

SOUTH AFRICA / JUDGMENT

Bonnet v Minister of Police (504/2021)

[2025] ZANWHC 109 (23 June 2025)

[2025] ZANWHC 109**COURT**

North West High Court, Mafikeng

BEFORE

Reddy

CASE / FILE NUMBER

504/2021

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Source record**IN****THE HIGH COURT OF SOUTH AFRICA****NORTH WEST DIVISION,****MAHIKENG****CASE****NO: 504/2021****Reportable: YES / NO****Circulate to Judges: YES****/ NO****Circulate to Magistrates:****YES / NO****Circulate to Regional****Magistrates: YES / NO****In****the matter between:****HERMANUS****JOHANNES BONNET****PLAINTIFF****and****MINISTER****OF POLICE****DEFENDANT****Judgment****is handed down electronically by distribution to the parties'****legal representatives by e-mail. The date that the****judgment is deemed****to be handed down is 23****JUNE 25 at****16h00.****ORDER**

(i)

The defendant is ordered to pay the plaintiff's agreed and/or proven damages in respect of his unlawful arrest and detention and assault.

(ii)

The issue of quantum is to serve before Reddy J on a date to be arranged with the Registrar of this Court.

(iii)

The plaintiff's claim in respect of wrongful infringement of his constitutional rights is dismissed.

(iv)

The plaintiff's claim in respect of medical costs is dismissed.

(v)

The defendant is ordered to pay the plaintiff's legal costs in the amount of R10 000-00. Interest on this amount at the legally prescribed rate of interest from date of judgment to date of payment.

(vi)

The defendant is ordered to pay the costs on a party-and party scale B.

JUDGMENT

REDDY J

Introduction

[1] The plaintiff Mr Hermanus Johannes Bonnet ('Bonnet') instituted an action for damages against the Minister of Police ('the defendant') under the following causes of action, claiming:

- (i) an amount of R400 000-00 for the alleged unlawful arrest and detention.
- (ii) an amount of R500 00-00 for assault.
- (iii) an amount of R 10 000-00 for the wrongful infringement of constitutional rights.
- (iv) an amount of R10 000-00 for legal costs.
- (v) an amount of R1200-00 for medical treatment.

- [2] The defendant denied the arrest and detention of Bonnet, or that any assault was perpetuated on him. In terms of rule 33(4) of the Uniform Rules of the Court ('the rules'), the issue of liability and quantum were separated.

The plaintiff's version

- [2] Bonnet's case which is set out in finer detail, is simply this. On 17 January 2020, at approximately 16h00, Bonnet, a candidate attorney was on route from Vryburg to Pretoria. Whilst driving his 2006 VW Polo ('Polo') he was flagged for exceeding the designated speed limit by travelling 93km p/h in an 80km p/h zone. Female traffic officer Mtlhare approached his motor vehicle and requested that he turn his Polo around. Bonnet retorted that it was too dangerous to execute such a manoeuvre. He produced his licence and handed same to the traffic officer.
- [3] Bonnet also requested the calibration certificate for the Prolaser 4 speed timing apparatus ('the speed timing device') as he believed that being familiar with this road, he was within the regulated speed limit. Additionally, he requested proof of Mtlhare's appointment certificate that she was qualified to operate the speeding timing device. To Bonnet's mind the purpose of viewing the calibration certificate was not to engage in an argument with Mtlhare, but it would assist in challenging a possible fault with the speed timing device or the operation thereof, at the appropriate Traffic Department.
- [4] Mtlhare who was in possession of his driver's licence crossed the road to the area where they had originally been positioned. Bonnet remained seated in his Polo. After the expiration of about fifteen minutes, noticing that nothing was happening, Bonnet similarly crossed the road. He volunteered to assist the traffic officers by providing any information that could accelerate the process as Pretoria, his destination, was still a distance away.
- [5] The traffic officer requested Bonnet to provide his date of birth to which he responded that same was on his identity document. Notwithstanding the request, he provided the details. Bonnet then provided his occupation as a candidate attorney when requested. The traffic officer then indicated in a demeaning tone that Bonnet, should return to his Polo.
- [6] Already perturbed by the situation Bonnet enquired if the traffic violation could just be issued. The calibration certificate was produced for which Bonnet expressed his gratitude. The book containing the traffic violation was handed to Bonnet. The recorded offence was a fine of one hundred rand (R100-00) for exceeding the regulated speed by travelling at a speed on 93km/ph in an 80km/ph zoned road.
- [7] Bonnet requested that the back of the female traffic officer next to him be used as support structure to inscribe his signature on the traffic violation. The book containing the traffic violation was removed from Bonnet's possession and placed on the ground with the accompanying remark that Bonnet should sign same of the ground. Bonnet acquiesced. When he stood up, Bonnet queried if the front page of the book was his and if he could remove same and proceed. The traffic officers confirmed, and he did so. Then inexplicably,

the traffic officers were taken aback and contended that Bonnet should not have done so. Consequently, withheld his driver's licence.

- [8] Bonnet proceeded to his Polo where he contacted his principal Mr Johan Le Grange ('Le Grange') in Vryburg. Le Grange advised him to request the traffic officers drive with him to the nearest police station. The traffic officers crossed the road from where they had been positioned and parked their motor vehicle in front of his Polo. At this stage they alleged that Bonnet had assaulted them by scratching them. As these allegations were made, Bonnet noticed a marked police motor vehicle passing by. The traffic officers unsuccessfully attempted to flag down same. It was then agreed that Bonnet would drive to Sannieshof Police station where they would all meet.
- [9] Whilst in his Polo, Bonnet contacted Le Grange. On route to the Sannieshof Police Station, he noticed a roadblock in his path of travel. The traffic officers that he had earlier encountered were travelling behind him. Bonnet stopped and parked some distance away from this roadblock.
- [10] Le Grange was contacted telephonically and informed of the developing situation. Moreover, Le Grange was requested to travel to the Sannieshof Police Station to assist him. At the same time whilst in active conversation with Le Grange a police officer approached. Bonnet opened his window slightly to explain that he was in contact with his attorney and once his conversation is concluded, he would alight from the Polo.
- [11] This police officer proceeded to insert his hand through this slight opening of the window and pulled the key of the Polo from the ignition space. Due to the way the window had been opened, the police officer was unable to remove his hand with the key. He then dropped the key. Bonnet then placed his phone into his pocket, took the key of the Polo, alighted from the Polo and locked it. The key was placed into his underpants. He then turned around in a submissive fashion so that he could be arrested.
- [12] Bonnet's act of placing the key of Polo in the front of his underpants did not go unnoticed. The number of officers around him had increased. Bonnet's underpants were pulled down. The keys of the Polo were then recovered. Bonnet was handcuffed with his hands placed behind his back. The Polo was unlocked, and Bonnet was placed in the passenger seat of his Polo. A police official then drove the Polo to Sannieshof Police Station. The traffic officers played no part in his arrest. The latter were seen again later that evening at Sannieshof Police Station.
- [13] At Sannieshof Police Station, Bonnet was escorted into the holding cell where he was uncuffed. Earlier his cell phone was removed from his possession when he tried to retrieve it. His remaining personal effects which included inter alia his wristwatch, wallet and belt were handed over. Thereafter approximately four (4) to five (5) police officers entered the cell

and started assaulting him. Bonnet was assaulted on his right ear, which caused him to fall. What followed was an assault on his head, the back of his head and over his face. All these blows occurred with strictly the use of open hands. These police officers then exited the cell. A few minutes later a police official entered. As Bonnet looked up, this official pepper sprayed him in the eye. As Bonnet turned to his left, this official continued spraying him in his ear. The official then exited leaving Bonnet alone in the holding cell.

- [14] After a while, Bonnet opened the window in the holding cell. Bonnet removed his shirt. He was concerned that something had happened to his right eye because of the combined effect of the assault and being pepper sprayed. Approximately half an hour later, a police officer arrived. He requested water with which he rinsed off his face and was able to make use of his right eye.
- [15] Bonnet was then accused of having assaulted the traffic officers who had flagged him down for exceeding the regulated speed limit. To this end, he remained silent as he did not want to argue with the police officers. All the while he hoped that Le Grange would arrive. Eventually, Le Grange arrived. The traffic officers followed. A senior official from the National Traffic Department also arrived. Le Grange and the three female traffic officials proceeded to one of the back rooms to discuss the matter. It would appear at some point the police officials also formed part of the discussions.
- [16] Ultimately, Le Grange was allowed to communicate with him. Le Grange inquired if Bonnet had his wallet on him with cash. Bonnet requested that the reception officer provide same, which was the first request that had been complied with. A bank card with the corresponding pin was handed over to Le Grange. Subsequently, Le Grange withdrew R600-00 (six hundred rand). On his return, Le Grange returned the wallet to the police officer.
- [17] Le Grange then proceeded to pay the fines that were issued. The first of R100.00 (one hundred rand) was for the earlier speeding incident. The second was R500-00 (five hundred rand) for failure to stop. Bonnet signed this fine which secured his release. The next day it dawned on him that it was for failure to stop, not that he had been arrested for any specific crime.
- [18] On his release being secured, Le Grange escorted him until Ventersdorp. Bonnet proceeded to drive onto Pretoria arriving at 00h00. He began to exhibit a severe allergic reaction to the pepper spray. Notwithstanding several showers and the pursuit of an extreme action by jumping into the swimming pool, the pain was not eased.
- [19] The next morning, Bonnet proceeded to open a case of assault at Annlin police station in Pretoria. At this police station, Bonnet was instructed to proceed to undergo a medical examination. He proceeded to Netcare Hospital or Mediclinic where he was examined and a medico legal report completed by the examining doctor. Bonnet, at trial, however, elected not to present any medical evidence.

The defendant's version

[20] On 17 January 2020, female traffic officers Matlhare, Ntholeng, and Keameditse were on duty in the Baberspan area. Matlhare flagged Bonnet down for exceeding the regulatory speed limit of 80km/ph as he was traveling at 90-94 km/ph. Bonnet's driver's licence was requested which he produced. Matlhare requested Bonnet to alight from his Polo to view the camera which exhibited the speed that he was travelling. Bonnet retorted that Matlhare should instead go and fetch the camera and the battery for him to look at. Matlhare countered that Bonnet should drive to the other side if he was unable

to walk. Bonnet declined.

[21] Instead, Bonnet requested the operating certificate for the speed timing device. Matlhare assented. Bonnet had already alighted from his Polo at this juncture. Bonnet grabbed the documents and was demanding his driver's licence. A scuffle ensued with Matlhare. It was then that Matlhare's colleagues Ntholeng and Keameditse approached. Bonnet persisted with his demand for his driver's licence, pointing out that he was recording the unfolding events with the camera function on his cell phone.

[22] Bonnet eventually viewed his speed but had no comment. Matlhare began writing the traffic violation. The conversation was in English. When Bonnet's personal information was requested, he intimated that he could only converse in Afrikaans to which Matlhare countered that a translator would be sourced. Whilst completing the traffic violation, Bonnet grabbed at it with force. Matlhare was touched inappropriately, with Bonnet suggesting that Matlhare should bend so that her back could provide support for him to write. It was then suggested that Bonnet could use the motor vehicle to achieve that end. Unpersuaded by this proposition Bonnet tried to follow through with his original idea of using the back of Matlhare as support. Matlhare moved which caused the book to fall to the ground.

[23] Bonnet signed the notice in the J534 book whilst it was on the ground. He then proceeded to tear the J534 Notice out of the book. Bonnet was informed that he had injured Matlhare. Keameditse then decided to call their supervisor, Chief Maano ('Maano'). Bonnet persisted with the demand that his license be returned for him to leave. Notwithstanding being informed that the traffic officers were awaiting the arrival of the SAPS given his conduct and the injury which had been inflicted on the traffic officer, Bonnet remained undeterred. Bonnet declared that he was leaving and that he intended to sue.

[24] Bonnet then squashed the traffic violation and threw it on the ground. The same was contained in the trial bundle, which showed signs of being furrowed. Bonnet left without his licence. There was no agreement that they would meet at Sannieshof Police Station to resolve the issue. After Bonnet left, the traffic officers packed all the relevant equipment and followed Bonnet.

- [25] Whilst Bonnet resumed his travel, Maano who had been given a description of Bonnet's Polo, parked his motor vehicle with blue lights flashing, keeping observation. Maano was clad in full uniform with reflectors on. On sighting Bonnet, Maano proceeded to enter the roadway to stop Bonnet. Maano's attempt to halt Bonnet proved pointless, as Bonnet simply veered into the oncoming lane, circumventing the efforts of Maano. Maano immediately liaised with the SAPS for assistance and reported that Bonnet had foiled his attempt to stop him. Relevant intelligence was provided for the setup of a roadblock.
- [26] As per the request of Maano, a roadblock was set up. On Maano's arrival he confirmed that Bonnet was indeed the person of interest. Bonnet was searched and the keys to his Polo was recovered in his underpants. Bonnet was not arrested. To this end, Bonnet's constitutional rights as evinced in s35 of the Constitution was not explained. Maano did not see any handcuffs on Bonnet. When the traffic officers next came across Bonnet; he was seated in his Polo about to be driven to the Sannieshof Police Station. The traffic officers then followed.
- [27] At the police station, Bonnet was placed in the Community Services Centre holding cell which was in an open plan design and transparent. Bonnet was uncooperative. Maano tried to find out what had occurred earlier. Maano further cautioned Bonnet that given his earlier conduct, he would be reported to the Law Society. It was then that Bonnet displayed a change in attitude.
- [28] Matlhare and her two colleagues sat in one of the interrogation offices, the purpose of which was to deliberate on (i) whether a criminal case against Bonnet should be registered given the injuries that Matlhare had sustained and, (ii) the consequences of Bonnet's failure to stop or remain while a J534 Notice was being issued to him. Maano interjected and conveyed that Bonnet's attorney Le Grange had called and requested that they pause any action until he arrives.
- [29] On Le Grange's arrival, he consulted with Bonnet in private. Thereafter Le Grange came to them and apologized on behalf of him and assented that a second J534 notice could be issued to Bonnet for failing to obey an instruction of a traffic officer. Le Grange then paid both fines after drawing the cash from Bonnet's account. On the payment of both fines, Bonnet's release was secured. He then apologized to all three-traffic officers and Maano. Bonnet's apology was completed with a handshake. Le Grange and Bonnet then exited.

Plaintiff's

submissions

Arrest

- [30] Mr Badenhorst contended that from the evidence presented it is undeniable that Bonnet was stopped at the roadblock managed by the SAPS. Bonnet was then handcuffed by the police and taken to the Sannieshof Police Station where he was detained in a holding cell in the police station. Bonnet was only released after two traffic fines were paid.
- [31] Mr Badenhorst averred that Bonnet's allegation that he was assaulted by the police officers was uncontested. He continued that the traffic officers were not always present in the Community Services Centre. Therefore, it followed that these traffic officers could not testify about the assault. Mr Badenhorst submitted that Maano's contention that he was ever present is subject to serious misgivings given his inability to make telling observations about the structure and positioning of the holding cell. Significantly, Kgotha only reported for duty at 18h00. Logically,

Kgotha could provide any facts regarding what had transpired prior to his arrival.

- [32] Crucially, Mr Badenhorst underscored that the police officer who had handcuffed Bonnet as well as the officer/s that had detained Bonnet in the holding cell did not testify. The effect of this Mr Badenhorst suggested was that the evidence of Bonnet remained undisturbed. Mr Badenhorst reasoned that an arrest does not require a formal process or action but rather the fact that Bonnet was under the direction and control of the police was sufficient to constitute an arrest. Reliance for this contention is placed on *Masawi v Chabata and Another* 1991(4) SA 764 (ZH) at 770 I -771 A, *State President and Others v Tsenoli Kerchoff and Another v Minister of Law and Order and Others* 1986 (4) SA 1150(A) at 1186 D – 1186F.
- [33] Mr Badenhorst declared that Bonnet had waived the claim of medical expenses because it would not be cost effective to summon a doctor to prove a claim of R1200.00 and it would be a waste of the Court's time to spend several hours on such a minimal amount. On a consideration of the conspectus of evidence Mr Badenhorst opined that it is undeniable that Bonnet was arrested.

Detention

- [34] Mr Badenhorst posited that on a finding that an arrest is unlawful it follows axiomatically that the subsequent detention would suffer the same fate. To emphasize this Mr Badenhorst placed store on *Minister of Safety and Security v Tyokwana* 2015
- (1) SACR 597 SCA. Mr Badenhorst opined that Bonnet proved that he was deprived of his physical liberty it follows that the deprivation is *prima facie* unlawful. Reliance for this contention is placed on *Mahlangu and Another v Minister of Police* 2021
- (2) SACR 595 (CC).

Legal costs

[35] In respect of the legal costs, Mr Badenhorst contended that if there is a finding that Bonnet was unlawfully arrested, he would be entitled to claim legal costs he incurred to secure his freedom. Mr Badenhorst underpinned that the defendant did not contest Bonnet's right to have Le Grange assist him to secure his release. For the legal services of Le Grange, Bonnet had to incur costs which he is entitled to an award for.

Defendant's

submissions

[36] Adv Mafoko submitted that Bonnet was a sketchy, evasive, inconsistent and contradictory witness. To this end, Bonnet seemed to have rehearsed to advance a narrative that on the day in question he was innocent and wrongfully arrested and assaulted by the police. In contrast to the evidence of Bonnet, the traffic officers so the argument ran gave a logical and cogent account of what had occurred. Pertinently focussing on the offences that Bonnet had committed and how his conduct was managed and resolved.

[37] Placing much store on Stellenbosch Farmer's Winery Group Ltd v Martell & Cie and Others 2003 (1) SA 11(SCA) para 5, Adv Mafoko, submitted that the credibility of Bonnet had been impugned as his evidence was not clear in all material aspects, which was a primary requirement for the evidence of a single witness. Significantly, the unexplained failure to produce inter alia video clips and photographic evidence which was in his possession must be frowned upon by this Court. To the contrary, Matlhare indicated that the video evidence would provide an independent and accurate account of the conduct of Bonnet. It was for this reason that Bonnet had intentionally suppressed this evidence. Notably, these two pieces of evidence were not discovered nor used during Bonnet's case.

[38] For these reasons Adv Mafoko contended that this Court should hold a dim view on the bona fides of Bonnet given that he selectively used evidence in lieu of presenting all the material evidence before court.

The arrest

[39] Dealing with specificity with Bonnet's averment that he was arrested, Adv Mafoko posited the following. Firstly, Adv Mafoko contended that Bonnet was never arrested. The proposition that was developed was that Bonnet was taken to Sannieshof Police Station as per the directive of Maano to mediate the matter amongst the parties. Initially, the traffic officers contemplated to open a case of assault and the failure to obey a lawful instruction. However, it was Maano who exercised his discretion and decided not to proceed with the arrest but reached a compromise taking due consideration of Bonnet's fledging legal career. To bolster this proposition Adv Mafoko relied on See: Caltiz and Others v Minister of Police (62934/2014)

[2021] ZAGPPHC 733 (29 October 2021) at para 26.

- [40] Secondly, Adv Mafoko contended that protagonist in the substance of Bonnet's action were the three female traffic officers. The conduct of Bonnet and the offences he had allegedly committed impugned their rights. As peace officers these officers also were enjoined with the right to arrest Bonnet. Adv Mafoko underscored that it was not the defendant who bore the onus to prove that Bonnet was arrested by the traffic officers, it is the duty of the defendant to prove that the arrest was not affected by them.
- [41] Adv Mafoko posited that Maano stated categorically that he made a call to the police station to request for a roadblock. Furthermore, that upon being assisted Maano gave a directive that they should proceed to Sannieshof Police Station for mediation. Moreover, he contends that there is no paper trail of the arrest of Bonnet which ameliorates the narrative of Bonnet's arrest. Adv Mafoko proposed this is a clear case where a good gesture by the traffic officers was manipulated for the purposes of selfish gain. To underscore this contention Adv Mafoko place reliance on *Tlhaganyane v Minister of Safety and Security* Case 1661/2009, (14 February 2013) NWHC.
- [42] Adv Mafoko submitted, as an alternative, that if the Court was to find that Bonnet was arrested by members of the SAPS, such an arrest would have been lawful as it would have been carried out in terms of s40(1)(a) and s40(2) of the Criminal Procedure Act 51 of 1977 ('the CPA'). The contention ran that s40(1)(a) of the CPA applied in that Bonnet failed to remain in attendance while being processed by traffic officers, that he forcefully manhandled Matlhare, that he damaged a traffic fine book, that he failed to obey a lawful instruction to stop when instructed to do so by a peace officer; and s40(2) of the CPA applied in that he could be arrested under any law (National Traffic 93 of 1996) without a warrant for failing to stop and remain until being processed by a traffic officer. Resultantly, the arrest was lawful. To buttress this submission Adv Mafoko relied on *Minister of Safety and Security v Sekhoto and Another*
- [2011] 2 All SA 157 (SCA), and *Nahour and Another v Minister of Justice and Constitutional Development* (6057/2007) [2018] ZAKZHC 65 (3 August 2018).

Assault

- [43] In dealing with the claim of assault Adv Mafoko postulated that Bonnet's claim imploded due to material contradictions in his evidence. Repeating the narrative in respect of the suppression of evidence Adv Mafoko opined that Bonnet's failure to produce the relevant photographic evidence impugned the credibility of his assertions. Curiously, Bonnet's allergic reactions were not the subject of any medical treatment. Consequently, it was not proved that such allergic reactions, if they ever existed were indeed caused by being pepper sprayed. Strangely, the alleged injuries sustained by Bonnet are inconsistent with the tenure of his evidence that he was assaulted by four (4) to five (5) police officers.
- [44] Focusing on the medical legal report, Adv Mafoko posited that the correctness of same was disputed. To this end, the J88 raised more questions than answers. It is incomplete in that it does not have the police station where the case was reported, it does not have a case

number, and it does not have the date and time of the examination. The absence of this collective material information is that the court is ill equipped to decide as to when Bonnet was examined. Separately from the absence of material information in the body of the J88, a page of the J88 has not be filed. Adv Mafoko concluded that the J88 in its current form was compromised. Moreover, Bonnet was at large in expounding in on the discrepancies between his evidence and the J88. Hence, the J88 was inadequate as evidence to embolden Bonnet's claim. Notwithstanding the election of Bonnet not to present medical evidence, Advocate Mafoko suggested that the absence of medical evidence hamstrung Bonnet's entire cause of action.

- [45] According to Adv Mafoko all these issues caused by the incomplete J88 could have been easily resolved by Bonnet calling the examining medical practitioner to testify, an avenue which Bonnet intentionally decided not to explore. Given the defects and inconsistencies in the J88, a causal link has not been established between the injuries and the incident as alleged by Bonnet. In the premises Advocate Mafoko Bonnet had not proved that an assault had been inflicted on him.
- [46] In so far as the detention of Bonnet is concerned Adv Mafoko emphasised that Bonnet was not detained. Bonnet had failed to prove that his freedom of movement inside and outside the holding cell was restricted. There was no evidence that the cell was locked or when it was unlocked.
- [47] Adv Mafoko contended that Bonnet if successful in this action and it results in the vindication of his rights, a claim for constitutional damages which is punitive in nature is seeking double or duplicate compensation and will be an unjustifiable windfall for Bonnet.
- [48] In respect of legal costs Adv Mafoko contended that Bonnet had not produced evidence in the form of an invoice or proof of payment that the legal costs claimed in his particulars of claim have been incurred and paid. Therefore, there is no proof or basis provided for the amounts claimed.

Legal framework

- [49] The Constitution preserves the right to freedom and security of the person, including the right not to be deprived of freedom arbitrarily or without just cause, as well as the founding value of freedom. See: s12(1), s1(a) and 7(1) of the Constitution. Therefore, it was adequate in this case for Bonnet to simply plead that he was unlawfully detained. This he did. The defendant then bore the burden to justify the deprivation of liberty; whatever form it may have taken.
- [50] This is not new development in our law. It has long been firmly established in our common law that every interference with physical liberty is *prima facie* unlawful. See: *Ingram v Minister of Justice* 1962

- (3) SA 225 (WLD) at 227; [1962] 3 All SA 76 (W) at 79; Boland Bank Bpk v Bellville Munisipaliteit en Andere 1981
- (2) SA 437 (C) at 444; [1981] 2 All SA 9 (C) at 14; Shoba v Minister van Justisie 1982
- (2) SA 554 (C) at 559; [1982]
- (4) All SA 153 (C) at 155; Minister of Law and Order and Others v Hurley and Another 1986
- (3) SA 568 (A) at 589[1986] ZASCA 53; ; [1986] 2 All SA 428 (A) at 443; During NO v Boesak and Another [1990] ZASCA 51; 1990
- (3) SA 661 (A) at 673-4; [1990] 2 All SA 347 (A) at 355; Masawi v Chabata and Another 1991
- (4) SA 764 (ZH) at 771-2; [1991] 4 All SA 544 (ZH) at 550; Minister of Justice v Hofmeyr [1993] ZASCA 40; 1993
- (3) SA 131 (A) at 153; [1993] 2 All SA 232 (A) at 244; Moses v Minister of Law and Order 1995
- (2) SA 518 (C) at 520; [1995] 3 All SA 98 (C) at 98; Robbertse v Minister van Veiligheid en Sekuriteit 1997
- (4) SA 168 (T) at 172; and Bentley and Another v McPherson 1999
- (3) SA 854 (E) at 857; [1999] 2 All SA 89 (EC) at 91.
- [51] Thus, once a plaintiff establishes that an interference has occurred, the burden falls upon the person causing that interference to establish a ground of justification. In Minister van Wet en Orde v Matshoba, 1990
- (1) SA 280 (A) the Supreme Court of Appeal again affirmed this principle, and went on to consider exactly what must be averred by a claimant complaining of unlawful detention. In the absence of any significant South African authority, Grosskopf JA found the law concerning the rei vindicatio a useful analogy. The simple averment of the plaintiff's ownership and the fact that his or her property is held by the defendant was sufficient in such cases. This led the Appellate Division to conclude that, since the common law right to personal freedom was far more fundamental than ownership, it must be sufficient for a plaintiff who is in detention simply to plead that he or she is being held by the defendant. The onus of justifying the detention then rests on the defendant. There can be no doubt that this reasoning applies with equal, if not greater, force under the Constitution. See: Zealand v Minister for Justice and Constitutional Development and Another (CCT54/07)
- [2008] ZACC 3; 2008 (6) BCLR 601 (CC); 2008 (2) SACR 1 (CC); 2008 (4) SA 458 (CC) (11 March 2008) at para 25.
- [52] There is no skirting the conduct of Bonnet. It was deplorable and obnoxious. He showed scant respect for the traffic officers and the role they played in traffic law enforcement, in compliance with legislation for the safety of all road users. It is equally concerning that Bonnet at this time was pursuing a vocation in law. It is evident from his evidence that he

was acutely aware of the process and procedures when stopped for an alleged speed violation. As an officer of the court, this required of him to act with more restraint and veneration. Importantly, it required of him to be a fit and proper person.

[53] Stepping away from the reprehensible conduct of Bonnet, there is undoubtedly conflicting evidence before this Court. Our law is replete with precedent on how such a dispute is to be resolved. In *Stellenbosch Farmers' Winery Group Ltd and Another v Martell and Others* supra at para 5 referred to by Adv Mafoko, the following tools were provided for unravelling a dispute of fact:

'To come to a conclusion on the disputed issues a court must make findings on:

- (a) the credibility of the various factual witnesses;
- (b) their reliability; and
- (c) the probability or improbability of each party's version on each of the disputed issues.

In light of the assessment of (a), (b) and (c), the court will then, as a final step, determine whether the party burdened with the onus of proof has succeeded in discharging it. The hard case, which will doubtless be a rare one, occurs when a court's credibility findings compel it in one direction and its evaluation of the general probabilities in another. The more convincing the former, the less convincing will be the latter. But when all factors equipoised, probabilities prevail'.

[54] In *National Employers' General Insurance Co Ltd v Jagers* 1984

(4) SA 437 (ECD) at 440D-441A the following was posited:

'It seems to me, with respect, that in any civil case, as in any criminal case, the onus can ordinarily only be discharged by adducing credible evidence to support the case of the party on whom the onus rests. In a civil case the onus is obviously not as heavy as it is in a criminal case, but nevertheless where the onus rests on the plaintiff as in the present case, and where there are two mutually destructive stories, he can only succeed if he satisfies the court on a preponderance of probabilities that his version is true and accurate and therefore acceptable, and that the other version advanced by the defendant is therefore false or mistaken and falls to be rejected. In deciding whether that evidence is true or not the court will weigh up and test the plaintiff's allegations against the general probabilities. The estimate of the credibility of a witness will therefore be inextricably bound up with a consideration of the probabilities of the case and, if the balance of probabilities favours the plaintiff, then the court will accept his version as being probably true. If however the probabilities are evenly balanced in the sense that they do not favour the plaintiff's case any more than they do the defendant's, the plaintiff can only succeed if the court nevertheless believes him and is satisfied that his evidence is true and that the defendant's version is false.

This view seems to me to be in general accordance with the views expressed by Coetzee J in *Koster Ko-operatiewe Landboumaatskappy Bpk v Suid-Afrikaanse Spoorweë en Hawens* (supra) and *African Eagle Assurance Co Ltd v Cainer* (supra). I would merely stress however that when in

such circumstances one talks about a plaintiff having discharged the onus which rested upon him on a balance of probabilities one really means that the court is satisfied on a balance of probabilities that he was telling the truth and that his version was therefore acceptable. It does not seem to me to be desirable for a court first to consider the question of credibility of the witnesses as the trial judge did in the present case, and then, having concluded that enquiry, to consider the probabilities of the case, as though the two aspects constitute separate fields of enquiry. In fact, as I have pointed out, it is only where a consideration of the probabilities fails to indicate where the truth probably lies, that recourse is had to an estimate of relative credibility apart from the probabilities.”

- [55] Within the prism of a dispute of fact, it is not unusual for the existence of commonalties. This action is no exception. The probabilities certainly lean in favour of the traffic officers as far as Bonnet’s conduct is concerned. Bonnet was egotistical when he was asked if he would like to view his alleged exceeded speed of travel. He riposted that the camera should be brought to him for a viewing of his recorded speed of travel on the speeding timing device. Further he requested to view their identification document and calibration certificate. The intended purpose and object of requesting same was contradictory. Bonnet conceded to making a peculiar request to use Matlhare’s back to sign the written Notice, notwithstanding the availability of a motor vehicle that was in close propinquity which could have been used to achieve the same result.
- [56] The probabilities certainly lean against Bonnet leaving with the implicit consent of Matlhare and her colleagues. This therefore need not detain this Court further. Bonnet acknowledged that on realizing that a roadblock had been set up for him, he stopped a distance away and engaged with Le Grange via cell phone communication. On being confronted by a police officer Bonnet indicated to the police officer that he intends to finish his cell phone call with his attorney. Pursuant thereto the police officer would have his undivided attention. Bonnet’s request was declined.
- [57] The police officer proceeded to insert his hand through the slight opening of the window and pulled the key of the Polo from the ignition space. Due to the way the window had been opened, the police officer was unable to remove his hand with the key. He then dropped the key. Bonnet then placed his phone into his pocket, took the key of the Polo, alighted from the Polo and locked it. The key was placed into his underpants.
- [58] The essence of the enquiry under this rubric is whether Bonnet was arrested. Bonnet contends that he was. Maano asserts that Bonnet was not arrested as his rights as bespoken in s35 of the Constitution were not explained to him. Moreover, Maano had not seen handcuffs on Bonnet. The objective evidence goes against the grain of this proposition. First, the defendant committed a fatal error by renouncing to present the evidence of witnesses that were intimately involved with Bonnet at the roadblock. Bonnet contended that he was handcuffed. Second, it is incontestable that Bonnet was driven in his Polo to the Sannieshof police station. Third, had Bonnet not been arrested there would have been no reason for him to have not to have driven his Polo. Bonnet was more than capable and

qualified to have driven to the Sannieshof police station accompanied by a police officer. Fourth, had Bonnet not been arrested he could have been escorted in a properly constituted convoy. This would have included the motor vehicles of police officers, and that of Maano and Matlhare's with Bonnet driving his Polo. The sole reason that these obvious alternatives were not considered was that Bonnet had been arrested.

[59] The fact that Bonnet's personal property was relinquished on instruction of the police at Sannieshof and was in the possession of the reception officer unequivocally points to and proves his arrest. The absence of a paper trail does not diminish the factual evidence. Bonnet's accepted evidence on the process he had to follow to retrieve his wallet for the purposes of withdrawing cash for the payment of his fines is decisive and telling.

[60] The law of general application pertinent to the execution of an arrest is longstanding. The import of which is to be found in s39 of the CPA provides that:

"(1) An arrest shall be effected with or without a warrant and, unless the person to be arrested submits to custody...by forcibly confining his body.

(2) The person effecting the arrest shall, at the time of effecting the arrest or immediately after effecting the arrest, inform the arrested person of the cause of the arrest, or in the case of an arrest effected by virtue of a warrant, upon demand of the person arrested hand him a copy of the warrant.

(3) The effect of the arrest shall be that the person arrested shall be in lawful custody and that he shall be detained in custody until he is lawfully discharged or released from custody".

[61] The meaning of arrest has been the subject of several academic works. Additionally, our case law is multifarious with authoritative precedent. The commonality that emerges from these collective legal prescripts is that the definition of an arrest encompasses the restriction of an individual's freedom. See: *Rex v Mazema* 1948 (2) SA EDLD at page 154.

[62] No amount of legalistic acrobatics can dispute that Bonnet's freedom was restricted from the moment he was handcuffed. It was from this point that his movements were controlled. It was misplaced for Maano to suggest in the absence of an explanation or issuing of his Notice of Rights as entrenched in s35 of the Constitution, Bonnet's arrest was not completed. A clear distinction must be made between the restriction of the freedom of movements and the failure to explain constitutional peremptory constitutional imperatives that follow an arrest.

[63] In an amended plea, the defendant contended that the "plaintiff was not processed at the police station and therefore not arrested by the South African Police." In written heads the following alternative proposition is dangled - if the court were to find that Bonnet was arrested by the SAPS, it was then contended that such an arrest would have been lawful as it was carried out in terms of Section 40(1)(a) and 40(2) of the CPA. To this end, section 40(1)(a) of the CPA would find application in that Bonnet, (i) failed to remain while being processed by traffic officers, (ii) forcefully manhandled Ms Matlhare, (iii) damaged a traffic fine book,

and(iv) failed to obey a lawful instruction or stop when instructed to do so by a peace officer. Driving this home, it was underscored that section 40(2) of the CPA Bonnet could have been arrested under any law (National Traffic Act 93 of 1996) without a warrant for failing to stop and remain until being processed by a traffic officer.

[64] It serves no purpose to restate this alternative in finer detail simply because it was not pleaded. Pleadings must be a clear and concise statement of material facts on which the pleader relies for their claim with sufficient particularity to enable the opposite party to reply thereto. See: *Moaki v Reckitt and Colman (Africa) Ltd and Another* 1968

(3) SA 98 (A) at 102A.

[65] It is trite that a party cannot be allowed to plead one case and attempt to present another at the trial. Usually, he or she will not be allowed to raise a different or fresh case without a due amendment. Given this longstanding practice of law, this Court by entertaining such an ill-conceived litigating posture would impermissibly be embroidering the dispute identified by the parties as that which it was is called to determine.

[66] In *Minister of Police v Gqamane* (226/2022) [2023] ZASCA 61 (3 May 2023 at para 13, the following was posited:

“A court is equally bound by those pleadings and should not pronounce upon any claim or defence not made in the pleadings by the parties. A court may relax this rule where the issue involves a question of law which emerges fully from the evidence or is apparent from the papers. This Court, in Minister of Safety and Security v Slabbert, held that: ‘There are, however, circumstances in which a party may be allowed to rely on an issue which was not covered by the pleadings. This occurs where the issue in question has been canvassed fully by both sides at the trial.’ (footnotes omitted)

[67] To conclude on this aspect, this Court must determine this action within the four corners of the pleadings. That being so, this “alternative” legislative afterthought is of no moment. Accordingly, I find, that Bonnet was unlawfully arrested and detained.

[68] I turn to consider the issue of the assault. Notwithstanding inconsistencies in the evidence of Bonnet, the probabilities overwhelmingly suggests that he was assaulted. Bonnet explained in detail how this occurred. No confuting evidence was presented on this score by the defendant. On the arrival of Le Grange, he repeated same. Le Grange confirmed his observations. It was evident that Bonnet was clearly shaken by unlawful conduct of the police officers. This necessitated Le Grange to escort him to Ventersdorp.

[69] The following day Bonnet proceeded to seek out medical attention and register a criminal case. Decisively, Bonnet was unable to identify the police officers who assaulted him. It would have served no purpose to proceed with a criminal action given the fissure of a lack of a proper identification of his assailants. Notwithstanding same, Bonnet persevered in quest for justice. These objective factors repudiate any suggestion that Bonnet had fabricated this assault.

[70] The wrongful infringement of the constitutional rights claim of the plaintiff to my mind is a duplication of Bonnet's cause of action. The infringement of these various constitutional imperatives is subsumed within the prism of the unlawful arrest and detention and assault claims. A self-standing claim in these circumstances is superfluous. It follows that it must fail.

Legal costs

[71] Bonnet has successfully proved that his legal costs were necessary fair and reasonable. These costs have been adequately liquidated and therefore should be awarded.

Medical Treatment

[72] This claim was abandoned.

Conclusion

[73] In the premises, Bonnet has been largely successful.

Costs

[74] There is basis to deviate from the usual rule that costs follow the result.

Order

[75] Resultantly, I make the following order:

- (i) The defendant is ordered to pay the plaintiff's agreed and/or proven damages in respect of his unlawful arrest and detention and assault.
- (ii) The issue of quantum is to serve before Reddy J on a date to be arranged with the Registrar of this Court.
- (iii) The plaintiff's claim in respect of wrongful infringement of his constitutional rights is dismissed.
- (iv) The plaintiff's claim in respect of medical costs is dismissed.
- (v) The defendant is ordered to pay the plaintiff's legal costs in the amount of R10 000-00. Interest on this amount at the legally prescribed rate of interest from date of judgment to date of payment.
- (vi) The defendant is ordered to pay the costs on a party-and party scale B.

A REDDY

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION MAHIKENG

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Date of Hearing 16 September 2024

Date of Judgment 23 June 2025

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