatives via email. The date and time for hand-down is deemed to be 9 July 2025 at 10H00am.

ORDER

[1]

The defendant is liable for the unlawful arrest and detention of the plaintiff from 3 January 2023 to 4 January 2023.

[2]

The defendant is hereby ordered to pay the plaintiff damages in the amount of R60 000 (Sixty Thousand Rand).

[3]

The defendant is ordered to pay interest on the amount referred to in paragraph [2] from the date of this judgment until the date of final payment, at the applicable prescribed rate.

[4]

The defendant is ordered to pay the costs of suit on the Magistrates' Court scale.

JUDGMENT

OOSTHUIZEN-SENEKAL AJ:

Introduction

- [1] The plaintiff, Mr M[...], instituted action against the defendant for unlawful arrest and detention, contending that he was arrested without a warrant, and that such arrest and subsequent detention constituted a violation of his constitutional rights. The plaintiff seeks damages for the deprivation of liberty and the indignity suffered.
- [2] In his particulars of claim, the plaintiff seeks damages in the amount of R150 000 arising from his unlawful arrest on 3 January 2023 and his subsequent detention until 4 January 2023. The claim encompasses general damages for the infringement of his constitutional rights, emotional distress, humiliation, and the adverse impact on his dignity and livelihood.
- [3] The matter proceeded on an unopposed basis after the defendant failed to file a plea. The plaintiff served a notice of bar on the Office of the State Attorney by hand on 12 December 2023. Despite proper service, the defendant failed to file a plea within the prescribed period. Thereafter, the plaintiff served a notice of set down on the State Attorney. The notice of set down was properly served, and the defendant was clearly aware that the matter would proceed in their absence. In the circumstances, the plaintiff was entitled to set the matter down and as such the matter proceeded on both the merits and quantum of damages.

Plaintiff's Evidence

- [4] Mr M[...] testified that on 3 January 2023, at approximately 09h00, while at his place of residence in Ventersdorp, members of the South African Police Service arrived and informed him that he was being arrested on allegations that he and his friends had assaulted a person. Despite attempting to explain his innocence, the police officers refused to hear his version and ordered him into the back of the police vehicle.
- [5] At the time of his arrest, his girlfriend and their three minor children, aged 10, 6 and 5 years, were present and witnessed the arrest, along with other members of the community. He described the arrest as humiliating and emotionally painful, particularly because his children were crying and wanted to approach him but were prevented by the officers.
- [6] He was transported to the Ventersdorp Police Station, where he again tried to explain that he was not involved in the alleged assault. His attempts were again dismissed, and he was placed in a cell approximately 3 metres by 7 metres in size. The cell was crowded and there were ten other detainees inside the cell. Mr M[...], who has a prosthetic leg from the hip down, stated that he was wearing short pants at the time of his arrest and that the prosthetic limb was clearly visible to the arresting officers.
- [7] While in custody, he felt terrified and vulnerable. The detainees inside the cell interrogated him, demanding to know what he had brought for them. When he responded that he had brought nothing, they searched him.
- [8] The cell conditions were deplorable, the floor and mattress were dirty, the blanket provided was unclean, and the toilet did not flush and had to be flushed manually using water from the shower. Drinking water had to be drawn from the same shower.
- [9] That night, he removed his prosthetic leg and concealed it under his body while sleeping to protect it. He testified that he spent the night praying for release.
- [10] He was not given any food until 15h00, despite having been detained since 09h00. The following morning, he was served four slices of bread and tea, and transported to court in a crowded police vehicle.
- [11] Upon arrival, he was placed in a smaller cell of approximately 3 metres by 3.5 metres, crammed with about 25 other detainees. The windows were broken, resulting in cold winds entering the cell, and the conditions were again unsanitary. Eventually, when he entered court, there was only a police officer who told him to go home. No explanation, charge, or apology was offered.
- [12] He testified that prior to the arrest, he transported children to and from school for a living. Following his arrest and detention, the parents of the children withdrew their trust and terminated his services, viewing him as untrustworthy and lacking credibility. The incident also affected his children emotionally. At the time of the arrest, he was 33 years old.

Legal Principles

- [13] The plaintiff correctly invoked the well-established legal principle that an arrest effected without a warrant is *prima facie* unlawful. This position was affirmed by the Constitutional Court in *Mahlangu and Another v Minister of Police* 2021 (1) SACR 595 (CC), where Madlanga J held:

“[73] In a claim for damages based on wrongful arrest and detention, which implicates the right not to be deprived of freedom arbitrarily or without just cause under section 12(1)(a) of the Constitution, all the plaintiff needs to prove is that the arrest and detention

occurred. Once that is established, the deprivation of liberty is prima facie unlawful. The burden then shifts to the defendant to establish the lawfulness of the arrest and detention.”

- [14] In the present matter, the plaintiff has discharged the evidentiary burden by demonstrating that he was arrested without a warrant. In the absence of any countervailing evidence from the defence to justify the arrest, I am constrained to find in favour of the plaintiff. The defendant has failed to rebut the presumption of unlawfulness and has not established any lawful grounds or statutory authority under section 40(1) of the Criminal Procedure Act 51 of 1977 to justify the arrest.
- [15] The plaintiff’s evidence concerning his arrest without a warrant at the hands of members of the South African Police, in the context of the defendant being in default, stands undisputed.
- [16] On a preponderance of the plaintiff’s evidence, I accordingly accept that the arrest and consequent detention of the plaintiff from 3 January 2023 to 4 January 2023, was unlawful

Quantum of Damages

- [17] In assessing damages, the court must take into account not only the duration of the detention but also the surrounding circumstances, including the indignity and trauma suffered by the plaintiff, the deplorable conditions of the detention cells, and the emotional harm caused to both him and his minor children.
- [18] In *Mahlangu*, *supra*, the Constitutional Court stated that:
- “[50] Damages for wrongful arrest and detention serve a dual purpose: to compensate the plaintiff for the infringement of their right to liberty and to deter future transgressions by organs of state.”*
- [19] Furthermore, the court in *Mahlangu* endorsed the remarks of the Supreme Court of Appeal in *Minister of Safety and Security v Seymour* 2006 (6) SA 320 (SCA), where Nugent JA aptly noted:
- “[20] Money can never be more than a crude solatium for the deprivation of what in truth can never be restored. There is no empirical measure for the loss.”*
- [20] The court is also mindful of the cautionary remarks in *Diljan v Minister of Police* 2023 (2) SACR 100 (GJ), where Carelse J warned against the tendency to inflate damages claims without proper foundation:

“[23] A word has to be said about the progressively exorbitant amounts that are claimed by litigants lately in comparable cases and sometimes awarded lavishly by our courts. Legal practitioners should exercise caution not to lend credence to the incredible practice of claiming unsubstantiated and excessive amounts in the particulars of claim. Amounts in monetary claims... should not be ‘thumb-sucked’ without due regard to the facts and circumstances of each case.”

- [21] In the present matter, the plaintiff suffers from a physical disability, he wears a prosthetic leg. This condition rendered him more vulnerable than an able-bodied person to the indignities, discomfort, and hardships inherent in arrest and detention. Being forcibly deprived of his liberty and subjected to the conditions of a police cell clearly caused him additional physical pain, discomfort, and psychological distress beyond that experienced by a person without such a disability.
- [22] Detention facilities are seldom, if ever, equipped to meet the needs of persons with disabilities. As an amputee reliant on a prosthetic leg, the plaintiff faced significant and unique challenges in such an environment. Police cells are typically designed with able-bodied detainees in mind, with little consideration for accessibility or the special needs of those with impaired mobility as evident in the present matter.
- [23] Sleeping in detention was particularly difficult for the plaintiff. Detainees are often provided with no bedding, or wholly inadequate bedding, and are expected to sleep on hard concrete floors or benches. The plaintiff was unable to comfortably remove and care for his prosthetic limb or to find a position that relieved pressure on his residual limb, would likely have endured pain, discomfort, and disrupted sleep.
- [24] The plaintiff testified that, during the night, he removed his prosthetic leg but held onto it while he tried to sleep, as he feared it might be taken from him or damaged if left unattended. This illustrates not only the lack of secure and appropriate facilities but also the anxiety and vulnerability he experienced throughout his detention.
- [25] Beyond these physical hardships, the psychological impact of the circumstances would also have been considerable. Any unlawful arrest and detention would inflict mental anguish and humiliation, but for a person with a disability, these feelings are often heightened. The plaintiff’s physical vulnerability has left him feeling exposed, helpless, and at risk of harm, particularly as he was detained among able-bodied detainees who did not understand or accommodate his limitations.
- [26] The plaintiff testified that he was so frightened that he began shivering uncontrollably. He, clearly experienced intense anxiety about his ability to protect himself, a constant fear of injury, and deep humiliation at having his most basic needs compromised in the presence of others.

[27] In light of the totality of the evidence, including the degrading treatment, the plaintiff's physical vulnerability due to his disability, the impact of the arrest on his children, the loss of his livelihood, and the absence of any apology or lawful justification, a fair and just award of damages is warranted.

Costs

[28] It is trite that costs follow the result, unless the court finds reason to depart from this general principle. In *Ferreira v Levin NO and Others; Vryenhoek and Others v Powell NO and Others*

[1996] ZACC 27; 1996 (2) SA 621 (CC) at paragraph [3], the Constitutional Court reaffirmed that the general rule in civil litigation is that the successful party should be awarded his or her costs.

[29] In the present matter, the plaintiff has succeeded in proving both the unlawfulness of his arrest and detention and the harm suffered as a result. The plaintiff's constitutional rights were infringed by state officials acting in the course of their employment, without lawful justification. There is no reason to deviate from the general rule.

[30] However, courts have consistently held that where a matter could and should have been instituted in a lower court, such as the Magistrates' Court, but was instead brought in the High Court without justification, costs should be awarded on the scale applicable to the lower court. This principle is well established in case law.

[31] In *Thusi v Minister of Home Affairs and Another* 2011

(2) SA 561 (KZP), the Court held:

"[40] There is judicial authority for the proposition that a successful party may be deprived of the costs attendant on having instituted

action in the High Court, instead of the Magistrates' Court, where the monetary value of the relief claimed falls within the jurisdiction of the Magistrates' Court."

[32] Similarly, in *Dipico v Dipico* 2002 (1) SA 504 (W) at 509C–D, it was confirmed that:

"The High Court has the discretion, where it is of the view that the Magistrates' Court would have been the more appropriate forum, to award costs only on the scale of that court."

[33] In the present case, although the plaintiff was successful in his claim for damages arising from unlawful arrest and detention, the amount of damages awarded to the plaintiff falls within the jurisdictional limits of the Magistrates' Court. Furthermore, the issues were neither novel nor complex, and there was no compelling reason to approach the High Court.

[34] In light of the above authorities and the facts of this matter, it is appropriate that costs be awarded on the Magistrates' Court scale.

Order

[35] In the result, the following order is made:

CSP OOSTHUIZEN-SENEKAL

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION, MAHIKENG

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