

SOUTH AFRICA / JUDGMENT

Khanyile v Minister of Police (33478/11)

[2013] ZAGPJHC 234 (5 August 2013)

[2013] ZAGPJHC 234**COURT**

South Gauteng High Court, Johannesburg

BEFORE

Madima

CASE / FILE NUMBER

33478/11

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REPORTABLE**SOUTH GAUTENG HIGH COURT****JOHANNESBURG****CASE NO: 33478/11****DATE:05/08/2013**

In the matter between

KHANYILE BONGINHLANHLA.....Plaintiff

and

MINISTER OF POLICE.....Defendant

JUDGMENT

MADIMA, AJ

Introduction

[1]. The plaintiff sues for damages for unlawful arrest and detention. He claims in the summons that he suffered injury to his privacy, dignity and bodily integrity as a result of the unlawful arrest and detention. For his troubles, plaintiff wants R150 000.00 in damages.

[2]. The plaintiff describes himself as an adult casual worker of Tshepisong in Roodepoort, Gauteng. He drives a taxi on occasion

[3]. At a pre-trial conference, the parties agreed on the following common cause issues, that, (a) the plaintiff was arrested on 2 August 2010 by police officers who were acting within the course and scope of their employment with the defendant, and (b) the plaintiff was detained at the Johannesburg Central Police Station from 2 August 2010 to 4 August 2010 by the said police officers.

[4]. The defendant disputes that the arrest and detention of the plaintiff was unlawful, and claim that plaintiff was arrested because he broke the law.

The onus of proof

[5]. Our courts have held, with regard to onus, and in the instance of an arrest, that the onus rested on the defendant to justify the said arrest. In *Minister of Law and Order and Others v Hurley and Another* [1986 (3) SA 568 (A) at 589E-F], Rabie CJ stated that ‘An arrest constitutes an interference with the liberty of the individual concerned, and it therefore seems fair and just to require that the person who arrested or caused the arrest of another person should bear the onus of proving that his action was justified in law.’

[6]. The Court went further and explained that “The Bill of Rights guarantees the right of security and freedom of the person, which includes the right ‘not to be deprived of freedom arbitrarily or without just cause’ – s 12(1)(a). This right, although previously not entrenched, is not something new in our law. That is why, as stated at the outset of this judgment, any deprivation of freedom has always been regarded as *prima facie* unlawful, and required justification by the arresting officer. This explains the rule that a plaintiff need only allege the deprivation of his freedom and require of the defendant to plead and prove justification’.

[7] There is no quarrel between the litigants that the defendant bears the onus to prove that the plaintiff’s arrest and detention were justified and lawful. Mr I, Ngwetjana, for the defendant indeed conceded that, that was the position.

Evidence not in dispute

[8]. The evidence led by the parties was that on 2 August 2010 at about 08:10 and at the intersection of Main and Terrace Streets in Fordsburg, Johannesburg (“the intersection”), a collision occurred between a minibus taxi (“the taxi”) driven by the plaintiff and a marked police vehicle occupied by police officers.

[9]. The plaintiff was driving along Main street, and headed towards Soweto, whilst the police officers were travelling in Terrace street.

[10]. The traffic lights at the intersection were not functioning and were flashing red instead of the normal green, amber and red. Immediately after the collision the police officers disembarked from the police vehicle and approached the taxi. The plaintiff remained inside his taxi and resisted attempts by the police officers to get him off the taxi. He held tightly on to the driver’s door.

[11]. A while later the police officers managed to get him out of the taxi and arrested him immediately. They put him in the back of the police vehicle.

The defendant's evidence

[12]. Constable Timothy Agente Marape ("Marape") testified that he was driving along Terrace Street on the morning of 2 August 2010. He was with his colleagues, one Sergeant Ramadi, Constables Moipolai and Mothowagae. He stopped at the corner of Terrace and Main streets. He had intended to turn right into Main street. The traffic lights were not in working order and he treated the non functioning lights at the intersection as a four way stop.

[13]. Marape said that when he and his colleagues arrived at the intersection, there already was a taxi ("the second taxi") that had also stopped at the traffic lights. The driver of the second taxi flashed his lights to indicate to the police vehicle that it could proceed and turn right into Main Street. As the police vehicle was about to turn right, the taxi driven by the plaintiff came from behind the taxi that had stopped at the traffic lights, overtook it, and then smashed onto the right hand side of the police vehicle. Marape stated that the taxi driven by the plaintiff did not stop at the traffic lights.

[14]. After the collision Marape or one of the policemen called 911 or "control" as they refer to it, and reported that a state vehicle had been involved in an accident. A captain Xulu arrived at the scene some thirty minutes after the collision. Also to arrive was Constable Muthuhadini Munyai ("Munyai"). Munyai opened the docket and filled in the accident report form. According to Marape, Munyai arrested the driver of the taxi for reckless and negligent driving, as well as for inconsiderate driving. The police officers had to wait for a photographer who arrived about one hour after the collision.

[15]. Marape testified further that the whole front of the taxi was damaged. This according to him, was an indication that the taxi was travelling at an excessive speed. The taxi would not have been, so testified Marape, damaged to that extent had it stopped at the traffic lights. I must say that no evidence of the damage was presented to the Court.

[16]. During cross examination ,Marape confirmed that Munyai arrested the Plaintiff upon his arrival on the scene, and put him inside the police vehicle that he, Munyai had just arrived in.

[17]. Mr L. du Bruin, appearing for the plaintiff, put the following version to Mr Marape for Marape's comments.

[17.1]. that the Plaintiff had the right of way when he arrived at the intersection.

[17.2]. that after the collision the police opened the passenger door and ordered the passengers to alight.

[17.3]. that the police instructed the plaintiff to pay back to the passengers their fare.

[17.4]. that the police flagged another taxi to take the passengers to their destination.

[17.5]. that the police instructed the plaintiff to alight from the driver's seat.

[17.6]. that the police asked the plaintiff why he drove his taxi the way he was driving.

[17.7]. that the police started hitting him with fists.

[18.8]. that Marape also assaulted him.

[17.9]. that the plaintiff fell to the ground and was kicked all over his body.

[18]. Marape disputed the entire version of the Plaintiff put to him by Plaintiff's counsel, save for admitting the version in paragraphs 17.2 and 17.5 above.

[19]. Munyai was the second witness for the defendant. He testified that he was with Sergeant Makhuvha ("Makhuvha") on the morning in question. They were patrolling in the CBD when they received a complaint via "control" that a state vehicle had been involved in an accident.

[20]. Upon their arrival at the scene, they saw the plaintiff at the back of the police vehicle that had been involved in the collision. Munyai and Makhuvha took control of the scene. They awaited the arrival of the photographer. Some hours later, Munyai accompanied the plaintiff to the Johannesburg Central Police Station and left him in the care of the Client Services Centre.

[21]. During cross examination Munyai testified that it was Makhuvha who filled in the accident report form and not himself as he was still a student constable at the time. Not much ought to turn on this.

[22]. Sergeant Ramadi ("Ramadi") testified that he was also on duty doing crime prevention duties on the morning in question. He was Marape, Constables Moipolai and Mothowagae. His evidence was similar to that of Marape. He confirmed that the plaintiff was put at the back of the police vehicle that had been in the collision. The plaintiff was arrested for driving through a red traffic light.

[23]. During cross examination Ramadi reiterated what had already been testified to by Marape and Munyai to a certain extent. Mr du Bruin put it to Ramadi that his, Ramadi's, statement did not mention the other taxi that was stationery at the traffic lights, nor does it say anything about the plaintiff resisting getting out of the driver's seat. Ramadi stated that there were several other things that were not mentioned in his statement. This was because there was not enough time to mention everything. Again nothing seems to turn on this as the plaintiff himself had testified that he had resisted when the police officers had required him to first step out of his taxi, and second, when the police officers wanted him to get into the back of the police vehicle.

[24]. Ramadi testified further that when one spoke of arresting the plaintiff, he meant that all the police officers present at the scene had effected the arrest. The arrest of plaintiff at the scene could therefore not be attributed to one police officer. The plaintiff was arrested because he broke the law and they, the police officers, do not issue fines as was suggested by Mr du Bruin. He testified that anyone who drove through a red traffic light is stopped, and depending on his/her explanation, he/she is arrested.

The Plaintiff's evidence

[25]. The plaintiff testified that he was the first to arrive at the traffic lights at the intersection of Main and Terrace Streets. He had four or five passengers in his taxi. The traffic lights were not in working order. They were flashing red. Upon his arrival at the intersection, he stopped as he had to treat the non functioning traffic lights as if they were a four-way stop. There was another taxi parallel to his. The two taxis took off simultaneously. The Plaintiff said that he saw, on his left hand side a police vehicle that was turning right into Main street. It did not stop at the intersection as he had imagined it would. The police vehicle then collided with his.

[26]. After the collision the plaintiff remained in his vehicle. Three police officers got out of their vehicle. They opened the taxi passenger door. They instructed him to refund his passengers. The police flagged another taxi and got the passengers to continue to their destinations in it. The one police officer asked the plaintiff why he was still sitting in the driver's seat in his taxi. Another one asked him why he was driving in the manner he did. He was then punched on the chest. After getting out of the taxi, he was assaulted by the police officers. They hit him with fists and kicked him. The other police officers joined in the assault. Passersby asked the police officers why they were assaulting the Plaintiff as he was not fighting them. I must also again state that none of the passersby was called to testify on the Plaintiff's behalf.

[27]. The plaintiff testified further that he resisted the arrest. He asked the police officers why they were arresting him. They responded that they were arresting him because he had broken the law. They put him at the back of the police vehicle, and later taken to Johannesburg Central Prison.

[28]. On 4 August 2010 he was taken to the Johannesburg Magistrates' Court from where he was released at around 16:00. He did not appear before a magistrate. He was simply told to go home by the police at Westgate. He was not charged.

[29]. During cross examination the plaintiff stated that he does not read or write in English. He said that the person who had written the statement on his behalf did not read it back to him to confirm whether what had been written was correct. This, so said the plaintiff, explained the difference between his evidence in chief and that which is contained in his written statement.

[30]. The plaintiff disputed the police version that he overtook another taxi that was stationary by the intersection. He stated further that by letting his passengers go without taking a statement from them, the police wanted him to be without a witness because they knew they were in the wrong. This evidence was never challenged by the defendant's witnesses.

[31]. The plaintiff stated in his response to a question by Mr Ngwetjana that the police were unreasonable in arresting him. They were not supposed to effect the arrest as he had not committed a crime. He says he was never charged. He maintained that he was assaulted. The assault has never been the plaintiff's case in the first place. This issue only was canvassed by the plaintiff when he led his evidence in chief. Mr du Bruin sought an amendment to the plaintiff's particulars of claim in this regard. I shall return to the application presently.

[32]. Mr Ngwetjana put it to plaintiff that the reason for his arrest was that he had caused the accident. Plaintiff denied that he had broken any law.

[33]. In his application for an amendment Mr du Bruin submitted that evidence regarding the assault had been led and that the defendant had had the opportunity to cross-examine the plaintiff on it. There therefore was no prejudice to the defendant if the amendment were to be granted. Mr Ngwetjana predictably objected to the application. He however could not demonstrate any prejudiced to be suffered by the defendant if I were to grant the amendment.

[34]. I reserved judgment on the application and requested the parties to finalise their respective cases.

Evaluation of the evidence

[35]. The Court is almost always presented with two irreconcilable versions in matters of unlawful arrest and detention. I must mention that the police did not make available to the court the photographs that were purportedly taken of the accident. I have no doubt that the photographer indeed did arrive at the scene and took the photographs. Why these were not made available to the Court is beyond comprehension.

[36]. The defendant did not provide a charge sheet which would have stated what crime the plaintiff was been charged with. I accept the evidence of the Plaintiff that he was never charged. I am however alive to the fact that it is not the police that charge suspects. That is the function of the prosecution authorities. There is no evidence before me that the police infact interacted with the prosecution authorities to ensure that the plaintiff was charged. There is, importantly, no nolle prosequi certificate. This would additionally have gone a long way to persuade me that the police had the intention to prosecute the plaintiff for his allegedly illegal act. Without the certificate, I cannot make that finding.

[37]. I have looked at the accident report. The sketch which was drawn by the police does not show the presence of a second taxi that the police allege the Plaintiff had overtaken. I ask myself why this is so. There has been no explanation from the defendant why the photographs that were taken by the police have not been placed before the Court. The defendant has further failed to provide the panel-beater's reports that describe the extent of the damage to either vehicle. These reports would have aided me in assessing, to some useful extent, which of the litigants was in the wrong.

[38]. I have no doubt in my mind that police officers generally have the right to arrest anyone that they see committing a crime. This they can do without a warrant. Their work would be hampered if they did not have this authority of arrest without a warrant. In this instance, the police officers would still have had the right to arrest the plaintiff even if the accident had been between the plaintiff and another motor vehicle other than that of the police. I agree with the Mr Ngwetjana's submission that the police are not traffic officer and can therefore not issue fines on errant motorists.

[39]. Mr du Bruin suggested that the police officers should not have arrested the plaintiff. They should instead have taken his details and warned him to attend court on a day determined by them. I find this proposition very difficult to understand. Should the police not arrest, on the spot, a house-breaker? Should they take his details and ask him to come to court in six months' time? Mr du Bruin's proposition would be laughable if it was not serious.

[40]. Having said all of that about defendant, I have nothing before me to work on. As I have stated above, there is nothing before me that justifies the arrest and detention of the plaintiff. He may well have jumped a red traffic light. The defendant did not call as a witness the "second taxi" driver whom it alleges "flashed his lights" to give them the right of way. This witness would have shed some illuminating light on what really happened at the intersection. No explanation was given to the Court why he was not called to testify. As already stated above, the police's sketch or diagram of the accident also does not show a second taxi as alleged in their evidence. What am I to make of that? I come to one conclusion in this regard. The police did not call the "second taxi" driver because they knew that he would not corroborate their evidence. From this I also come to the conclusion that the police did not stop at the intersection. It is my conclusion that they caused the collision,

and were wrong to arrest the Plaintiff.

[41]. The Bill of Rights in our Constitution is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom. The Constitution enjoins the State to respect, protect and fulfill these rights in the Bill of Rights. (my emphasis)

[42]. Section 12 of the Constitution provides for the protection of the freedom and security of the person. It states that

...

12. Freedom and security of the person

- (1) Everyone has the right to freedom and security of the person, which includes the right –
 - (a) not to be deprived of freedom arbitrarily or without just cause;
 - (b) not to be detained without trial;
 - (c) to be free from all forms of violence from either public or private sources;

- (d) not to be tortured in any way; and
- (e) not to be treated or punished in a cruel, inhuman or degrading way.

[43]. Section 12(1)(a) and (b) is of particular relevance to the Plaintiff. I deduce from his treatment by the police officers as a violation of his section 12(1)(a) and (b) constitutionally protected rights. The police have failed to satisfy me that the Plaintiff's arrest and detention was not arbitrary and without just cause. With regard to plaintiff's detention, the police "cleverly" took him to "court" on the second day of his detention where he is released without appearing before a magistrate.

[44]. I would have adjusted my thinking and finding if the control prosecutor had issued a nolle prosequi certificate. As I have alluded above, this would have been sufficient indication that the police were intent on bringing the Plaintiff before the Court. To simply have Plaintiff released after two day in detention without having charged him is a violation of his section 12 rights.

[44]. The Criminal Procedure Act ("the Act") provides for various ways to secure the attendance in court of an accused person. The arrest must be effected by a peace officer. [see section 40]. The confusion regarding who effected Plaintiff's arrest is neither here nor there. It is common cause that he was arrested by members of Defendant in the course and scope of their employment with defendant.

[45]. It is what happened, or aptly put, what did not happen after Plaintiff was arrested that is of concern to me. The Criminal Procedure act provides in this regard that

50 Procedure after arrest

- (1)(a) Any person who is arrested ... without a warrant for allegedly committing an offence, ... shall as soon as possible be brought to a police station...
- (b) A person who is in detention as contemplated in paragraph (a) shall, as soon as reasonably possible, be informed of his right to institute bail proceedings.
- (c) Subject to paragraph (d), if such an arrested person is not released by reason that –
 - (i) no charge is to be brought against him; or
 - (ii) bail is not granted to him or her in terms of section 59 or 59A,

he or she shall be brought before a lower court as soon as reasonably possible, but not later than 48 hours after the arrest."

[46]. It is common cause that the plaintiff was not granted bail. He was detained in custody. No charge was brought against him despite the police insisting that he had broken the law. Realising that they have made a blunder, the police took plaintiff to the Johannesburg Magistrates Court on the second day of his detention and released him at the end of that day. I must point out that the section 50(1)(c)(ii) of the Criminal Procedure Act states that if not charged or granted bail, the plaintiff ought to be

brought before a lower court not later than 48 hours after the arrest. The police officers did not bring plaintiff before a lower

court. They instead took him to the Johannesburg Magistrate Court where he was released without him having been brought before the judicial officer. This they did, that is, take Plaintiff to the Magistrates Court in order to satisfy the requirements of section

50(1)(c) of the Act.

[47]. The police also failed to comply with the SAPS Standing Order (G) 341 (“the Standing Order”) when they effected the arrest of plaintiff. [The Standing Order issued under Consolidated Notice 15/1999 and entitled ‘Arrest and the Treatment of an Accused Person until Such Person is Handed Over to the Community Service Centre Commander’]. It provides inter alia that;

.

4. The object of an arrest

(1) General rule

As a general rule, the object of an arrest is to secure the attendance of such person at his or her trial. A member may not arrest a person in order to punish, scare, or harass such person.”

[48]. The object of an arrest is always to ensure that the arrested person will be brought before a court of law. If that is not the object, then the arrest is unlawful. The Standing Order also states that the police may not arrest a person in order to punish, scare or harass them. I have failed to find any justification for the arrest and detention of the plaintiff by the police in this case. I am even inclined to come to the conclusion that they arrested him because he was “cheeky” by refusing to co-operate when they demanded that he should “get off” his taxi after the collision. The intention of the police was not to bring plaintiff before a court. Their intention was to punish him, contrary to the Standing Orders.

[49]. Any arrest of a suspect not preceded by an intention to bring the arrested person to justice, is unlawful. [Minister of Safety and Security v Sekhoto [2011 (5) SA 367 SCA]. In Louw and Another v Minister of Safety and Security and Others 2006

- (2) SACR 178 (T) at 185b-e, Bertelsmann J held that “An arrest is a drastic interference with the rights of the individual to freedom of movement and to dignity. In the recent past, several statements by our Courts and academic commentators have underlined that an arrest should only be the last resort as a means of producing an accused person or a suspect in court. In Minister of Correctional Services v Tobani 2003
- (5) SA 126 (E), the Court held that ‘So fundamental is the right to personal liberty, the lawfulness or otherwise of a person’s detention must be objectively justifiable, regardless ... even of whether or not he was aware of the wrongful nature of the detention.’ If an accused person or a suspect does not present a danger to society, will in all probability stand his trial, will not abscond, will not harm himself and is not in danger of being harmed by others, and may

be able and keen to disprove the allegations against him or her, an arrest will ordinarily not be the appropriate way of ensuring the accused's presence...1

[50]. The court in *Gellman v Minister of Safety and Security* [2008 SACR 446 WLD] provided a road map for the arrest by a peace officer of a suspect as follows:

[97.5] After the policeman has determined that there are reasonable grounds for suspecting the commission of a Schedule 1 offence, he must exercise his discretion to determine whether there are circumstances which militate in favour of effecting a warrantless arrest. Usually the risk of the suspect absconding or committing further crimes if the policeman delays in obtaining a warrant, would militate in favour of a warrantless arrest.

[97.6] A policeman should always consider whether the accused's attendance can be procured through a summons, as this is the preferable method of summoning a suspect's attendance at trial. If the policeman concludes that there is a risk of flight if a summons is served on the suspect, the policeman should consider whether the ends of justice may be defeated if he approaches a magistrate or justice of the peace to obtain a warrant.

[97.7] In determining whether or not to effect an arrest, the arresting officer should carefully consider his/her standing orders. Where a police officer exercises a discretion in violation of standing orders, that may in itself be an indication that the discretion was not properly exercised and that the warrantless arrest was unlawful."

[my emphasis]

[51]. I have no doubt in my mind that the police officers who arrested and detained the plaintiff did so without lawful cause. They failed lamentably to justify the arrest and detention.

Amendment application

[52]. The plaintiff during the course of his evidence in chief testified that he had been assaulted by the police officers during the course of his arrest. The defendant counsel did not object to this evidence being led even though same was not pleaded in the plaintiff's papers. Mr Ngwetjana indeed cross examined the plaintiff on this evidence. Mr du Bruin submitted that there was no prejudice to the defendant if the plaintiff's particulars were to be amended to include the assault. I would have expected Mr Ngwetjana to object on the basis that he has not taken instructions regarding this late amendment. He did not. Had he done so, I would have found otherwise.

[53]. Consequently, the amendment application succeeds. There is however nothing before me that informs me that Plaintiff suffered any injuries resulting from the alleged assault. The Plaintiff testified that he consulted a traditional healer who tendered to his injuries. The healer was however not called to testify. The Plaintiff has, thus not provided proof of these injuries. I shall take the issue no further.

Damages

[54]. The Court in *Ntshingana v Minister of Safety and Security* [Unreported case no 1639/01, ECD, 14.10.2003] approached the assessment of damages for wrongful arrest thus:

“The satisfaction in damages to which a plaintiff is entitled falls to be considered on the basis of the extent and nature of the violation of his personality (corpus parma and dignitas). As no fixed or sliding scale exists for the computation of such damages, the court is required to make an estimate ex aequo et bono. The authors of Visser and Potgieter’s Law of Damages 2nd Edition, 475 have extracted from our case law factors which can play a role in the exercise:

The circumstances under which the deprivation of liberty took place, the presence or absence of improper motive or (malice) on the part of the defendant, the harsh conduct of the defendant, the duration and nature of the confinement of the deprivation of liberty; the status, standing, age and health of the plaintiff, the extent of the publicity given to the deprivation of liberty; the presence or absence of an apology or satisfactory explanation of the events by the defendant; awards in previous comparable cases; the fact that in addition to physical freedom, other personality interests such as honour and good name have been infringed, the high value of the right to physical liberty; the affect of inflation; and the fact that the actual inuriarem also has a punitive function”.

[55]. I am alive to the fact that each case must be determined according to its own merits. This is because cases are different. It is unusual to find two similar cases that are identical in their facts to the dot. It is therefore helpful to compare these cases and the awards only as a guide to determining the quantum of damages.

[57] The Plaintiff’s counsel referred me to *Tlhaganyane v Minister of Safety and Security*, an unreported judgment of North West High Court, 13 February 2013, SAFLLI 2013 ZANWHC. A comparison between the *Tlhaganyane* and the instant case is instructive. *Tlhaganyane* was arrested for reckless and negligent driving and detained for 19 hours whilst plaintiff was arrested, ostensibly for the same “offence” and detained for 56 hours (two and half days according to his counsel). Police bail was fixed for *Tlhaganyane* while no bail was fixed for the plaintiff. *Tlhaganyane* appeared before a magistrate. Plaintiff had no such luck. *Tlhaganyane* was awarded damages of R140 000.00.

[58.] Mr Ngwetjana referred me to 11 cases to guide me in deciding, in the event I find that plaintiff’s arrest and/or detention was unlawful, the recommended quantum. Although the cases referred to me by counsel were decided more than five years ago, they proved to be very helpful. I am indebted to both counsel for their diligence and scholarship of their heads of argument from which I have borrowed heavily in the writing of this

judgment.

[59]. I have also had a look at the decision in *Minister of Safety and Security v Seymour* [2006

(6) SA 320 SCA 67]. In this case, the plaintiff was arrested and detained for 5 days. The court a quo awarded general damages of R500 000.00. This was amount was however reduced to R90 000.00 on appeal.

[60]. In Ngema v Minister of Police [unreported case no.05081/2012 (SGHC)], the Plaintiff was awarded the sum of R40 000.00 for wrongful arrest and detention for less than three hours. There is no table from whence a Court is to determine the amount to award in damages to unlawfully arrested suspects.

[61]. In his evidence regarding quantum, the Plaintiff testified that he was a casual worker. He drives a taxi. I do not believe that plaintiff should be treated any less favourably because of his station in life and the nature of his job. On the contrary the police officers treated the Plaintiff rather shabbily. No evidence was led whether Plaintiff was offered any apology when he was released on 4 August 2010. I come to the conclusion that none was offered. This is an aggravating factor.

[62]. Mr du Bruin submitted that the Court should award to Plaintiff the sum of R150 000.00 for damages, as claimed in the summons. I have taken and used the above referred to cases as guides in arriving at my decision on quantum. I am therefore of the view that R110 000.00 is an appropriate amount for damages.

[63]. It is trite that a Plaintiff must claim a reasonable amount when issuing summons. I do not believe that the Plaintiff in this case exaggerated or inflated his claim for the purposes of being heard in the High Court.

[64]. I am accordingly satisfied that the Plaintiff has successfully made a case for unlawful arrest and detention. His action should succeed.

[65]. I therefore make the following order that:

The Defendant is to pay the Plaintiff the amount of R110 000.00

Interest on the aforesaid amount at the rate of 15.5% from the date of service of the summons to date of payment.

Cost of the action

MADIMA: AJ

ACTING JUDGE OF THE HIGH COURT

On behalf of the Plaintiff: Adv L du Bruin

Instructed by: Bessinger Attorneys

011 615 7098

On behalf of the First Respondent: Adv Ngwetjana

Instructed by: State Attorney - Johannesburg

011 330 7624

Dates of Hearing: 22 May 2013

Date of Judgment: 22 July 2013

1 Gellman: 462i-463b.

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Prepared on 11 October 2026 · Esheria